1990—Subsec. (b)(1). Pub. L. 101–508, §11531(b)(3), inserted before comma ''or the alternative tax energy preference deduction under section 56(h)''.

Subsec. (b)(2). Pub. L. 101–508, §11801(c)(2)(E), struck out ''(and the last sentence of section 56(f)(2)(B))'' after ''section 164(a)(5)''.

Subsec. (e)(1). Pub. L. 101–508, §11231(a)(1)(A), substituted ''January 1, 1996'' for ''January 1, 1992''.

1988—Subsec. (b)(2). Pub. L. 100–647, §2001(c)(3)(B), inserted ''(and the last sentence of section 56(f)(2)(B))'' before period at end.

Subsecs. (c) to (e). Pub. L. 100–647, §2001(c)(1), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1992, see section 1915(d) of Pub. L. 102–486, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11531(b)(3) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11531(c) of Pub. L. 101–508, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as an Effective Date of 1986 Amendment note under section 26 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[PART VIII—REPEALED]

[§ 59B. Repealed. Pub. L. 101–234, title I, § 102(a), Dec. 13, 1989, 103 Stat. 1980]

Section, added Pub. L. 100–360, title I, §111(a), July 1, 1988, 102 Stat. 690, provided for imposition of a supplemental medicare premium.

EFFECTIVE DATE OF REPEAL

Section 102(d) of Pub. L. 101–234 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the provisions of this section [repealing section 1395i–1a of Title 42, The Public Health and Welfare, enacting provisions set out as notes under section 6050F of this title and section 1395t of Title 42, and repealing provisions set out as a note under section 1395i–1a of Title 42] shall take effect January 1, 1990.

''(2) REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM.—The repeal of section 111 of MCCA [Pub. L. 100–360, which enacted this section, amended section 6050F of this title, and enacted provisions set out as notes below] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE

Section 111(e) of Pub. L. 100–360, which provided that the enactment of this section and the amendment of section 6050F of this title applied to taxable years beginning after December 31, 1988, and that in case of a taxable year beginning in 1989, the premium imposed by this section should not be treated as a tax for purposes of applying section 6654 of this title, was repealed by Pub. L. 101–234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980.

ANNOUNCEMENT OF SUPPLEMENTAL PREMIUM RATE

Section 111(d) of Pub. L. 100–360, which provided that in the case of calendar year 1993 or any calendar year thereafter (1) not later than July 1 of such calendar year, the Secretary of the Treasury or his delegate was required to make an announcement of the estimated supplemental premium rate under this section for taxable years beginning in the following calendar year, and (2) not later than October 1 of such calendar year, the Secretary of the Treasury or his delegate was required to make an announcement of the actual supplemental premium rate under this section for such taxable years, was repealed by Pub. L. 101–234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980.

Subchapter B—Computation of Taxable Income

Part

I. Definition of gross income, adjusted gross income, taxable income, etc.
II. Items specifically included in gross income.
III. Items specifically excluded from gross income.
IV. Determination of marital status.[1]
V. Deductions for personal exemptions.
VI. Itemized deductions for individuals and corporations.
VII. Additional itemized deductions for individuals.
VIII. Special deductions for corporations.
IX. Items not deductible.
X. Terminal railroad corporations and their shareholders.
XI. Special rules relating to corporate preference items.

AMENDMENTS

1982—Pub. L. 97–248, title II, §204(c)(2), Sept. 3, 1982, 96 Stat. 427, added item for part XI.

1977—Pub. L. 95–30, title I, §101(e)(3), May 23, 1977, 91 Stat. 135, substituted ''Determination of marital status'' for ''Standard deduction for individuals'' in item for part IV.

1976—Pub. L. 94–455, title XIX, §1901(b)(4)(C), Oct. 4, 1976, 90 Stat. 1793, substituted ''taxable income, etc.'' for ''and taxable income.'' in item for part I.

1962—Pub. L. 87–870, §1(b), Oct. 23, 1962, 76 Stat. 1160, added item for part X.

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

Sec.

61. Gross income defined.
62. Adjusted gross income defined.
63. Taxable income defined.
64. Ordinary income defined.
65. Ordinary loss defined.
66. Treatment of community income.
67. 2-percent floor on miscellaneous itemized deductions.
68. Overall limitation on itemized deductions.

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11103(d), Nov. 5, 1990, 104 Stat. 1388–407, added item 68.

1986—Pub. L. 99–514, title I, §132(d), Oct. 22, 1986, 100 Stat. 2116, added item 67.

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

1984—Pub. L. 98–369, div. A, title IV, § 424(b)(2)(C), July 18, 1984, 98 Stat. 803, struck out ''where spouses live apart'' in item 66.

1980—Pub. L. 96–605, title I, § 101(b), Dec. 28, 1980, 94 Stat. 3522, added item 66.

1976—Pub. L. 94–455, title XIX, § 1901(b)(4)(A), (B), Oct. 4, 1976, 90 Stat. 1793, substituted ''TAXABLE INCOME, ETC.'' for ''AND TAXABLE INCOME'' in part heading, and added items 64 and 65.

§ 61. Gross income defined

(a) General definition

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

(2) Gross income derived from business;

(3) Gains derived from dealings in property;

(4) Interest;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Alimony and separate maintenance payments;

(9) Annuities;

(10) Income from life insurance and endowment contracts;

(11) Pensions;

(12) Income from discharge of indebtedness;

(13) Distributive share of partnership gross income;

(14) Income in respect of a decedent; and

(15) Income from an interest in an estate or trust.

(b) Cross references

For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 17; Pub. L. 98–369, div. A, title V, § 531(c), July 18, 1984, 98 Stat. 884.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369 inserted reference to fringe benefits.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

TERMINATION DATE OF 1978 AMENDMENT

Pub. L. 95–615, § 210(a), Nov. 8, 1978, 92 Stat. 3109, provided that: ''Title I of this Act [probably means sections 1 to 8 of Pub. L. 95–615, see Short Title of 1978 Amendment note under section 1 of this title] (other than sections 4 and 5 thereof) [amending section 167 of this title, enacting provisions set out as notes under this section and sections 61 and 62 of this title, and amending provisions set out as notes under sections 117, 167, and 382 of this title] shall cease to have effect on the day after the date of the enactment of this Act [Nov. 8, 1978].''

REGULATIONS

Pub. L. 95–427, § 1, Oct. 7, 1978, 92 Stat. 996, as amended by Pub. L. 96–167, § 1, Dec. 29, 1979, 93 Stat. 1275; Pub. L. 97–34, title VIII, § 801, Aug. 13, 1981, 95 Stat. 349; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—No fringe benefit regulation shall be issued—

''(1) in final form on or after May 1, 1978, and on or before December 31, 1983, or

''(2) in proposed or final form on or after May 1, 1978, if such regulation has an effective date on or before December 31, 1983.

''(b) DEFINITION OF FRINGE BENEFIT REGULATION.—For purposes of subsection (a), the term 'fringe benefit regulation' means a regulation providing for the inclusion of any fringe benefit in gross income by reason of section 61 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

Pub. L. 95–615, § 3, Nov. 8, 1978, 92 Stat. 3097, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that no regulations be issued in final form on or after Oct. 1, 1977, and before July 1, 1978, providing for inclusion of any fringe benefit in gross income by reason of section 61 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], ceased to have effect on the day after Nov. 8, 1978, pursuant to section 210(a) of that Act.

NO GAIN RECOGNIZED FROM NET GIFTS MADE BEFORE MARCH 4, 1981

Section 1026 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—In the case of any transfer of property subject to gift tax made before March 4, 1981, for purposes of subtitle A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, 26 U.S.C. 1 et seq.], gross income of the donor shall not include any amount attributable to the donee's payment of (or agreement to pay) any gift tax imposed with respect to such gift.

''(b) GIFT TAX DEFINED.—For purposes of subsection (a), the term 'gift tax' means—

''(1) the tax imposed by chapter 12 of such Code [26 U.S.C. 2501 et seq.], and

''(2) any tax imposed by a State (or the District of Columbia) on transfers by gifts.

''(c) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from subsection (a) is prevented on the date of the enactment of this Act [July 18, 1984] (or at any time within 1 year after such date) by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to subsection (a)) may nevertheless be made or allowed if claim therefor is filed within 1 year after the date of the enactment of this Act.''

PAYMENT-IN-KIND TAX TREATMENT ACT OF 1983

Pub. L. 98–4, Mar. 11, 1983, 97 Stat. 7, as amended by Pub. L. 98–369, div. A, title X, § 1061(a), July 18, 1984, 98 Stat. 1046; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, § 6252(a)(1), Nov. 10, 1988, 102 Stat. 3752, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Payment-in-Kind Tax Treatment Act of 1983'.

''SEC. 2. INCOME TAX TREATMENT OF AGRICULTURAL COMMODITIES RECEIVED UNDER A 1983 PAYMENT-IN-KIND PROGRAM.

''(a) INCOME TAX DEFERRAL, ETC.—Except as otherwise provided in this Act, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

''(1) a qualified taxpayer shall not be treated as having realized income when he receives a commodity under a 1983 payment-in-kind program,

''(2) such commodity shall be treated as if it were produced by such taxpayer, and

''(3) the unadjusted basis of such commodity in the hands of such taxpayer shall be zero.

''(b) EFFECTIVE DATE.—This section shall apply to taxable years ending after December 31, 1982, but only with respect to commodities received for the 1983 crop year.

''SEC. 3. LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM TREATED AS USED IN FARMING BUSINESS, ETC.

''(a) GENERAL RULE.—For purposes of the provisions specified in subsection (b), in the case of any land di-

verted from the production of an agricultural commodity under a 1983 payment-in-kind program—

''(1) such land shall be treated as used during the 1983 crop year by the qualified taxpayer in the active conduct of the trade or business of farming, and

''(2) any qualified taxpayer who materially participates in the diversion and devotion to conservation uses required under a 1983 payment-in-kind program shall be treated as materially participating in the operation of such land during such crop year.

''(b) PROVISIONS TO WHICH SUBSECTION (a) APPLIES.—The provisions specified in this subsection are—

''(1) section 2032A of the Internal Revenue Code of 1986 (relating to valuation of certain farm, etc., real property),

''(2) section 6166 of such Code (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business),

''(3) chapter 2 of such Code (relating to tax on self-employment income), and

''(4) title II of the Social Security Act [42 U.S.C. 401 et seq.] (relating to Federal old-age, survivors, and disability insurance benefits).

''SEC. 4. ANTIABUSE RULES.

''(a) GENERAL RULE.—In the case of any person, sections 2 and 3 of this Act shall not apply with respect to any land acquired by such person after February 23, 1983, unless such land was acquired in a qualified acquisition.

''(b) QUALIFIED ACQUISITION.—For purposes of this section, the term 'qualified acquisition' means any acquisition—

''(1) by reason of the death of a qualified transferor,

''(2) by reason of a gift from a qualified transferor, or

''(3) from a qualified transferor who is a member of the family of the person acquiring the land.

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED TRANSFEROR.—The term 'qualified transferor' means any person—

''(A) who held the land on February 23, 1983, or

''(B) who acquired the land after February 23, 1983, in a qualified acquisition.

''(2) MEMBER OF FAMILY.—The term 'member of the family' has the meaning given such term by section 2032A(e)(2) of the Internal Revenue Code of 1986.

''(3) MERE CHANGE IN FORM OF BUSINESS.—Subsection (a) shall not apply to any change in ownership by reason of a mere change in the form of conducting the trade or business so long as the land is retained in such trade or business and the person holding the land before such change retains a direct or indirect 80-percent interest in such land.

''(4) TREATMENT OF CERTAIN ACQUISITIONS OF RIGHT TO THE CROP.—The acquisition of a direct or indirect interest in 80 percent or more of the crop from any land shall be treated as an acquisition of such land.

''SEC. 5. DEFINITIONS AND SPECIAL RULES.

''(a) GENERAL RULE.—For purposes of this Act—

''(1) 1983 PAYMENT-IN-KIND PROGRAM.—The term '1983 payment-in-kind program' means any program for the 1983 crop year—

''(A) under which the Secretary of Agriculture (or his delegate) makes payments in kind of any agricultural commodity to any person in return for—

''(i) the diversion of farm acreage from the production of an agricultural commodity, and

''(ii) the devotion of such acreage to conservation uses, and

''(B) which the Secretary of Agriculture certifies to the Secretary of the Treasury as being described in subparagraph (A).

''(2) CROP YEAR.—The term '1983 crop year' means the crop year for any crop the planting or harvesting period for which occurs during 1983. The term '1984 crop year' means the crop year for wheat the planting and harvesting period for which occurs during 1984.

''(3) QUALIFIED TAXPAYER.—The term 'qualified taxpayer' means any producer of agricultural commodities (within the meaning of the 1983 payment-in-kind programs) who receives any agricultural commodity in return for meeting the requirements of clauses (i) and (ii) of paragraph (1)(A).

''(4) RECEIPT INCLUDES RIGHT TO RECEIVE, ETC.—A right to receive (or other constructive receipt of) a commodity shall be treated the same as actual receipt of such commodity.

''(5) AMOUNTS RECEIVED BY THE TAXPAYER AS REIMBURSEMENT FOR STORAGE.—A qualified taxpayer reporting on the cash receipts and disbursements method of accounting shall not be treated as being entitled to receive any amount as reimbursement for storage of commodities received under a 1983 payment-in-kind program until such amount is actually received by the taxpayer.

''(6) COMMODITY CREDIT LOANS TREATED SEPARATELY.—Subsection (a) of section 2 shall apply to the receipt of any commodity under a 1983 payment-in-kind program separately from, and without taking into account, any related transaction or series of transactions involving the satisfaction of loans from the Commodity Credit Corporation.

''(b) EXTENSION TO WHEAT PLANTED AND HARVESTED IN 1984.—In the case of wheat—

''(1) any reference in this Act to the 1983 crop year shall include a reference to the 1984 crop year, and

''(2) any reference to the 1983 payment-in-kind program shall include a reference to any program for the 1984 year for wheat which meets the requirements of subparagraphs (A) and (B) of subsection (a)(1).

''(c) REGULATIONS.—The Secretary of the Treasury or his delegate (after consultation with the Secretary of Agriculture) shall prescribe such regulations as may be necessary to carry out the purposes of this Act, including (but not limited to) such regulations as may be necessary to carry out the purposes of this Act where the commodity is received by a cooperative on behalf of the qualified taxpayer.''

[Section 1061(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending Pub. L. 98–4 set out above] shall apply with respect to commodities received for the 1984 crop year (as defined in section 5(a)(2) of the Payment-in-Kind Tax Treatment Act of 1983 [Pub. L. 98–4, set out above] as amended by subsection (a)).'']

CANCELLATION OF CERTAIN STUDENT LOANS

Pub. L. 94–455, title XXI, §2117, Oct. 4, 1976, 90 Stat. 1911, as amended by Pub. L. 95–600, title I, §162, Nov. 6, 1978, 92 Stat. 2810; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that no amount be included in gross income of an individual for purposes of 26 U.S.C. 61 by reason of the discharge made before Jan. 1, 1983 of the indebtedness of the individual under a student loan if the discharge was pursuant to a provision of the loan under which the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain geographical areas or for certain classes of employers.

REGULATIONS RELATING TO TAX TREATMENT OF CERTAIN PREPUBLICATION EXPENDITURES OF PUBLISHERS

Pub. L. 94–455, title XXI, §2119, Oct. 4, 1976, 90 Stat. 1912, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—With respect to taxable years beginning on or before the date on which regulations dealing with prepublication expenditures are issued after the date of the enactment of this Act [Oct. 4, 1976], the application of sections 61 (as it relates to cost of goods sold), 162, 174, 263, and 471 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to any prepublication expenditure shall be administered—

''(1) without regard to Revenue Ruling 73–395, and

''(2) in the manner in which such sections were applied consistently by the taxpayer to such expenditures before the date of the issuance of such revenue ruling.

''(b) REGULATIONS TO BE PROSPECTIVE ONLY.—Any regulations issued after the date of the enactment of this Act [Oct. 4, 1976] which deal with the application of sections 61 (as it relates to cost of goods sold), 162, 174, 263, and 471 of the Internal Revenue Code of 1986 to prepublication expenditures shall apply only with respect to taxable years beginning after the date on which such regulations are issued.

''(c) PREPUBLICATION EXPENDITURES DEFINED.—For purposes of this section, the term 'prepublication expenditures' means expenditures paid or incurred by the taxpayer (in connection with his trade or business of publishing) for the writing, editing, compiling, illustrating, designing, or other development or improvement of a book, teaching aid, or similar product.''

REIMBURSEMENT OF MOVING EXPENSES OF EMPLOYEES OF CERTAIN CORPORATIONS EXCLUDED FROM GROSS INCOME; CLAIM FOR REFUND OR CREDIT; LIMITATIONS; INTEREST

Pub. L. 86–780, § 5, Sept. 14, 1960, 74 Stat. 1013, provided for the exclusion from gross income of any amount received after Dec. 31, 1949, and before Oct. 1, 1955, by employees of certain corporations as reimbursement for moving expenses, and the refund or credit of any overpayments.

§ 62. Adjusted gross income defined

(a) General rule

For purposes of this subtitle, the term ''adjusted gross income'' means, in the case of an individual, gross income minus the following deductions:

(1) Trade and business deductions

The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) Certain trade and business deductions of employees

(A) Reimbursed expenses of employees

The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.

(B) Certain expenses of performing artists

The deductions allowed by section 162 which consist of expenses paid or incurred by a qualified performing artist in connection with the performances by him of services in the performing arts as an employee.

(C) Certain expenses of officials

The deductions allowed by section 162 which consist of expenses paid or incurred with respect to services performed by an official as an employee of a State or a political subdivision thereof in a position compensated in whole or in part on a fee basis.

(D) Certain expenses of elementary and secondary school teachers

In the case of taxable years beginning during 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, or 2011, the deductions allowed by section 162 which consist of expenses, not in excess of $250, paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.

(E) Certain expenses of members of reserve components of the Armed Forces of the United States

The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.

(3) Losses from sale or exchange of property

The deductions allowed by part VI (sec. 161 and following) as losses from the sale or exchange of property.

(4) Deductions attributable to rents and royalties

The deductions allowed by part VI (sec. 161 and following), by section 212 (relating to expenses for production of income), and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.

(5) Certain deductions of life tenants and income beneficiaries of property

In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611.

(6) Pension, profit-sharing, and annuity plans of self-employed individuals

In the case of an individual who is an employee within the meaning of section 401(c)(1), the deduction allowed by section 404.

(7) Retirement savings

The deduction allowed by section 219 (relating to deduction of certain retirement savings).

[(8) Repealed. Pub. L. 104–188, title I, § 1401(b)(4), Aug. 20, 1996, 110 Stat. 1788]

(9) Penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits

The deductions allowed by section 165 for losses incurred in any transaction entered into for profit, though not connected with a trade or business, to the extent that such losses include amounts forfeited to a bank, mutual savings bank, savings and loan association,

building and loan association, cooperative bank or homestead association as a penalty for premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit.

(10) Alimony

The deduction allowed by section 215.

(11) Reforestation expenses

The deduction allowed by section 194.

(12) Certain required repayments of supplemental unemployment compensation benefits

The deduction allowed by section 165 for the repayment to a trust described in paragraph (9) or (17) of section 501(c) of supplemental unemployment compensation benefits received from such trust if such repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974 (19 U.S.C. 2291 and 2292).

(13) Jury duty pay remitted to employer

Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term ''jury pay'' means any payment received by the individual for the discharge of jury duty.

(14) Deduction for clean-fuel vehicles and certain refueling property

The deduction allowed by section 179A.

(15) Moving expenses

The deduction allowed by section 217.

(16) Archer MSAs

The deduction allowed by section 220.

(17) Interest on education loans

The deduction allowed by section 221.

(18) Higher education expenses

The deduction allowed by section 222.

(19) Health savings accounts

The deduction allowed by section 223.

(20) Costs involving discrimination suits, etc.

Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code[1] or a claim made under section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y(b)(3)(A)). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.

(21) Attorneys fees relating to awards to whistleblowers

Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any award under section 7623(b) (relating to awards to whistleblowers). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of such award.

Nothing in this section shall permit the same item to be deducted more than once.

(b) Qualified performing artist

(1) In general

For purposes of subsection (a)(2)(B), the term ''qualified performing artist'' means, with respect to any taxable year, any individual if—

(A) such individual performed services in the performing arts as an employee during the taxable year for at least 2 employers,

(B) the aggregate amount allowable as a deduction under section 162 in connection with the performance of such services exceeds 10 percent of such individual's gross income attributable to the performance of such services, and

(C) the adjusted gross income of such individual for the taxable year (determined without regard to subsection (a)(2)(B)) does not exceed $16,000.

(2) Nominal employer not taken into account

An individual shall not be treated as performing services in the performing arts as an employee for any employer during any taxable year unless the amount received by such individual from such employer for the performance of such services during the taxable year equals or exceeds $200.

(3) Special rules for married couples

(A) In general

Except in the case of a husband and wife who lived apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, subsection (a)(2)(B) shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

(B) Application of paragraph (1)

In the case of a joint return—

(i) paragraph (1) (other than subparagraph (C) thereof) shall be applied separately with respect to each spouse, but

(ii) paragraph (1)(C) shall be applied with respect to their combined adjusted gross income.

(C) Determination of marital status

For purposes of this subsection, marital status shall be determined under section 7703(a).

(D) Joint return

For purposes of this subsection, the term ''joint return'' means the joint return of a husband and wife made under section 6013.

(c) Certain arrangements not treated as reimbursement arrangements

For purposes of subsection (a)(2)(A), an arrangement shall in no event be treated as a re-

[1] So in original. Probably should be followed by a comma.

imbursement or other expense allowance arrangement if—

(1) such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the person providing the reimbursement, or

(2) such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

The substantiation requirements of the preceding sentence shall not apply to any expense to the extent that substantiation is not required under section 274(d) for such expense by reason of the regulations prescribed under the 2nd sentence thereof.

(d) Definition; special rules

(1) Eligible educator

(A) In general

For purposes of subsection (a)(2)(D), the term ''eligible educator'' means, with respect to any taxable year, an individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year.

(B) School

The term ''school'' means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.

(2) Coordination with exclusions

A deduction shall be allowed under subsection (a)(2)(D) for expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135, 529(c)(1), or 530(d)(2) for the taxable year.

(e) Unlawful discrimination defined

For purposes of subsection (a)(20), the term ''unlawful discrimination'' means an act that is unlawful under any of the following:

(1) Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202).[2]

(2) Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

(3) The National Labor Relations Act (29 U.S.C. 151 et seq.).

(4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).

(6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).

(7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).

(8) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).

(10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).

(11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).

(12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).

(13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).

(14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or 2000e–16).

(15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).

(16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).

(17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

(18) Any provision of Federal, State, or local law, or common law claims permitted under Federal, State, or local law—

(i) providing for the enforcement of civil rights, or

(ii) regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.

(Aug. 16, 1954, ch. 736, 68A Stat. 17; Pub. L. 87–792, §7(b), Oct. 10, 1962, 76 Stat. 828; Pub. L. 88–272, title II, §213(b), Feb. 26, 1964, 78 Stat. 52; Pub. L. 91–172, title V, §531(b), Dec. 30, 1969, 83 Stat. 655; Pub. L. 93–406, title II, §§2002(a)(2), 2005(c)(9), Sept. 2, 1974, 88 Stat. 959, 992; Pub. L. 93–483, §6(a), Oct. 26, 1974, 88 Stat. 1458; Pub. L. 94–455, title V, §502(a), title XV, §1501(b)(1), title XIX, §1901(a)(8), (9), Oct. 4, 1976, 90 Stat. 1559, 1735, 1765; Pub. L. 95–615, §203(b), Nov. 8, 1978, 92 Stat. 3106; Pub. L. 96–451, title III, §301(b), Oct. 14, 1980, 94 Stat. 1990; Pub. L. 96–608, §3(a), Dec. 28, 1980, 94 Stat. 3551; Pub. L. 97–34, title I, §§103(b), 112(b)(2), title III, §311(h)(1), Aug. 13, 1981, 95 Stat. 187, 195, 282; Pub. L. 97–354, §5(a)(17), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 98–369, div. A, title IV, §491(d)(2), July 18, 1984, 98 Stat. 849; Pub. L. 99–514, title I, §§131(b)(1), 132(b), (c), title III, §301(b)(1), title XVIII, §1875(c)(3), Oct. 22, 1986, 100 Stat. 2113, 2115, 2116, 2217, 2894; Pub. L. 100–485, title VII, §702(a), Oct. 13, 1988, 102 Stat. 2426; Pub. L. 100–647, title I, §1001(b)(3)(A), title VI, §6007(b), Nov. 10, 1988, 102 Stat. 3349, 3687; Pub. L. 101–508, title XI, §11802(e)(1), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 102–318, title V, §521(b)(2), July 3, 1992, 106 Stat. 310; Pub. L. 102–486, title XIX, §1913(a)(2), Oct. 24, 1992, 106 Stat. 3019; Pub. L. 103–66, title XIII, §13213(c)(1), Aug. 10, 1993, 107 Stat. 474; Pub. L. 104–188, title I, §1401(b)(4), Aug. 20, 1996, 110 Stat. 1788; Pub. L. 104–191, title III, §301(b), Aug. 21, 1996, 110 Stat. 2048; Pub. L. 105–34, title II, §202(b), title IX, §975(a), Aug. 5, 1997, 111 Stat. 808, 898; Pub. L. 106–554, §1(a)(7) [title II, §202(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629; Pub. L. 107–16, title IV, §431(b), June 7, 2001, 115 Stat. 68; Pub. L. 107–147, title IV, §406(a), (b), Mar. 9, 2002, 116 Stat. 43;

[2] See References in Text note below.

Pub. L. 108–121, title I, § 109(b), Nov. 11, 2003, 117 Stat. 1341; Pub. L. 108–173, title XII, § 1201(b), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 108–311, title III, § 307(a), Oct. 4, 2004, 118 Stat. 1179; Pub. L. 108–357, title VII, § 703(a), (b), Oct. 22, 2004, 118 Stat. 1546, 1547; Pub. L. 109–135, title IV, § 412(q), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–432, div. A, title I, § 108(a), title IV, § 406(a)(3), Dec. 20, 2006, 120 Stat. 2939, 2959; Pub. L. 110–343, div. C, title II, § 203(a), Oct. 3, 2008, 122 Stat. 3864; Pub. L. 111–312, title VII, § 721(a), Dec. 17, 2010, 124 Stat. 3316.)

AMENDMENT OF SECTION

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

REFERENCES IN TEXT

Section 302 of the Civil Rights Act of 1991, referred to in subsec. (e)(1), was formerly classified to section 1202 of Title 2, The Congress, and was transferred to section 2000e–16b of Title 42, The Public Health and Welfare.

The National Labor Relations Act, referred to in subsec. (e)(3), is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Fair Labor Standards Act of 1938, referred to in subsec. (e)(4), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

The Education Amendments of 1972, referred to in subsec. (e)(8), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Employee Polygraph Protection Act of 1988, referred to in subsec. (e)(9), is Pub. L. 100–347, June 27, 1988, 102 Stat. 646, as amended, which is classified generally to chapter 22 (§ 2001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 29 and Tables.

The Worker Adjustment and Retraining Notification Act, referred to in subsec. (e)(10), is Pub. L. 100–379, Aug. 4, 1988, 102 Stat. 890, as amended, which is classified generally to chapter 23 (§ 2101 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 2101 of Title 29 and Tables.

AMENDMENTS

2010—Subsec. (a)(2)(D). Pub. L. 111–312 substituted ''2009, 2010, or 2011'' for ''or 2009''.

2008—Subsec. (a)(2)(D). Pub. L. 110–343 substituted ''2007, 2008, or 2009'' for ''or 2007''.

2006—Subsec. (a)(2)(D). Pub. L. 109–432, § 108(a), substituted ''2005, 2006, or 2007'' for ''or 2005''.

Subsec. (a)(21). Pub. L. 109–432, § 406(a)(3), added par. (21).

2005—Subsec. (a)(19), (20). Pub. L. 109–135, § 412(q)(1), redesignated par. (19) relating to costs involving discrimination suits, etc., as par. (20) and moved to follow par. (19) relating to health savings accounts.

Subsec. (e). Pub. L. 109–135, § 412(q)(2), substituted ''subsection (a)(20)'' for ''subsection (a)(19)'' in introductory provisions.

2004—Subsec. (a)(2)(D). Pub. L. 108–311 substituted '', 2003, 2004, or 2005'' for ''or 2003''.

Subsec. (a)(19). Pub. L. 108–357, § 703(a), added par. (19) relating to costs involving discrimination suits, etc.

Subsec. (e). Pub. L. 108–357, § 703(b), added subsec. (e).

2003—Subsec. (a)(2)(E). Pub. L. 108–121 added subpar. (E).

Subsec. (a)(19). Pub. L. 108–173 added par. (19).

2002—Subsec. (a)(2)(D). Pub. L. 107–147, § 406(a), added subpar. (D).

Subsec. (d). Pub. L. 107–147, § 406(b), added subsec. (d).

2001—Subsec. (a)(18). Pub. L. 107–16, §§ 431(b), 901, temporarily added par. (18). See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (a)(16). Pub. L. 106–554 amended heading and text of par. (16) generally. Prior to amendment, text read as follows: ''The deduction allowed by section 220.''

1997—Subsec. (a)(2)(C). Pub. L. 105–34, § 975(a), added subpar. (C).

Subsec. (a)(17). Pub. L. 105–34, § 202(b), added par. (17).

1996—Subsec. (a)(8). Pub. L. 104–188 struck out par. (8) which read as follows: ''CERTAIN PORTION OF LUMP-SUM DISTRIBUTIONS FROM PENSION PLANS TAXED UNDER SECTION 402(D).—The deduction allowed by section 402(d)(3).''

Subsec. (a)(16). Pub. L. 104–191 added par. (16).

1993—Subsec. (a)(15). Pub. L. 103–66 added par. (15).

1992—Subsec. (a)(8). Pub. L. 102–318 substituted ''402(d)'' for ''402(e)'' in heading and in text.

Subsec. (a)(14). Pub. L. 102–486 added par. (14).

1990—Subsec. (a)(13). Pub. L. 101–508, § 11802(e)(1), amended par. (13) generally. Prior to amendment, par. (13) read as follows: ''The deduction allowed by section 220.''

1988—Subsec. (a)(2)(A). Pub. L. 100–647, § 1001(b)(3)(A), inserted at end ''The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.''

Subsec. (a)(13). Pub. L. 100–647, § 6007(b), added par. (13).

Subsec. (c). Pub. L. 100–485 added subsec. (c).

1986—Subsec. (a). Pub. L. 99–514, § 132(b)(2)(A), designated existing provisions as subsec. (a) and added heading.

Subsec. (a)(2). Pub. L. 99–514, § 132(b)(1), amended par. (2) generally, substituting ''Certain trade'' for ''Trade'' in heading and inserting ''of employees'' in subpar. (A) heading, substituting provision relating to deduction of certain expenses of performing artists for provision relating to deduction of expenses for travel away from home in subpar. (B), and striking out subpar. (C) relating to deduction of travel expenses and subpar. (D) relating to deduction of expenses of outside salesmen.

Subsec. (a)(3) to (5). Pub. L. 99–514, § 301(b)(1), redesignated pars. (4) to (6) as (3) to (5), respectively, and struck out former par. (3) which related to long-term capital gains and read as follows: ''The deduction allowed by section 1202.''

Subsec. (a)(6). Pub. L. 99–514, § 301(b)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Pub. L. 99–514, § 1875(c)(3), struck out ''to the extent attributable to contributions made on behalf of such individual'' after ''section 404''.

Subsec. (a)(7). Pub. L. 99–514, § 301(b)(1), redesignated par. (10) as (7). Former par. (7) redesignated (6).

Subsec. (a)(8). Pub. L. 99–514, § 301(b)(1), redesignated par. (11) as (8). Former par. (8) struck out.

Pub. L. 99–514, § 132(c), struck out par. (8) which related to moving expense deduction and read as follows: ''The deduction allowed by section 217.''

Subsec. (a)(9) to (15). Pub. L. 99–514, § 301(b)(1), redesignated pars. (12) to (15) as (9) to (12), respectively. Former pars. (10) and (11) redesignated (7) and (8), respectively.

