

1962, and all references to sections of parts II and III, subchapter L, chapter 1 of the Code are to sections of the Internal Revenue Code of 1954 as amended by section 8 of the Revenue Act of 1962 (76 Stat. 989).

[T.D. 6681, 28 FR 11110, Oct. 17, 1963]

§ 1.821-3 Tax on mutual insurance companies other than life or marine or fire insurance companies subject to the tax imposed by section 831.

(a) *In general.* (1) For taxable years beginning after December 31, 1954, all mutual insurance companies, including foreign insurance companies carrying on an insurance business within the United States, not taxable under section 802 or 831 and not specifically exempt under the provisions of section 501(c)(15), are subject to the tax imposed by section 821 on their investment income or on their gross income, whichever tax is the greater, except interinsurers and reciprocal underwriters which are taxed only on their investment income. For the alternative tax, in lieu of the tax imposed by section 821 (a) or (b), where the net long-term capital gain for any taxable year exceeds the net short-term capital loss, see section 1201(a) and the regulations thereunder.

(2) The taxable income of mutual insurance companies subject to the tax imposed by section 821 differs from the taxable income of other corporations. See section 821(a)(2) and section 822. Such companies are entitled, in computing mutual insurance company taxable income, to the deductions provided in part VIII (section 241 and following, except section 248), subchapter B, chapter 1 of the Code. The gross amount of income during the taxable year from interest, the deduction under section 822(c)(1) for wholly tax-exempt interest, and the deduction under section 242 for partially tax-exempt interest, are decreased by the appropriate amortization of premium and increased by the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures or other evidences of indebtedness held by a mutual insurance company subject to the tax imposed by section 821. See section 822(d)(2) and § 1.822-7. However, for taxable years beginning after May 31, 1960,

only the accrual of discount relating to issue discount will increase the deduction for wholly tax-exempt interest. See section 103. In the case of any such evidence of indebtedness, adjustment shall be made to basis in the same manner as that made by life insurance companies under section 1016(a)(17) and the regulations thereunder.

(3) All provisions of the Internal Revenue Code and of the regulations in this part not inconsistent with the specific provisions of section 821 are applicable to the assessment and collection of the tax imposed by section 821 (a) or (b) and mutual insurance companies subject to the tax imposed by section 821 are subject to the same penalties as are provided in the case of returns and payment of income tax by other corporations. The return shall be on Form 1120M.

(4) Foreign mutual insurance companies not carrying on an insurance business within the United States are not taxable under section 821 (a) or (b), but are taxable as other foreign corporations. See section 881.

(5) Mutual insurance companies subject to the tax imposed by section 821, except interinsurers or reciprocal underwriters, with mutual insurance company taxable income (computed without regard to the deduction provided in section 242 for partially tax-exempt interest) of over \$3,000 or with gross amounts of income during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and net premiums (minus dividends to policyholders and wholly tax-exempt interest) in excess of \$75,000, are subject to a tax computed under section 821(a)(1) or section 821(a)(2) whichever is the greater. Interinsurers and reciprocal underwriters with mutual insurance company taxable income (computed without regard to the deduction provided in section 242 for partially tax-exempt interest) of over \$50,000 are subject to a tax computed under section 821(b).

(b) *Rates of tax.* (1) For taxable years beginning before July 1, 1963, the normal tax under section 821(a)(1)(A) and

821(b)(1), except as hereinafter indicated, is computed upon mutual insurance company taxable income for purposes of the normal tax at the rate of 30 percent.

(2) The surtax under section 821(a)(1)(B) and 821(b)(2), except as hereinafter indicated, is computed on that portion of the mutual insurance company taxable income for the purposes of the surtax in excess of \$25,000 at the rate of 22 percent. The tax under section 821(a)(2), except as hereinafter indicated, is 1 percent of the gross amount of income during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and net premiums, minus dividends to policyholders and minus wholly tax-exempt interest.

