§ 1.809–4

share of each and every item of investment yield set aside for policyholders was 80 percent and the company’s share of each and every item of investment yield was 20 percent. Based upon these figures, T had a gain from operations of $5,180,000 for the taxable year 1958, computed as follows:

<table>
<thead>
<tr>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Col. 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest wholly tax-exempt</td>
<td>$10,000</td>
<td>$8,000</td>
</tr>
<tr>
<td>Interest partially tax-exempt</td>
<td>78,000</td>
<td>62,400</td>
</tr>
<tr>
<td>Dividends received</td>
<td>50,000</td>
<td>120,000</td>
</tr>
<tr>
<td>Other items of investment yield</td>
<td>662,000</td>
<td>529,600</td>
</tr>
<tr>
<td>Investment yield</td>
<td>900,000</td>
<td>720,000</td>
</tr>
</tbody>
</table>

Gross amount (sum of items under sec. 809(c)) .......... $12,000,000

Total ................................ 12,180,000

Less:
Deductions under sec. 809(d)(8):
Company’s share of interest wholly tax-exempt .......... $2,000
30/52 of company’s share of interest partially tax-exempt (30/52 x $15,600) .......... 9,000
85% of company’s share of dividends received (but not to exceed 85% of gain from operations as computed under sec. 809(d)(8)(B)) (85% x $30,000) .......... 25,500
All other deductions under sec. 809(d) .......... 6,963,500

Gain from operations .................................. 5,180,000

(d) Exception. (1) In accordance with section 809(b)(4), if it is established in any case to the satisfaction of the Commissioner, or by a determination of The Tax Court of the United States, or of any other court of competent jurisdiction, which has become final, that the application of the definition of gain from operations contained in section 809(b)(1) results in the imposition of tax on:

(i) Any interest which under section 103 is excluded from gross income,

(ii) Any amount of interest which under section 242 (as modified by section 809(a)(3)) is allowable as a deduction, or

(iii) Any amount of dividends received which under sections 243, 244,
to be credited in reduction of premiums under the terms of the contract), or any other item of similar nature. Such term includes advance premiums, premiums deferred and uncollected and premiums due and unpaid, deposits, fees, assessments, and consideration in respect of assuming liabilities under contracts not issued by the taxpayer (such as a payment or transfer of property in an assumption reinsurance transaction as defined in paragraph (a)(7)(ii) of §1.809–5). The term also includes amounts a life insurance company charges itself representing premiums with respect to liability for insurance and annuity benefits for its employees (including full-time life insurance salesmen within the meaning of section 7701(a)(20)).

(ii) The term return premiums means amounts returned or credited which are fixed by contract and do not depend on the experience of the company or the discretion of the management. Furthermore, amounts of premiums or other consideration returned to another life insurance company in respect of reinsurance ceded shall be included in return premiums. For the treatment of amounts which do not meet the requirements of return premiums, see section 811 (relating to dividends to policyholders).

(iii) For purposes of section 809(c)(1) and this subparagraph, the term reinsurance ceded means an arrangement whereby the taxpayer (the reinsured) remains solely liable to the policyholder, whether all or only a portion of the risk has been transferred to the reinsurer. Such term includes indemnity reinsurance transactions but does not include assumption reinsurance transactions. See section 811 relating to dividends to policyholders.

(b) Decreases in certain reserves. Each net decrease in reserves which is required by section 810 (a) and (d)(1) or 811(b)(2) to be taken into account for the taxable year as a net decrease for purposes of section 809(c)(2).

3. Other amounts. All amounts, not included in computing investment yield and not otherwise taken into account under section 809(c) (1) or (2), shall be taken into account under section 809(c)(3) to the extent that such amounts are includible in gross income under subtitle A of the Code. See section 61 (relating to gross income defined) and the regulations thereunder.

(b) Treatment of net long-term capital gains. For taxable years beginning before January 1, 1962, any net long-term capital gains (as defined in section 1222(7)) from the sale or exchange of a capital asset (or any gain considered to be from the sale or exchange of a capital asset under applicable law) shall be excluded from the determination of gain or loss from operations of a life insurance company. On the other hand, with respect to taxable years beginning after December 31, 1961, the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss (as defined in section 1222(5)) over net long-term capital loss (as defined in section 1222(6)) shall be taken into account in determining gain or loss from operations under section 809. However, for any taxable year beginning after December 31, 1958, the excess of net short-term capital gain (as defined in section 1222(5)) over net long-term capital loss (as defined in section 1222(6)) is included in computing investment yield (as defined in section 804(c)) and, to that extent, is taken into account in determining gain or loss from operations under section 809.


§ 1.809–5 Deductions.

(a) Deductions allowed. Section 809(d) provides the following deductions for purposes of determining gain or loss from operations under section 809(b) (1) and (2), respectively:

1. Death benefits, etc. All claims and benefits accrued (less reinsurance recoverable), and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts (including contracts supplementary thereto). The term all claims and benefits accrued includes, for example, matured endowments and amounts allowed on surrender. The term losses incurred (whether or not ascertained) includes a reasonable estimate of the amount of the losses (based