Subsec. (a)(16). Pub. L. 99–514, § 131(b)(1), struck out par. (16) which related to deduction for two-earner married couples and read as follows: ''The deduction allowed by section 221.''

Subsec. (b). Pub. L. 99–514, § 132(b)(2)(B), added subsec. (b).

1984—Par. (7). Pub. L. 98–369, § 491(d)(2), substituted ''and annuity'' for ''annuity, and bond purchase'' in heading, and substituted ''the deduction allowed by

section 404'' for ''the deductions allowed by section 404 and section 405(c)'' in text.

1983—Par. (9). Pub. L. 97–354 repealed par. (9) relating to the deduction allowed by section 1379(b)(3).

1981—Par. (10). Pub. L. 97–34, §311(h)(1), struck out ''and the deduction allowed by section 220 (relating to retirement savings for certain married individuals)'' after ''retirement savings''.

Par. (14). Pub. L. 97–34, §112(b)(2), redesignated par. (15) as (14). Former par. (14), relating to deduction for certain expenses of living abroad, was struck out.

Par. (15). Pub. L. 97–34, §112(b)(2), redesignated par. (16) as (15). Former par. (15) redesignated (14).

Par. (16). Pub. L. 97–34, §§103(b), 112(b)(2), added par. (16). Former par. (16) redesignated (15).

1980—Par. (15). Pub. L. 96–451 added par. (15).

Par. (16). Pub. L. 96–608 added par. (16).

1978—Par. (14). Pub. L. 95–615 added par. (14).

1976—Par. (10). Pub. L. 94–455, §1501(b)(1), inserted reference to the deduction allowed by section 220 (relating to retirement savings for certain married individuals).

Pars. (11), (12). Pub. L. 94–455, §1901(a)(8), (9), redesignated par. (11) relating to penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits, as par. (12), and substituted ''trade or business, to the extent'' for ''trade or business to the extent''.

Par. (13). Pub. L. 94–455, §502(a), added par. (13).

1974—Par. (10). Pub. L. 93–406, §2002(a)(2), added par. (10).

Par. (11). Pub. L. 93–483 added par. (11) relating to penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits. Another par. (11) relating to certain portions of lump-sum distributions from pension plans taxed under section 402(e) of this title, was added by Pub. L. 93–406, §2005(c)(9).

1969—Par. (9). Pub. L. 91–172 added par. (9).

1964—Par. (8). Pub. L. 88–272 added par. (8).

1962—Par. (7). Pub. L. 87–792 added par. (7).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §721(b), Dec. 17, 2010, 124 Stat. 3316, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §203(b), Oct. 3, 2008, 122 Stat. 3864, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §108(b), Dec. 20, 2006, 120 Stat. 2939, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

Pub. L. 109–432, div. A, title IV, §406(d), Dec. 20, 2006, 120 Stat. 2960, provided that: ''The amendments made by subsection (a) [amending this section and sections 7443A and 7623 of this title] shall apply to information provided on or after the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title VII, §703(c), Oct. 22, 2004, 118 Stat. 1548, provided that: ''The amendments made by this section [amending this section] shall apply to fees and costs paid after the date of the enactment of this Act [Oct. 22, 2004] with respect to any judgment or settlement occurring after such date.''

Pub. L. 108–311, title III, §307(b), Oct. 4, 2004, 118 Stat. 1179, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenses paid or incurred in taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 2003 AMENDMENTS

Pub. L. 108–173, title XII, §1201(k), Dec. 8, 2003, 117 Stat. 2479, provided that: ''The amendments made by this section [enacting sections 223 and 4980G of this title, amending this section and sections 106, 125, 220, 848, 3231, 3306, 3401, 4973, 4975, 6051, and 6693 of this title, and renumbering former section 223 of this title as 224] shall apply to taxable years beginning after December 31, 2003.''

Pub. L. 108–121, title I, §109(c), Nov. 11, 2003, 117 Stat. 1342, provided that: ''The amendments made by this section [amending this section and section 162 of this title] shall apply to amounts paid or incurred in taxable years beginning after December 31, 2002.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §406(c), Mar. 9, 2002, 116 Stat. 44, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §431(d), June 7, 2001, 115 Stat. 69, provided that: ''The amendments made by this section [enacting section 222 of this title, amending this section and sections 86, 135, 137, 219, 221, and 469 of this title, and renumbering former section 222 of this title as 223] shall apply to payments made in taxable years beginning after December 31, 2001.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 202(e) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting section 221 of this title, amending this section and section 6050S of this title, and renumbering former section 221 of this title as section 222 of this title] shall apply to any qualified education loan (as defined in section 221(e)(1) of the Internal Revenue Code of 1986, as added by this section) incurred on, before, or after the date of the enactment of this Act [Aug. 5, 1997], but only with respect to—

''(1) any loan interest payment due and paid after December 31, 1997, and

''(2) the portion of the 60-month period referred to in section 221(d) of the Internal Revenue Code of 1986 (as added by this section) after December 31, 1997.''

Section 975(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to expenses paid or incurred in taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 301(j) of Pub. L. 104–191 provided that: ''The amendments made by this section [enacting sections 220 and 4980E of this title, amending this section and sections 106, 125, 848, 3231, 3306, 3401, 4973, 4975, 6051, and 6693 of this title, and renumbering section 220 of this title as section 221] shall apply to taxable years beginning after December 31, 1996.''

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13213(e) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 67, 82, 132, 217, 1001, 1016, and 4977 of this title] shall apply to expenses incurred after December 31, 1993; except that the amendments made by subsection (d) [amending sections 82, 132, and 4977 of this title] shall apply to reimbursements or other payments in respect of expenses incurred after such date.''

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–486 applicable to property placed in service after June 30, 1993, see section 1913(c)

of Pub. L. 102–486, set out as an Effective Date note under section 30 of this title.

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1001(b)(3)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6007(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [enacting section 220 of this title, amending this section, and renumbering former section 220 of this title as section 221 of this title] shall apply as if included in the amendments made by section 132 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

Section 702(b) of Pub. L. 100–485 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 131(b)(1) and 132(b), (c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Section 301(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 170, 172, 219, 220, 223, 642, 643, 691, 871, 1211, 1212, and 1402 of this title and repealing section 1202 of this title] shall apply to taxable years beginning after December 31, 1986.''

Section 1875(c)(12) of Pub. L. 99–514 provided that: ''The amendments made by paragraphs (3), (4), and (6) [amending this section and sections 219 and 408 of this title] shall take effect as if included in the amendments made by section 238 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 238 of Pub. L. 97–248, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title].''

EFFECTIVE DATE OF 1984 AMENDMENT

''Section 491(f)(1) of Pub. L. 98–369 provided that: ''The amendments and repeals made by subsections (a), (b), and (d) [amending this section, sections 55, 72, 172, 219, 402, 403, 406, 407, 408, 412, 414, 415, 457, 2039, 2517, 3121, 3306, 3401, 4972, 4973, 4975, 6047, 6058, 6104, 6652, 7207, 7476, and 7701 of this title, section 3107 of Title 31, Money and Finance, and section 409 of Title 42, The Public Health and Welfare, and repealing sections 405 and 409 of this title] shall apply to obligations issued after December 31, 1983.''

EFFECTIVE DATE OF 1983 AMENDMENT

Par. (9) as in effect before date of repeal by Pub. L. 97–354 to remain in effect for years beginning before Jan. 1, 1984, see section 6(b)(1) of Pub. L. 97–354, set out as an Effective Date note under section 3761 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 103(d) of Pub. L. 97–34 provided that: ''The amendments made by this section [enacting section 219 of this title and amending this section and sections 85 and 105 of this title] shall apply to taxable years beginning after December 31, 1981.''

Amendment by sections 112(b)(2) and 311(h)(1) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see sections 115 and 311(i)(1) of Pub. L. 97–34, set out as notes under sections 911 and 219, respectively, of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 3(b) of Pub. L. 96–608 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to repayments made in taxable years beginning after the date of the enactment of this Act [Dec. 28, 1980].''

Amendment by Pub. L. 96–451 applicable with respect to additions to capital account made after Dec. 31, 1979, see section 301(d) of Pub. L. 96–451, set out as an Effective Date note under section 194 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 502(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 3402 of this title] shall apply to taxable years beginning after December 31, 1976.''

Section 1501(d) of Pub. L. 94–455 provided that: ''The amendments made by this section [enacting section 220 of this title, amending this section and sections 219, 408, 409, 3401, 4973, and 6047 of this title, and renumbering former section 220 as 221 of this title], other than the amendment made by subsection (b)(3), shall apply to taxable years beginning after December 31, 1976. The amendment made by subsection (b)(3) [amending section 415 of this title] shall apply to years beginning after December 31, 1976.''

Amendment by section 1901(a)(8), (9) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 6(b) of Pub. L. 93–483 provided that: ''The amendment made by this section [amending this section] applies to taxable years beginning after December 31, 1972.''

Amendment by section 2002(a)(2) of Pub. L. 93–406 applicable to taxable years beginning after Dec. 31, 1974, see section 2002(i)(1) of Pub. L. 93–406, set out as an Effective Date note under section 219 of this title.

Amendment by section 2005(c)(9) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years of electing small business corporations beginning after Dec. 31, 1970, see section 531(d) of Pub. L. 91–172, set out as an Effective Date note under section 1379 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 213(d) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) [enacting section 217 and redesignating former section 217 as 218] and (b) [amending this section] shall apply to expenses incurred after December 31, 1963, in taxable years ending after such date. The amendment made by subsection (c) [amending section 3401 of this title] shall apply with respect to remuneration paid after the seventh day following the date of the enactment of this Act [Feb. 26, 1964].''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of

income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

COMMUTING EXPENSES

Pub. L. 95–427, § 2, Oct. 7, 1978, 92 Stat. 996, as amended by Pub. L. 96–167, § 2, Dec. 29, 1979, 93 Stat. 1275, provided that with respect to transportation costs paid or incurred after December 31, 1976, and on or before May 31, 1981, the application of sections 62, 162, and 262 and of chapters 21, 23, and 24 of the Internal Revenue Code of 1954 [now 1986] to transportation expenses in traveling between a taxpayer's residence and place of work be determined without regard to Revenue Ruling 76–453 or any other regulation, ruling, or decision reaching the same or similar result, and with full regard to the rules in effect before that Revenue Ruling.

Pub. L. 95–615, § 2, Nov. 8, 1978, 92 Stat. 3097, provided that with respect to transportation costs paid or incurred after Dec. 31, 1976, and before Apr. 30, 1978, the application of sections 62, 162, and 262 and chapters 21, 23, and 24 of the Internal Revenue Code of 1954 [now 1986] to transportation expenses in traveling between a taxpayer's residence and place of work be determined without regard to Revenue Ruling 76–453 or any other regulation, ruling or decision reaching the same or similar result, and with full regard to the rules in effect before that Revenue Ruling, and ceased to have effect on the day after Nov. 8, 1978 pursuant to section 210(a) of that Act.

§ 63. Taxable income defined

(a) In general

Except as provided in subsection (b), for purposes of this subtitle, the term ''taxable income'' means gross income minus the deductions allowed by this chapter (other than the standard deduction).

(b) Individuals who do not itemize their deductions

In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term ''taxable income'' means adjusted gross income, minus—

(1) the standard deduction, and

(2) the deduction for personal exemptions provided in section 151.

(c) Standard deduction

For purposes of this subtitle—

(1) In general

Except as otherwise provided in this subsection, the term ''standard deduction'' means the sum of—

(A) the basic standard deduction,

(B) the additional standard deduction,

(C) in the case of any taxable year beginning in 2008 or 2009, the real property tax deduction,

(D) the disaster loss deduction, and

(E) the motor vehicle sales tax deduction.

(2) Basic standard deduction

For purposes of paragraph (1), the basic standard deduction is—

(A) 200 percent of the dollar amount in effect under subparagraph (C) for the taxable year in the case of—

(i) a joint return, or

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

(B) $4,400 in the case of a head of household (as defined in section 2(b)), or

(C) $3,000 in any other case.

(3) Additional standard deduction for aged and blind

For purposes of paragraph (1), the additional standard deduction is the sum of each additional amount to which the taxpayer is entitled under subsection (f).

(4) Adjustments for inflation

In the case of any taxable year beginning in a calendar year after 1988, each dollar amount contained in paragraph (2)(B), (2)(C), or (5) or subsection (f) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting for ''calendar year 1992'' in subparagraph (B) thereof—

(i) ''calendar year 1987'' in the case of the dollar amounts contained in paragraph (2)(B), (2)(C), or (5)(A) or subsection (f), and

(ii) ''calendar year 1997'' in the case of the dollar amount contained in paragraph (5)(B).

(5) Limitation on basic standard deduction in the case of certain dependents

In the case of an individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the basic standard deduction applicable to such individual for such individual's taxable year shall not exceed the greater of—

(A) $500, or

(B) the sum of $250 and such individual's earned income.

(6) Certain individuals, etc., not eligible for standard deduction

In the case of—

(A) a married individual filing a separate return where either spouse itemizes deductions,

(B) a nonresident alien individual,

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

(D) an estate or trust, common trust fund, or partnership,

the standard deduction shall be zero.

(7) Real property tax deduction

For purposes of paragraph (1), the real property tax deduction is the lesser of—

(A) the amount allowable as a deduction under this chapter for State and local taxes described in section 164(a)(1), or

(B) $500 ($1,000 in the case of a joint return).

Any taxes taken into account under section 62(a) shall not be taken into account under this paragraph.

(8) Disaster loss deduction

For the purposes of paragraph (1), the term ''disaster loss deduction'' means the net disaster loss (as defined in section 165(h)(3)(B)).

(9) Motor vehicle sales tax deduction

For purposes of paragraph (1), the term ''motor vehicle sales tax deduction'' means the amount allowable as a deduction under section 164(a)(6). Such term shall not include any amount taken into account under section 62(a).

(d) Itemized deductions

For purposes of this subtitle, the term ''itemized deductions'' means the deductions allowable under this chapter other than—

(1) the deductions allowable in arriving at adjusted gross income, and

(2) the deduction for personal exemptions provided by section 151.

(e) Election to itemize

(1) In general

Unless an individual makes an election under this subsection for the taxable year, no itemized deduction shall be allowed for the taxable year. For purposes of this subtitle, the determination of whether a deduction is allowable under this chapter shall be made without regard to the preceding sentence.

(2) Time and manner of election

Any election under this subsection shall be made on the taxpayer's return, and the Secretary shall prescribe the manner of signifying such election on the return.

(3) Change of election

Under regulations prescribed by the Secretary, a change of election with respect to itemized deductions for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding to the taxable year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations—

(A) the spouse makes a change of election with respect to itemized deductions, for the taxable year covered in such separate return, consistent with the change of treatment sought by the taxpayer, and

(B) the taxpayer and his spouse consent in writing to the assessment (within such period as may be agreed on with the Secretary) of any deficiency, to the extent attributable to such change of election, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

This paragraph shall not apply if the tax liability of the taxpayer's spouse for the taxable year corresponding to the taxable year of the taxpayer has been compromised under section 7122.

(f) Aged or blind additional amounts

(1) Additional amounts for the aged

The taxpayer shall be entitled to an additional amount of $600—

(A) for himself if he has attained age 65 before the close of his taxable year, and

(B) for the spouse of the taxpayer if the spouse has attained age 65 before the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151(b).

(2) Additional amount for blind

The taxpayer shall be entitled to an additional amount of $600—

(A) for himself if he is blind at the close of the taxable year, and

(B) for the spouse of the taxpayer if the spouse is blind as of the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151(b).

For purposes of subparagraph (B), if the spouse dies during the taxable year the determination of whether such spouse is blind shall be made as of the time of such death.

(3) Higher amount for certain unmarried individuals

In the case of an individual who is not married and is not a surviving spouse, paragraphs (1) and (2) shall be applied by substituting ''$750'' for ''$600''.

(4) Blindness defined

For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(g) Marital status

For purposes of this section, marital status shall be determined under section 7703.

(Aug. 16, 1954, ch. 736, 68A Stat. 18; Pub. L. 95–30, title I, § 102(a), May 23, 1977, 91 Stat. 135; Pub. L. 95–600, title I, § 101(b), Nov. 6, 1978, 92 Stat. 2769; Pub. L. 97–34, title I, §§ 104(b), 111(b)(4), 121(b),

(c)(2), Aug. 13, 1981, 95 Stat. 189, 194, 196, 197; Pub. L. 99–514, title I, §102(a), title XII, §1272(d)(6), Oct. 22, 1986, 100 Stat. 2099, 2594; Pub. L. 100–647, title I, §1001(b)(1), Nov. 10, 1988, 102 Stat. 3349; Pub. L. 101–508, title XI, §§11101(d)(1)(D), 11801(a)(4), Nov. 5, 1990, 104 Stat. 1388–405, 1388–520; Pub. L. 103–66, title XIII, §13201(b)(3)(D), Aug. 10, 1993, 107 Stat. 459; Pub. L. 105–34, title XII, §1201(a), Aug. 5, 1997, 111 Stat. 993; Pub. L. 107–16, title III, §301(a), (b), (c)(2), June 7, 2001, 115 Stat. 53, 54; Pub. L. 107–147, title IV, §411(e), Mar. 9, 2002, 116 Stat. 46; Pub. L. 108–27, title I, §103(a), May 28, 2003, 117 Stat. 754; Pub. L. 108–311, title I, §101(b), Oct. 4, 2004, 118 Stat. 1167; Pub. L. 110–289, div. C, title I, §3012(a), (b), July 30, 2008, 122 Stat. 2891, 2892; Pub. L. 110–343, div. C, title II, §204(a), title VII, §706(b)(1), (2), Oct. 3, 2008, 122 Stat. 3865, 3922; Pub. L. 111–5, div. B, title I, §1008(c), Feb. 17, 2009, 123 Stat. 318.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

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

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

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

AMENDMENTS

2009—Subsec. (c)(1)(E). Pub. L. 111–5, §1008(c)(1), added subpar. (E).

Subsec. (c)(9). Pub. L. 111–5, §1008(c)(2), added par. (9).

2008—Subsec. (c)(1)(C). Pub. L. 110–343, §204(a), inserted ''or 2009'' after ''2008''.

Pub. L. 110–289, §3012(a), added subpar. (C).

Subsec. (c)(1)(D). Pub. L. 110–343, §706(b)(1), added subpar. (D).

Subsec. (c)(7). Pub. L. 110–289, §3012(b), added par. (7).

Subsec. (c)(8). Pub. L. 110–343, §706(b)(2), added par. (8).

2004—Subsec. (c)(2). Pub. L. 108–311, §§101(b)(1), 105, temporarily reenacted heading without change and amended text generally, substituting provisions relating to a specific percentage for provisions relating to applicable percentage in subpar. (A), redesignating subpar. (D) as (C), and deleting former subpar. (C) relating to married individuals filing separately. See Effective and Termination Dates of 2004 Amendment note below.

Subsec. (c)(4). Pub. L. 108–311, §§101(b)(2)(A), 105, temporarily substituted ''(2)(C)'' for ''(2)(D)'' in introductory provisions and in subpar. (B)(i). See Effective and Termination Dates of 2004 Amendment note below.

Subsec. (c)(7). Pub. L. 108–311, §§101(b)(2)(B), 105, temporarily struck out par. (7) which related to applicable percentage for purposes of par. (2). See Effective and Termination Dates of 2004 Amendment note below.

2003—Subsec. (c)(7). Pub. L. 108–27, §§103(a), 107, temporarily inserted table item relating to years 2003 and 2004. See Effective and Termination Dates of 2003 Amendment note below.

2002—Subsec. (c)(2). Pub. L. 107–147, §411(e)(1)(E), inserted ''If any amount determined under subparagraph (A) is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.'' at end.

Subsec. (c)(2)(A). Pub. L. 107–147, §411(e)(1)(A), substituted ''subparagraph (D)'' for ''subparagraph (C)''.

Subsec. (c)(2)(B). Pub. L. 107–147, §411(e)(1)(B), struck out ''or'' at end.

Subsec. (c)(2)(C), (D). Pub. L. 107–147, §411(e)(1)(C), (D), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c)(4). Pub. L. 107–147, §411(e)(2)(C), which directed amendment by striking out the flush sentence at the end added by section 301(c)(2) of Public Law 107–17, was executed by striking out ''The preceding sentence shall not apply to the amount referred to in paragraph (2)(A).'', which was inserted by section 301(c)(2) of Pub. L. 107–16, to reflect the probable intent of Congress. See 2001 Amendment note below.

Pub. L. 107–147, §411(e)(2)(A), substituted ''paragraph (2)(B), (2)(D), or (5)'' for ''paragraph (2) or (5)'' in introductory provisions.

Subsec. (c)(4)(B)(i). Pub. L. 107–147, §411(e)(2)(B), substituted ''paragraph (2)(B), (2)(D),'' for ''paragraph (2)''.

2001—Subsec. (c)(2)(A). Pub. L. 107–16, §§301(a)(1), 901, temporarily substituted ''the applicable percentage of the dollar amount in effect under subparagraph (C) for the taxable year'' for ''$5,000''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2)(B). Pub. L. 107–16, §§301(a)(2), 901, temporarily inserted ''or'' at end. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2)(C). Pub. L. 107–16, §§301(a)(3), 901, temporarily substituted ''in any other case.'' for ''in the case of an individual who is not married and who is not a surviving spouse or head of household, or''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2)(D). Pub. L. 107–16, §§301(a)(4), 901, temporarily struck out subpar. (D) which read as follows: ''$2,500 in the case of a married individual filing a separate return.'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(4). Pub. L. 107–16, §§301(c)(2), 901, temporarily inserted at end ''The preceding sentence shall not apply to the amount referred to in paragraph (2)(A).'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(7). Pub. L. 107–16, §§301(b), 901, temporarily added par. (7). See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (c)(4). Pub. L. 105–34, §1201(a)(2), in introductory provisions, substituted ''(5)'' for ''(5)(A)'' and, in subpar. (B), substituted ''by substituting for 'calendar year 1992' in subparagraph (B) thereof—'' for ''by substituting 'calendar year 1987' for 'calendar year 1992' in subparagraph (B) thereof'' and added cls. (i) and (ii).

Subsec. (c)(5)(B). Pub. L. 105–34, §1201(a)(1), substituted ''the sum of $250 and such individual's earned income'' for ''such individual's earned income''.

1993—Subsec. (c)(4)(B). Pub. L. 103–66 substituted ''1992'' for ''1989''.

1990—Subsec. (c)(4)(B). Pub. L. 101–508, §11101(d)(1)(D), inserted before period at end '', by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof''.

Subsec. (h). Pub. L. 101–508, §11801(a)(4), struck out subsec. (h) ''Transitional rule for taxable years beginning in 1987'' which read as follows: ''In the case of any taxable year beginning in 1987, paragraph (2) of subsection (c) shall be applied—

''(1) by substituting '$3,760' for '$5,000',

''(2) by substituting '$2,540' for '$4,400',

''(3) by substituting '$2,540' for '$3,000', and

''(4) by substituting '$1,880' for '$2,500'.

The preceding sentence shall not apply if the taxpayer is entitled to an additional amount determined under subsection (f) (relating to additional amount for aged and blind) for the taxable year.''

1988—Subsec. (c)(5). Pub. L. 100–647 substituted ''basic standard deduction'' for ''standard deduction'' in heading and text.

1986—Subsec. (a). Pub. L. 99–514, §102(a), substituted ''In general'' for ''Corporations'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subtitle, in the case of a corporation, the term 'taxable income' means gross income minus the deductions allowed by this chapter.''

Subsec. (b). Pub. L. 99–514, § 102(a), substituted ''Individuals who do not itemize their deductions'' for ''Individuals'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subtitle, in the case of an individual, the term 'taxable income' means adjusted gross income—

''(1) reduced by the sum of—

''(A) the excess itemized deductions,

''(B) the deductions for personal exemptions provided by section 151, and

''(C) the direct charitable deduction, and

''(2) increased (in the case of an individual for whom an unused zero bracket amount computation is provided by subsection (e)) by the unused zero bracket amount (if any).''

Subsec. (c). Pub. L. 99–514, § 102(a), substituted ''Standard deduction'' for ''Excess itemized deductions'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subtitle, the term 'excess itemized deductions' means the excess (if any) of—

''(1) the itemized deductions, over

''(2) the zero bracket amount.''

Subsec. (c)(6)(C) to (E). Pub. L. 99–514, § 1272(d)(6), redesignated subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpar. (C) which read as follows: ''a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States),''.

Subsec. (d). Pub. L. 99–514, § 102(a), substituted ''Itemized deductions'' for ''Zero bracket amount'' in heading and amended text generally. Prior to amendment, subsec. (d) read as follows: ''For purposes of this subtitle, the term 'zero bracket amount' means—

''(1) in the case of an individual to whom subsection (a), (b), (c), or (d) of section 1 applies, the maximum amount of taxable income on which no tax is imposed by the applicable subsection of section 1, or

''(2) zero in any other case.''

Subsec. (e). Pub. L. 99–514, § 102(a), substituted ''Election to itemize'' for ''Unused zero bracket amount'' in heading.

Subsec. (e)(1). Pub. L. 99–514, § 102(a), substituted ''In general'' for ''Individuals for whom computation must be made'' in heading and amended text generally. Prior to amendment, text read as follows: ''A computation for the taxable year shall be made under this subsection for the following individuals:

''(A) a married individual filing a separate return where either spouse itemized deductions,

''(B) a nonresident alien individual,

''(C) a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States), and

''(D) an individual with respect to whom a deduction under section 151(e) is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins.''

Subsec. (e)(2). Pub. L. 99–514, § 102(a), substituted ''Time and manner of election'' for ''Computation'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subtitle, an individual's unused zero bracket amount for the taxable year is an amount equal to the excess (if any) of—

''(A) the zero bracket amount, over

''(B) the itemized deductions.

In the case of an individual referred to in paragraph (1)(D), if such individual's earned income (as defined in section 911(d)(2)) exceeds the itemized deductions, such earned income shall be substituted for the itemized deductions in subparagraph (B).''

Subsec. (e)(3). Pub. L. 99–514, § 102(a), in amending subsec. (e) generally, added par. (3).

Subsec. (f). Pub. L. 99–514, § 102(a), substituted ''Aged or blind additional amounts'' for ''Itemized deductions'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subtitle, the term 'itemized deductions' means the deductions allowable by this chapter other than—

''(1) the deductions allowable in arriving at adjusted gross income,

''(2) the deductions for personal exemptions provided by section 151, and

''(3) the direct charitable deduction.''

Subsec. (g). Pub. L. 99–514, § 102(a), amended subsec. (g) generally, substituting provision that marital status be determined under section 7703 for provisions relating to election to itemize. See subsec. (e).

Subsec. (h). Pub. L. 99–514, § 102(a), substituted ''Transitional rule for taxable years beginning in 1987'' for ''Marital status'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, marital status shall be determined under section 143.''

Subsec. (i). Pub. L. 99–514, § 102(a), in amending section generally, struck out subsec. (i), ''Direct charitable deduction'', which read as follows: ''For purposes of this section, the term 'direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(i).''

1981—Subsec. (b)(1)(C). Pub. L. 97–34, § 121(b)(1), added subpar. (C).

Subsec. (d). Pub. L. 97–34, § 104(b), substituted a blanket reference to individuals to whom subsection (a), (b), (c), or (d) of section 1 applies and the maximum amount of taxable income on which no tax is imposed by the applicable subsection of section 1 for provisions specifically referring to amounts of $3,400 in the case of (A) a joint return under section 6013, or (B) a surviving spouse (as defined in section 2(a)), $2,300 in the case of an individual who is not married and who is not a surviving spouse (as so defined), and $1,700 in the case of a married individual filing a separate return.

Subsec. (e)(2). Pub. L. 97–34, § 111(b)(4), substituted ''section 911(d)(2)'' for ''section 911(b)'' in provisions following subpar. (B).

Subsec. (f)(3). Pub. L. 97–34, § 121(c)(2), added par. (3).

Subsec. (i). Pub. L. 97–34, § 121(b)(2), added subsec. (i).

1978—Pub. L. 95–600 substituted ''$3,400'' for ''$3,200'' in par. (1), ''$2,300'' for ''$2,200'' in par. (2), and ''$1,700'' for ''$1,600'' in par. (3).

1977—Pub. L. 95–30 completely revised definition of taxable income from one using the concept of a standard deduction and consisting of subsecs. (a) and (b) entitled, respectively, ''General rule'' and ''Individuals electing standard deduction'' to definition using the concepts of zero bracket amounts and excess itemized deductions and consisting of subsecs. (a) to (h) entitled, respectively, ''Corporations'', ''Individuals'', ''Excess itemized deductions'', ''Zero bracket amount'', ''Unused zero bracket amount'', ''Itemized deductions'', ''Election to itemize'', and ''Marital status''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to purchases on or after Feb. 17, 2009, in taxable years ending after such date, see section 1008(e) of Pub. L. 111–5, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, § 204(b), Oct. 3, 2008, 122 Stat. 3865, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Amendment by section 706(b)(1), (2) of Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

Pub. L. 110–289, div. C, title I, § 3012(c), July 30, 2008, 122 Stat. 2892, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

Amendment by section 101(b) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2003, see

section 101(e) of Pub. L. 108–311, set out as a note under section 1 of this title.

Amendment by section 101(b) of Pub. L. 108–311 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the provisions of such Act to which such amendments relate, see section 105 of Pub. L. 108–311, set out as a note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Pub. L. 108–27, title I, §103(c), May 28, 2003, 117 Stat. 754, provided that: ''The amendments made by this section [amending this section and provisions set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] shall apply to taxable years beginning after December 31, 2002.''

Amendments by title I of Pub. L. 108–27 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the provisions of such Act to which such amendments relate, see section 107 of Pub. L. 108–27, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2002, see section 301(d) of Pub. L. 107–16, as amended, set out as a note under section 1 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 1201(c) of Pub. L. 105–34, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(D) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 102(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1272(d)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 104(b) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1984, see section 104(e) of Pub. L. 97–34, set out as a note under section 1 of this title.

Amendment by section 111(b)(4) of Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

Amendment by section 121(b), (c)(2) of Pub. L. 97–34 applicable to contributions made after Dec. 31, 1981, in taxable years beginning after such date, see section 121(d) of Pub. L. 97–34, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95–600, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 64. Ordinary income defined

For purposes of this subtitle, the term ''ordinary income'' includes any gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b). Any gain from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as ''ordinary income'' shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b).

(Added Pub. L. 94–455, title XIX, §1901(a)(10), Oct. 4, 1976, 90 Stat. 1765.)

§ 65. Ordinary loss defined

For purposes of this subtitle, the term ''ordinary loss'' includes any loss from the sale or exchange of property which is not a capital asset. Any loss from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as ''ordinary loss'' shall be treated as loss from the sale or exchange of property which is not a capital asset.

(Added Pub. L. 94–455, title XIX, §1901(a)(11), Oct. 4, 1976, 90 Stat. 1765.)

§ 66. Treatment of community income

(a) Treatment of community income where spouses live apart

If—

(1) 2 individuals are married to each other at any time during a calendar year;

(2) such individuals—

(A) live apart at all times during the calendar year, and

(B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;

(3) one or both of such individuals have earned income for the calendar year which is community income; and

(4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year,

then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

(b) Secretary may disregard community property laws where spouse not notified of community income

The Secretary may disallow the benefits of any community property law to any taxpayer with respect to any income if such taxpayer acted as if solely entitled to such income and failed to notify the taxpayer's spouse before the due date (including extensions) for filing the return for the taxable year in which the income was derived of the nature and amount of such income.

(c) Spouse relieved of liability in certain other cases

Under regulations prescribed by the Secretary, if—

(1) an individual does not file a joint return for any taxable year,

(2) such individual does not include in gross income for such taxable year an item of community income properly includible therein which, in accordance with the rules contained in section 879(a), would be treated as the income of the other spouse,

(3) the individual establishes that he or she did not know of, and had no reason to know of, such item of community income, and

(4) taking into account all facts and circumstances, it is inequitable to include such item of community income in such individual's gross income,

then, for purposes of this title, such item of community income shall be included in the gross income of the other spouse (and not in the gross income of the individual). Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability.