(3) For taxable years beginning before July 1, 1963, under section 821(a)(1)(A) companies with mutual insurance company taxable income for purposes of the normal tax of over \$3,000 and not over \$6,000 pay a normal tax, at a specified rate, on that portion of such income in excess of \$3,000. The rate applicable in computing the normal tax of such companies is 60 percent. Under section 821(a)(2) companies with gross amounts of income during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and net premiums, minus dividends to policyholders and minus wholly tax-exempt interest, of over \$75,000 and not over \$150,000 pay a tax equal to 2 percent of that portion in excess of \$75,000.

(4) For taxable years beginning before July 1, 1963, under section 821(b)(1) interinsurers and reciprocal underwriters with mutual insurance company taxable income for purposes of the normal tax of over \$50,000 and not over \$100,000 pay a normal tax computed on that portion of such income in excess of \$50,000 at the rate of 60 percent. Under section 821(b)(2) interinsurers and reciprocal underwriters with mutual insurance company taxable income for purposes of the surtax of over \$50,000 and not over \$100,000 pay a surtax, at the rate of 33 percent, on that portion of such income in excess of \$50,000.

(5) Section 821(c) provides for an adjustment of the amount computed

under section 821(a)(1), section 821(a)(2), and section 821(b) where the gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) is over \$75,000 and less than \$125,000. The adjustment reduces the tax otherwise computed under those sections to an amount which bears the same proportion to such tax as the excess over \$75,000 bears to \$50,000.

(c) *Application.* The application of section 821 (a) to (c) inclusive, may be illustrated by the following examples:

Example 1. The W Company, a mutual casualty insurance company, for the calendar year 1958, has mutual insurance company taxable income for purposes of the surtax of \$5,500 and, due to partially tax-exempt interest of \$800, has income for purposes of the normal tax of \$4,700. The gross amount of income of the W Company from the items described in section 822(b) (other than paragraph (1)(D) thereof) and net premiums, minus dividends to policyholders and wholly tax-exempt interest, is \$150,000. Its normal tax under section 821(a)(1) for the calendar year 1958 is 60 percent of \$1,700 (\$4,700 minus \$3,000) or \$1,020, since its income subject to normal tax is not over \$6,000. It is not liable for surtax for the calendar year 1958 as its mutual insurance company taxable income for purposes of the surtax does not exceed \$25,000. It has no surtax and, therefore, its total tax under section 821(a)(1)(A) is the normal tax of \$1,020. The tax under section 821(a)(2) is 2 percent of \$75,000 (\$150,000 - \$75,000), or \$1,500. Since the tax under section 821(a)(2) exceeds the tax under section 821(a)(1), the tax under section 821 is \$1,500, namely, that imposed by section 821(a)(2).

Example 2. If in the above example the income for purposes of the normal tax were not over \$3,000, the income for purposes of the surtax were not over \$25,000, the gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) were \$90,000, and the gross amount of income from the items described in section 822(b) (other than paragraph (1)(D) thereof) and net premiums, minus dividends to policyholders and wholly tax-exempt interest were \$70,000, the W Company would be required to file an income tax return but due to section 821(a) no income tax would be imposed.

Example 3. The X Company, a mutual casualty insurance company, for the calendar year 1958, has mutual insurance company taxable income for surtax purposes of \$28,000 and, due to partially tax-exempt interest of \$5,000, has income for normal tax purposes of

\$23,000. The gross amount of income of the X Company received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and net premiums, minus dividends to policyholders and wholly tax-exempt interest, is \$1,200,000. Under section 821(a)(1) its normal tax for the calendar year 1958 is 30 percent of \$23,000, or \$6,900, and the surtax is 22 percent of \$3,000 (\$23,000 - \$25,000), or \$660. The combined tax under section 821(a)(1) is \$7,560 (\$6,900 plus \$660). The tax under section 821(a)(2) is 1 percent of \$1,200,000, or \$12,000. Since the tax under section 821(a)(2) exceeds the tax under section 821(a)(1), the tax under section 821(a) is \$12,000, namely, that imposed by section 821(a)(2).