(d) Definitions

For purposes of this section—

(1) Earned income

The term ''earned income'' has the meaning given to such term by section 911(d)(2).

(2) Community income

The term ''community income'' means income which, under applicable community property laws, is treated as community income.

(3) Community property laws

The term ''community property laws'' means the community property laws of a State, a foreign country, or a possession of the United States.

(Added Pub. L. 96–605, title I, § 101(a), Dec. 28, 1980, 94 Stat. 3521; amended Pub. L. 98–369, div. A, title IV, § 424(b)(1)–(2)(B), July 18, 1984, 98 Stat. 802, 803; Pub. L. 101–239, title VII, § 7841(d)(8), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 105–206, title III, § 3201(b), July 22, 1998, 112 Stat. 739.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–206 inserted at end ''Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability.''

1989—Subsec. (d)(1). Pub. L. 101–239 substituted ''section 911(d)(2)'' for ''section 911(b)''.

1984—Pub. L. 98–369, § 424(b)(2)(A), struck out ''where spouses live apart'' in section catchline.

Subsec. (a). Pub. L. 98–369, § 424(b)(2)(B), substituted ''Treatment of community income where spouses live apart'' for ''General rule'' in heading.

Subsecs. (b) to (d). Pub. L. 98–369, § 424(b)(1), added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 applicable to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining unpaid as of such date, see section 3201(g)(1) of Pub. L. 105–206, set out as a note under section 6015 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies with corresponding provisions deemed to be included in the Internal Revenue Code of 1939 and applicable to all taxable years to which such Code applies, except subsection (b) of this section is applicable to taxable years beginning after December 31, 1984, see section 424(c) of Pub. L. 98–369, set out as a note under section 6013 of this title.

EFFECTIVE DATE

Section 101(c) of Pub. L. 96–605 provided that: ''The amendments made by this section [enacting this section] shall apply to calendar years beginning after December 31, 1980.''

§ 67. 2-percent floor on miscellaneous itemized deductions

(a) General rule

In the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income.

(b) Miscellaneous itemized deductions

For purposes of this section, the term ''miscellaneous itemized deductions'' means the itemized deductions other than—

(1) the deduction under section 163 (relating to interest),

(2) the deduction under section 164 (relating to taxes),

(3) the deduction under section 165(a) for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d),

(4) the deductions under section 170 (relating to charitable, etc., contributions and gifts) and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose),

(5) the deduction under section 213 (relating to medical, dental, etc., expenses),

(6) any deduction allowable for impairment-related work expenses,

(7) the deduction under section 691(c) (relating to deduction for estate tax in case of income in respect of the decedent),

(8) any deduction allowable in connection with personal property used in a short sale,

(9) the deduction under section 1341 (relating to computation of tax where taxpayer restores substantial amount held under claim of right),

(10) the deduction under section 72(b)(3) (relating to deduction where annuity payments cease before investment recovered),

(11) the deduction under section 171 (relating to deduction for amortizable bond premium), and

(12) the deduction under section 216 (relating to deductions in connection with cooperative housing corporations).

(c) Disallowance of indirect deduction through pass-thru entity

(1) In general

The Secretary shall prescribe regulations which prohibit the indirect deduction through pass-thru entities of amounts which are not allowable as a deduction if paid or incurred directly by an individual and which contain such reporting requirements as may be necessary to carry out the purposes of this subsection.

(2) Treatment of publicly offered regulated investment companies

(A) In general

Paragraph (1) shall not apply with respect to any publicly offered regulated investment company.

(B) Publicly offered regulated investment companies

For purposes of this subsection—

(i) In general

The term ''publicly offered regulated investment company'' means a regulated investment company the shares of which are—

(I) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),

(II) regularly traded on an established securities market, or

(III) held by or for no fewer than 500 persons at all times during the taxable year.

(ii) Secretary may reduce 500 person requirement

The Secretary may by regulation decrease the minimum shareholder requirement of clause (i)(III) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares.

(3) Treatment of certain other entities

Paragraph (1) shall not apply—

(A) with respect to cooperatives and real estate investment trusts, and

(B) except as provided in regulations, with respect to estates and trusts.

(d) Impairment-related work expenses

For purposes of this section, the term ''impairment-related work expenses'' means expenses—

(1) of a handicapped individual (as defined in section 190(b)(3)) for attendant care services at the individual's place of employment and other expenses in connection with such place of employment which are necessary for such individual to be able to work, and

(2) with respect to which a deduction is allowable under section 162 (determined without regard to this section).

(e) Determination of adjusted gross income in case of estates and trusts

For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

(1) the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such trust or estate, and

(2) the deductions allowable under sections 642(b), 651, and 661,

shall be treated as allowable in arriving at adjusted gross income. Under regulations, appropriate adjustments shall be made in the application of part I of subchapter J of this chapter to take into account the provisions of this section.

(f) Coordination with other limitation

This section shall be applied before the application of the dollar limitation of the second sentence of section 162(a) (relating to trade or business expenses).

(Added Pub. L. 99–514, title I, §132(a), Oct. 22, 1986, 100 Stat. 2113; amended Pub. L. 100–647, title I, §1001(f), title IV, §4011(a), Nov. 10, 1988, 102 Stat. 3351, 3655; Pub. L. 101–239, title VII, §7814(f), Dec. 19, 1989, 103 Stat. 2414; Pub. L. 103–66, title XIII, §13213(c)(2), Aug. 10, 1993, 107 Stat. 474; Pub. L. 105–277, div. J, title IV, §4004(b)(1), Oct. 21, 1998, 112 Stat. 2681–910; Pub. L. 106–554, §1(a)(7) [title III, §319(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646.)

REFERENCES IN TEXT

Section 4 of the Securities Act of 1933, referred to in subsec. (c)(2)(B)(i)(I), is classified to section 77d of Title 15, Commerce and Trade.

AMENDMENTS

2000—Subsec. (f). Pub. L. 106–554 substituted ''the second sentence'' for ''the last sentence''.

1998—Subsec. (b)(3). Pub. L. 105–277 substituted ''for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section

165(d)'' for ''for losses described in subsection (c)(3) or (d) of section 165''.

1993—Subsec. (b)(6) to (13). Pub. L. 103–66 redesignated pars. (7) to (13) as (6) to (12), respectively, and struck out former par. (6) which read as follows: ''the deduction under section 217 (relating to moving expenses),''.

1989—Subsec. (c)(4). Pub. L. 101–239 struck out par. (4) which read as follows: ''TERMINATION.—This subsection shall not apply to any taxable year beginning after December 31, 1989.''

1988—Subsec. (b)(4). Pub. L. 100–647, § 1001(f)(2), substituted ''deductions'' for ''deduction'' and inserted before comma at end ''and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose)''.

Subsec. (c). Pub. L. 100–647, § 4011(a), amended subsec. (c) generally. Prior to amendment subsec. (c) read as follows: ''The Secretary shall prescribe regulations which prohibit the indirect deduction through pass-thru entities of amounts which are not allowable as a deduction if paid or incurred directly by an individual and which contain such reporting requirements as may be necessary to carry out the purposes of this subsection. The preceding sentence shall not apply—

''(1) with respect to cooperatives and real estate investment trusts, and

''(2) except as provided in regulations, with respect to estates and trusts.''

Pub. L. 100–647, § 1001(f)(4), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The preceding sentence shall not apply with respect to estates, trusts, cooperatives, and real estate investment trusts.''

Subsec. (e). Pub. L. 100–647, § 1001(f)(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and would not have been incurred if the property were not held in such trust or estate shall be treated as allowable in arriving at adjusted gross income.''

Subsec. (f). Pub. L. 100–647, § 1001(f)(1), added subsec. (f).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title IV, § 4004(c)(2), Oct. 21, 1998, 112 Stat. 2681–911, provided that: ''The amendment made by subsection (b)(1) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(f) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4011(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 1 of this title.

1-YEAR DELAY IN TREATMENT OF PUBLICLY OFFERED REGULATED INVESTMENT COMPANIES UNDER 2-PERCENT FLOOR

Pub. L. 100–203, title X, § 10104(a), Dec. 22, 1987, 101 Stat. 1330–386, provided that:

''(1) GENERAL RULE.—Section 67(c) of the Internal Revenue Code of 1986 to the extent it relates to indirect deductions through a publicly offered regulated investment company shall apply only to taxable years beginning after December 31, 1987.

''(2) PUBLICLY OFFERED REGULATED INVESTMENT COMPANY DEFINED.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'publicly offered regulated investment company' means a regulated investment company the shares of which are—

''(i) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa) [15 U.S.C. 77d]),

''(ii) regularly traded on an established securities market, or

''(iii) held by or for no fewer than 500 persons at all times during the taxable year.

''(B) SECRETARY MAY REDUCE 500 PERSON REQUIREMENT.—The Secretary of the Treasury or his delegate may by regulation decrease the minimum shareholder requirement of subparagraph (A)(iii) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares.''

§ 68. Overall limitation on itemized deductions

(a) General rule

In the case of an individual whose adjusted gross income exceeds the applicable amount, the amount of the itemized deductions otherwise allowable for the taxable year shall be reduced by the lesser of—

(1) 3 percent of the excess of adjusted gross income over the applicable amount, or

(2) 80 percent of the amount of the itemized deductions otherwise allowable for such taxable year.

(b) Applicable amount

(1) In general

For purposes of this section, the term ''applicable amount'' means $100,000 ($50,000 in the case of a separate return by a married individual within the meaning of section 7703).

(2) Inflation adjustments

In the case of any taxable year beginning in a calendar year after 1991, each dollar amount contained in paragraph (1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1990'' for ''calendar year 1992'' in subparagraph (B) thereof.

(c) Exception for certain itemized deductions

For purposes of this section, the term ''itemized deductions'' does not include—

(1) the deduction under section 213 (relating to medical, etc. expenses),

(2) any deduction for investment interest (as defined in section 163(d)), and

(3) the deduction under section 165(a) for casualty or theft losses described in paragraph (2)

or (3) of section 165(c) or for losses described in section 165(d).

(d) Coordination with other limitations

This section shall be applied after the application of any other limitation on the allowance of any itemized deduction.

(e) Exception for estates and trusts

This section shall not apply to any estate or trust.

(f) Phaseout of limitation

(1) In general

In the case of taxable years beginning after December 31, 2005, and before January 1, 2010, the reduction under subsection (a) shall be equal to the applicable fraction of the amount which would (but for this subsection) be the amount of such reduction.

(2) Applicable fraction

For purposes of paragraph (1), the applicable fraction shall be determined in accordance with the following table:

For taxable years beginning in calendar year—	The applicable fraction is—
2006 and 2007	⅔
2008 and 2009	⅓.

(g) Termination

This section shall not apply to any taxable year beginning after December 31, 2009.

(Added Pub. L. 101–508, title XI, §11103(a), Nov. 5, 1990, 104 Stat. 1388–406; amended Pub. L. 103–66, title XIII, §§13201(b)(3)(E), 13204, Aug. 10, 1993, 107 Stat. 459, 462; Pub. L. 105–277, div. J, title IV, §4004(b)(2), Oct. 21, 1998, 112 Stat. 2681–911; Pub. L. 107–16, title I, §103(a), June 7, 2001, 115 Stat. 44.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

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

AMENDMENTS

2001—Subsecs. (f), (g). Pub. L. 107—16, §§103(a), 901, temporarily added subsecs. (f) and (g). See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (c)(3). Pub. L. 105–277 substituted ''for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d)'' for ''for losses described in subsection (c)(3) or (d) of section 165''.

1993—Subsec. (b)(2)(B). Pub. L. 103–66, §13201(b)(3)(E), substituted ''1992'' for ''1989''.

Subsec. (f). Pub. L. 103–66, §13204, struck out heading and text of subsec. (f). Text read as follows: ''This section shall not apply to any taxable year beginning after December 31, 1995.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title I, §103(b), June 7, 2001, 115 Stat. 45, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title IV, §4004(c)(3), Oct. 21, 1998, 112 Stat. 2681–911, provided that: ''The amendment made by subsection (b)(2) [amending this section] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13201(b)(3)(E) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1990, see section 11103(e) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 1 of this title.

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

Sec.
71. Alimony and separate maintenance payments.
72. Annuities; certain proceeds of endowment and life insurance contracts.
73. Services of child.
74. Prizes and awards.
75. Dealers in tax-exempt securities.
[76. Repealed.]
77. Commodity credit loans.
78. Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit.
79. Group-term life insurance purchased for employees.
80. Restoration of value of certain securities.
[81. Repealed.]
82. Reimbursement of moving expenses.[1]
83. Property transferred in connection with performance of services.
84. Transfer of appreciated property to political organizations.[1]
85. Unemployment compensation.
86. Social security and tier 1 railroad retirement benefits.
87. Alcohol and biodiesel fuels credits.
88. Certain amounts with respect to nuclear decommissioning costs.
[89. Repealed.]
90. Illegal Federal irrigation subsidies.

AMENDMENTS

2004—Pub. L. 108–357, title III, §302(c)(1)(B), Oct. 22, 2004, 118 Stat. 1465, substituted ''and biodiesel fuels credits'' for ''fuel credit'' in item 87.

1989—Pub. L. 101–239, title VII, §7822(c), Dec. 19, 1989, 103 Stat. 2425, substituted ''Illegal Federal irrigation'' for ''Federal irrigation'' in item 90.

Pub. L. 101–140, title II, §202(b), Nov. 8, 1989, 103 Stat. 830, struck out item 89 ''Benefits provided under certain employee benefit plans''.

1987—Pub. L. 100–203, title X, §§10201(b)(6), 10611(b), Dec. 22, 1987, 101 Stat. 1330–387, 1330–452, struck out item 81 ''Increase in vacation pay suspense account'' and added item 90.

1986—Pub. L. 99–514, title VIII, §805(c)(1)(B), title XI, §1151(j)(1), Oct. 22, 1986, 100 Stat. 2362, 2508, substituted ''Increase in vacation pay suspense account'' for ''Cer-

[1] So in original. Does not conform to section catchline.

tain increases in suspense accounts'' in item 81, and added item 89.

1984—Pub. L. 98–369, div. A, title I, § 91(f)(2), July 18, 1984, 98 Stat. 608, added item 88.

1983—Pub. L. 98–21, title I, § 121(f)(3), Apr. 20, 1983, 97 Stat. 84, added item 86 and redesignated former item 86 as 87.

1980—Pub. L. 96–223, title II, § 232(c)(3), Apr. 2, 1980, 94 Stat. 277, added item 86.

1978—Pub. L. 95–600, title I, § 112(c)(1), Nov. 6, 1978, 92 Stat. 2778, added item 85.

1976—Pub. L. 94–455, title XIX, § 1901(b)(5), Oct. 4, 1976, 90 Stat. 1793, struck out item 76 ''Mortgages made or obligations issued by joint-stock land banks''.

1975—Pub. L. 93–625, §§ 4(c)(2), 13(a)(2), Jan. 3, 1975, 88 Stat. 2111, 2121, substituted ''Certain increases in suspense accounts'' for ''Increases in suspense account under section 166(g)'' in item 81, and added item 84.

1969—Pub. L. 91–172, title II, § 231(c)(1), title III, § 321(c), Dec. 30, 1969, 83 Stat. 579, 591, added items 82, 83.

1966—Pub. L. 89–722, § 1(b)(2), Nov. 2, 1966, 80 Stat. 1152, added item 81.

Pub. L. 89–384, § 1(b)(2), Apr. 8, 1966, 80 Stat. 102, added item 80.

1964—Pub. L. 88–272, title II, § 204(a)(2), Feb. 26, 1964, 78 Stat. 36, added item 79.

1962—Pub. L. 87–834, § 9(d)(1), Oct. 16, 1962, 76 Stat. 1001, added item 78.

§ 71. Alimony and separate maintenance payments

(a) General rule

Gross income includes amounts received as alimony or separate maintenance payments.

(b) Alimony or separate maintenance payments defined

For purposes of this section—

(1) In general

The term ''alimony or separate maintenance payment'' means any payment in cash if—

(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument,

(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,

(C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

(D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.

(2) Divorce or separation instrument

The term ''divorce or separation instrument'' means—

(A) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

(B) a written separation agreement, or

(C) a decree (not described in subparagraph (A)) requiring a spouse to make payments for the support or maintenance of the other spouse.

(c) Payments to support children

(1) In general

Subsection (a) shall not apply to that part of any payment which the terms of the divorce or separation instrument fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of children of the payor spouse.

(2) Treatment of certain reductions related to contingencies involving child

For purposes of paragraph (1), if any amount specified in the instrument will be reduced—

(A) on the happening of a contingency specified in the instrument relating to a child (such as attaining a specified age, marrying, dying, leaving school, or a similar contingency), or

(B) at a time which can clearly be associated with a contingency of a kind specified in subparagraph (A),

an amount equal to the amount of such reduction will be treated as an amount fixed as payable for the support of children of the payor spouse.

(3) Special rule where payment is less than amount specified in instrument

For purposes of this subsection, if any payment is less than the amount specified in the instrument, then so much of such payment as does not exceed the sum payable for support shall be considered a payment for such support.

(d) Spouse

For purposes of this section, the term ''spouse'' includes a former spouse.

(e) Exception for joint returns

This section and section 215 shall not apply if the spouses make a joint return with each other.

(f) Recomputation where excess front-loading of alimony payments

(1) In general

If there are excess alimony payments—

(A) the payor spouse shall include the amount of such excess payments in gross income for the payor spouse's taxable year beginning in the 3rd post-separation year, and

(B) the payee spouse shall be allowed a deduction in computing adjusted gross income for the amount of such excess payments for the payee's taxable year beginning in the 3rd post-separation year.

(2) Excess alimony payments

For purposes of this subsection, the term ''excess alimony payments'' mean the sum of—

(A) the excess payments for the 1st post-separation year, and

(B) the excess payments for the 2nd post-separation year.

(3) Excess payments for 1st post-separation year

For purposes of this subsection, the amount of the excess payments for the 1st post-separation year is the excess (if any) of—

(A) the amount of the alimony or separate maintenance payments paid by the payor

spouse during the 1st post-separation year, over

(B) the sum of—

(i) the average of—

(I) the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, reduced by the excess payments for the 2nd post-separation year, and

(II) the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

(ii) $15,000.

(4) Excess payments for 2nd post-separation year

For purposes of this subsection, the amount of the excess payments for the 2nd post-separation year is the excess (if any) of—

(A) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, over

(B) the sum of—

(i) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

(ii) $15,000.

(5) Exceptions

(A) Where payment ceases by reason of death or remarriage

Paragraph (1) shall not apply if—

(i) either spouse dies before the close of the 3rd post-separation year, or the payee spouse remarries before the close of the 3rd post-separation year, and

(ii) the alimony or separate maintenance payments cease by reason of such death or remarriage.

(B) Support payments

For purposes of this subsection, the term ''alimony or separate maintenance payment'' shall not include any payment received under a decree described in subsection (b)(2)(C).

(C) Fluctuating payments not within control of payor spouse

For purposes of this subsection, the term ''alimony or separate maintenance payment'' shall not include any payment to the extent it is made pursuant to a continuing liability (over a period of not less than 3 years) to pay a fixed portion or portions of the income from a business or property or from compensation for employment or self-employment.

(6) Post-separation years

For purposes of this subsection, the term ''1st post-separation years'' means the 1st calendar year in which the payor spouse paid to the payee spouse alimony or separate maintenance payments to which this section applies. The 2nd and 3rd post-separation years shall be the 1st and 2nd succeeding calendar years, respectively.

(g) Cross references

(1) For deduction of alimony or separate maintenance payments, see section 215.

(2) For taxable status of income of an estate or trust in the case of divorce, etc., see section 682.

(Aug. 16, 1954, ch. 736, 68A Stat. 19; Pub. L. 98–369, div. A, title IV, § 422(a), July 18, 1984, 98 Stat. 795; Pub. L. 99–514, title XVIII, § 1843(a)–(c)(1), (d), Oct. 22, 1986, 100 Stat. 2853, 2855.)

AMENDMENTS

1986—Subsec. (b)(1)(D). Pub. L. 99–514, § 1843(b), struck out ''(and the divorce or separation instrument states that there is no such liability)'' after ''for such payments after the death of the payee spouse''.

Subsec. (c)(2)(B). Pub. L. 99–514, § 1843(d), substituted ''specified in subparagraph (A)'' for ''specified in paragraph (1)''.

Subsec. (f). Pub. L. 99–514, § 1843(c)(1), amended subsec. (f) generally, substituting provisions for the recomputation of liability where there has been excess front-loading of alimony payments for provisions setting forth special rules to prevent excess front-loading of alimony payments.

Subsec. (g). Pub. L. 99–514, § 1843(a), added subsec. (g).

1984—Pub. L. 98–369 amended section generally, substituting present provisions for provisions which had declared in: subsec. (a), a general rule as to decree of divorce or separate maintenance in par. (1), written separation agreement in par. (2), and decree for support in par. (3); subsec. (b), payments to support minor children; subsec. (c), principal sum paid in installments, par. (1) stating a general rule and par. (2) the rule where period for payment is more than 10 years; subsec. (d), the rule for husband in case of transferred property; and subsec. (e), cross references to sections 7701(a)(17), 215, and 682.

EFFECTIVE DATE OF 1986 AMENDMENT; TRANSITIONAL RULE

Section 1843(c)(2), (3) of Pub. L. 99–514 provided that: ''(2) EFFECTIVE DATES.—

''(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply with respect to divorce or separation instruments (as defined in section 71(b)(2)) of the Internal Revenue Code of 1986 executed after December 31, 1986.

''(B) MODIFICATIONS OF INSTRUMENTS EXECUTED BEFORE JANUARY 1, 1987.—The amendments made by paragraph (1) [amending this section] shall also apply to any divorce or separation instrument (as so defined) executed before January 1, 1987, but modified on or after such date if the modification expressly provides that the amendments made by paragraph (1) shall apply to such modification.

''(3) TRANSITIONAL RULE.—In the case of any instrument to which the amendment made by paragraph (1) [amending this section] does not apply, paragraph (2) of section 71(f) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) shall apply only with respect to the first 3 post-separation years.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 422(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 215, 219, 682, 6676, and 7701 of this title] shall apply with respect to divorce or separation instruments (as defined in section 71(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this section) executed after December 31, 1984.

''(2) MODIFICATIONS OF INSTRUMENTS EXECUTED BEFORE JANUARY 1, 1985.—The amendments made by this section shall also apply to any divorce or separation instrument (as so defined) executed before January 1, 1985, but modified on or after such date if the modification expressly provides that the amendments made by this section shall apply to such modification.

''(3) REQUIREMENT OF IDENTIFICATION NUMBER.—Section 215(c) of the Internal Revenue Code of 1986 (as amended by subsection (b)) and the amendments made by subsection (c) [amending section 6676 of this title] shall apply to payments made after December 31, 1984.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 72. Annuities; certain proceeds of endowment and life insurance contracts

(a) General rules for annuities

(1) Income inclusion

Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

(2) Partial annuitization

If any amount is received as an annuity for a period of 10 years or more or during one or more lives under any portion of an annuity, endowment, or life insurance contract—

(A) such portion shall be treated as a separate contract for purposes of this section,

(B) for purposes of applying subsections (b), (c), and (e), the investment in the contract shall be allocated pro rata between each portion of the contract from which amounts are received as an annuity and the portion of the contract from which amounts are not received as an annuity, and

(C) a separate annuity starting date under subsection (c)(4) shall be determined with respect to each portion of the contract from which amounts are received as an annuity.

(b) Exclusion ratio

(1) In general

Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date).

(2) Exclusion limited to investment

The portion of any amount received as an annuity which is excluded from gross income under paragraph (1) shall not exceed the unrecovered investment in the contract immediately before the receipt of such amount.

(3) Deduction where annuity payments cease before entire investment recovered

(A) In general

If—

(i) after the annuity starting date, payments as an annuity under the contract cease by reason of the death of an annuitant, and

(ii) as of the date of such cessation, there is unrecovered investment in the contract,

the amount of such unrecovered investment (in excess of any amount specified in subsection (e)(5) which was not included in gross income) shall be allowed as a deduction to the annuitant for his last taxable year.

(B) Payments to other persons

In the case of any contract which provides for payments meeting the requirements of subparagraphs (B) and (C) of subsection (c)(2), the deduction under subparagraph (A) shall be allowed to the person entitled to such payments for the taxable year in which such payments are received.

(C) Net operating loss deductions provided

For purposes of section 172, a deduction allowed under this paragraph shall be treated as if it were attributable to a trade or business of the taxpayer.

(4) Unrecovered investment

For purposes of this subsection, the unrecovered investment in the contract as of any date is—

(A) the investment in the contract (determined without regard to subsection (c)(2)) as of the annuity starting date, reduced by

(B) the aggregate amount received under the contract on or after such annuity starting date and before the date as of which the determination is being made, to the extent such amount was excludable from gross income under this subtitle.

(c) Definitions

(1) Investment in the contract

For purposes of subsection (b), the investment in the contract as of the annuity starting date is—

(A) the aggregate amount of premiums or other consideration paid for the contract, minus

(B) the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws.

(2) Adjustment in investment where there is refund feature

If—

(A) the expected return under the contract depends in whole or in part on the life expectancy of one or more individuals;

(B) the contract provides for payments to be made to a beneficiary (or to the estate of an annuitant) on or after the death of the annuitant or annuitants; and

(C) such payments are in the nature of a refund of the consideration paid,

then the value (computed without discount for interest) of such payments on the annuity starting date shall be subtracted from the amount determined under paragraph (1). Such value shall be computed in accordance with actuarial tables prescribed by the Secretary. For purposes of this paragraph and of sub-

section (e)(2)(A), the term ''refund of the consideration paid'' includes amounts payable after the death of an annuitant by reason of a provision in the contract for a life annuity with minimum period of payments certain, but (if part of the consideration was contributed by an employer) does not include that part of any payment to a beneficiary (or to the estate of the annuitant) which is not attributable to the consideration paid by the employee for the contract as determined under paragraph (1)(A).

(3) Expected return

For purposes of subsection (b), the expected return under the contract shall be determined as follows:

(A) Life expectancy

If the expected return under the contract, for the period on and after the annuity starting date, depends in whole or in part on the life expectancy of one or more individuals, the expected return shall be computed with reference to actuarial tables prescribed by the Secretary.

(B) Installment payments

If subparagraph (A) does not apply, the expected return is the aggregate of the amounts receivable under the contract as an annuity.

(4) Annuity starting date

For purposes of this section, the annuity starting date in the case of any contract is the first day of the first period for which an amount is received as an annuity under the contract; except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954.

(d) Special rules for qualified employer retirement plans

(1) Simplified method of taxing annuity payments

(A) In general

In the case of any amount received as an annuity under a qualified employer retirement plan—

(i) subsection (b) shall not apply, and

(ii) the investment in the contract shall be recovered as provided in this paragraph.

(B) Method of recovering investment in contract

(i) In general

Gross income shall not include so much of any monthly annuity payment under a qualified employer retirement plan as does not exceed the amount obtained by dividing—

(I) the investment in the contract (as of the annuity starting date), by

(II) the number of anticipated payments determined under the table contained in clause (iii) (or, in the case of a contract to which subsection (c)(3)(B) applies, the number of monthly annuity payments under such contract).

(ii) Certain rules made applicable

Rules similar to the rules of paragraphs (2) and (3) of subsection (b) shall apply for purposes of this paragraph.

(iii) Number of anticipated payments

If the annuity is payable over the life of a single individual, the number of anticipated payments shall be determined as follows:

If the age of the annuitant on the annuity starting date is:	The number of anticipated payments is:
Not more than 55	360
More than 55 but not more than 60	310
More than 60 but not more than 65	260
More than 65 but not more than 70	210
More than 70	160.

(iv) Number of anticipated payments where more than one life

If the annuity is payable over the lives of more than 1 individual, the number of anticipated payments shall be determined as follows:

If the combined ages of annuitants are:	The number is:
Not more than 110	410
More than 110 but not more than 120	360
More than 120 but not more than 130	310
More than 130 but not more than 140	260
More than 140	210.

(C) Adjustment for refund feature not applicable

For purposes of this paragraph, investment in the contract shall be determined under subsection (c)(1) without regard to subsection (c)(2).

(D) Special rule where lump sum paid in connection with commencement of annuity payments

If, in connection with the commencement of annuity payments under any qualified employer retirement plan, the taxpayer receives a lump-sum payment—

(i) such payment shall be taxable under subsection (e) as if received before the annuity starting date, and

(ii) the investment in the contract for purposes of this paragraph shall be determined as if such payment had been so received.

(E) Exception

This paragraph shall not apply in any case where the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity.

(F) Adjustment where annuity payments not on monthly basis

In any case where the annuity payments are not made on a monthly basis, appropriate adjustments in the application of this paragraph shall be made to take into account the period on the basis of which such payments are made.

(G) Qualified employer retirement plan

For purposes of this paragraph, the term ''qualified employer retirement plan'' means any plan or contract described in paragraph (1), (2), or (3) of section 4974(c).

(2) Treatment of employee contributions under defined contribution plans

For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract.

(e) Amounts not received as annuities

(1) Application of subsection

(A) In general

This subsection shall apply to any amount which—

(i) is received under an annuity, endowment, or life insurance contract, and

(ii) is not received as an annuity,

if no provision of this subtitle (other than this subsection) applies with respect to such amount.

(B) Dividends

For purposes of this section, any amount received which is in the nature of a dividend or similar distribution shall be treated as an amount not received as an annuity.

(2) General rule

Any amount to which this subsection applies—

(A) if received on or after the annuity starting date, shall be included in gross income, or

(B) if received before the annuity starting date—

(i) shall be included in gross income to the extent allocable to income on the contract, and

(ii) shall not be included in gross income to the extent allocable to the investment in the contract.

(3) Allocation of amounts to income and investment

For purposes of paragraph (2)(B)—

(A) Allocation to income

Any amount to which this subsection applies shall be treated as allocable to income on the contract to the extent that such amount does not exceed the excess (if any) of—

(i) the cash value of the contract (determined without regard to any surrender charge) immediately before the amount is received, over

(ii) the investment in the contract at such time.

(B) Allocation to investment

Any amount to which this subsection applies shall be treated as allocable to investment in the contract to the extent that such amount is not allocated to income under subparagraph (A).

(4) Special rules for application of paragraph (2)(B)

For purposes of paragraph (2)(B)—

(A) Loans treated as distributions

If, during any taxable year, an individual—

(i) receives (directly or indirectly) any amount as a loan under any contract to which this subsection applies, or

(ii) assigns or pledges (or agrees to assign or pledge) any portion of the value of any such contract,

such amount or portion shall be treated as received under the contract as an amount not received as an annuity. The preceding sentence shall not apply for purposes of determining investment in the contract, except that the investment in the contract shall be increased by any amount included in gross income by reason of the amount treated as received under the preceding sentence.

(B) Treatment of policyholder dividends

Any amount described in paragraph (1)(B) shall not be included in gross income under paragraph (2)(B)(i) to the extent such amount is retained by the insurer as a premium or other consideration paid for the contract.

(C) Treatment of transfers without adequate consideration

(i) In general

If an individual who holds an annuity contract transfers it without full and adequate consideration, such individual shall be treated as receiving an amount equal to the excess of—

(I) the cash surrender value of such contract at the time of transfer, over

(II) the investment in such contract at such time,

under the contract as an amount not received as an annuity.

(ii) Exception for certain transfers between spouses or former spouses

Clause (i) shall not apply to any transfer to which section 1041(a) (relating to transfers of property between spouses or incident to divorce) applies.

(iii) Adjustment to investment in contract of transferee

If under clause (i) an amount is included in the gross income of the transferor of an annuity contract, the investment in the contract of the transferee in such contract shall be increased by the amount so included.

(5) Retention of existing rules in certain cases

(A) In general

In any case to which this paragraph applies—

(i) paragraphs (2)(B) and (4)(A) shall not apply, and

(ii) if paragraph (2)(A) does not apply,

the amount shall be included in gross income, but only to the extent it exceeds the investment in the contract.

(B) Existing contracts

This paragraph shall apply to contracts entered into before August 14, 1982. Any amount allocable to investment in the contract after August 13, 1982, shall be treated as from a contract entered into after such date.

(C) Certain life insurance and endowment contracts

Except as provided in paragraph (10) and except to the extent prescribed by the Secretary by regulations, this paragraph shall apply to any amount not received as an annuity which is received under a life insurance or endowment contract.

(D) Contracts under qualified plans

Except as provided in paragraph (8), this paragraph shall apply to any amount received—

(i) from a trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) from a contract—

(I) purchased by a trust described in clause (i),

(II) purchased as part of a plan described in section 403(a),

(III) described in section 403(b), or

(IV) provided for employees of a life insurance company under a plan described in section 818(a)(3), or

(iii) from an individual retirement account or an individual retirement annuity.

Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this subparagraph, be treated as paid under a separate contract to which clause (ii)(I) applies.

(E) Full refunds, surrenders, redemptions, and maturities

This paragraph shall apply to—

(i) any amount received, whether in a single sum or otherwise, under a contract in full discharge of the obligation under the contract which is in the nature of a refund of the consideration paid for the contract, and

(ii) any amount received under a contract on its complete surrender, redemption, or maturity.

In the case of any amount to which the preceding sentence applies, the rule of paragraph (2)(A) shall not apply.

(6) Investment in the contract

For purposes of this subsection, the investment in the contract as of any date is—

(A) the aggregate amount of premiums or other consideration paid for the contract before such date, minus

(B) the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws.

[(7) Repealed. Pub. L. 100–647, title I, § 1011A(b)(9)(A), Nov. 10, 1988, 102 Stat. 3474]

(8) Extension of paragraph (2)(b)[1] to qualified plans

(A) In general

Notwithstanding any other provision of this subsection, in the case of any amount received before the annuity starting date from a trust or contract described in paragraph (5)(D), paragraph (2)(B) shall apply to such amounts.

(B) Allocation of amount received

For purposes of paragraph (2)(B), the amount allocated to the investment in the contract shall be the portion of the amount described in subparagraph (A) which bears the same ratio to such amount as the investment in the contract bears to the account balance. The determination under the preceding sentence shall be made as of the time of the distribution or at such other time as the Secretary may prescribe.

(C) Treatment of forfeitable rights

If an employee does not have a nonforfeitable right to any amount under any trust or contract to which subparagraph (A) applies, such amount shall not be treated as part of the account balance.

(D) Investment in the contract before 1987

In the case of a plan which on May 5, 1986, permitted withdrawal of any employee contributions before separation from service, subparagraph (A) shall apply only to the extent that amounts received before the annuity starting date (when increased by amounts previously received under the contract after December 31, 1986) exceed the investment in the contract as of December 31, 1986.

(9) Extension of paragraph (2)(B) to qualified tuition programs and Coverdell education savings accounts

Notwithstanding any other provision of this subsection, paragraph (2)(B) shall apply to amounts received under a qualified tuition program (as defined in section 529(b)) or under a Coverdell education savings account (as defined in section 530(b)). The rule of paragraph (8)(B) shall apply for purposes of this paragraph.

(10) Treatment of modified endowment contracts

(A) In general

Notwithstanding paragraph (5)(C), in the case of any modified endowment contract (as defined in section 7702A)—

(i) paragraphs (2)(B) and (4)(A) shall apply, and

(ii) in applying paragraph (4)(A), ''any person'' shall be substituted for ''an individual''.

(B) Treatment of certain burial contracts

Notwithstanding subparagraph (A), paragraph (4)(A) shall not apply to any assignment (or pledge) of a modified endowment contract if such assignment (or pledge) is solely to cover the payment of expenses referred to in section 7702(e)(2)(C)(iii) and if the maximum death benefit under such contract does not exceed $25,000.

(11) Special rules for certain combination contracts providing long-term care insurance

Notwithstanding paragraphs (2), (5)(C), and (10), in the case of any charge against the cash

[1] So in original. Probably should be paragraph ''(2)(B)''.

value of an annuity contract or the cash surrender value of a life insurance contract made as payment for coverage under a qualified long-term care insurance contract which is part of or a rider on such annuity or life insurance contract—

(A) the investment in the contract shall be reduced (but not below zero) by such charge, and

(B) such charge shall not be includible in gross income.

(12) Anti-abuse rules

(A) In general

For purposes of determining the amount includible in gross income under this subsection—

(i) all modified endowment contracts issued by the same company to the same policyholder during any calendar year shall be treated as 1 modified endowment contract, and

(ii) all annuity contracts issued by the same company to the same policyholder during any calendar year shall be treated as 1 annuity contract.

The preceding sentence shall not apply to any contract described in paragraph (5)(D).

(B) Regulatory authority

The Secretary may by regulations prescribe such additional rules as may be necessary or appropriate to prevent avoidance of the purposes of this subsection through serial purchases of contracts or otherwise.

(f) Special rules for computing employees' contributions

In computing, for purposes of subsection (c)(1)(A), the aggregate amount of premiums or other consideration paid for the contract, and for purposes of subsection (e)(6), the aggregate premiums or other consideration paid, amounts contributed by the employer shall be included, but only to the extent that—

(1) such amounts were includible in the gross income of the employee under this subtitle or prior income tax laws; or

(2) if such amounts had been paid directly to the employee at the time they were contributed, they would not have been includible in the gross income of the employee under the law applicable at the time of such contribution.

Paragraph (2) shall not apply to amounts which were contributed by the employer after December 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of section 911 if such amounts had been paid directly to the employee at the time of contribution. The preceding sentence shall not apply to amounts which were contributed by the employer, as determined under regulations prescribed by the Secretary, to provide pension or annuity credits, to the extent such credits are attributable to services performed before January 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on March 12, 1962, and on that date applicable to such services, or to the extent such credits are attributable to services performed as a foreign missionary (within the meaning of section 403(b)(2)(D)(iii), as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001).

(g) Rules for transferee where transfer was for value

Where any contract (or any interest therein) is transferred (by assignment or otherwise) for a valuable consideration, to the extent that the contract (or interest therein) does not, in the hands of the transferee, have a basis which is determined by reference to the basis in the hands of the transferor, then—

(1) for purposes of this section, only the actual value of such consideration, plus the amount of the premiums and other consideration paid by the transferee after the transfer, shall be taken into account in computing the aggregate amount of the premiums or other consideration paid for the contract;

(2) for purposes of subsection (c)(1)(B), there shall be taken into account only the aggregate amount received under the contract by the transferee before the annuity starting date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws; and

(3) the annuity starting date is January 1, 1954, or the first day of the first period for which the transferee received an amount under the contract as an annuity, whichever is the later.

For purposes of this subsection, the term ''transferee'' includes a beneficiary of, or the estate of, the transferee.

(h) Option to receive annuity in lieu of lump sum

If—

(1) a contract provides for payment of a lump sum in full discharge of an obligation under the contract, subject to an option to receive an annuity in lieu of such lump sum;

(2) the option is exercised within 60 days after the day on which such lump sum first became payable; and

(3) part or all of such lump sum would (but for this subsection) be includible in gross income by reason of subsection (e)(1),

then, for purposes of this subtitle, no part of such lump sum shall be considered as includible in gross income at the time such lump sum first became payable.

[(i) Repealed. Pub. L. 94–455, title XIX, § 1951(b)(1)(A), Oct. 4, 1976, 90 Stat. 1836]

(j) Interest

Notwithstanding any other provision of this section, if any amount is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

[(k) Repealed. Pub. L. 98–369, div. A, title IV, § 421(b)(1), July 18, 1984, 98 Stat. 794]

***(l)* Face-amount certificates**

For purposes of this section, the term ''endowment contract'' includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a–2), issued after December 31, 1954.

(m) Special rules applicable to employee annuities and distributions under employee plans

[(1) Repealed. Pub. L. 93–406, title II, § 2001(h)(2), Sept. 2, 1974, 88 Stat. 957]

(2) Computation of consideration paid by the employee

In computing—

(A) the aggregate amount of premiums or other consideration paid for the contract for purposes of subsection (c)(1)(A) (relating to the investment in the contract), and

(B) the aggregate premiums or other consideration paid for purposes of subsection (e)(6) (relating to certain amounts not received as an annuity),

any amount allowed as a deduction with respect to the contract under section 404 which was paid while the employee was an employee within the meaning of section 401(c)(1) shall be treated as consideration contributed by the employer, and there shall not be taken into account any portion of the premiums or other consideration for the contract paid while the employee was an owner-employee which is properly allocable (as determined under regulations prescribed by the Secretary) to the cost of life, accident, health, or other insurance.

(3) Life insurance contracts

(A) This paragraph shall apply to any life insurance contract—

(i) purchased as a part of a plan described in section 403(a), or

(ii) purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) if the proceeds of such contract are payable directly or indirectly to a participant in such trust or to a beneficiary of such participant.

(B) Any contribution to a plan described in subparagraph (A)(i) or a trust described in subparagraph (A)(ii) which is allowed as a deduction under section 404, and any income of a trust described in subparagraph (A)(ii), which is determined in accordance with regulations prescribed by the Secretary to have been applied to purchase the life insurance protection under a contract described in subparagraph (A), is includible in the gross income of the participant for the taxable year when so applied.

(C) In the case of the death of an individual insured under a contract described in subparagraph (A), an amount equal to the cash surrender value of the contract immediately before the death of the insured shall be treated as a payment under such plan or a distribution by such trust, and the excess of the amount payable by reason of the death of the insured over such cash surrender value shall not be includible in gross income under this section and shall be treated as provided in section 101.

[(4) Repealed. Pub. L. 97–248, title II, § 236(b)(1), Sept. 3, 1982, 96 Stat. 510]

(5) Penalties applicable to certain amounts received by 5-percent owners

(A) This paragraph applies to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, a 5-percent owner, or by a successor of such an individual, but only to the extent such amounts are determined, under regulations prescribed by the Secretary, to exceed the benefits provided for such individual under the plan formula.

(B) If a person receives an amount to which this paragraph applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year.

(C) For purposes of this paragraph, the term ''5-percent owner'' means any individual who, at any time during the 5 plan years preceding the plan year ending in the taxable year in which the amount is received, is a 5-percent owner (as defined in section 416(i)(1)(B)).

(6) Owner-employee defined

For purposes of this subsection, the term ''owner-employee'' has the meaning assigned to it by section 401(c)(3) and includes an individual for whose benefit an individual retirement account or annuity described in section 408(a) or (b) is maintained. For purposes of the preceding sentence, the term ''owner-employee'' shall include an employee within the meaning of section 401(c)(1).

(7) Meaning of disabled

For purposes of this section, an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary may require.

[(8) Repealed. Pub. L. 97–248, title II, § 236(b)(1), Sept. 3, 1982, 96 Stat. 510]

[(9) Repealed. Pub. L. 98–369, div. A, title VII, § 713(d)(1), July 18, 1984, 98 Stat. 957]

(10) Determination of investment in the contract in the case of qualified domestic relations orders

Under regulations prescribed by the Secretary, in the case of a distribution or payment made to an alternate payee who is the spouse or former spouse of the participant pursuant to a qualified domestic relations order (as defined in section 414(p)), the investment in the contract as of the date prescribed in such regulations shall be allocated on a pro rata basis between the present value of such distribution or payment and the present value of all other benefits payable with respect to the participant to which such order relates.

(n) Annuities under retired serviceman's family protection plan or survivor benefit plan

Subsection (b) shall not apply in the case of amounts received after December 31, 1965, as an

annuity under chapter 73 of title 10 of the United States Code, but all such amounts shall be excluded from gross income until there has been so excluded (under section 122(b)(1) or this section, including amounts excluded before January 1, 1966) an amount equal to the consideration for the contract (as defined by section 122(b)(2)), plus any amount treated pursuant to section 101(b)(2)(D) (as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996) as additional consideration paid by the employee. Thereafter all amounts so received shall be included in gross income.

(*o*) Special rules for distributions from qualified plans to which employee made deductible contributions

(1) Treatment of contributions

For purposes of this section and sections 402 and 403, notwithstanding section 414(h), any deductible employee contribution made to a qualified employer plan or government plan shall be treated as an amount contributed by the employer which is not includible in the gross income of the employee.

[(2) Repealed. Pub. L. 100–647, title I, § 1011A(c)(8), Nov. 10, 1988, 102 Stat. 3476]

(3) Amounts constructively received

(A) In general

For purposes of this subsection, rules similar to the rules provided by subsection (p) (other than the exception contained in paragraph (2) thereof) shall apply.

(B) Purchase of life insurance

To the extent any amount of accumulated deductible employee contributions of an employee are applied to the purchase of life insurance contracts, such amount shall be treated as distributed to the employee in the year so applied.

(4) Special rule for treatment of rollover amounts

For purposes of sections 402(c), 403(a)(4), and 403(b)(8), 408(d)(3), and 457(e)(16), the Secretary shall prescribe regulations providing for such allocations of amounts attributable to accumulated deductible employee contributions, and for such other rules, as may be necessary to insure that such accumulated deductible employee contributions do not become eligible for additional tax benefits (or freed from limitations) through the use of rollovers.

(5) Definitions and special rules

For purposes of this subsection—

(A) Deductible employee contributions

The term ''deductible employee contributions'' means any qualified voluntary employee contribution (as defined in section 219(e)(2)) made after December 31, 1981, in a taxable year beginning after such date and made for a taxable year beginning before January 1, 1987, and allowable as a deduction under section 219(a) for such taxable year.

(B) Accumulated deductible employee contributions

The term ''accumulated deductible employee contributions'' means the deductible employee contributions—

(i) increased by the amount of income and gain allocable to such contributions, and

(ii) reduced by the sum of the amount of loss and expense allocable to such contributions and the amounts distributed with respect to the employee which are attributable to such contributions (or income or gain allocable to such contributions).

(C) Qualified employer plan

The term ''qualified employer plan'' has the meaning given to such term by subsection (p)(3)(A)(i).

(D) Government plan

The term ''government plan'' has the meaning given such term by subsection (p)(3)(B).

(6) Ordering rules

Unless the plan specifies otherwise, any distribution from such plan shall not be treated as being made from the accumulated deductible employee contributions, until all other amounts to the credit of the employee have been distributed.

(p) Loans treated as distributions

For purposes of this section—

(1) Treatment as distributions

(A) Loans

If during any taxable year a participant or beneficiary receives (directly or indirectly) any amount as a loan from a qualified employer plan, such amount shall be treated as having been received by such individual as a distribution under such plan.

(B) Assignments or pledges

If during any taxable year a participant or beneficiary assigns (or agrees to assign) or pledges (or agrees to pledge) any portion of his interest in a qualified employer plan, such portion shall be treated as having been received by such individual as a loan from such plan.

(2) Exception for certain loans

(A) General rule

Paragraph (1) shall not apply to any loan to the extent that such loan (when added to the outstanding balance of all other loans from such plan whether made on, before, or after August 13, 1982), does not exceed the lesser of—

(i) $50,000, reduced by the excess (if any) of—

(I) the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date on which such loan was made, over

(II) the outstanding balance of loans from the plan on the date on which such loan was made, or

(ii) the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) $10,000.

For purposes of clause (ii), the present value of the nonforfeitable accrued benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (*o*)(5)(B)).

(B) Requirement that loan be repayable within 5 years

(i) In general

Subparagraph (A) shall not apply to any loan unless such loan, by its terms, is required to be repaid within 5 years.

(ii) Exception for home loans

Clause (i) shall not apply to any loan used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as the principal residence of the participant.

(C) Requirement of level amortization

Except as provided in regulations, this paragraph shall not apply to any loan unless substantially level amortization of such loan (with payments not less frequently than quarterly) is required over the term of the loan.

(D) Related employers and related plans

For purposes of this paragraph—

(i) the rules of subsections (b), (c), and (m) of section 414 shall apply, and

(ii) all plans of an employer (determined after the application of such subsections) shall be treated as 1 plan.

(3) Denial of interest deductions in certain cases

(A) In general

No deduction otherwise allowable under this chapter shall be allowed under this chapter for any interest paid or accrued on any loan to which paragraph (1) does not apply by reason of paragraph (2) during the period described in subparagraph (B).

(B) Period to which subparagraph (A) applies

For purposes of subparagraph (A), the period described in this subparagraph is the period—

(i) on or after the 1st day on which the individual to whom the loan is made is a key employee (as defined in section 416(i)), or

(ii) such loan is secured by amounts attributable to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3).

(4) Qualified employer plan, etc.

For purposes of this subsection—

(A) Qualified employer plan

(i) In general

The term ''qualified employer plan'' means—

(I) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(II) an annuity plan described in section 403(a), and

(III) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

(ii) Special rule

The term ''qualified employer plan'' shall include any plan which was (or was determined to be) a qualified employer plan or a government plan.

(B) Government plan

The term ''government plan'' means any plan, whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing.

(5) Special rules for loans, etc., from certain contracts

For purposes of this subsection, any amount received as a loan under a contract purchased under a qualified employer plan (and any assignment or pledge with respect to such a contract) shall be treated as a loan under such employer plan.

(q) 10-percent penalty for premature distributions from annuity contracts

(1) Imposition of penalty

If any taxpayer receives any amount under an annuity contract, the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

(2) Subsection not to apply to certain distributions

Paragraph 1 shall not apply to any distribution—

(A) made on or after the date on which the taxpayer attains age 59½,

(B) made on or after the death of the holder (or, where the holder is not an individual, the death of the primary annuitant (as defined in subsection (s)(6)(B))),

(C) attributable to the taxpayer's becoming disabled within the meaning of subsection (m)(7),

(D) which is a part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his designated beneficiary,

(E) from a plan, contract, account, trust, or annuity described in subsection (e)(5)(D),

(F) allocable to investment in the contract before August 14, 1982, or[2]

(G) under a qualified funding asset (within the meaning of section 130(d), but without regard to whether there is a qualified assignment),

(H) to which subsection (t) applies (without regard to paragraph (2) thereof),

[2] So in original. The word ''or'' probably should not appear.

(I) under an immediate annuity contract (within the meaning of section 72(u)(4)), or

(J) which is purchased by an employer upon the termination of a plan described in section 401(a) or 403(a) and which is held by the employer until such time as the employee separates from service.

(3) Change in substantially equal payments

If—

(A) paragraph (1) does not apply to a distribution by reason of paragraph (2)(D), and

(B) the series of payments under such paragraph are subsequently modified (other than by reason of death or disability)—

(i) before the close of the 5-year period beginning on the date of the first payment and after the taxpayer attains age 59½, or

(ii) before the taxpayer attains age 59½,

the taxpayer's tax for the 1st taxable year in which such modification occurs shall be increased by an amount, determined under regulations, equal to the tax which (but for paragraph (2)(D)) would have been imposed, plus interest for the deferral period (within the meaning of subsection (t)(4)(B)).

(r) Certain railroad retirement benefits treated as received under employer plans

(1) In general

Notwithstanding any other provision of law, any benefit provided under the Railroad Retirement Act of 1974 (other than a tier 1 railroad retirement benefit) shall be treated for purposes of this title as a benefit provided under an employer plan which meets the requirements of section 401(a).

(2) Tier 2 taxes treated as contributions

(A) In general

For purposes of paragraph (1)—

(i) the tier 2 portion of the tax imposed by section 3201 (relating to tax on employees) shall be treated as an employee contribution,

(ii) the tier 2 portion of the tax imposed by section 3211 (relating to tax on employee representatives) shall be treated as an employee contribution, and

(iii) the tier 2 portion of the tax imposed by section 3221 (relating to tax on employers) shall be treated as an employer contribution.

(B) Tier 2 portion

For purposes of subparagraph (A)—

(i) After 1984

With respect to compensation paid after 1984, the tier 2 portion shall be the taxes imposed by sections 3201(b), 3211(b), and 3221(b).

(ii) After September 30, 1981, and before 1985

With respect to compensation paid before 1985 for services rendered after September 30, 1981, the tier 2 portion shall be—

(I) so much of the tax imposed by section 3201 as is determined at the 2 percent rate, and

(II) so much of the taxes imposed by sections 3211 and 3221 as is determined at the 11.75 percent rate.

With respect to compensation paid for services rendered after December 31, 1983, and before 1985, subclause (I) shall be applied by substituting ''2.75 percent'' for ''2 percent'', and subclause (II) shall be applied by substituting ''12.75 percent'' for ''11.75 percent''.

(iii) Before October 1, 1981

With respect to compensation paid for services rendered during any period before October 1, 1981, the tier 2 portion shall be the excess (if any) of—

(I) the tax imposed for such period by section 3201, 3211, or 3221, as the case may be (other than any tax imposed with respect to man-hours), over

(II) the tax which would have been imposed by such section for such period had the rates of the comparable taxes imposed by chapter 21 for such period applied under such section.

(C) Contributions not allocable to supplemental annuity or windfall benefits

For purposes of paragraph (1), no amount treated as an employee contribution under this paragraph shall be allocated to—

(i) any supplemental annuity paid under section 2(b) of the Railroad Retirement Act of 1974, or

(ii) any benefit paid under section 3(h), 4(e), or 4(h) of such Act.

(3) Tier 1 railroad retirement benefit

For purposes of paragraph (1), the term ''tier 1 railroad retirement benefit'' has the meaning given such term by section 86(d)(4).

(s) Required distributions where holder dies before entire interest is distributed

(1) In general

A contract shall not be treated as an annuity contract for purposes of this title unless it provides that—

(A) if any holder of such contract dies on or after the annuity starting date and before the entire interest in such contract has been distributed, the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used as of the date of his death, and

(B) if any holder of such contract dies before the annuity starting date, the entire interest in such contract will be distributed within 5 years after the death of such holder.

(2) Exception for certain amounts payable over life of beneficiary

If—

(A) any portion of the holder's interest is payable to (or for the benefit of) a designated beneficiary,

(B) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(C) such distributions begin not later than 1 year after the date of the holder's death or

such later date as the Secretary may by regulations prescribe,

then for purposes of paragraph (1), the portion referred to in subparagraph (A) shall be treated as distributed on the day on which such distributions begin.

(3) Special rule where surviving spouse beneficiary

If the designated beneficiary referred to in paragraph (2)(A) is the surviving spouse of the holder of the contract, paragraphs (1) and (2) shall be applied by treating such spouse as the holder of such contract.

(4) Designated beneficiary

For purposes of this subsection, the term ''designated beneficiary'' means any individual designated a beneficiary by the holder of the contract.

(5) Exception for certain annuity contracts

This subsection shall not apply to any annuity contract—

(A) which is provided—

(i) under a plan described in section 401(a) which includes a trust exempt from tax under section 501, or

(ii) under a plan described in section 403(a),

(B) which is described in section 403(b),

(C) which is an individual retirement annuity or provided under an individual retirement account or annuity, or

(D) which is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment).

(6) Special rule where holder is corporation or other non-individual

(A) In general

For purposes of this subsection, if the holder of the contract is not an individual, the primary annuitant shall be treated as the holder of the contract.

(B) Primary annuitant

For purposes of subparagraph (A), the term ''primary annuitant'' means the individual, the events in the life of whom are of primary importance in affecting the timing or amount of the payout under the contract.

(7) Treatment of changes in primary annuitant where holder of contract is not an individual

For purposes of this subsection, in the case of a holder of an annuity contract which is not an individual, if there is a change in a primary annuitant (as defined in paragraph (6)(B)), such change shall be treated as the death of the holder.

(t) 10-percent additional tax on early distributions from qualified retirement plans

(1) Imposition of additional tax

If any taxpayer receives any amount from a qualified retirement plan (as defined in section 4974(c)), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

(2) Subsection not to apply to certain distributions

Except as provided in paragraphs (3) and (4), paragraph (1) shall not apply to any of the following distributions:

(A) In general

Distributions which are—

(i) made on or after the date on which the employee attains age 59½,

(ii) made to a beneficiary (or to the estate of the employee) on or after the death of the employee,

(iii) attributable to the employee's being disabled within the meaning of subsection (m)(7),

(iv) part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of such employee and his designated beneficiary,

(v) made to an employee after separation from service after attainment of age 55,

(vi) dividends paid with respect to stock of a corporation which are described in section 404(k), or

(vii) made on account of a levy under section 6331 on the qualified retirement plan.

(B) Medical expenses

Distributions made to the employee (other than distributions described in subparagraph (A), (C), or (D)) to the extent such distributions do not exceed the amount allowable as a deduction under section 213 to the employee for amounts paid during the taxable year for medical care (determined without regard to whether the employee itemizes deductions for such taxable year).

(C) Payments to alternate payees pursuant to qualified domestic relations orders

Any distribution to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)(1)).

(D) Distributions to unemployed individuals for health insurance premiums

(i) In general

Distributions from an individual retirement plan to an individual after separation from employment—

(I) if such individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of such separation,

(II) if such distributions are made during any taxable year during which such unemployment compensation is paid or the succeeding taxable year, and

(III) to the extent such distributions do not exceed the amount paid during the taxable year for insurance described in section 213(d)(1)(D) with respect to the

individual and the individual's spouse and dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(ii) Distributions after reemployment

Clause (i) shall not apply to any distribution made after the individual has been employed for at least 60 days after the separation from employment to which clause (i) applies.

(iii) Self-employed individuals

To the extent provided in regulations, a self-employed individual shall be treated as meeting the requirements of clause (i)(I) if, under Federal or State law, the individual would have received unemployment compensation but for the fact the individual was self-employed.

(E) Distributions from individual retirement plans for higher education expenses

Distributions to an individual from an individual retirement plan to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (7)) of the taxpayer for the taxable year. Distributions shall not be taken into account under the preceding sentence if such distributions are described in subparagraph (A), (C), or (D) or to the extent paragraph (1) does not apply to such distributions by reason of subparagraph (B).

(F) Distributions from certain plans for first home purchases

Distributions to an individual from an individual retirement plan which are qualified first-time homebuyer distributions (as defined in paragraph (8)). Distributions shall not be taken into account under the preceding sentence if such distributions are described in subparagraph (A), (C), (D), or (E) or to the extent paragraph (1) does not apply to such distributions by reason of subparagraph (B).

(G) Distributions from retirement plans to individuals called to active duty

(i) In general

Any qualified reservist distribution.

(ii) Amount distributed may be repaid

Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

(iii) Qualified reservist distribution

For purposes of this subparagraph, the term ''qualified reservist distribution'' means any distribution to an individual if—

(I) such distribution is from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii),

(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

(iv) Application of subparagraph

This subparagraph applies to individuals ordered or called to active duty after September 11, 2001. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2 years after the date of the enactment of this subparagraph.

(3) Limitations

(A) Certain exceptions not to apply to individual retirement plans

Subparagraphs (A)(v) and (C) of paragraph (2) shall not apply to distributions from an individual retirement plan.

(B) Periodic payments under qualified plans must begin after separation

Paragraph (2)(A)(iv) shall not apply to any amount paid from a trust described in section 401(a) which is exempt from tax under section 501(a) or from a contract described in section 72(e)(5)(D)(ii) unless the series of payments begins after the employee separates from service.

(4) Change in substantially equal payments

(A) In general

If—

(i) paragraph (1) does not apply to a distribution by reason of paragraph (2)(A)(iv), and

(ii) the series of payments under such paragraph are subsequently modified (other than by reason of death or disability)—

(I) before the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59½, or

(II) before the employee attains age 59½,

the taxpayer's tax for the 1st taxable year in which such modification occurs shall be increased by an amount, determined under regulations, equal to the tax which (but for paragraph (2)(A)(iv)) would have been imposed, plus interest for the deferral period.

(B) Deferral period

For purposes of this paragraph, the term ''deferral period'' means the period beginning with the taxable year in which (without

regard to paragraph (2)(A)(iv)) the distribution would have been includible in gross income and ending with the taxable year in which the modification described in subparagraph (A) occurs.

(5) Employee

For purposes of this subsection, the term ''employee'' includes any participant, and in the case of an individual retirement plan, the individual for whose benefit such plan was established.

(6) Special rules for simple retirement accounts

In the case of any amount received from a simple retirement account (within the meaning of section 408(p)) during the 2-year period beginning on the date such individual first participated in any qualified salary reduction arrangement maintained by the individual's employer under section 408(p)(2), paragraph (1) shall be applied by substituting ''25 percent'' for ''10 percent''.

(7) Qualified higher education expenses

For purposes of paragraph (2)(E)—

(A) In general

The term ''qualified higher education expenses'' means qualified higher education expenses (as defined in section 529(e)(3)) for education furnished to—

(i) the taxpayer,

(ii) the taxpayer's spouse, or

(iii) any child (as defined in section 152(f)(1)) or grandchild of the taxpayer or the taxpayer's spouse,

at an eligible educational institution (as defined in section 529(e)(5)).

(B) Coordination with other benefits

The amount of qualified higher education expenses for any taxable year shall be reduced as provided in section 25A(g)(2).

(8) Qualified first-time homebuyer distributions

For purposes of paragraph (2)(F)—

(A) In general

The term ''qualified first-time homebuyer distribution'' means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 120th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual, the spouse of such individual, or any child, grandchild, or ancestor of such individual or the individual's spouse.

(B) Lifetime dollar limitation

The aggregate amount of payments or distributions received by an individual which may be treated as qualified first-time homebuyer distributions for any taxable year shall not exceed the excess (if any) of—

(i) $10,000, over

(ii) the aggregate amounts treated as qualified first-time homebuyer distributions with respect to such individual for all prior taxable years.

(C) Qualified acquisition costs

For purposes of this paragraph, the term ''qualified acquisition costs'' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

(D) First-time homebuyer; other definitions

For purposes of this paragraph—

(i) First-time homebuyer

The term ''first-time homebuyer'' means any individual if—

(I) such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies, and

(II) subsection (h) or (k) of section 1034[3] (as in effect on the day before the date of the enactment of this paragraph) did not suspend the running of any period of time specified in section 1034[3] (as so in effect) with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A).

(ii) Principal residence

The term ''principal residence'' has the same meaning as when used in section 121.

(iii) Date of acquisition

The term ''date of acquisition'' means the date—

(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

(II) on which construction or reconstruction of such a principal residence is commenced.

(E) Special rule where delay in acquisition

If any distribution from any individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting ''120th day'' for ''60th day'' in such section), except that—

(i) section 408(d)(3)(B) shall not be applied to such contribution, and

(ii) such amount shall not be taken into account in determining whether section 408(d)(3)(B) applies to any other amount.

(9) Special rule for rollovers to section 457 plans

For purposes of this subsection, a distribution from an eligible deferred compensation plan (as defined in section 457(b)) of an eligible

[3] See References in Text note below.

employer described in section 457(e)(1)(A) shall be treated as a distribution from a qualified retirement plan described in 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c)).

(10) Distributions to qualified public safety employees in governmental plans

(A) In general

In the case of a distribution to a qualified public safety employee from a governmental plan (within the meaning of section 414(d)) which is a defined benefit plan, paragraph (2)(A)(v) shall be applied by substituting ''age 50'' for ''age 55''.

(B) Qualified public safety employee

For purposes of this paragraph, the term ''qualified public safety employee'' means any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.

(u) Treatment of annuity contracts not held by natural persons

(1) In general

If any annuity contract is held by a person who is not a natural person—

(A) such contract shall not be treated as an annuity contract for purposes of this subtitle (other than subchapter L), and

(B) the income on the contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the owner during such taxable year.

For purposes of this paragraph, holding by a trust or other entity as an agent for a natural person shall not be taken into account.

(2) Income on the contract

(A) In general

For purposes of paragraph (1), the term ''income on the contract'' means, with respect to any taxable year of the policyholder, the excess of—

(i) the sum of the net surrender value of the contract as of the close of the taxable year plus all distributions under the contract received during the taxable year or any prior taxable year, reduced by

(ii) the sum of the amount of net premiums under the contract for the taxable year and prior taxable years and amounts includible in gross income for prior taxable years with respect to such contract under this subsection.

Where necessary to prevent the avoidance of this subsection, the Secretary may substitute ''fair market value of the contract'' for ''net surrender value of the contract'' each place it appears in the preceding sentence.

(B) Net premiums

For purposes of this paragraph, the term ''net premiums'' means the amount of premiums paid under the contract reduced by any policyholder dividends.

(3) Exceptions

This subsection shall not apply to any annuity contract which—

(A) is acquired by the estate of a decedent by reason of the death of the decedent,

(B) is held under a plan described in section 401(a) or 403(a), under a program described in section 403(b), or under an individual retirement plan,

(C) is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment),

(D) is purchased by an employer upon the termination of a plan described in section 401(a) or 403(a) and is held by the employer until all amounts under such contract are distributed to the employee for whom such contract was purchased or the employee's beneficiary, or

(E) is an immediate annuity.