Example 4. The Y Company, a mutual fire insurance company subject to the tax imposed by section 821 for the calendar year 1958, has mutual insurance company taxable income for purposes of the surtax of \$35,000 and, due to partially tax-exempt interest of \$5,000, has income for purposes of the normal tax of \$30,000. The gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) is \$120,000, and the gross amount of income from interest, dividends, rents, and net premiums, minus dividends to policyholders and wholly tax-exempt interest, is \$100,000. Under section 821(a)(1), without application of section 821(c), the normal tax would be 30 percent of \$30,000, or \$9,000, since this is less than \$16,200, 60 percent of \$27,000 (excess of \$30,000 over \$3,000); and the surtax would be 22 percent of \$10,000 (excess of \$35,000 over \$25,000), or \$2,200. The combined tax of \$11,200 (\$9,000 plus \$2,200) would then be reduced by applying section 821(c), since the gross receipts are between \$75,000 and \$125,000. The tax under section 821(a)(1), as thus adjusted, would be 90 percent of \$11,200, or \$10,080, since \$45,000 (excess of \$120,000 over \$75,000) is 90 percent of \$50,000. Under section 821(a)(2), without reference to section 821(c), the tax is 2 percent of \$25,000 (excess of \$100,000 over \$75,000), or \$500, since this is less than \$1,000, 1 percent of \$100,000. Applying section 821(c) reduces this to \$450, or 90 percent of \$500. Since \$10,080, the tax under section 821(a)(1), as adjusted, exceeds \$450, the tax under section 821(a)(2), as adjusted, the tax under section 821(a)(1), as adjusted, is applicable. The Y Company would accordingly pay a combined normal tax and surtax of \$10,080.

Example 5. The Z Exchange, an inter-insurer, for the calendar year 1958 has mutual insurance company taxable income for purposes of the surtax of \$60,000 and, due to partially tax-exempt interest of \$12,000, has income for purposes of the normal tax of \$48,000. The gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D)

thereof) and premiums (including deposits and assessments) is \$2,700,000. The Z Exchange is not liable for normal tax under section 821(b)(1) for the calendar year 1958 as its mutual insurance company taxable income for purposes of the normal tax does not exceed \$50,000. Its surtax is 33 percent of \$10,000 (\$60,000 minus \$50,000), or \$3,300, since that amount is less than \$7,700, 22 percent of \$35,000 (excess of \$60,000 over \$25,000). Since the Z Exchange has no normal tax, is not subject to the tax imposed by section 821(a)(2), and is not entitled to the adjustment provided in section 821(c), its total tax under section 821(b) is \$3,300.

[T.D. 6610, 27 FR 8718, Aug. 31, 1962]

§ 1.821-4 Tax on mutual insurance companies other than life insurance companies and other than fire, flood, or marine insurance companies, subject to tax imposed by section 831.

(a) *In general*—(1) *Tax imposed.* (i) For taxable years beginning after December 31, 1962, all mutual insurance companies, including foreign insurance companies carrying on an insurance business within the United States, not taxable under section 802 or 831, and not specifically exempt under the provisions of section 501(c)(15), are subject either to the tax imposed by section 821(a) on mutual insurance company taxable income or, in the case of certain small companies, to the tax imposed by section 821(c) on taxable investment income. The determination of whether a mutual insurance company is taxable under section 821 (a) or (c) for the taxable year is dependent upon the gross amount received by the company during such taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments). If such gross amount received exceeds \$150,000, but does not exceed \$500,000 for the taxable year, the company is subject to the tax imposed by section 821(c) on taxable investment income, unless (a) the company elects under section 821(d) in the manner provided in paragraph (f) of this section to be subject to the tax imposed by section 821(a), or (b) there is a balance in its protection against loss account at the beginning of the taxable year. A company having a gross amount received in excess of \$500,000 is subject to the tax imposed by section