(4) Immediate annuity

For purposes of this subsection, the term ''immediate annuity'' means an annuity—

(A) which is purchased with a single premium or annuity consideration,

(B) the annuity starting date (as defined in subsection (c)(4)) of which commences no later than 1 year from the date of the purchase of the annuity, and

(C) which provides for a series of substantially equal periodic payments (to be made not less frequently than annually) during the annuity period.

(v) 10-percent additional tax for taxable distributions from modified endowment contracts

(1) Imposition of additional tax

If any taxpayer receives any amount under a modified endowment contract (as defined in section 7702A), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

(2) Subsection not to apply to certain distributions

Paragraph (1) shall not apply to any distribution—

(A) made on or after the date on which the taxpayer attains age 59½,

(B) which is attributable to the taxpayer's becoming disabled (within the meaning of subsection (m)(7)), or

(C) which is part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his beneficiary.

(w) Application of basis rules to nonresident aliens

(1) In general

Notwithstanding any other provision of this section, for purposes of determining the portion of any distribution which is includible in

gross income of a distributee who is a citizen or resident of the United States, the investment in the contract shall not include any applicable nontaxable contributions or applicable nontaxable earnings.

(2) Applicable nontaxable contribution

For purposes of this subsection, the term ''applicable nontaxable contribution'' means any employer or employee contribution—

(A) which was made with respect to compensation—

(i) for labor or personal services performed by an employee who, at the time the labor or services were performed, was a nonresident alien for purposes of the laws of the United States in effect at such time, and

(ii) which is treated as from sources without the United States, and

(B) which was not subject to income tax (and would have been subject to income tax if paid as cash compensation when the services were rendered) under the laws of the United States or any foreign country.

(3) Applicable nontaxable earnings

For purposes of this subsection, the term ''applicable nontaxable earnings'' means earnings—

(A) which are paid or accrued with respect to any employer or employee contribution which was made with respect to compensation for labor or personal services performed by an employee,

(B) with respect to which the employee was at the time the earnings were paid or accrued a nonresident alien for purposes of the laws of the United States, and

(C) which were not subject to income tax under the laws of the United States or any foreign country.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection, including regulations treating contributions and earnings as not subject to tax under the laws of any foreign country where appropriate to carry out the purposes of this subsection.

(x) Cross reference

For limitation on adjustments to basis of annuity contracts sold, see section 1021.

(Aug. 16, 1954, ch. 736, 68A Stat. 20; Pub. L. 87–792, §4(a), (b), Oct. 10, 1962, 76 Stat. 821; Pub. L. 87–834, §11(b), Oct. 16, 1962, 76 Stat. 1005; Pub. L. 88–272, title II, §232(b), Feb. 26, 1964, 78 Stat. 110; Pub. L. 89–44, title VIII, §809(d)(2), June 21, 1965, 79 Stat. 167; Pub. L. 89–97, title I, §106(d)(2), July 30, 1965, 79 Stat. 337; Pub. L. 89–365, §1(b), Mar. 8, 1966, 80 Stat. 32; Pub. L. 91–172, title V, §515(b), Dec. 30, 1969, 83 Stat. 644; Pub. L. 93–406, title II, §§2001(e)(5), (g)(1), (2)(A), (h)(2), (3), 2002(g)(10), 2005(c)(3), 2007(b)(2), Sept. 2, 1974, 88 Stat. 955, 957, 970, 991, 994; Pub. L. 94–455, title XIX, §§1901(a)(12), (13), 1906(b)(13)(A), 1951(b)(1)(A), Oct. 4, 1976, 90 Stat. 1765, 1834, 1836; Pub. L. 97–34, title III, §§311(b)(1), 312(d), (e)(1), Aug. 13, 1981, 95 Stat. 278, 284; Pub. L. 97–248, title II, §§236(a), (b), 237(d), 265(a), (b)(1), Sept. 3, 1982, 96 Stat. 509–511, 544–546; Pub. L. 97–448, title I, §103(c)(3)(B)(i), (6), Jan. 12, 1983, 96 Stat. 2376; Pub. L. 98–76, title II, §224(a), Aug. 12, 1983, 97 Stat. 421; Pub. L. 98–369, div. A, title II, §§211(b)(1), 222(a), (b), title IV, §§421(b)(1), 491(d)(3), (4), title V, §§521(d), 523(a), (b), title VII, §713(b)(1)–(c)(1)(B), (d)(1), July 18, 1984, 98 Stat. 754, 774, 794, 849, 868, 871, 872, 956, 957; Pub. L. 98–397, title II, §204(c)(2), Aug. 23, 1984, 98 Stat. 1448; Pub. L. 99–514, title XI, §§1101(b)(2)(B), (C), 1122(c), 1123(a), (b), (d)(1), 1134(a)–(d), 1135(a), title XVIII, §§1826(a), (b)(1)–(3), (c), (d), 1852(a)(2), (c)(1)–(4), 1854(b)(1), 1898(c)(1)(B), Oct. 22, 1986, 100 Stat. 2413, 2414, 2467, 2472, 2474, 2475, 2483, 2484, 2848–2850, 2864, 2867, 2878, 2951; Pub. L. 100–647, title I, §§1011A(b)(1)(A), (B), (2), (9), (c)(1)–(8), (h), (i), 1018(k), (t)(1)(A), (B), (u)(8), title V, §5012(a), (b)(1), (d), Nov. 10, 1988, 102 Stat. 3472, 3474–3476, 3482, 3583, 3587, 3590, 3661, 3662, 3664; Pub. L. 101–239, title VII, §§7811(m)(4), 7815(a)(3), (5), Dec. 19, 1989, 103 Stat. 2412, 2414; Pub. L. 101–508, title XI, §11802(a), Nov. 5, 1990, 104 Stat. 1388–529; Pub. L. 102–318, title V, §521(b)(3), July 3, 1992, 106 Stat. 310; Pub. L. 104–188, title I, §§1403(a), 1421(b)(4)(A), 1463(a), 1704(*l*)(1), (t)(2), (77), Aug. 20, 1996, 110 Stat. 1790, 1796, 1824, 1882, 1887, 1891; Pub. L. 104–191, title III, §361(a)–(c), Aug. 21, 1996, 110 Stat. 2071, 2072; Pub. L. 105–34, title II, §203(a), (b), title III, §303(a), (b), title X, §1075(a), (b), Aug. 5, 1997, 111 Stat. 809, 829, 949; Pub. L. 105–206, title III, §3436(a), title VI, §§6004(d)(3)(B), 6005(c)(1), 6023(3), (4), July 22, 1998, 112 Stat. 761, 794, 800, 824; Pub. L. 107–16, title IV, §402(a)(4)(A), (B), title VI, §§632(a)(3)(A), 641(a)(2)(C), (e)(1), June 7, 2001, 115 Stat. 60, 61, 113, 120; Pub. L. 107–22, §1(b)(1)(A), (3)(A), July 26, 2001, 115 Stat. 196, 197; Pub. L. 107–90, title II, §204(e)(2), Dec. 21, 2001, 115 Stat. 893; Pub. L. 108–311, title II, §207(6), (7), title IV, §408(a)(4), (b)(3), Oct. 4, 2004, 118 Stat. 1177, 1191, 1192; Pub. L. 108–357, title VIII, §906(a), Oct. 22, 2004, 118 Stat. 1653; Pub. L. 109–280, title VIII, §§827(a), 828(a), 844(a), Aug. 17, 2006, 120 Stat. 999, 1001, 1010; Pub. L. 110–245, title I, §107(a), June 17, 2008, 122 Stat. 1631; Pub. L. 110–458, title I, §108(e), Dec. 23, 2008, 122 Stat. 5109; Pub. L. 111–240, title II, §2113(a), Sept. 27, 2010, 124 Stat. 2566.)

REFERENCES IN TEXT

The enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001, referred to in subsec. (f), means the enactment of Pub. L. 107–16, which was approved June 7, 2001.

The date of the enactment of the Small Business Job Protection Act of 1996, referred to in subsec. (n), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

The Railroad Retirement Act of 1974, referred to in subsec. (r)(1), (2)(C)(i), (ii), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Sections 2(b), 3(h), and 4(e) and (h) of the Act are classified to sections 231a(b), 231b(h), and 231c(e) and (h), respectively, of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (t)(2)(G)(iv), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

Section 1034 (as in effect on the day before the date of the enactment of this paragraph), referred to in sub-

sec. (t)(8)(D)(i)(II), means section 1034 of this title as in effect on the day before Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105–34, title III, §312(b), Aug. 5, 1997, 111 Stat. 839.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–240 amended subsec. (a) generally. Prior to amendment, text read as follows: ''Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.''

2008—Subsec. (t)(2)(G)(iv). Pub. L. 110–245, which directed amendment by striking out '', and before December 31, 2007'' after ''September 11, 2001'', was executed by striking out '', and on or before December 31, 2007'' after ''September 11, 2001'', to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110–458. See Amendment note and Effective Date of 2008 Amendment note below.

Pub. L. 110–458 inserted ''on or'' before ''before'' in first sentence.

2006—Subsec. (e)(11), (12). Pub. L. 109–280, §844(a), added par. (11) and redesignated former par. (11) as (12).

Subsec. (t)(2)(G). Pub. L. 109–280, §827(a), added subpar. (G).

Subsec. (t)(10). Pub. L. 109–280, §828(a), added par. (10).

2004—Subsec. (e)(9). Pub. L. 108–311, §408(b)(3), amended Pub. L. 107–22, §1(b)(3)(A). See 2001 Amendment note below.

Subsec. (f). Pub. L. 108–311, §408(a)(4), substituted ''Economic Growth and Tax Relief Reconciliation Act of 2001)'' for ''Economic Growth and Tax Relief Reconciliation Act of 2001'' in concluding provisions.

Subsec. (t)(2)(D)(i)(III). Pub. L. 108–311, §207(6), inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

Subsec. (t)(7)(A)(iii). Pub. L. 108–311, §207(7), substituted ''152(f)(1)'' for ''151(c)(3)''.

Subsecs. (w), (x). Pub. L. 108–357 added subsec. (w) and redesignated former subsec. (w) as (x).

2001—Subsec. (e)(9). Pub. L. 107–22, §1(b)(3)(A), as amended by Pub. L. 108–311, §408(b)(3), substituted ''Coverdell education savings'' for ''educational individual retirement'' in heading.

Pub. L. 107–22, §1(b)(1)(A), substituted ''a Coverdell education savings'' for ''an education individual retirement''.

Pub. L. 107–16, §402(a)(4)(A), (B), substituted ''qualified tuition'' for ''qualified State tuition'' in heading and text.

Subsec. (f). Pub. L. 107–16, §632(a)(3)(A), substituted ''section 403(b)(2)(D)(iii), as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001'' for ''section 403(b)(2)(D)(iii))'' in concluding provisions.

Subsec. (*o*)(4). Pub. L. 107–16, §641(e)(1), substituted ''403(b)(8), 408(d)(3), and 457(e)(16)'' for ''and 408(d)(3)''.

Subsec. (r)(2)(B)(i). Pub. L. 107–90 substituted ''3211(b)'' for ''3211(a)(2)''.

Subsec. (t)(9). Pub. L. 107–16, §641(a)(2)(C), added par. (9).

1998—Subsec. (e)(9). Pub. L. 105–206, §6004(d)(3)(B), added par. (9).

Subsec. (n). Pub. L. 105–206, §6023(3), inserted ''(as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996)'' after ''section 101(b)(2)(D)''.

Subsec. (t)(2)(A)(iv). Pub. L. 105–206, §3436(a), which directed amendment of cl. (iv) by striking out ''or'' at end, could not be executed because the word ''or'' did not appear at end.

Subsec. (t)(2)(A)(vii). Pub. L. 105–206, §3436(a), added cl. (vii).

Subsec. (t)(3)(A). Pub. L. 105–206, §6023(4), substituted ''(A)(v)'' for ''(A)(v),''.

Subsec. (t)(8)(E). Pub. L. 105–206, §6005(c)(1), in introductory provisions, substituted ''120th day'' for ''120 days'' and ''60th day'' for ''60 days''.

1997—Subsec. (d)(1)(B)(iii). Pub. L. 105–34, §1075(b), inserted ''If the annuity is payable over the life of a single individual, the number of anticipated payments shall be determined as follows:'' before table and struck out ''primary'' after ''If the age of the'' in table.

Subsec. (d)(1)(B)(iv). Pub. L. 105–34, §1075(a), added cl. (iv).

Subsec. (t)(2)(E). Pub. L. 105–34, §203(a), added subpar. (E).

Subsec. (t)(2)(F). Pub. L. 105–34, §303(a), added subpar. (F).

Subsec. (t)(7). Pub. L. 105–34, §203(b), added par. (7).

Subsec. (t)(8). Pub. L. 105–34, §303(b), added par. (8).

1996—Subsec. (b)(4)(A). Pub. L. 104–188, §1704(*l*)(1), inserted ''(determined without regard to subsection (c)(2))'' after ''contract''.

Subsec. (d). Pub. L. 104–188, §1403(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS AS SEPARATE CONTRACTS.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract.''

Subsec. (f). Pub. L. 104–188, §1463(a), in closing provisions, inserted before period at end '', or to the extent such credits are attributable to services performed as a foreign missionary (within the meaning of section 403(b)(2)(D)(iii))''.

Subsec. (m)(2)(A) to (C). Pub. L. 104–188, §1704(t)(2), inserted ''and'' at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''the consideration for the contract contributed by the employee for purposes of subsection (d)(1) (relating to employee's contributions recoverable in 3 years) and subsection (e)(7) (relating to plans where substantially all contributions are employee contributions), and''.

Subsec. (p)(4)(A)(ii). Pub. L. 104–188, §1704(t)(77), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''SPECIAL RULES.—The term 'qualified employer plan'—

''(I) shall include any plan which was (or was determined to be) a qualified employer plan or a government plan, but

''(II) shall not include a plan described in subsection (e)(7).''

Subsec. (t)(2)(B). Pub. L. 104–191, §361(c), substituted '', (C), or (D)'' for ''or (C)''.

Subsec. (t)(2)(D). Pub. L. 104–191, §361(b), added subpar. (D).

Subsec. (t)(3)(A). Pub. L. 104–191, §361(a), struck out ''(B),'' after ''Subparagraphs (A)(v),''.

Subsec. (t)(6). Pub. L. 104–188, §1421(b)(4)(A), added par. (6).

1992—Subsec. (*o*)(4). Pub. L. 102–318 substituted ''402(c)'' for ''402(a)(5), 402(a)(7)''.

1990—Subsec. (t)(2)(C), (D). Pub. L. 101–508, §11802(a)(1), (2), redesignated subpar. (D) as (C) and struck out former subpar. (C) ''Exceptions for distributions from employee stock ownership plans'' which read as follows: ''Any distribution made before January 1, 1990, to an employee from an employee stock ownership plan (as defined in section 4975(e)(7)) or a tax credit employee stock ownership plan (as defined in section 409) if—

''(i) such distribution is attributable to assets which have been invested in employer securities (within the meaning of section 409(*l*)) at all times during the 5-plan-year period preceding the plan year in which the distribution is made, and

''(ii) at all times during such period the requirements of sections 401(a)(28) and 409 (as in effect at such times) are met with respect to such employer securities.''

Subsec. (t)(3)(A). Pub. L. 101–508, §11802(a)(3), substituted ''and (C)'' for ''(C), and (D)''.

1989—Subsec. (e)(11)(A). Pub. L. 101–239, §7815(a)(3), (5), substituted ''calendar year'' for ''12-month period'' in cls. (i) and (ii), and inserted at end ''The preceding

sentence shall not apply to any contract described in paragraph (5)(D).''

Subsec. (q)(2)(B). Pub. L. 101–239, §7811(m)(4), inserted an additional closing parenthesis after ''subsection (s)(6)(B))''.

1988—Subsec. (d). Pub. L. 100–647, §1011A(b)(2)(A), added subsec. (d).

Subsec. (e)(4)(A). Pub. L. 100–647, §5012(d)(1), inserted at end ''The preceding sentence shall not apply for purposes of determining investment in the contract, except that the investment in the contract shall be increased by any amount included in gross income by reason of the amount treated as received under the preceding sentence.''

Subsec. (e)(5)(C). Pub. L. 100–647, §5012(a)(2), substituted ''Except as provided in paragraph (10) and except to the extent'' for ''Except to the extent''.

Subsec. (e)(5)(D). Pub. L. 100–647, §1011A(b)(9)(B), substituted ''paragraph (8)'' for ''paragraphs (7) and (8)''.

Subsec. (e)(7). Pub. L. 100–647, §1011A(b)(9)(A), struck out par. (7) which related to special rules for plans where substantially all contributions are employee contributions.

Subsec. (e)(8)(A). Pub. L. 100–647, §1011A(b)(9)(C), struck out ''(other than paragraph (7))'' after ''this subsection''.

Subsec. (e)(9). Pub. L. 100–647, §1011A(b)(2)(B), struck out par. (9) which related to treatment of employee contributions as separate contract.

Subsec. (e)(10). Pub. L. 100–647, §5012(a)(1), added par. (10).

Subsec. (e)(11). Pub. L. 100–647, §5012(d)(2), added par. (11).

Subsec. (f). Pub. L. 100–647, §1011A(b)(1)(A), struck out ''for purposes of subsections (d)(1) and (e)(7), the consideration for the contract contributed by the employee,'' after ''contract,'' in introductory provisions.

Subsec. (n). Pub. L. 100–647, §1011A(b)(1)(B), substituted ''Subsection (b)'' for ''Subsections (b) and (d)''.

Subsec. (*o*)(2). Pub. L. 100–647, §1011A(c)(8), struck out par. (2) which related to additional tax if amount received before age 59½.

Subsec. (p)(3)(A). Pub. L. 100–647, §1011A(h)(1), inserted ''to which paragraph (1) does not apply by reason of paragraph (2) during the period'' after ''loan''.

Subsec. (p)(3)(B). Pub. L. 100–647, §1011A(h)(2), substituted ''Period'' for ''Loans'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of subparagraph (A), a loan is described in this subparagraph—

''(i) if paragraph (1) does not apply to such loan by reason of paragraph (2), and

''(ii) if—

''(I) such loan is made to a key employee (as defined in section 416(i)), or

''(II) such loan is secured by amounts attributable to elective 401(k) or 403(b) deferrals (as defined in section 402(g)(3)).''

Subsec. (q)(2)(B). Pub. L. 100–647, §1018(t)(1)(B), substituted ''subsection (s)(6)(B))'' for ''subsection (s)(6)(B)))''.

Subsec. (q)(2)(D). Pub. L. 100–647, §1011A(c)(7), inserted ''designated'' before ''beneficiary''.

Pub. L. 100–647, §§1011A(c)(4), 1018(u)(8), amended subpar. (D) identically, substituting a comma for period at end.

Subsec. (q)(2)(E). Pub. L. 100–647, §1011A(b)(9)(D), struck out ''(determined without regard to subsection (e)(7))'' after ''subsection (e)(5)(D)''.

Subsec. (q)(2)(G). Pub. L. 100–647, §1011A(c)(4), substituted a comma for period at end.

Subsec. (q)(2)(H). Pub. L. 100–647, §1011A(c)(6), added subpar. (H).

Subsec. (q)(3)(B). Pub. L. 100–647, §1011A(c)(5), substituted ''taxpayer'' for ''employee'' in cls. (i) and (ii).

Subsec. (s)(5). Pub. L. 100–647, §1018(k)(2), substituted ''certain annuity contracts'' for ''annuity contracts which are part of qualified plans'' in heading.

Subsec. (s)(5)(D). Pub. L. 100–647, §1018(k)(1), added subpar. (D).

Subsec. (s)(7). Pub. L. 100–647, §1018(t)(1)(A), substituted ''primary annuitant'' for ''primary annuity''.

Subsec. (t)(2)(A)(iv). Pub. L. 100–647, §1011A(c)(7), inserted ''designated'' before ''beneficiary''.

Subsec. (t)(2)(A)(v). Pub. L. 100–647, §1011A(c)(1), struck out ''on account of early retirement under the plan'' after ''separation from service''.

Subsec. (t)(2)(C). Pub. L. 100–647, §1011A(c)(2), substituted ''Exceptions for distributions from employee stock ownership plans'' for ''Certain plans'' in heading and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—Except as provided in clause (ii), any distribution made before January 1, 1990, to an employee from an employee stock ownership plan defined in section 4975(e)(7) to the extent that, on average, a majority of assets in the plan have been invested in employer securities (as defined in section 409(*l*)) for the 5-plan-year period preceding the plan year in which the distribution is made.

''(ii) BENEFITS DISTRIBUTED MUST BE INVESTED IN EMPLOYER SECURITIES FOR 5 YEARS.—Clause (i) shall not apply to any distribution which is attributable to assets which have not been invested in employer securities at all times during the period referred to in clause (i).''

Subsec. (t)(3)(A). Pub. L. 100–647, §1011A(c)(3), substituted ''(C), and (D)'' for ''and (C)''.

Subsec. (u)(1)(A). Pub. L. 100–647, §1011A(i)(1), inserted ''(other than subchapter L)'' after ''subtitle''.

Subsec. (u)(3)(D). Pub. L. 100–647, §1011A(i)(3), substituted ''is purchased'' for ''which is purchased'' and ''is held'' for ''which is held''.

Pub. L. 100–647, §1011A(i)(2), substituted ''until all amounts under such contract are distributed to the employee for whom such contract was purchased or the employee's beneficiary'' for ''until such time as the employee separates from service''.

Subsec. (u)(3)(E). Pub. L. 100–647, §1011A(i)(3), substituted ''is'' for ''which is''.

Subsec. (u)(4)(C). Pub. L. 100–647, §1011A(i)(4), added subpar. (C).

Subsecs. (v), (w). Pub. L. 100–647, §5012(b)(1), added subsec. (v) and redesignated former subsec. (v) as (w).

1986—Subsec. (b). Pub. L. 99–514, §1122(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date). This subsection shall not apply to any amount to which subsection (d)(1) (relating to certain employee annuities) applies.''

Subsec. (d). Pub. L. 99–514, §1122(c)(1), struck out subsec. (d) which related to employee's annuities where the employee's contributions were recoverable in 3 years.

Subsec. (e)(4)(C). Pub. L. 99–514, §1826(b)(3), added subpar. (C).

Subsec. (e)(5)(D). Pub. L. 99–514, §1122(c)(3)(B), substituted ''paragraphs (7) and (8)'' for ''paragraph (7)'' in introductory provisions.

Pub. L. 99–514, §1854(b)(1), inserted closing provisions which read as follows: ''Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this subparagraph, be treated as paid under a separate contract to which clause (ii)(I) applies.''

Subsec. (e)(7)(B). Pub. L. 99–514, §1852(c)(1), in introductory provisions substituted ''any plan or contract'' for ''any trust or contract'', in cl. (ii) substituted ''85 percent or more of'' for ''85 percent of'', and inserted closing provision: ''For purposes of clause (ii), deductible employee contributions (as defined in subsection (*o*)(5)(A)) shall not be taken into account.''

Subsec. (e)(8), (9). Pub. L. 99–514, §1122(c)(3)(A), added pars. (8) and (9).

Subsec. (f). Pub. L. 99–514, §1852(c)(3), in introductory provisions, substituted ''subsections (d)(1) and (e)(7)''

for ''subsection (d)(1)'' and ''subsection (e)(6)'' for ''subsection (e)(1)(B)''.

Subsec. (m)(2)(B). Pub. L. 99–514, §1852(c)(4)(A), inserted ''and subsection (e)(7) (relating to plans where substantially all contributions are employee contributions)''.

Subsec. (m)(2)(C). Pub. L. 99–514, §1852(c)(4)(B), substituted ''subsection (e)(6)'' for ''subsection (e)(1)(B)''.

Subsec. (m)(5). Pub. L. 99–514, §1852(a)(2)(C), which directed that par. (5) be amended by substituting ''5-percent owners'' for ''owner-employees'' in heading, was executed by substituting ''5-percent owners'' for ''key employees'', to reflect the probable intent of Congress and intervening amendment by section 713(c)(1)(B) of Pub. L. 98–369.

Subsec. (m)(5)(A). Pub. L. 99–514, §1123(d)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''This subparagraph shall apply—

''(i) to amounts which—

''(I) are received from a qualified trust described in section 401(a) or under a plan described in section 403(a), and

''(II) are received by a 5-percent owner before such owner attains the age of 59½ years, for any reason other than such owner becoming disabled (within the meaning of paragraph (7) of this section), and

''(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by a 5-percent owner, or by the successor of such owner, but only to the extent that such amounts are determined (under regulations prescribed by the Secretary) to exceed the benefits provided for such individual under the plan formula.

Clause (i) shall not apply to any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution and clause (i) shall not apply to amounts attributable to benefits accrued before January 1, 1985.''

Pub. L. 99–514, §1852(a)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''This paragraph shall apply—

''(i) to amounts (other than any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution) which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) and which are received by an individual, who is, or has been, a 5-percent owner, before such individual attains the age of 59½ years, for any reason other than the individual's becoming disabled (within the meaning of paragraph (7) of this subsection), but only to the extent that such amounts are attributable to contributions paid on behalf of such individual (other than contributions made by him as a 5-percent owner) while he was a 5-percent owner, and

''(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, a 5-percent owner or by the successor of such individual, but only to the extent that such amounts are determined, under regulations prescribed by the Secretary, to exceed the benefits provided for such individual under the plan formula.''

Subsec. (m)(5)(C). Pub. L. 99–514, §1852(a)(2)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of this paragraph, the term '5 percent owner' have the same meanings as when used in section 416.''

Subsec. (m)(10). Pub. L. 99–514, §1898(c)(1)(B), inserted ''who is the spouse or former spouse of the participant''.

Subsec. (*o*)(5). Pub. L. 99–514, §1101(b)(2)(C), inserted ''and made for a taxable year beginning before January 1, 1987,'' in subpar. (A), substituted ''subsection (p)(3)(A)(i)'' for ''section 219(e)(3)'' in subpar. (C), and substituted ''subsection (p)(3)(B)'' for ''section 219(e)(4)'' in subpar. (D).

Subsec. (p)(2)(A)(i). Pub. L. 99–514, §1134(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''$50,000, or''.

Subsec. (p)(2)(B)(ii). Pub. L. 99–514, §1134(d), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''Clause (i) shall not apply to any loan used to acquire, construct, reconstruct, or substantially rehabilitate any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the participant or a member of the family (within the meaning of section 267(c)(4)) of the participant.''

Subsec. (p)(2)(C), (D). Pub. L. 99–514, §1134(b), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (p)(3). Pub. L. 99–514, §1134(c), added par. (3) and redesignated former par. (3) as (4).

Pub. L. 99–514, §1101(b)(2)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this subsection, the term 'qualified employer plan' means any plan which was (or was determined to be) a qualified employer plan (as defined in section 219(e)(3) other than a plan described in subsection (e)(7)). For purposes of this subsection, such term includes any government plan (as defined in section 219(e)(4)).''

Subsec. (p)(4), (5). Pub. L. 99–514, §1134(c), redesignated former pars. (3) and (4) as (4) and 5, respectively.

Subsec. (q). Pub. L. 99–514, §1123(b)(1)(B), substituted ''10-percent'' for ''5-percent'' in heading.

Subsec. (q)(1). Pub. L. 99–514, §1123(b)(1)(A), substituted ''10 percent'' for ''5 percent''.

Subsec. (q)(2). Pub. L. 99–514, §1123(b)(3), substituted ''Paragraph (1)'' for ''This subsection'' in introductory provisions.

Subsec. (q)(2)(B). Pub. L. 99–514, §1826(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''made to a beneficiary (or to the estate of an annuitant) on or after the death of an annuitant,''.

Subsec. (q)(2)(D). Pub. L. 99–514, §1123(b)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''which is one of a series of substantially equal periodic payments made for the life of a taxpayer or over a period extending for at least 60 months after the annuity starting date,''.

Subsec. (q)(2)(E). Pub. L. 99–514, §1852(c)(2), inserted ''(determined without regard to subsection (e)(7))''.

Subsec. (q)(2)(G). Pub. L. 99–514, §1826(d), added subpar. (G).

Subsec. (q)(2)(I), (J). Pub. L. 99–514, §1123(b)(4), which added subpars. (I) and (J) directed the amendment of subpar. (G) by striking out ''or'' at the end thereof, and of subpar. (H) by striking out the period at the end thereof, could not be executed to subpars. (G) and (H) because subpar. (G) does not contain ''or'', and no subpar. (H) was enacted.

Subsec. (q)(3). Pub. L. 99–514, §1123(b)(3), added par. (3).

Subsec. (s)(1). Pub. L. 99–514, §1826(b)(2), substituted ''any holder of such contract'' for ''the holder of such contract'' in subpars. (A) and (B).

Subsec. (s)(5). Pub. L. 99–514, §1826(a), added par. (5).

Subsec. (s)(6), (7). Pub. L. 99–514, §1826(b)(1), added pars. (6) and (7).

Subsec. (t). Pub. L. 99–514, §1123(a), added subsec. (t) and redesignated former subsec. (t) as (u).

Subsecs. (u), (v). Pub. L. 99–514, §1135(a), added subsec. (u) and redesignated former subsec. (u) as (v).

1984—Subsec. (e)(5)(D). Pub. L. 98–369, §523(b)(1), substituted ''Except as provided in paragraph (7), this'' for ''This''.

Subsec. (e)(5)(D)(ii)(IV). Pub. L. 98–369, §211(b)(1), which directed substitution of ''section 818(a)(3)'' for ''805(d)(3)'' in subpar. (D)(i)(IV), was executed to subpar. (D)(ii)(IV) to reflect the probable intent of Congress.

Subsec. (e)(7). Pub. L. 98–369, §523(a), added par. (7).

Subsec. (k). Pub. L. 98–369, §421(b)(1), repealed subsec. (k) relating to payments in discharge of alimony.

Subsec. (m)(5). Pub. L. 98–369, §713(c)(1)(B), substituted ''key employees'' for ''owner-employees'' in heading.

Subsec. (m)(5)(A). Pub. L. 98–369, §521(d)(1), (2), substituted ''5-percent owner'' for ''key employee'' wherever appearing and struck out ''in a top-heavy plan'' at end of cl. (i).

Pub. L. 98–369, §713(c)(1)(A), substituted ''as a key employee'' for ''as an owner-employee'' in cl. (i).

Subsec. (m)(5)(C). Pub. L. 98–369, §521(d)(3), substituted ''the term '5 percent owner'' for ''the terms 'key employee' and 'top-heavy plan' ''.

Subsec. (m)(9). Pub. L. 98–369, §713(d)(1), repealed par. (9) relating to return of excess contributions before due date of return.

Subsec. (m)(10). Pub. L. 98–397 added par. (10).

Subsec. (*o*)(1). Pub. L. 98–369, §491(d)(3), substituted ''402 and 403'' for ''402, 403, and 405''.

Subsec. (*o*)(3)(A). Pub. L. 98–369, §713(b)(1)(A), inserted ''(other than the exception contained in paragraph (2) thereof)''.

Subsec. (*o*)(4). Pub. L. 98–369, §491(d)(4), substituted ''and 408(d)(3)'' for ''408(d)(3), and 409(b)(3)(C)''.

Subsec. (p)(2)(A). Pub. L. 98–369, §713(b)(1)(B), inserted at end ''For purposes of clause (ii), the present value of the nonforfeitable accrued benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (*o*)(5)(B)).''

Subsec. (p)(2)(A)(ii). Pub. L. 98–369, §713(b)(4), substituted as cl. (ii) ''the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) $10,000'' for ''½ of the present value of the nonforfeitable accrued benefit of the employee under the plan (but not less than $10,000)''.

Subsec. (p)(3). Pub. L. 98–369, §523(b)(2), inserted ''other than a plan described in subsection (e)(7)''.

Subsec. (q)(1). Pub. L. 98–369, §222(a), amended par. (1) generally, striking out designation ''(A) In general.—'' preceding text, substituting ''which is includible in gross income'' for ''includible in gross income which is properly allocable to any investment in the annuity contract made during the 10-year period ending on the date such amount was received by the taxpayer'', and striking out former subpar. (B), which had provided that for purposes of subpar. (A), the amount includible in gross income would be allocated to the earliest investment in the contract with respect to which amounts had not been previously fully allocated under this par.

Subsecs. (s), (t). Pub. L. 98–369, §222(b), added subsec. (s) and redesignated former subsec. (s) as (t).

1983—Subsec. (*o*)(2)(A). Pub. L. 97–448, §103(c)(6), struck out ''to which the employee made one or more deductible employee contributions'' after ''from a qualified employer plan or government plan''.

Subsec. (p)(3). Pub. L. 97–448, §103(c)(3)(B)(i), struck out ''without regard to subparagraph (D) thereof'' after ''as defined in section 219(e)(3)''.

Subsecs. (r), (s). Pub. L. 98–76 added subsec. (r) and redesignated former subsec. (r) as (s).

1982—Subsec. (e). Pub. L. 97–248, §265(a), in par. (1) substituted provisions relating to the application of this subsection to amounts received under annuity, endowment, or life insurance contracts which are not received as annuities and to amounts received as dividends for provisions which stated a general rule relating to the includability as gross income of amounts that were received under annuity, endowment, or life insurance contracts which were not received as annuities and also stated that for the purposes of this section amounts which were received as dividends would be treated as amounts not received as an annuity, in par. (2) substituted provisions stating a general rule as to the includability as gross income of amounts received before or after the annuity starting date for provisions which set out those amounts which would be treated as amounts not received as an annuity, and added pars. (3) to (6).

Subsec. (m)(4). Pub. L. 97–248, §236(b)(1), struck out par. (4) which related to amounts constructively received with respect to assignments or pledges, and loans on contracts.

Subsec. (m)(5). Pub. L. 97–248, §237(d)(1), (2), in subpar. (A) substituted applicability to key employees for applicability to owner-employees and added subpar. (C).

Subsec. (m)(6). Pub. L. 97–248, §237(d)(3), struck out ''except in applying paragraph (5),'' after ''shall''.

Subsec. (m)(8). Pub. L. 97–248, §236(b)(1), struck out par. (8) which related to loans to owner-employees.

Subsec. (*o*)(3)(A). Pub. L. 97–248, §236(b)(2), substituted reference to subsec. (p) of this section for references to subsec. (m)(4) and (8) of this section.

Subsec. (p). Pub. L. 97–248, §236(a), added subsec. (p). Former subsec. (p) redesignated (q).

Subsec. (q). Pub. L. 97–248, §265(b)(1), added subsec. (q). Former subsec. (q) redesignated (r).

Pub. L. 97–248, §236(a), redesignated former subsec. (p) as (q).

Subsec. (r). Pub. L. 97–248, §§236(a), 265(b)(1), redesignated former subsec. (p) as (r).

1981—Subsec. (m)(6). Pub. L. 97–34, §312(d)(1), expanded definition of ''owner-employee'' to include an employee within the meaning of section 401(c)(1) except in applying paragraph (5).

Subsec. (m)(8). Pub. L. 97–34, §312(d)(2), added par. (8).

Subsec. (m)(9). Pub. L. 97–34, §312(e)(1), added par. (9).

Subsecs. (*o*), (p). Pub. L. 97–34, §311(b)(1), added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1976—Subsec. (c)(2), (3)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1). Pub. L. 94–455, §1901(a)(12), struck out in subpar. (B) ''(whether or not before January 1, 1954)'' after ''beginning on the date'', and in provisions following subpar. (B) struck out ''(under this paragraph and prior income tax laws)'' after ''until there has been so excluded''.

Subsec. (f). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (i). Pub. L. 94–455, §1951(b)(1)(A), struck out subsec. (i) which related to joint annuities where first annuitant died in 1951, 1952, or 1953.

Subsec. (m)(2), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (m)(4)(A). Pub. L. 94–455, §1901(a)(13), substituted ''an individual retirement account'' for ''an individual retirement amount''.

Subsec. (m)(5)(A)(ii), (7). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (m)(1). Pub. L. 93–406, §2001(h)(2), struck out par. (1) which related to certain amounts received before annuity starting date.

Subsec. (m)(4)(A). Pub. L. 93–406, §2002(g)(10)(A), inserted references to an individual retirement amount described in section 408(a) and an individual retirement annuity described in section 408(b).

Subsec. (m)(5)(A). Pub. L. 93–406, §2001(e)(5), (h)(3), substituted ''(other than contributions made by him as an owner-employee)'' for ''(whether or not paid by him)'' in cl. (i), and struck out cl. (iii) which had made reference to amounts which were received, by an individual who was or had been, an owner-employee, by reason of the distribution under the provisions of section 401(e)(2)(E) of his entire interest in all qualified trusts described in section 401(a) and in all plans described in section 403(a).

Subsec. (m)(5)(B). Pub. L. 93–406, §2001(g)(1), substituted provisions that if a person receives an amount to which subsec. (m)(5) applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year for provisions that if the aggregate amounts to which subsec. (m)(5) applied received by any person in his taxable year equalled or exceeded $2,500, the increase in his tax for the taxable year in which such amounts were received and attributable to such amounts could not be less than 110 percent of the aggregate increase in taxes, for the taxable year and the 4 immediately preceding taxable years, which would have resulted if such

amounts had been included in such person's gross income ratably over such taxable years, with provision for alternate computation if deductions had been allowed under section 404 for contributions paid for a number of prior taxable years less than 4.

Subsec. (m)(5)(C) to (E). Pub. L. 93–406, § 2001(g)(2)(A), struck out subpars. (C) to (E) which contained special rules for the application of subsec. (m)(5).

Subsec. (m)(6). Pub. L. 93–406, § 2002(g)(10)(B), inserted reference to an individual for whose benefit an individual retirement account or annuity described in section 408(a) or (b) is maintained.

Subsec. (n). Pub. L. 93–406, §§ 2005(c)(3), 2007(b)(2), redesignated former subsec. (*o*) as (n) and in heading of subsec. (n) as so redesignated inserted reference to survivor benefit plan. Former subsec. (n), which set out provisions covering the treatment to be accorded total distributions, was struck out.

Subsec. (*o*). Pub. L. 93–406, § 2005(c)(3), redesignated former subsec. (p) as (*o*). Former subsec. (*o*) redesignated (n) and amended.

Subsec. (p). Pub. L. 93–406, § 2005(c)(3), redesignated subsec. (p) as (*o*).

1969—Subsec. (n)(1). Pub. L. 91–172, § 515(b)(1), altered section to accommodate the insertion into sections 402 and 403 of provisions under which employer contributions to qualified pension, profit sharing, stock bonus, and annuity plans for plan years beginning after 1969 are to be treated as ordinary income when received in a lump sum distribution, but with such amounts to be eligible for a special averaging procedure.

Subsec. (n)(4). Pub. L. 91–172, § 515(b)(2), added par. (4).

1966—Subsecs. (*o*), (p). Pub. L. 89–365 added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1965—Subsec. (m)(5)(A)(i). Pub. L. 89–97, § 106(d)(2)(A), substituted ''paragraph (7) of this subsection'' for ''section 213(g)(3)''.

Subsec. (m)(7). Pub. L. 89–97, § 106(d)(2)(B), added par. (7).

Subsec. (n)(1). Pub. L. 89–97, § 106(d)(2)(C), substituted in subpars. (A)(iii) and (B)(iii) ''subsection (m)(7)'' for ''section 213(g)(3)''.

Subsec. (n)(3). Pub. L. 89–44 substituted ''sections 31 and 39'' for ''section 31'' in sentence following subpar. (B).

1964—Subsec. (e)(3). Pub. L. 88–272 struck out par. (3) which provided for a limit on the tax attributable to the receipt of a lump sum.

1962—Subsec. (d)(2). Pub. L. 87–792, § 4(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (f). Pub. L. 87–834 inserted sentence providing that par. (2) shall not apply to amounts which were contributed by the employer after Dec. 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of Section 911 if such amounts had been paid directly to the employee at the time of contribution, and making such sentence inapplicable to amounts which were contributed by the employer, as determined under regulations, to provide pension or annuity credits, to the extent such credits are attributable to services performed before Jan. 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on Mar. 12, 1962, and on that date applicable to such services.

Subsecs. (m) to (*o*). Pub. L. 87–792, § 4(b), added subsecs. (m) and (n) and redesignated former subsec. (m) as (*o*).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, § 2113(b), Sept. 27, 2010, 124 Stat. 2567, provided that: ''The amendment made by this section [amending this section] shall apply to amounts received in taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, § 112, Dec. 23, 2008, 122 Stat. 5113, provided that: ''Except as otherwise provided in this subtitle [subtitle A (§§ 101–112) of title I of Pub. L. 110–458, see Tables for classification], the amendments made by this subtitle shall take effect as if included in the provisions of the 2006 Act [Pub. L. 109–280] to which the amendments relate.''

Pub. L. 110–245, title I, § 107(b), June 17, 2008, 122 Stat. 1631, provided that: ''The amendment made by this section [amending this section] shall apply to individuals ordered or called to active duty on or after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 827(c), Aug. 17, 2006, 120 Stat. 1001, provided that:

''(1) EFFECTIVE DATE.—The amendment made by this section [amending this section and sections 401 and 403 of this title] shall apply to distributions after September 11, 2001.

''(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Aug. 17, 2006] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.''

Pub. L. 109–280, title VIII, § 828(b), Aug. 17, 2006, 120 Stat. 1001, provided that: ''The amendment made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title VIII, § 844(g), Aug. 17, 2006, 120 Stat. 1013, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6050U of this title and amending this section and sections 848, 1035, 6724, and 7702B of this title] shall apply to contracts issued after December 31, 1996, but only with respect to taxable years beginning after December 31, 2009.

''(2) TAX-FREE EXCHANGES.—The amendments made by subsection (b) [amending section 1035 of this title] shall apply with respect to exchanges occurring after December 31, 2009.

''(3) INFORMATION REPORTING.—The amendments made by subsection (d) [enacting section 6050U of this title and amending section 6724 of this title] shall apply to charges made after December 31, 2009.

''(4) POLICY ACQUISITION EXPENSES.—The amendment made by subsection (e) [amending section 848 of this title] shall apply to specified policy acquisition expenses determined for taxable years beginning after December 31, 2009.

''(5) TECHNICAL AMENDMENT.—The amendment made by subsection (f) [amending section 7702B of this title] shall take effect as if included in section 321(a) of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191].''

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title VIII, § 906(c), Oct. 22, 2004, 118 Stat. 1654, provided that: ''The amendments made by this section [amending this section and section 83 of this title] shall apply to distributions on or after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 207(6), (7) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2001 AMENDMENTS

Amendment by Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as an Effective and Termination Dates of 2001 Amendment note under section 24 of this title.

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as an Effective and Termination Dates of 2001 Amendment note under section 26 of this title.

Pub. L. 107–16, title IV, § 402(h), June 7, 2001, 115 Stat. 63, provided that: ''The amendments made by this section [amending this section and sections 135, 221, 529, 530, 4973, and 6693 of this title] shall apply to taxable years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, § 632(a)(4), June 7, 2001, 115 Stat. 115, provided that: ''The amendments made by this subsection [amending this section and sections 402, 403, 404, 415, and 664 of this title] shall apply to years beginning after December 31, 2001.''

Amendment by section 641(a)(2)(C), (e)(1) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, § 3436(b), July 22, 1998, 112 Stat. 761, provided that: ''The amendments made by this section [amending this section] shall apply to distributions after December 31, 1999.''

Amendment by section 6023(3), (4) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by sections 6004(d)(3)(B) and 6005(c)(1) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 203(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to distributions after December 31, 1997, with respect to expenses paid after such date (in taxable years ending after such date), for education furnished in academic periods beginning after such date.''

Section 303(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to payments and distributions in taxable years beginning after December 31, 1997.''

Section 1075(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply with respect to annuity starting dates beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 361(d) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section] shall apply to distributions after December 31, 1996.''

Section 1403(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply in cases where the annuity starting date is after the 90th day after the date of the enactment of this Act [Aug. 20, 1996].''

Section 1421(e) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section, sections 219, 280G, 402, 404, 408, 414, 416, 457, 3121, 3306, 3401, 4972, and 6693 of this title, sections 1021 and 1104 of Title 29, Labor, and section 409 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1996.''

Section 1463(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Section 1704(*l*)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1122(c) of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011A(b)(1)(A), (B), (2), (9), (c)(1)–(8), (h), (i), and 1018(k), (t)(1)(A), (B), and (u)(8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 5012(a), (b)(1), (d) of Pub. L. 100–647 applicable to contracts entered into on or after June 21, 1988, with special rule where death benefit increases by more than $150,000, certain other material changes taken into account, certain exchanges permitted, and special rule in the case of annuity contracts, see section 5012(e) of Pub. L. 100–647, set out as an Effective Date note under section 7702A of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1101(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 219 of this title] shall apply to contributions for taxable years beginning after December 31, 1986.''

Amendment by section 1122(c)(1) of Pub. L. 99–514 applicable to individuals whose annuity starting date is after July 1, 1986, amendment by section 1122(c)(2) of Pub. L. 99–514 applicable to individuals whose annuity starting date is after Dec. 31, 1986, and amendment by section 1122(c)(3) of Pub. L. 99–514 applicable to amounts received after July 1, 1986, in the case of any plan not described in section 72(e)(8)(D) of this title, see section 1122(h)(2) of Pub. L. 99–514, set out as a note under section 402 of this title.

Section 1123(e) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011A(c)(11), (12), Nov. 10, 1988, 102 Stat. 3476, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 403 and 408 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) SUBSECTION (c).—The amendments made by subsection (c) [amending section 403 of this title] shall apply to years beginning after December 31, 1988, but only with respect to distributions from contracts described in section 403(b) of the Internal Revenue Code of 1986 which are attributable to assets other than assets held as of the close of the last year beginning before January 1, 1989.

''(3) EXCEPTION WHERE DISTRIBUTION COMMENCES.—The amendments made by this section shall not apply to distributions to any employee from a plan maintained by any employer if—

''(A) as of March 1, 1986, the employee separated from service with the employer,

''(B) as of March 1, 1986, the accrued benefit of the employee was in pay status pursuant to a written election providing a specific schedule for the distribution of the entire accrued benefit of the employee, and

''(C) such distribution is made pursuant to such written election.

''(4) TRANSITION RULE.—The amendments made by this section shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 242(b)(2) of Pub. L. 97–248, formerly set out as an Effective Date of 1982 Amendment note under section 401 of this title].

''(5) SPECIAL RULE FOR DISTRIBUTIONS UNDER AN ANNUITY CONTRACT.—The amendments made by paragraphs (1), (2), and (3) of subsection (b) [amending this section] shall not apply to any distribution under an annuity contract if—

''(A) as of March 1, 1986, payments were being made under such contract pursuant to a written election providing a specific schedule for the distribution of the taxpayer's interest in such contract, and

''(B) such distribution is made pursuant to such written election.''

Section 1134(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to loans made, renewed, renegotiated, modified, or extended after December 31, 1986.''

Section 1135(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contributions to annuity contracts after February 28, 1986.''

Amendment by sections 1826(a), (d), 1852(a)(2), (c)(1)–(4), and 1854(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1826(b)(4) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to contracts issued after the date which is 6 months after the date of the enactment of this Act [Oct. 22, 1986] in taxable years ending after such date.''

Section 1826(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(t)(1)(D), Nov. 10, 1988, 102 Stat. 3587, provided that the amendment made by section 1826(c) of Pub. L. 99–514 is effective with respect to distributions commencing after the date 6 months after Oct. 22, 1986.

Section 1854(b)(6) of Pub. L. 99–514 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 404 of this title] shall not apply to dividends paid before January 1, 1986, if the taxpayer treated such dividends in a manner inconsistent with such amendments on a return filed with the Secretary before the date of the enactment of this Act [Oct. 22, 1986].''

Section 1898(c)(1)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section and section 402 of this title] shall apply to payments made after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 211(b)(1) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Section 222(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to contracts issued after the day which is 6 months after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) TRANSITIONAL RULES FOR CONTRACTS ISSUED BEFORE EFFECTIVE DATE.—In the case of any contract (other than a single premium contract) which is issued on or before the day which is 6 months after the date of the enactment of this Act, for purposes of section 72(q)(1)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act), any investment in such contract which is made during any calendar year shall be treated as having been made on January 1 of such calendar year.''

Amendment by section 421(b)(1) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have repeal apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 491(d)(3), (4) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(d) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Section 523(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to any amount received or loan made after the 90th day after the date of enactment of this Act [July 18, 1984].''

Amendment by section 713(b)(1), (4), (c)(1)(A), (B) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Section 713(d)(1) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, § 1875(c)(5), Oct. 22, 1986, 100 Stat. 2895, provided that the amendment made by section 713(d)(1) of Pub. L. 98–369 is effective with respect to contributions made in taxable years beginning after Dec. 31, 1983.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 227(b) of Pub. L. 98–76, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 224 [enacting section 6050G of this title, amending this section and section 86 of this title, and enacting provisions set out as a note under section 231n of Title 45, Railroads] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

''(2) TREATMENT OF CERTAIN LUMP-SUM PAYMENTS RECEIVED AFTER DECEMBER 31, 1983.—The amendments made by section 224 shall not apply to any portion of a lump-sum payment received after December 31, 1983, if the generally applicable payment date for such portion was before January 1, 1984.

''(3) NO FRESH START.—For purposes of determining whether any benefit received after December 31, 1983, is includible in gross income by reason of section 72(r) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this Act, the amendments made by section 224 be treated as having been in effect during all periods before 1984.''

Section 103(c)(3)(B)(ii) of Pub. L. 97–448 provided that: ''The amendment made by clause (i) [amending this section] shall take effect as if the matter struck out had never been included in such paragraph.''

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 236(c) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(11), Jan. 12, 1983, 96 Stat. 2404; Pub. L. 98–369, div. A, title V, § 554, title VII, § 713(b)(2), July 18, 1984, 98 Stat. 897, 957; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to loans, assignments, and pledges made after August 13, 1982. For purposes of the preceding sentence, the outstanding balance of any loan which is renegotiated, extended, renewed, or revised after such date shall be treated as an amount received as a loan on the date of such renegotiation, extension, renewal, or revision.

''(2) EXCEPTION FOR CERTAIN LOANS USED TO REPAY OUTSTANDING OBLIGATIONS.—

''(A) IN GENERAL.—Any qualified refunding loan shall not be treated as a distribution by reason of the amendments made by this section to the extent such loan is repaid before August 14, 1983.

''(B) QUALIFIED REFUNDING LOAN.—For purposes of subparagraph (A), the term 'qualified refunding loan' means any loan made after August 13, 1982, and before August 14, 1983, to the extent such loan is used to make a required principal payment.

''(C) REQUIRED PRINCIPAL PAYMENT.—For purposes of subparagraph (B), the term 'required principal payment' means any principal repayment on a loan made under the plan which was outstanding on August 13, 1982, if such repayment is required to be made after August 13, 1982, and before August 14, 1983 or if such loan was payable on demand.

''(D) SPECIAL RULE FOR NON-KEY EMPLOYEES.—In the case of a non-key employee (within the meaning of section 416(i)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), this paragraph shall be applied by substituting 'January 1, 1985' for 'August 14, 1983' each place it appears.

''(3) TREATMENT OF CERTAIN RENEGOTIATIONS.—If—

''(A) the taxpayer after August 13, 1982, and before September 4, 1982, borrows money from a government plan (as defined in section 219(e)(4) of the Internal Revenue Code of 1986),

''(B) under the applicable State law, such loan requires the renegotiation of all outstanding prior loans made to the taxpayer under such plan, and

''(C) the renegotiation described in subparagraph (B) does not change the interest rate on, or extend the duration of, any such outstanding prior loan,

then the renegotiation described in subparagraph (B) shall not be treated as a renegotiation, extension, renewal, or revision for purposes of paragraph (1). If the renegotiation described in subparagraph (B) does not meet the requirements of subparagraph (C) solely because it extends the duration of any such outstanding prior loan, the requirements of subparagraph (C) shall be treated as met with respect to such renegotiation if, before April 1, 1983, such extension is eliminated.''

Section 265(c) of Pub. L. 97–248 provided that:

''(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall take effect on August 13, 1982.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and sections 46, 50A, 53, 901, 1302, and 1304 of this title] shall apply to distributions after December 31, 1982.''

Amendment by section 237(d) of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 312(f) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 103(d)(3), 96 Stat. 2378, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 219, 401, 404, 408, 1379, and 4972 of this title] shall apply to taxable years beginning after December 31, 1981.

''(2) TRANSITIONAL RULE.—The amendments made by subsection (d) [amending this section] shall not apply to any loan from a plan to a self-employed individual who is an employee within the meaning of section 401(c)(1) which is outstanding on December 31, 1981. For purposes of the preceding sentence, any loan which is renegotiated, extended, renewed, or revised after such date shall be treated as a new loan.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(12), (13) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 1951(d) of Pub. L. 94–455 provided that: ''Except as otherwise expressly provided, the amendments made by this section [see Tables for classification of section 1951 of Pub. L. 94–455] shall apply with respect to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2001(e)(5) of Pub. L. 93–406 applicable to contributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(4) of Pub. L. 93–406, set out as a note under section 401 of this title.

Section 2001(i)(5), (6) of Pub. L. 93–406 provided that:

''(5) The amendments made by subsection (g) [amending this section and sections 46, 50A, 56, 404, and 901 of this title] apply to distributions made in taxable years beginning after December 31, 1975.

''(6) The amendments made by subsection (h) [amending this section and section 401 of this title] apply to taxable years ending after the date of enactment of this Act [Sept. 2, 1974].''

Amendment by section 2002(g)(10) of Pub. L. 93–406 effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

Amendment by section 2005(c)(3) of Pub. L. 93–406, applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

Amendment by section 2007(b)(2) of Pub. L. 93–406 applicable to taxable years ending on or after Sept. 21, 1972, see section 2007(c) of Pub. L. 93–406, set out as a note under section 122 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–365 applicable with respect to taxable years ending after Dec. 31, 1965, see section 1(d) of Pub. L. 89–365, set out as an Effective Date note under section 122 of this title.

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 11(c)(2) of Pub. L. 87–834 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 1962.''

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Section 1951(b)(1)(B) of Pub. L. 94–455 provided that: ''Notwithstanding subparagraph (A) [repealing subsec. (i) of this section], if the provisions of section 72(i) applied to amounts received in taxable years beginning before January 1, 1977, under an annuity contract, then amounts received under such contract on or after such date shall be treated as if such provisions were not repealed.''

APPLICABILITY OF SUBSECTION (t)

Section 1011A(c)(13) of Pub. L. 100–647 provided that: ''Section 72(t) of the 1986 Code shall apply to any distribution without regard to whether such distribution is made without the consent of the participant pursuant to section 411(a)(11) or section 417(e) of the 1986 Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

DEFINITION OF TERMS USED IN TITLE I OF PUB. L. 110–458

Pub. L. 110–458, title I, §100, Dec. 23, 2008, 122 Stat. 5093, provided that: ''For purposes of this title [see Tables for classification]:

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

''(2) AMENDMENT OF ERISA.—The term 'ERISA' means the Employee Retirement Income Security Act of 1974 [Pub. L. 93–406; see Short Title note under section 1001 of Title 29, Labor].

''(3) 2006 ACT.—The term '2006 Act' means the Pension Protection Act of 2006 [Pub. L. 109–280; see Short Title of 2006 Amendment note under section 1001 of Title 29, Labor].''

§ 73. Services of child

(a) Treatment of amounts received

Amounts received in respect of the services of a child shall be included in his gross income and not in the gross income of the parent, even though such amounts are not received by the child.

(b) Treatment of expenditures

All expenditures by the parent or the child attributable to amounts which are includible in the gross income of the child (and not of the parent) solely by reason of subsection (a) shall be treated as paid or incurred by the child.

(c) Parent defined

For purposes of this section, the term ''parent'' includes an individual who is entitled to the services of a child by reason of having parental rights and duties in respect of the child.

(d) Cross reference

For assessment of tax against parent in certain cases, see section 6201(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 24.)

§ 74. Prizes and awards

(a) General rule

Except as otherwise provided in this section or in section 117 (relating to qualified scholarships), gross income includes amounts received as prizes and awards.

(b) Exception for certain prizes and awards transferred to charities

Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, but only if—

(1) the recipient was selected without any action on his part to enter the contest or proceeding;

(2) the recipient is not required to render substantial future services as a condition to receiving the prize or award; and

(3) the prize or award is transferred by the payor to a governmental unit or organization described in paragraph (1) or (2) of section 170(c) pursuant to a designation made by the recipient.

(c) Exception for certain employee achievement awards

(1) In general

Gross income shall not include the value of an employee achievement award (as defined in section 274(j)) received by the taxpayer if the cost to the employer of the employee achievement award does not exceed the amount allowable as a deduction to the employer for the cost of the employee achievement award.

(2) Excess deduction award

If the cost to the employer of the employee achievement award received by the taxpayer exceeds the amount allowable as a deduction to the employer, then gross income includes the greater of—

(A) an amount equal to the portion of the cost to the employer of the award that is not allowable as a deduction to the employer (but not in excess of the value of the award), or

(B) the amount by which the value of the award exceeds the amount allowable as a deduction to the employer.

The remaining portion of the value of such award shall not be included in the gross income of the recipient.

(3) Treatment of tax-exempt employers

In the case of an employer exempt from taxation under this subtitle, any reference in this subsection to the amount allowable as a deduction to the employer shall be treated as a reference to the amount which would be allowable as a deduction to the employer if the employer were not exempt from taxation under this subtitle.

(4) Cross reference

For provisions excluding certain de minimis fringes from gross income, see section 132(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 24; Pub. L. 99–514, title I, §§122(a)(1), 123(b)(1), Oct. 22, 1986, 100 Stat. 2109, 2113.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, §123(b)(1), which directed that subsec. (a) be amended by substituting ''(relating to qualified scholarships)'' for ''(relating to scholarship and fellowship grants)'', was executed by making the substitution for ''(relating to scholarships and fellowship grants)'' to reflect the probable intent of Congress.

Pub. L. 99–514, §122(a)(1)(A), substituted ''Except as otherwise provided in this section or'' for ''Except as provided in subsection (b) and''.

Subsec. (b). Pub. L. 99–514, §122(a)(1)(B), (C), inserted ''for certain prizes and awards transferred to charities'' in heading and added par. (3).

Subsec. (c). Pub. L. 99–514, §122(a)(1)(D), added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(a)(1) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 123(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99–514, set out as a note under section 1 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 123(b)(1) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(3) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 75. Dealers in tax-exempt securities

(a) Adjustment for bond premium

In computing the gross income of a taxpayer who holds during the taxable year a short-term municipal bond (as defined in subsection (b)(1) primarily for sale to customers in the ordinary course of his trade or business—

(1) if the gross income of the taxpayer from such trade or business is computed by the use of inventories and his inventories are valued on any basis other than cost, the cost of securities sold (as defined in subsection (b)(2) during such year shall be reduced by an amount equal to the amortizable bond premium which would be disallowed as a deduction for such year by section 171(a)(2) (relating to deduction for amortizable bond premium) if the definition in section 171(d) of the term ''bond'' did not exclude such municipal bond; or

(2) if the gross income of the taxpayer from such trade or business is computed without the use of inventories, or by use of inventories valued at cost, and the municipal bond is sold or otherwise disposed of during such year, the adjusted basis (computed without regard to this paragraph) of the municipal bond shall be reduced by the amount of the adjustment which would be required under section 1016(a)(5) (relating to adjustment to basis for amortizable bond premium) if the definition in section 171(d) of the term ''bond'' did not exclude such municipal bond.

Notwithstanding the provisions of paragraph (1), no reduction to the cost of securities sold during the taxable year shall be made in respect of any obligation described in subsection (b)(1)(A)(ii) which is held by the taxpayer at the close of the taxable year; but in the taxable year in which any such obligation is sold or otherwise disposed of, if such obligation is a municipal bond (as defined in subsection (b)(1)), the cost of securities sold during such year shall be reduced by an amount equal to the adjustment described in paragraph (2), without regard to the fact that the taxpayer values his inventories on any basis other than cost.

(b) Definitions

For purposes of subsection (a)—

(1) The term ''municipal bond'' means any obligation issued by a government or political subdivision thereof if the interest on such obligation is excludable from gross income; but such term does not include such an obligation if—

(A)(i) it is sold or otherwise disposed of by the taxpayer within 30 days after the date of its acquisition by him, or

(ii) its earliest maturity or call date is a date more than 5 years from the date on which it was acquired by the taxpayer; and

(B) when it is sold or otherwise disposed of by the taxpayer—

(i) in the case of a sale, the amount realized, or

(ii) in the case of any other disposition, its fair market value at the time of such disposition,

is higher than its adjusted basis (computed without regard to this section and section 1016(a)(6)).

Determinations under subparagraph (B) shall be exclusive of interest.

(2) The term ''cost of securities sold'' means the amount ascertained by subtracting the inventory value of the closing inventory of a taxable year from the sum of—

(A) the inventory value of the opening inventory for such year, and

(B) the cost of securities and other property purchased during such year which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 25; Pub. L. 85–866, title I, §2(a), Sept. 2, 1958, 72 Stat. 1606.)

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–866, §2(a)(2), (3), struck out ''short-term'' each place it appeared, and inserted sentence to provide that no reduction to cost of securities sold during taxable year shall be made in respect of subsec. (b)(1)(A)(ii) obligations held at close of year, and to permit reduction in cost of securities sold in taxable year sold if obligation is municipal bond.

Subsec. (b)(1). Pub. L. 85–866, §2(a)(1), substituted ''municipal bond'' for ''short-term municipal bond'', designated former subpars. (A) and (B) as (A)(i) and (ii), respectively, and added subpar. (B).

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2(c) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1016 of this title] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to obligations acquired after such date.''

[§ 76. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(14), Oct. 4, 1976, 90 Stat. 1765]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 25, related to inclusion in gross of all income derived from mortgages made, or obligations issued, by a joint-stock land bank.

§ 77. Commodity credit loans

(a) Election to include loans in income

Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income and shall be included in gross income for the taxable year in which received.

(b) Effect of election on adjustments for subsequent years

If a taxpayer exercises the election provided for in subsection (a) for any taxable year, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the Secretary a change to a different method is authorized.

(Aug. 16, 1954, ch. 736, 68A Stat. 25; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

§ 78. Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit

If a domestic corporation chooses to have the benefits of subpart A of part III of subchapter N (relating to foreign tax credit) for any taxable year, an amount equal to the taxes deemed to be paid by such corporation under section 902(a) (relating to credit for corporate stockholder in foreign corporation) or under section 960(a)(1) (relating to taxes paid by foreign corporation) for such taxable year shall be treated for purposes of this title (other than section 245) as a dividend received by such domestic corporation from the foreign corporation.

(Added Pub. L. 87–834, § 9(b), Oct. 16, 1962, 76 Stat. 1001; amended Pub. L. 94–455, title X, § 1033(b)(1), Oct. 4, 1976, 90 Stat. 1628.)

AMENDMENTS

1976—Pub. L. 94–455 substituted ''section 902(a)'' for ''section 902(a)(1)'' and ''section 960(a)(1)'' for ''section 960(a)(1)(C)''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable on different dates depending on the date the distributions were received, see section 1033(c) of Pub. L. 94–455, set out as a note under section 902 of this title.

EFFECTIVE DATE

Section applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as an Effective Date of 1962 Amendment note under section 902 of this title.

§ 79. Group-term life insurance purchased for employees

(a) General rule

There shall be included in the gross income of an employee for the taxable year an amount equal to the cost of group-term life insurance on his life provided for part or all of such year under a policy (or policies) carried directly or indirectly by his employer (or employers); but only to the extent that such cost exceeds the sum of—

(1) the cost of $50,000 of such insurance, and

(2) the amount (if any) paid by the employee toward the purchase of such insurance.

(b) Exceptions

Subsection (a) shall not apply to—

(1) the cost of group-term life insurance on the life of an individual which is provided under a policy carried directly or indirectly by an employer after such individual has terminated his employment with such employer and is disabled (within the meaning of section 72(m)(7)),

(2) the cost of any portion of the group-term life insurance on the life of an employee provided during part or all of the taxable year of the employee under which—

(A) the employer is directly or indirectly the beneficiary, or

(B) a person described in section 170(c) is the sole beneficiary,

for the entire period during such taxable year for which the employee receives such insurance, and

(3) the cost of any group-term life insurance which is provided under a contract to which section 72(m)(3) applies.

(c) Determination of cost of insurance

For purposes of this section and section 6052, the cost of group-term insurance on the life of an employee provided during any period shall be determined on the basis of uniform premiums (computed on the basis of 5-year age brackets) prescribed by regulations by the Secretary.

(d) Nondiscrimination requirements

(1) In general

In the case of a discriminatory group-term life insurance plan—

(A) subsection (a)(1) shall not apply with respect to any key employee, and

(B) the cost of group-term life insurance on the life of any key employee shall be the greater of—

(i) such cost determined without regard to subsection (c), or

(ii) such cost determined with regard to subsection (c).

(2) Discriminatory group-term life insurance plan

For purposes of this subsection, the term ''discriminatory group-term life insurance plan'' means any plan of an employer for providing group-term life insurance unless—

(A) the plan does not discriminate in favor of key employees as to eligibility to participate, and

(B) the type and amount of benefits available under the plan do not discriminate in favor of participants who are key employees.

(3) Nondiscriminatory eligibility classification

(A) In general

A plan does not meet requirements of subparagraph (A) of paragraph (2) unless—

(i) such plan benefits 70 percent or more of all employees of the employer,

(ii) at least 85 percent of all employees who are participants under the plan are not key employees,

(iii) such plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of key employees, or

(iv) in the case of a plan which is part of a cafeteria plan, the requirements of section 125 are met.

(B) Exclusion of certain employees

For purposes of subparagraph (A), there may be excluded from consideration—

(i) employees who have not completed 3 years of service;

(ii) part-time or seasonal employees;

(iii) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if the benefits provided under the plan were the subject of good faith bargaining between such employee representatives and such employer or employers; and

(iv) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(4) Nondiscriminatory benefits

A plan does not meet the requirements of paragraph (2)(B) unless all benefits available to participants who are key employees are available to all other participants.

(5) Special rule

A plan shall not fail to meet the requirements of paragraph (2)(B) merely because the amount of life insurance on behalf of the employees under the plan bears a uniform relationship to the total compensation or the basic or regular rate of compensation of such employees.

(6) Key employee defined

For purposes of this subsection, the term ''key employee'' has the meaning given to such term by paragraph (1) of section 416(i). Such term also includes any former employee if such employee when he retired or separated from service was a key employee.

(7) Exemption for church plans

(A) In general

This subsection shall not apply to a church plan maintained for church employees.

(B) Definitions

For purposes of subparagraph (A), the terms ''church plan'' and ''church employee'' have the meaning given such terms by paragraphs (1) and (3)(B) of section 414(e), respectively, except that—

(i) section 414(e) shall be applied by substituting ''section 501(c)(3)'' for ''section 501'' each place it appears, and

(ii) the term ''church employee'' shall not include an employee of—

(I) an organization described in section 170(b)(1)(A)(ii) above the secondary school level (other than a school for religious training),

(II) an organization described in section 170(b)(1)(A)(iii), and

(III) an organization described in section 501(c)(3), the basis of the exemption for which is substantially similar to the basis for exemption of an organization described in subclause (II).

(8) Treatment of former employees

To the extent provided in regulations, this subsection shall be applied separately with respect to former employees.

(e) Employee includes former employee

For purposes of this section, the term ''employee'' includes a former employee.

(Added Pub. L. 88–272, title II, §204(a)(1), Feb. 26, 1964, 78 Stat. 36; amended Pub. L. 89–97, title I, §106(d)(3), July 30, 1965, 79 Stat. 337; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title II, §244(a), Sept. 3, 1982, 96 Stat. 523; Pub. L. 98–369, div. A, title II, §223(a), (b), July 18, 1984, 98 Stat. 775; Pub. L. 99–514, title XI, §1151(c)(1), title XVIII, §1827(a)(1), (c), (d), Oct. 22, 1986, 100 Stat. 2503, 2850, 2851; Pub. L. 100–647, title V, §5013(a), Nov. 10, 1988, 102 Stat. 3666; Pub. L. 101–140, title II, §203(a)(1), (b)(1)(A), Nov. 8, 1989, 103 Stat. 830, 831; Pub. L. 101–508, title XI, §11703(e)(1), Nov. 5, 1990, 104 Stat. 1388–517.)

AMENDMENTS

1990—Subsec. (d)(6). Pub. L. 101–508 substituted ''any former employee'' for ''any retired employee''.

1989—Subsec. (d). Pub. L. 101–140, §203(a)(1), amended subsec. (d) to read as if amendments by Pub. L. 99–514, §1151(c)(1), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(7). Pub. L. 101–140, §203(b)(1)(A), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.''

1988—Subsec. (c). Pub. L. 100–647 struck out at end ''In the case of an employee who has attained age 64, the cost prescribed shall not exceed the cost with respect to such individual if he were age 63.''

1986—Subsec. (d). Pub. L. 99–514, §1151(c)(1), amended subsec. (d) generally, substituting ''In the case of a group-term life insurance plan which is a discriminatory employee benefit plan, subsection (a)(1) shall apply only to the extent provided in section 89.'' for

provisions formerly designated as pars. (1)(A) and (B) that in the case of a discriminatory group-term life insurance plan subsec. (a)(1) shall not apply with respect to any key employee and the cost of group-term life insurance on the life of any key employee shall be determined without regard to subsec. (c), and striking out pars. (2) to (7) relating to classifications and eligibility classifications of nondiscriminatory plans.

Subsec. (d)(1)(B). Pub. L. 99–514, §1827(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the cost of group-term life insurance on the life of any key employee shall be determined without regard to subsection (c).''

Subsec. (d)(6). Pub. L. 99–514, §1827(c), struck out '', except that subparagraph (A)(iv) of such paragraph shall be applied by not taking into account employees described in paragraph (3)(B) who are not participants in the plan'' from first sentence and inserted provision that such term also includes any retired employee if such employee when he retired or separated from service was a key employee.

Subsec. (d)(8). Pub. L. 99–514, §1827(d), added par. (8).

1984—Subsec. (b)(1). Pub. L. 98–369, §223(a)(2), struck out ''either has reached the retirement age with respect to such employer or'' before ''is disabled''.

Subsec. (d)(1). Pub. L. 98–369, §223(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e). Pub. L. 98–369, §223(a)(1), added subsec. (e).

1982—Subsec. (d). Pub. L. 97–248 added subsec. (d).

1976—Subsec. (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1965—Subsec. (b)(1). Pub. L. 89–97 substituted ''section 72(m)(7)'' for ''paragraph (3) of section 213(g), determined without regard to paragraph (4) thereof''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11703(e)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to employees separating from service after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 203(c) of Pub. L. 101–140 provided that: ''The amendments made by this section [amending this section and sections 105, 117, 120, 125, 127, 129, 132, 162, 401, 414, 505, 3121, 3231, 3306, 3401, 4976, and 6652 of this title, section 409 of title 42, The Public Health and Welfare, and provisions set out as notes under sections 89 and 3121 of this title] shall take effect as if included in section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see section 1151(k) set out below].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 5013(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1151(k) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011B(a)(25), (26), Nov. 10, 1988, 102 Stat. 3486, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 89 of this title and amending this section and sections 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 6039D, and 6652 of this title] shall apply to years beginning after the later of—

''(A) December 31, 1987, or

''(B) the earlier of—

''(i) the date which is 3 months after the date on which the Secretary of the Treasury or his delegate issues such regulations as are necessary to carry out the provisions of section 89 of the Internal Revenue Code of 1986 (as added by this section), or

''(ii) December 31, 1988.

Notwithstanding the preceding sentence, the amendments made by subsections (e)(1) and (i)(3)(C) [amending section 414 of this title] shall, to the extent they relate to sections 106, 162(i)(2), and 162(k) of the Internal Revenue Code of 1986, apply to years beginning after 1986.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING PLAN.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section [enacting section 89 of this title and amending this section and sections 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 6039D, and 6652 of this title] shall not apply to employees covered by such an agreement in years beginning before the earlier of—

''(A) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1991.

A plan shall not be required to take into account employees to which the preceding sentence applies for purposes of applying section 89 of the Internal Revenue Code of 1986 (as added by this section) to employees to which the preceding sentence does not apply for any year preceding the year described in the preceding sentence.

''(3) EXCEPTION FOR CERTAIN GROUP-TERM INSURANCE PLANS.—In the case of a plan described in section 223(d)(2) of the Tax Reform Act of 1984 [section 232(d)(2) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note below], such plan shall be treated as meeting the requirements of section 89 of the Internal Revenue Code of 1986 (as added by this section) with respect to individuals described in section 223(d)(2) of such Act. An employer may elect to disregard such individuals in applying section 89 of such Code (as so added) to other employees of the employer.

''(4) SPECIAL RULE FOR CHURCH PLANS.—In the case of a church plan (within the meaning of section 414(e)(3) of the Internal Revenue Code of 1986) maintaining an insured accident and health plan, the amendments made by this section [enacting section 89 of this title and amending this section and sections 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 6039D, and 6652 of this title] shall apply to years beginning after December 31, 1988.

''(5) CAFETERIA PLANS.—The amendments made by subsection (d)(2) [amending sections 3121 and 3306 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1983.

''(6) CERTAIN PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—If an educational organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986 makes an election under this paragraph with respect to a plan described in section 125(c)(2)(C) of such Code, the amendments made by this section shall apply with respect to such plan for plan years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Section 1827(a)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1827(c), (d) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 223(d) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1827(b), Oct. 22, 1986, 100 Stat. 2095, 2850, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 83 of this title] shall apply to taxable years beginning after December 31, 1983.

''(2) INCLUSION OF FORMER EMPLOYEES IN THE CASE OF EXISTING GROUP-TERM INSURANCE PLANS.—

''(A) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall not apply—

''(i) to any group-term life insurance plan of the employer in existence on January 1, 1984, or

''(ii) to any group-term life insurance plan of the employer (or a successor employer) which is a comparable successor to a plan described in clause (i),

but only with respect to an individual who attained age 55 on or before January 1, 1984, and was employed by such employer (or a predecessor employer) at any time during 1983. Such amendments also shall not apply to any employee who retired from employment on or before January 1, 1984, and who, when he retired, was covered by the plan (or a predecessor plan).

''(B) SPECIAL RULE IN THE CASE OF DISCRIMINATORY GROUP-TERM LIFE INSURANCE PLAN.—In the case of any plan which, after December 31, 1986, is a discriminatory group-term life insurance plan (as defined in section 79(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), subparagraph (A) shall not apply in the case of any individual retiring under such plan after December 31, 1986.

''(C) BENEFITS TO CERTAIN RETIRED INDIVIDUALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING WHETHER PLAN IS DISCRIMINATORY.—For purposes of determining whether a plan described in subparagraph (A) meets the requirements of section 79(d) of the Internal Revenue Code of 1986 with respect to group-term life insurance for former employees, coverage provided to employees who retired on or before December 31, 1986, may, at the employer's election, be disregarded.

''(D) COMPARABLE SUCCESSOR PLANS.—For purposes of subparagraph (A), a plan shall not fail to be treated as a comparable successor to a plan described in subparagraph (A)(i) with respect to any employee whose benefits do not increase under the successor plan.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 244(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

EFFECTIVE DATE

Section 204(d) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a) [amending this section and section 7701 of this title] and (c) [amending sections 6052 and 6678 of this title] and paragraph (3) of section 6652(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 221(b)(2) of this Act), shall apply with respect to group-term life insurance provided after December 31, 1963, in taxable years ending after such date. The amendments made by subsection (b) [amending section 3401 of this title] shall apply with respect to remuneration paid after December 31, 1963, in the form of group-term life insurance provided after such date. In applying section 79(b) of the Internal Revenue Code of 1986 (as added by subsection (a)(1) of this section) to a taxable year beginning before May 1, 1964, if paragraph (2)(B) of such section applies with respect to an employee for the period beginning May 1, 1964, and ending with the close of his first taxable year ending after April 30, 1964, such paragraph (2)(B) shall be treated as applying with respect to such employee for the period beginning January 1, 1964, and ending April 30, 1964.''

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 80. Restoration of value of certain securities

(a) General rule

In the case of a domestic corporation subject to the tax imposed by section 11 or 801, if the value of any security (as defined in section 165(g)(2))—

(1) which became worthless by reason of the expropriation, intervention, seizure, or similar taking by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing of property to which such security was related, and

(2) which was taken into account as a loss from the sale or exchange of a capital asset or with respect to which a deduction for a loss was allowed under section 165,

is restored in whole or in part during any taxable year by reason of any recovery of money or other property in respect of the property to which such security was related, the value so restored (to the extent that, when added to the value so restored during prior taxable years, it does not exceed the amount of the loss described in paragraph (2)) shall, except as provided in subsection (b), be included in gross income for the taxable year in which such restoration occurs.

(b) Reduction for failure to receive tax benefit

The amount otherwise includible in gross income under subsection (a) in respect of any security shall be reduced by an amount equal to the amount (if any) of the loss described in subsection (a)(2) which did not result in a reduction of the taxpayer's tax under this subtitle for any taxable year, determined under regulations prescribed by the Secretary.

(c) Character of income

For purposes of this subtitle—

(1) Except as provided in paragraph (2), the amount included in gross income under this section shall be treated as ordinary income.

(2) If the loss described in subsection (a)(2) was taken into account as a loss from the sale or exchange of a capital asset, the amount included in gross income under this section shall be treated as long-term capital gain.

(d) Treatment under foreign expropriation loss recovery provisions

This section shall not apply to any recovery of a foreign expropriation loss to which section 1351 applies.

(Added Pub. L. 89–384, § 1(b)(1), Apr. 8, 1966, 80 Stat. 101; amended Pub. L. 94–455, title XIX, §§ 1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat.

1793, 1834; Pub. L. 98–369, div. A, title II, § 211(b)(2), July 18, 1984, 98 Stat. 754.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 substituted ''801'' for ''802''.

1976—Subsec. (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(1). Pub. L. 94–455, § 1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(K) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 1(b)(3) of Pub. L. 89–384, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this subsection [enacting this section] shall apply to taxable years beginning after December 31, 1965, but only with respect to losses described in section 80(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by paragraph (1) of this subsection) which were sustained after December 31, 1958.''

[§ 81. Repealed. Pub. L. 100–203, title X, § 10201(b)(1), Dec. 22, 1987, 101 Stat. 1330–387]

Section, added Pub. L. 89–722, § 1(b)(1), Nov. 2, 1966, 80 Stat. 1152; amended Pub. L. 93–625, § 4(c)(1), Jan. 3, 1975, 88 Stat. 2111; Pub. L. 94–455, title VI, § 605(b), Oct. 4, 1976, 90 Stat. 1575; Pub. L. 99–514, title VIII, § 805(c)(1)(A), Oct. 22, 1986, 100 Stat. 2362, included increase in vacation pay suspense account in gross income.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 404 of this title.

§ 82. Reimbursement for expenses of moving

Except as provided in section 132(a)(6), there shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment or self-employment.

(Added Pub. L. 91–172, title II, § 231(b), Dec. 30, 1969, 83 Stat. 579; amended Pub. L. 103–66, title XIII, § 13213(d)(3)(A), Aug. 10, 1993, 107 Stat. 474.)

AMENDMENTS

1993—Pub. L. 103–66 substituted ''Except as provided in section 132(a)(6), there shall'' for ''There shall''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66, set out as a note under section 62 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after December 31, 1969, except that it does not apply to moving expenses paid or incurred before July 1, 1970, in connection with the commencement of work by the taxpayer as an employee at a new principal place of work of which the taxpayer had been notified by his employer on or before December 19, 1969, see section 231(d) of Pub. L. 91–172, set out as an Effective Date of 1969 Amendment note under section 217 of this title.

MOVING EXPENSES OF MEMBERS OF THE UNIFORMED SERVICES

Withholding, reporting, inclusion within adjusted gross income, and deduction for reimbursement for moving expenses of members of the uniformed services, see section 2 of Pub. L. 93–490, Oct. 26, 1974, 88 Stat. 1466, set out as a note under section 217 of this title.

§ 83. Property transferred in connection with performance of services

(a) General rule

If, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of—

(1) the fair market value of such property (determined without regard to any restriction other than a restriction which by its terms will never lapse) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over

(2) the amount (if any) paid for such property, shall be included in the gross income of the person who performed such services in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such property in an arm's length transaction before his rights in such property become transferable or not subject to a substantial risk of forfeiture.

(b) Election to include in gross income in year of transfer

(1) In general

Any person who performs services in connection with which property is transferred to any person may elect to include in his gross income for the taxable year in which such property is transferred, the excess of—

(A) the fair market value of such property at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), over

(B) the amount (if any) paid for such property.

If such election is made, subsection (a) shall not apply with respect to the transfer of such property, and if such property is subsequently forfeited, no deduction shall be allowed in respect of such forfeiture.

(2) Election

An election under paragraph (1) with respect to any transfer of property shall be made in

such manner as the Secretary prescribes and shall be made not later than 30 days after the date of such transfer. Such election may not be revoked except with the consent of the Secretary.

(c) Special rules

For purposes of this section—

(1) Substantial risk of forfeiture

The rights of a person in property are subject to a substantial risk of forfeiture if such person's rights to full enjoyment of such property are conditioned upon the future performance of substantial services by any individual.

(2) Transferability of property

The rights of a person in property are transferable only if the rights in such property of any transferee are not subject to a substantial risk of forfeiture.

(3) Sales which may give rise to suit under section 16(b) of the Securities Exchange Act of 1934

So long as the sale of property at a profit could subject a person to suit under section 16(b) of the Securities Exchange Act of 1934, such person's rights in such property are—

(A) subject to a substantial risk of forfeiture, and

(B) not transferable.

(4) For purposes of determining an individual's basis in property transferred in connection with the performance of services, rules similar to the rules of section 72(w) shall apply.

(d) Certain restrictions which will never lapse

(1) Valuation

In the case of property subject to a restriction which by its terms will never lapse, and which allows the transferee to sell such property only at a price determined under a formula, the price so determined shall be deemed to be the fair market value of the property unless established to the contrary by the Secretary, and the burden of proof shall be on the Secretary with respect to such value.

(2) Cancellation

If, in the case of property subject to a restriction which by its terms will never lapse, the restriction is canceled, then, unless the taxpayer establishes—

(A) that such cancellation was not compensatory, and

(B) that the person, if any, who would be allowed a deduction if the cancellation were treated as compensatory, will treat the transaction as not compensatory, as evidenced in such manner as the Secretary shall prescribe by regulations,

the excess of the fair market value of the property (computed without regard to the restrictions) at the time of cancellation over the sum of—

(C) the fair market value of such property (computed by taking the restriction into account) immediately before the cancellation, and

(D) the amount, if any, paid for the cancellation,

shall be treated as compensation for the taxable year in which such cancellation occurs.

(e) Applicability of section

This section shall not apply to—

(1) a transaction to which section 421 applies,

(2) a transfer to or from a trust described in section 401(a) or a transfer under an annuity plan which meets the requirements of section 404(a)(2),

(3) the transfer of an option without a readily ascertainable fair market value,

(4) the transfer of property pursuant to the exercise of an option with a readily ascertainable fair market value at the date of grant, or

(5) group-term life insurance to which section 79 applies.

(f) Holding period

In determining the period for which the taxpayer has held property to which subsection (a) applies, there shall be included only the period beginning at the first time his rights in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier.

(g) Certain exchanges

If property to which subsection (a) applies is exchanged for property subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject, and if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applied to such exchange, or if such exchange was pursuant to the exercise of a conversion privilege—

(1) such exchange shall be disregarded for purposes of subsection (a), and

(2) the property received shall be treated as property to which subsection (a) applies.

(h) Deduction by employer

In the case of a transfer of property to which this section applies or a cancellation of a restriction described in subsection (d), there shall be allowed as a deduction under section 162, to the person for whom were performed the services in connection with which such property was transferred, an amount equal to the amount included under subsection (a), (b), or (d)(2) in the gross income of the person who performed such services. Such deduction shall be allowed for the taxable year of such person in which or with which ends the taxable year in which such amount is included in the gross income of the person who performed such services.

(Added Pub. L. 91–172, title III, §321(a), Dec. 30, 1969, 83 Stat. 588; amended Pub. L. 94–455, title XIX, §§1901(a)(15), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1765, 1834; Pub. L. 97–34, title II, §252(a), Aug. 13, 1981, 95 Stat. 260; Pub. L. 97–448, title I, §102(k)(1), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 98–369, div. A, title II, §223(c), July 18, 1984, 98 Stat. 775; Pub. L. 99–514, title XVIII, §1827(e), Oct. 22, 1986, 100 Stat. 2851; Pub. L. 101–508, title XI, §11801(a)(5), Nov. 5, 1990, 104 Stat. 1388–520; Pub. L. 108–357, title VIII, §906(b), Oct. 22, 2004, 118 Stat. 1654.)

REFERENCES IN TEXT

Section 16(b) of the Securities Exchange Act of 1934, referred to in subsec. (c)(3), is classified to section 78p(b) of Title 15, Commerce and Trade.

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108–357 added par. (4).

1990—Subsec. (i). Pub. L. 101–508 struck out subsec. (i) ''Transition rules'' which read as follows: ''This section shall apply to property transferred after June 30, 1969, except that this section shall not apply to property transferred—

''(1) pursuant to a binding written contract entered into before April 22, 1969,

''(2) upon the exercise of an option granted before April 22, 1969,

''(3) before May 1, 1970, pursuant to a written plan adopted and approved before July 1, 1969,

''(4) before January 1, 1973, upon the exercise of an option granted pursuant to a binding written contract entered into before April 22, 1969, between a corporation and the transferor requiring the transferor to grant options to employees of such corporation (or a subsidiary of such corporation) to purchase a determinable number of shares of stock of such corporation, but only if the transferee was an employee of such corporation (or a subsidiary of such corporation) on or before April 22, 1969, or

''(5) in exchange for (or pursuant to the exercise of a conversion privilege contained in) property transferred before July 1, 1969, or for property to which this section does not apply (by reason of paragraphs (1), (2), (3), or (4)), if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, or if gain or loss is not otherwise required to be recognized upon the exercise of such conversion privilege, and if the property received in such exchange is subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject.''

1986—Subsec. (e)(5). Pub. L. 99–514 struck out ''the cost of'' before ''group-life insurance''.

1984—Subsec. (e)(5). Pub. L. 98–369 added par. (5).

1983—Subsec. (c)(3). Pub. L. 97–448 substituted ''Securities Exchange Act of 1934'' for ''Securities and Exchange Act of 1934'' in heading and text.

1981—Subsec. (c)(3). Pub. L. 97–34 added par. (3).

1976—Subsec. (b)(2). Pub. L. 94–455, § 1901(a)(15), struck out ''(or, if later, 30 days after the date of the enactment of the Tax Reform Act of 1969)'' after ''after the date of such transfer'', and § 1906(b)(13)(A), ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (d)(1), (2)(B). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to distributions on or after Oct. 22, 2004, see section 906(c) of Pub. L. 108–357, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 223(d)(1) of Pub. L. 98–369, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 252(c) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 102(k)(2), 96 Stat. 2374, provided that: ''The amendment made by subsection (a) [amending this section] and the provisions of subsection (b) [set out below] shall apply to transfers after December 31, 1981.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(15) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 321(d) of Pub. L. 91–172 provided that: ''The amendments made by subsections (a) and (c) [amending sections 402, 403, and 404 of this title] shall apply to taxable years ending after June 30, 1969. The amendments made by subsection (b) [enacting this section] shall apply with respect to contributions made and premiums paid after August 1, 1969.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICATION OF AMENDMENTS MADE BY SECTION 252 OF PUB. L. 97–34

Section 1879(p) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(q)(3), Nov. 10, 1988, 102 Stat. 3585, provided that:

''(1) Notwithstanding subsection (c) of section 252 of the Economic Recovery Tax Act of 1981 [section 252(c) of Pub. L. 97–34, set out above], the amendment made by subsection (a) of such section 252 [amending this section] (and the provisions of subsection (b) of such section 252 [set out below]) shall apply to any transfer of stock to any person if—

''(A) such transfer occurred in November or December of 1973 and was pursuant to the exercise of an option granted in November or December of 1971,

''(B) in December 1973 the corporation granting the option was acquired by another corporation in a transaction qualifying as a reorganization under section 368 of the Internal Revenue Code of 1954 [now 1986],

''(C) the fair market value (as of July 1, 1974) of the stock received by such person in the reorganization in exchange for the stock transferred to him pursuant to the exercise of such option was less than 50 percent of the fair market value of the stock so received (as of December 4, 1973),

''(D) in 1975 or 1976 such person sold substantially all of the stock received in such reorganization, and

''(E) such person makes an election under this section at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

''(2) LIMITATION ON AMOUNT OF BENEFIT.—Paragraph (1) shall not apply to transfers with respect to any employee to the extent that the application of paragraph (1) with respect to such employee would (but for this paragraph) result in a reduction in liability for income tax with respect to such employee for all taxable years in excess of $100,000 (determined without regard to any interest).

''(3) STATUTE OF LIMITATIONS.—

''(A) OVERPAYMENTS.—If refund or credit of any overpayment of tax resulting from the application of paragraph (1) is prevented on the date of the enactment of this Act [Oct. 22, 1986] (or at any time within 6 months after such date of enactment) by the operation of any law or rule of law, refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 6-month period.

''(B) DEFICIENCIES.—If the assessment of any deficiency of tax resulting from the application of paragraph (1) is prevented on the date of the enactment of this Act [Oct. 22, 1986] (or at any time within 6 months after such date of enactment) by the operation of any law or rule of law, assessment of such deficiency (to the extent attributable to the application of paragraph (1)) may, nevertheless, be made within such 6-month period.''

TIME FOR MAKING CERTAIN SECTION 83(b) ELECTIONS

Section 556 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1855(b), Oct. 22, 1986, 100 Stat. 2095, 2882, provided that: ''In the case of any transfer of property in connection with the performance of services on or before November 18, 1982, the election permitted by section 83(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] may be made, notwithstanding paragraph (2) of such section 83(b), with the income tax return for any taxable year ending after July 18, 1984, and beginning before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986 if—

''(1) the amount paid for such property was not less than its fair market value at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), and

''(2) the election is consented to by the person transferring such property.

The election shall contain that information required by the Secretary of the Treasury or his delegate for elections permitted by such section 83(b). The period for assessing any tax attributable to a transfer of property which is the subject of an election made pursuant to this section shall not expire before the date which is 3 years after the date such election was made.''

PROPERTY SUBJECT TO TRANSFER RESTRICTIONS TO COMPLY WITH ''POOLING-OF-INTERESTS ACCOUNTING'' RULES

Section 252(b) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided, effective with respect to taxable years ending after Dec. 31, 1981, that: ''For purposes of section 83 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], property is subject to substantial risk of forfeiture and is not transferable so long as such property is subject to a restriction on transfer to comply with the ''Pooling-of-Interests Accounting'' rules set forth in Accounting Series Release Numbered 130 ((10/5/72) 37 FR 20937; 17 CFR 211.130) and Accounting Series Release Numbered 135 ((1/18/73) 38 FR 1734; 17 CFR 211.135).''

§ 84. Transfer of appreciated property to political organization

(a) General rule

If—

(1) any person transfers property to a political organization, and

(2) the fair market value of such property exceeds its adjusted basis,

then for purposes of this chapter the transferor shall be treated as having sold such property to the political organization on the date of the transfer, and the transferor shall be treated as having realized an amount equal to the fair market value of such property on such date.

(b) Basis of property

In the case of a transfer of property to a political organization to which subsection (a) applies, the basis of such property in the hands of the political organization shall be the same as it would be in the hands of the transferor, increased by the amount of gain recognized to the transferor by reason of such transfer.

(c) Political organization defined

For purposes of this section, the term ''political organization'' has the meaning given to such term by section 527(e)(1).

(Added Pub. L. 93–625, § 13(a)(1), Jan. 3, 1975, 88 Stat. 2120.)

EFFECTIVE DATE

Section 13(b) of Pub. L. 93–625 provided that: ''The amendments made by subsection (a) [enacting this section] shall apply to transfers made after May 7, 1974, in taxable years ending after such date.''

NONRECOGNITION OF GAIN OR LOSS WHERE ORGANIZATION SOLD CONTRIBUTED PROPERTY BEFORE AUGUST 2, 1973

Section 13(c) of Pub. L. 93–625 provided that in the case of the sale or exchange of property before Aug. 2, 1973, which was acquired by the exempt political organization by contribution, no gain or loss shall be recognized by such organization.

§ 85. Unemployment compensation

(a) General rule

In the case of an individual, gross income includes unemployment compensation.

(b) Unemployment compensation defined

For purposes of this section, the term ''unemployment compensation'' means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation.

(c) Special rule for 2009

In the case of any taxable year beginning in 2009, gross income shall not include so much of the unemployment compensation received by an individual as does not exceed $2,400.

(Added Pub. L. 95–600, title I, § 112(a), Nov. 6, 1978, 92 Stat. 2777; amended Pub. L. 97–34, title I, § 103(c)(1), Aug. 13, 1981, 95 Stat. 188; Pub. L. 97–248, title VI, § 611(a), Sept. 3, 1982, 96 Stat. 706; Pub. L. 98–21, title I, §§ 121(f)(1), 122(c)(2), Apr. 20, 1983, 97 Stat. 84, 87; Pub. L. 99–514, title I, § 121, Oct. 22, 1986, 100 Stat. 2109; Pub. L. 111–5, div. B, title I, § 1007(a), Feb. 17, 2009, 123 Stat. 317.)

AMENDMENTS

2009—Subsec. (c). Pub. L. 111–5 added subsec. (c).

1986—Subsec. (a). Pub. L. 99–514 substituted ''General rule'' for ''In general'' in heading and amended text generally. Prior to amendment, text read as follows: ''If the sum for the taxable year of the adjusted gross in-

come of the taxpayer (determined without regard to this section, section 86 and section 221) and the unemployment compensation exceeds the base amount, gross income for the taxable year includes unemployment compensation in an amount equal to the lesser of—

''(1) one-half of the amount of the excess of such sum over the base amount, or

''(2) the amount of the unemployment compensation.''

Subsecs. (b), (c). Pub. L. 99–514, in amending section generally, redesignated former subsec. (c) as (b) and struck out former subsec. (b), ''Base amount defined'', which read as follows: ''For purposes of this section, the term 'base amount' means—

''(1) except as provided in paragraphs (2) and (3), $12,000,

''(2) $18,000, in the case of a joint return under section 6013, or

''(3) zero, in the case of a taxpayer who—

''(A) is married at the close of the taxable year (within the meaning of section 143) but does not file a joint return for such year, and

''(B) does not live apart from his spouse at all times during the taxable year.''

1983—Subsec. (a). Pub. L. 98–21, §122(c)(2), struck out '', section 105(d),'' after ''section 86''.

Pub. L. 98–21, §121(f)(1), inserted ''section 86,'' after ''this section,''.

1982—Subsec. (b)(1). Pub. L. 97–248, §611(a)(1), substituted ''$12,000'' for ''$20,000''.

Subsec. (b)(2). Pub. L. 97–248, §611(a)(2), substituted ''$18,000'' for ''$25,000''.

1981—Subsec. (a). Pub. L. 97–34 substituted ''this section, section 105(d), and section 221'' for ''this section and without regard to section 105(d)'' in parenthetical provision preceding par. (1).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1007(b), Feb. 17, 2009, 123 Stat. 317, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to amounts received after Dec. 31, 1986, in taxable years ending after such date, see section 151(b) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 121(f)(1) of Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

Amendment by section 122(c)(2) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 611(b) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) COMPENSATION PAID AFTER 1981.—The amendments made by this section [amending this section] shall apply to payments of unemployment compensation made after December 31, 1981, in taxable years ending after such date.

''(2) NO ADDITION TO TAX FOR UNDERPAYMENT OF ESTIMATED TAX ATTRIBUTABLE TO APPLICATION OF AMENDMENTS TO COMPENSATION PAID IN 1982.—No addition to tax shall be made under section 6654 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to any underpayment to the extent such underpayment is attributable to unemployment compensation which is received during 1982 and which (but for the amendments made by subsection (a)) would not be includable in gross income.

''(3) SPECIAL RULE FOR FISCAL YEAR TAXPAYERS.—In the case of a taxable year (other than a calendar year) which includes January 1, 1982—

''(A) the amendments made by this section shall be applied by taking into account the entire amount of unemployment compensation received during such taxable year, but

''(B) the increase in gross income for such taxable year as a result of such amendments shall not exceed the amount of unemployment compensation paid after December 31, 1981.

''(4) UNEMPLOYMENT COMPENSATION DEFINED.—For purposes of this subsection, the term 'unemployment compensation' has the meaning given to such term by section 85(c) of the Internal Revenue Code of 1986.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 103(d) of Pub. L. 97–34, set out as a note under section 62 of this title.

EFFECTIVE DATE

Section 112(d) of Pub. L. 95–600, as amended by Pub. L. 98–369, div. A, title X, §1075(a), July 18, 1984, 98 Stat. 1053, provided that: ''The amendments made by this section [enacting this section and section 6050B of this title] shall apply to payments of unemployment compensation made after December 31, 1978, in taxable years ending after such date, except that such amendments shall not apply to payments made for weeks of unemployment ending before December 1, 1978.''

WAIVER OF STATUTE OF LIMITATIONS

Pub. L. 98–369, div. A, title X, §1075(b), July 18, 1984, 98 Stat. 1053, provided that: ''If credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) [amending section 112(d) of Pub. L. 95–600, set out as an Effective Date note above] is barred on the date of the enactment of this Act [July 18, 1984] or at any time during the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.''

§ 86. Social security and tier 1 railroad retirement benefits

(a) In general

(1) In general

Except as provided in paragraph (2), gross income for the taxable year of any taxpayer described in subsection (b) (notwithstanding section 207 of the Social Security Act) includes social security benefits in an amount equal to the lesser of—

(A) one-half of the social security benefits received during the taxable year, or

(B) one-half of the excess described in subsection (b)(1).

(2) Additional amount

In the case of a taxpayer with respect to whom the amount determined under subsection (b)(1)(A) exceeds the adjusted base amount, the amount included in gross income under this section shall be equal to the lesser of—

(A) the sum of—

(i) 85 percent of such excess, plus

(ii) the lesser of the amount determined under paragraph (1) or an amount equal to one-half of the difference between the adjusted base amount and the base amount of the taxpayer, or

(B) 85 percent of the social security benefits received during the taxable year.

(b) Taxpayers to whom subsection (a) applies

(1) In general

A taxpayer is described in this subsection if—

(A) the sum of—

(i) the modified adjusted gross income of the taxpayer for the taxable year, plus

(ii) one-half of the social security benefits received during the taxable year, exceeds

(B) the base amount.

(2) Modified adjusted gross income

For purposes of this subsection, the term ''modified adjusted gross income'' means adjusted gross income—

(A) determined without regard to this section and sections 135, 137, 199, 221, 222, 911, 931, and 933, and

(B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

(c) Base amount and adjusted base amount

For purposes of this section—

(1) Base amount

The term ''base amount'' means—

(A) except as otherwise provided in this paragraph, $25,000,

(B) $32,000 in the case of a joint return, and

(C) zero in the case of a taxpayer who—

(i) is married as of the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

(ii) does not live apart from his spouse at all times during the taxable year.

(2) Adjusted base amount

The term ''adjusted base amount'' means—

(A) except as otherwise provided in this paragraph, $34,000,

(B) $44,000 in the case of a joint return, and

(C) zero in the case of a taxpayer described in paragraph (1)(C).

(d) Social security benefit

(1) In general

For purposes of this section, the term ''social security benefit'' means any amount received by the taxpayer by reason of entitlement to—

(A) a monthly benefit under title II of the Social Security Act, or

(B) a tier 1 railroad retirement benefit.

(2) Adjustment for repayments during year

(A) In general

For purposes of this section, the amount of social security benefits received during any taxable year shall be reduced by any repayment made by the taxpayer during the taxable year of a social security benefit previously received by the taxpayer (whether or not such benefit was received during the taxable year).

(B) Denial of deduction

If (but for this subparagraph) any portion of the repayments referred to in subparagraph (A) would have been allowable as a deduction for the taxable year under section 165, such portion shall be allowable as a deduction only to the extent it exceeds the social security benefits received by the taxpayer during the taxable year (and not repaid during such taxable year).

(3) Workmen's compensation benefits substituted for social security benefits

For purposes of this section, if, by reason of section 224 of the Social Security Act (or by reason of section 3(a)(1) of the Railroad Retirement Act of 1974), any social security benefit is reduced by reason of the receipt of a benefit under a workmen's compensation act, the term ''social security benefit'' includes that portion of such benefit received under the workmen's compensation act which equals such reduction.

(4) Tier 1 railroad retirement benefit

For purposes of paragraph (1), the term ''tier 1 railroad retirement benefit'' means—

(A) the amount of the annuity under the Railroad Retirement Act of 1974 equal to the amount of the benefit to which the taxpayer would have been entitled under the Social Security Act if all of the service after December 31, 1936, of the employee (on whose employment record the annuity is being paid) had been included in the term ''employment'' as defined in the Social Security Act, and

(B) a monthly annuity amount under section 3(f)(3) of the Railroad Retirement Act of 1974.

(5) Effect of early delivery of benefit checks

For purposes of subsection (a), in any case where section 708 of the Social Security Act causes social security benefit checks to be delivered before the end of the calendar month for which they are issued, the benefits involved shall be deemed to have been received in the succeeding calendar month.

(e) Limitation on amount included where taxpayer receives lump-sum payment

(1) Limitation

If—

(A) any portion of a lump-sum payment of social security benefits received during the taxable year is attributable to prior taxable years, and

(B) the taxpayer makes an election under this subsection for the taxable year,

then the amount included in gross income under this section for the taxable year by reason of the receipt of such portion shall not exceed the sum of the increases in gross income under this chapter for prior taxable years which would result

solely from taking into account such portion in the taxable years to which it is attributable.

(2) Special rules

(A) Year to which benefit attributable

For purposes of this subsection, a social security benefit is attributable to a taxable year if the generally applicable payment date for such benefit occurred during such taxable year.

(B) Election

An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such election, once made, may be revoked only with the consent of the Secretary.

(f) Treatment as pension or annuity for certain purposes

For purposes of—

(1) section 22(c)(3)(A) (relating to reduction for amounts received as pension or annuity),

(2) section 32(c)(2) (defining earned income),

(3) section 219(f)(1) (defining compensation), and

(4) section 911(b)(1) (defining foreign earned income),

any social security benefit shall be treated as an amount received as a pension or annuity.

(Added and amended Pub. L. 98–21, title I, §121(a), title III, §335(b)(2)(A), Apr. 20, 1983, 97 Stat. 80, 130; Pub. L. 98–76, title II, §224(d), Aug. 12, 1983, 97 Stat. 424; Pub. L. 98–369, div. A, title IV, §474(r)(2), div. B, title VI, §2661(*o*)(1), July 18, 1984, 98 Stat. 839, 1158; Pub. L. 99–272, title XII, §12111(b), title XIII, §13204(a), Apr. 7, 1986, 100 Stat. 287, 313; Pub. L. 99–514, title I, §131(b)(2), title XIII, §1301(j)(8), title XVIII, §1847(b)(2), Oct. 22, 1986, 100 Stat. 2113, 2658, 2856; Pub. L. 100–647, title I, §1001(e), title VI, §6009(c)(1), Nov. 10, 1988, 102 Stat. 3351, 3690; Pub. L. 103–66, title XIII, §13215(a), (b), Aug. 10, 1993, 107 Stat. 475, 476; Pub. L. 103–296, title III, §309(d), Aug. 15, 1994, 108 Stat. 1523; Pub. L. 104–188, title I, §§1704(t)(3), 1807(c)(2), Aug. 20, 1996, 110 Stat. 1887, 1902; Pub. L. 105–277, div. J, title IV, §4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title IV, §431(c)(1), June 7, 2001, 115 Stat. 68; Pub. L. 108–357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428.)

AMENDMENT OF SECTION

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

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1) and (d)(1)(A), (3), (4)(A), (5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§401 et seq.) of Title 42. Sections 207, 224, and 708 of the Act are classified to sections 407, 424a, and 909 of Title 42, respectively. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (d)(3), (4), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Section 3(a)(1), (f)(3) of the Act is classified to section 231b(a)(1), (f)(3) of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

PRIOR PROVISIONS

A prior section 86 was renumbered section 87 of this title.

AMENDMENTS

2004—Subsec. (b)(2)(A). Pub. L. 108–357 inserted ''199,'' before ''221''.

2001—Subsec. (b)(2)(A). Pub. L. 107–16, §§431(c)(1), 901, temporarily inserted ''222,'' after ''221,''. See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(2)(A). Pub. L. 105–277 inserted ''221,'' after ''137,''.

1996—Subsec. (b)(2). Pub. L. 104–188, §1704(t)(3), substituted ''means adjusted'' for ''means adusted'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 104–188, §1807(c)(2), inserted ''137,'' before ''911''.

1994—Subsec. (d)(1). Pub. L. 103–296 struck out at end ''For purposes of the preceding sentence, the amount received by any taxpayer shall be determined as if the Social Security Act did not contain section 203(i) thereof.''

1993—Subsec. (a). Pub. L. 103–66, §13215(a), designated existing provisions as par. (1), inserted par. (1) heading, substituted ''Except as provided in paragraph (2), gross'' for ''Gross'', redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (c). Pub. L. 103–66, §13215(b), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'base amount' means—

''(1) except as otherwise provided in this subsection, $25,000,

''(2) $32,000, in the case of a joint return, and

''(3) zero, in the case of a taxpayer who—

''(A) is married at the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

''(B) does not live apart from his spouse at all times during the taxable year.''

1988—Subsec. (b)(2)(A). Pub. L. 100–647, §6009(c)(1), inserted ''135,'' before ''911''.

Subsec. (f)(4), (5). Pub. L. 100–647, §1001(e), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''section 221(b)(2) (defining earned income), and''.

1986—Subsec. (b)(2)(A). Pub. L. 99–514, §131(b)(2), substituted ''sections'' for ''sections 221,''.

Subsec. (c)(3)(A). Pub. L. 99–514, §1301(j)(8), substituted ''section 7703'' for ''section 143''.

Subsec. (d)(4). Pub. L. 99–272, §13204(a), in amending par. (4) generally, designated existing provisions as introductory clause of par. (4), struck out ''a monthly benefit under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974'', and added cls. (A) and (B).

Subsec. (d)(5). Pub. L. 99–272, §12111(b), added par. (5).

Subsec. (f)(1). Pub. L. 99–514, §1847(b)(2), substituted ''section 22(c)(3)(A)'' for ''section 37(c)(3)(A)''.

1984—Subsec. (f)(1). Pub. L. 98–369, §2661(*o*)(1), added par. (1). Former par. (1) redesignated par. (2).

Pub. L. 98–369, §474(r)(2), substituted ''section 32(c)(2)'' for ''section 43(c)(2)''.

Subsec. (f)(2)–(5). Pub. L. 98–369, §2661(*o*)(1), redesignated pars. (1) to (4) as (2) to (5), respectively.

1983—Subsec. (a). Pub. L. 98–21, §335(b)(2)(A), inserted ''(notwithstanding section 207 of the Social Security Act)''.

Subsec. (d)(4). Pub. L. 98–76 inserted ''3(f)(3),'' after ''3(a),''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of

Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title IV, §4003(*l*), Oct. 21, 1998, 112 Stat. 2681–910, provided that: ''The amendments made by this section [amending this section and sections 135, 137, 163, 172, 219, 221, 264, 351, 368, 469, 954, 2001, 6311, 6404, and 9510 of this title and amending provisions set out as a note under section 7508A of this title] shall take effect as if included in the provisions of the 1997 Act [Pub. L. 105–34] to which they relate.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1807(c)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 36C of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 309(e)(2) of Pub. L. 103–296 provided that: ''The amendment made by subsection (d) [amending this section] shall apply with respect to benefits received after December 31, 1995, in taxable years ending after such date.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13215(d) of Pub. L. 103–66 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(e) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6009(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [enacting section 135 of this title, amending this section and sections 219 and 469 of this title, and renumbering former section 135 as section 136 of this title] shall apply to taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 131(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311–1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1847(b)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 12111(b) of Pub. L. 99–272 applicable with respect to benefit checks issued for months ending after Apr. 7, 1986, see section 12111(c) of Pub. L. 99–272, set out as a note under section 909 of Title 42, The Public Health and Welfare.

Section 13204(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any monthly benefit for which the generally applicable payment date is after December 31, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(2) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 2661 of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for portions of lump-sum payments received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 227(b) of Pub. L. 98–76 set out as a note under section 72 of this title.

EFFECTIVE DATE

Section 121(g) of Pub. L. 98–21, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 6050F of this title, amending sections 85, 128, 861, 871, 1441, and 6103 of this title and section 3413 of Title 12, Banks and Banking, and enacting provisions set out as a note under section 401 of Title 42, The Public Health and Welfare] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

''(2) TREATMENT OF CERTAIN LUMP-SUM PAYMENTS RECEIVED AFTER DECEMBER 31, 1983.—The amendments made by this section shall not apply to any portion of a lump-sum payment of social security benefits (as defined in section 86(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) received after December 31, 1983, if the generally applicable payment date for such portion was before January 1, 1984.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 87. Alcohol and biodiesel fuels credits

Gross income includes—

(1) the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a), and

(2) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40A(a).

(Added Pub. L. 96–223, title II, §232(c)(1), Apr. 2, 1980, 94 Stat. 276, §86; renumbered §87, Pub. L. 98–21, title I, §121(a), Apr. 20, 1983, 97 Stat. 80; amended Pub. L. 98–369, div. A, title IV, §474(r)(3), July 18, 1984, 98 Stat. 839; Pub. L. 108–357, title III, §302(c)(1)(A), Oct. 22, 2004, 118 Stat. 1465.)

AMENDMENTS

2004—Pub. L. 108–357 amended section catchline and text generally. Prior to amendment, text read as follows: ''Gross income includes the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a).''

1984—Pub. L. 98–369 amended section generally, substituting ''the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a)'' for ''an amount equal to the amount of the credit allowable to the taxpayer under section 44E for the taxable year (determined without regard to subsection (e) thereof)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE

Section applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as a note under section 40 of this title.

§ 88. Certain amounts with respect to nuclear decommissioning costs

In the case of any taxpayer who is required to include the amount of any nuclear decommissioning costs in the taxpayer's cost of service for ratemaking purposes, there shall be includible in the gross income of such taxpayer the amount so included for any taxable year.

(Added Pub. L. 98–369, div. A, title I, § 91(f)(1), July 18, 1984, 98 Stat. 607; amended Pub. L. 99–514, title XVIII, § 1807(a)(4)(E)(vii), Oct. 22, 1986, 100 Stat. 2813.)

AMENDMENTS

1986—Pub. L. 99–514 substituted ''for ratemaking purposes'' for ''of ratemaking purposes''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective July 18, 1984, with respect to taxable years ending after such date, see section 91(g)(5) of Pub. L. 98–369, as amended, set out as an Effective Date of 1984 Amendment note under section 461 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 89. Repealed. Pub. L. 101–140, title II, § 202(a), Nov. 8, 1989, 103 Stat. 830]

Section, added Pub. L. 99–514, title XI, § 1151(a), Oct. 22, 1986, 100 Stat. 2494; amended Pub. L. 100–647, title I, § 1011B(a)(1)–(9), (21), (28), (29), (34), title III, § 3021(a)(1)(A), (B), (2)(A), (3)–(9), (11)–(13)(A), (b)(2)(B), (3), title VI, § 6051(a), Nov. 10, 1988, 102 Stat. 3483–3485, 3487, 3488, 3625–3632, 3695, related to nondiscrimination rules regarding benefits provided under employee benefit plans.

EFFECTIVE DATE OF REPEAL

Section 202(c) of Pub. L. 101–140 provided that: ''The amendments made by this section [repealing this section] shall take effect as if included in section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see section 1151(k) set out as a note under section 79 of this title].''

NONENFORCEMENT OF SECTION FOR FISCAL YEAR 1990

Pub. L. 101–136, title V, § 528, Nov. 3, 1989, 103 Stat. 816, provided that: ''No monies appropriated by this Act [see Tables for classification] may be used to implement or enforce section 1151 of the Tax Reform Act of 1986 or the amendments made by such section [section 1151 of Pub. L. 99–514, which enacted section 89 of this title, amended sections 79, 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 3121, 3306, 6039D, and 6652 of this title and section 409 of Title 42, The Public Health and Welfare, and enacted provisions set out as a note under section 89 of this title].''

TRANSITIONAL PROVISIONS

Section 3021(c) of Pub. L. 100–647 provided for the first issue of valuation rules, the interim impact on former employees, the meeting of the written requirement for covered plans in connection with implementation of section 89 of the Code, and the issuance by Nov. 15, 1988, of rules necessary to carry out section 89, prior to repeal by Pub. L. 101–140, title II, § 203(a)(7), Nov. 8, 1989, 103 Stat. 831.

PART-TIME EMPLOYEE DEFINED FOR PURPOSES OF SUBSECTION (f)

Section 6070 of Pub. L. 100–647 increased the number of employees who would be excluded from consideration under this section during plan years 1989 and 1990, in the case of a plan maintained by an employer which employs fewer than 10 employees on a normal working day during a plan year, prior to repeal by Pub. L. 101–140, title II, § 203(a)(7), Nov. 8, 1989, 103 Stat. 831.

§ 90. Illegal Federal irrigation subsidies

(a) General rule

Gross income shall include an amount equal to any illegal Federal irrigation subsidy received by the taxpayer during the taxable year.

(b) Illegal Federal irrigation subsidy

For purposes of this section—

(1) In general

The term ''illegal Federal irrigation subsidy'' means the excess (if any) of—

(A) the amount required to be paid for any Federal irrigation water delivered to the taxpayer during the taxpayer year, over

(B) the amount paid for such water.

(2) Federal irrigation water

The term ''Federal irrigation water'' means any water made available for agricultural purposes from the operation of any reclamation or irrigation project referred to in paragraph (8) of section 202 of the Reclamation Reform Act of 1982.

(c) Denial of deduction

No deduction shall be allowed under this subtitle by reason of any inclusion in gross income under subsection (a).

(Added Pub. L. 100–203, title X, §10611(a), Dec. 22, 1987, 101 Stat. 1330–451.)

REFERENCES IN TEXT

Section 202 of the Reclamation Reform Act of 1982, referred to in subsec. (b)(2), is classified to section 390bb of Title 43, Public Lands.

EFFECTIVE DATE

Section 10611(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting this section] shall apply to water delivered to the taxpayer in months beginning after the date of the enactment of this Act [Dec. 22, 1987].''

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

Sec.

101. Certain death payments.[1]
102. Gifts and inheritances.
103. Interest on State and local bonds.
[103A. Repealed.]
104. Compensation for injuries or sickness.
105. Amounts received under accident and health plans.
106. Contributions by employer to accident and health plans.
107. Rental value of parsonages.
108. Income from discharge of indebtedness.
109. Improvements by lessee on lessor's property.
110. Qualified lessee construction allowances for short-term leases.
111. Recovery of tax benefit items.
112. Certain combat zone compensation of members of the Armed Forces.
[113, 114. Repealed.]
115. Income of States, municipalities, etc.
[116. Repealed.]
117. Qualified scholarships.
118. Contributions to the capital of a corporation.
119. Meals or lodging furnished for convenience of employer.[1]
120. Amounts received under qualified group legal services plans.
121. Exclusion of gain from sale of principal residence.
122. Certain reduced uniformed services retirement pay.
123. Amounts received under insurance contracts for certain living expenses.
[124. Repealed.]
125. Cafeteria plans.
126. Certain cost-sharing payments.
127. Educational assistance programs.
[128. Repealed.]
129. Dependent care assistance programs.[2]
130. Certain personal injury liability assignments.
131. Certain foster care payments.
132. Certain fringe benefits.
[133. Repealed.]
134. Certain military benefits.
135. Income from United States savings bonds used to pay higher education tuition and fees.
136. Energy conservation subsidies provided by public utilities.
137. Adoption assistance programs.
138. Medicare Advantage MSA.
139. Disaster relief payments.
139A. Federal subsidies for prescription drug plans.
139B. Benefits provided to volunteer firefighters and emergency medical responders.
139C. COBRA premium assistance.
139D. Free choice vouchers.[3]
139D. Indian health care benefits.[3]
140. Cross references to other Acts.

AMENDMENTS

2010—Pub. L. 111–148, title X, §10108(f)(2), Mar. 23, 2010, 124 Stat. 913, added item 139D relating to free choice vouchers.

Pub. L. 111–148, title IX, §9021(b), Mar. 23, 2010, 124 Stat. 874, added item 139D relating to Indian health care benefits.

2009—Pub. L. 111–5, div. B, title III, §3001(a)(15)(B), Feb. 17, 2009, 123 Stat. 465, added item 139C.

2007—Pub. L. 110–142, §5(b), Dec. 20, 2007, 121 Stat. 1806, added item 139B.

2004—Pub. L. 108–357, title I, §101(b)(3), Oct. 22, 2004, 118 Stat. 1423, struck out item 114 ''Extraterritorial income''.

Pub. L. 108–311, title IV, §408(a)(5)(G), Oct. 4, 2004, 118 Stat. 1191, substituted ''Medicare Advantage MSA'' for ''Medicare+Choice MSA'' in item 138.

2003—Pub. L. 108–173, title XII, §1202(c), Dec. 8, 2003, 117 Stat. 2480, added item 139A.

2002—Pub. L. 107–134, title I, §111(b), Jan. 23, 2002, 115 Stat. 2433, added item 139 and redesignated former item 139 as 140.

2000—Pub. L. 106–519, §4(6), Nov. 15, 2000, 114 Stat. 2433, added item 114.

1997—Pub. L. 105–34, title III, §312(d)(14), title XII, §1213(d), Aug. 5, 1997, 111 Stat. 841, 1001, added item 110 and substituted ''Exclusion of gain from sale of principal residence'' for ''One-time exclusion of gain from sale of principal residence by individual who has attained age 55'' in item 121.

Pub. L. 105–33, title IV, §4006(b)(3), Aug. 5, 1997, 111 Stat. 334, added items 138 and 139 and struck out former item 138 ''Cross reference to other Acts''.

1996—Pub. L. 104–188, title I, §§1602(b)(8), 1704(t)(4)(B), 1807(c)(7), Aug. 20, 1996, 110 Stat. 1834, 1887, 1902, substituted ''combat zone compensation'' for ''combat pay'' in item 112, struck out item 133 ''Interest on certain loans used to acquire employer securities'', added items 137 and 138, and struck out former item 137 ''Cross reference to other Acts''.

1992—Pub. L. 102–486, title XIX, §1912(b), Oct. 24, 1992, 106 Stat. 3016, added items 136 and 137 and struck out former item 136 ''Cross references to other Acts''.

1990—Pub. L. 101–508, title XI, §11801(b)(2), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 110 ''Income taxes paid by lessee corporation'', item 113 ''Mustering-out payments for members of the Armed Forces'', item 114 ''Sports programs conducted for the American National Red Cross'', item 124 ''Qualified transportation provided by employer'', and item 128 ''Interest on certain savings certificates''.

1988—Pub. L. 100–647, title I, §1013(a)(37), title VI, §6009(c)(4), Nov. 10, 1988, 102 Stat. 3544, 3690, substituted ''Interest on State and local bonds'' for ''Interest on certain governmental obligations'' in item 103, struck out item 103A ''Mortgage subsidy bonds'', added item 135 and redesignated former item 135 ''Cross references to other Acts'' as item 136.

1986—Pub. L. 99–514, title I, §123(b)(4), title VI, §612(b)(8), title XI, §1168(b), Oct. 22, 1986, 100 Stat. 2113, 2251, 2512, struck out item 116 ''Partial exclusion of dividends received by individuals'', substituted in item 117 ''Qualified scholarships'' for ''Scholarships and fellowship grants'', added item 134, and redesignated former item 134 as 135.

1984—Pub. L. 98–369, div. A, title I, §171(b), title V, §§531(a)(2), 543(b), July 18, 1984, 98 Stat. 699, 881, 892, substituted ''Recovery of tax benefit items'' for ''Recovery of bad debts, prior taxes, and delinquency amounts'' in

[1] So in original. Does not conform to section catchline.

[2] Editorially supplied. Section 129 added by Pub. L. 97–34 without corresponding amendment of part analysis.

[3] So in original. Two sections 139D have been enacted.

item 111, added items 132 (relating to certain fringe benefits) and 133 (relating to interest on certain loans used to acquire employer securities), and redesignated former item 132 (relating to cross references to other Acts) as item 134.

Pub. L. 98–369, div. A, title I, § 16(a), July 18, 1984, 98 Stat. 505, repealed an amendment made by Pub. L. 97–34, § 302(c). See 1981 Amendment note below.

1983—Pub. L. 97–473, title I, § 101(b)(2), Jan. 14, 1983, 96 Stat. 2606, purported to strike out the item relating to section 130, and added items 130 (relating to certain personal injury liability assignments) and 131 (relating to cross references to other Acts).

Pub. L. 97–473, title I, § 102(b), Jan. 14, 1983, 96 Stat. 2607, struck out item 131 (relating to cross references to other Acts) and added items 131 (relating to certain foster care payments) and 132 (relating to cross references to other Acts).

1981—Pub. L. 97–34, title III, §§ 301(b)(1), 302(c)(1), (d)(1), Aug. 13, 1981, 95 Stat. 270, 272, 274, effective with regard to taxable years beginning after Sept. 30, 1981, redesignated item 128 ''Cross References to other Acts'' as 129 and added item 128 ''Interest on certain savings certificates'' and, section 302(c)(1), with regard to taxable years beginning after Dec. 31, 1984, provided that ''Partial exclusion of interest'' is substituted for ''Interest on certain savings certificates'' in item 128. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Pub. L. 96–499, title XI, § 1102(b), Dec. 5, 1980, 94 Stat. 2669, added item 103A.

Pub. L. 96–223, title IV, § 404(b)(1), Apr. 2, 1980, 94 Stat. 306, inserted ''and interest'' after ''dividends'' in item 116.

1978—Pub. L. 95–618, title II, § 242(b), Nov. 9, 1978, 92 Stat. 3194, redesignated former item 124 as 125 and added item 124.

Pub. L. 95–600, title I, §§ 134(b), 164(c), title IV, § 404(c)(3), title V, § 543(b), Nov. 6, 1978, 92 Stat. 2785, 2814, 2870, 2890, in item 121 substituted ''One-time exclusion of gain from sale of principal residence by individual who has attained age 55'' for ''Gain from sale of exchange of residence of individual who has attained age 65'', redesignated former item 124 as 128, and added items 125 to 127.

1976—Pub. L. 94–455, title XXI, § 2134(c), Oct. 4, 1976, 90 Stat. 1928, added item 120.

1969—Pub. L. 91–172, title IX, § 901(b), Dec. 30, 1969, 83 Stat. 709, redesignated former item 123 as 124, and added item 123.

1966—Pub. L. 89–365, § 1(a)(2), Mar. 8, 1966, 80 Stat. 32, redesignated former item 122 as 123, and added item 122.

1964—Pub. L. 88–272, title II, § 206(b)(2), Feb. 26, 1964, 78 Stat. 40, redesignated former item 121 as 122, and added item 121.

1958—Pub. L. 85–866, title I, § 3(b), Sept. 2, 1958, 72 Stat. 1607, struck out item 120 ''Statutory subsistence allowance received by police''.

NO FEDERAL INCOME TAX ON RESTITUTION RECEIVED BY VICTIMS OF THE NAZI REGIME OR THEIR HEIRS OR ESTATES

Pub. L. 107–16, title VIII, § 803, June 7, 2001, 115 Stat. 149, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, any excludable restitution payments received by an eligible individual (or the individual's heirs or estate) and any excludable interest—

''(1) shall not be included in gross income; and

''(2) shall not be taken into account for purposes of applying any provision of such Code which takes into account excludable income in computing adjusted gross income, including section 86 of such Code (relating to taxation of Social Security benefits).

For purposes of such Code, the basis of any property received by an eligible individual (or the individual's heirs or estate) as part of an excludable restitution payment shall be the fair market value of such property as of the time of the receipt.

''(b) ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'eligible individual' means a person who was persecuted on the basis of race, religion, physical or mental disability, or sexual orientation by Nazi Germany, any other Axis regime, or any other Nazi-controlled or Nazi-allied country.

''(c) EXCLUDABLE RESTITUTION PAYMENT.—For purposes of this section, the term 'excludable restitution payment' means any payment or distribution to an individual (or the individual's heirs or estate) which—

''(1) is payable by reason of the individual's status as an eligible individual, including any amount payable by any foreign country, the United States of America, or any other foreign or domestic entity, or a fund established by any such country or entity, any amount payable as a result of a final resolution of a legal action, and any amount payable under a law providing for payments or restitution of property;

''(2) constitutes the direct or indirect return of, or compensation or reparation for, assets stolen or hidden from, or otherwise lost to, the individual before, during, or immediately after World War II by reason of the individual's status as an eligible individual, including any proceeds of insurance under policies issued on eligible individuals by European insurance companies immediately before and during World War II; or

''(3) consists of interest which is payable as part of any payment or distribution described in paragraph (1) or (2).

''(d) EXCLUDABLE INTEREST.—For purposes of this section, the term 'excludable interest' means any interest earned by—

''(1) escrow accounts or settlement funds established pursuant to the settlement of the action entitled 'In re: Holocaust Victim Assets Litigation,' (E.D.N.Y.) C.A. No. 96–4849,

''(2) funds to benefit eligible individuals or their heirs created by the International Commission on Holocaust Insurance Claims as a result of the Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the Foundation 'Remembrance, Responsibility, and Future,' dated July 17, 2000, or

''(3) similar funds subject to the administration of the United States courts created to provide excludable restitution payments to eligible individuals (or eligible individuals' heirs or estates).

''(e) EFFECTIVE DATE.—

''(1) IN GENERAL.—This section shall apply to any amount received on or after January 1, 2000.

''(2) NO INFERENCE.—Nothing in this Act [see Tables for classification] shall be construed to create any inference with respect to the proper tax treatment of any amount received before January 1, 2000.''

§ 101. Certain death benefits

(a) Proceeds of life insurance contracts payable by reason of death

(1) General rule

Except as otherwise provided in paragraph (2), subsection (d), subsection (f), and subsection (j), gross income does not include amounts received (whether in a single sum or otherwise) under a life insurance contract, if such amounts are paid by reason of the death of the insured.

(2) Transfer for valuable consideration

In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance contract or any interest therein, the amount excluded from gross income by paragraph (1) shall not exceed an amount

equal to the sum of the actual value of such consideration and the premiums and other amounts subsequently paid by the transferee. The preceding sentence shall not apply in the case of such a transfer—

(A) if such contract or interest therein has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor, or

(B) if such transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer.

The term ''other amounts'' in the first sentence of this paragraph includes interest paid or accrued by the transferee on indebtedness with respect to such contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of section 264(a)(4).

[(b) Repealed. Pub. L. 104–188, title I, § 1402(a), Aug. 20, 1996, 110 Stat. 1789]

(c) Interest

If any amount excluded from gross income by subsection (a) is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(d) Payment of life insurance proceeds at a date later than death

(1) General rule

The amounts held by an insurer with respect to any beneficiary shall be prorated (in accordance with such regulations as may be prescribed by the Secretary) over the period or periods with respect to which such payments are to be made. There shall be excluded from the gross income of such beneficiary in the taxable year received any amount determined by such proration. Gross income includes, to the extent not excluded by the preceding sentence, amounts received under agreements to which this subsection applies.

(2) Amount held by an insurer

An amount held by an insurer with respect to any beneficiary shall mean an amount to which subsection (a) applies which is—

(A) held by any insurer under an agreement provided for in the life insurance contract, whether as an option or otherwise, to pay such amount on a date or dates later than the death of the insured, and

(B) equal to the value of such agreement to such beneficiary

(i) as of the date of death of the insured (as if any option exercised under the life insurance contract were exercised at such time), and

(ii) as discounted on the basis of the interest rate used by the insurer in calculating payments under the agreement and mortality tables prescribed by the Secretary.

(3) Application of subsection

This subsection shall not apply to any amount to which subsection (c) is applicable.

[(e) Repealed. Pub. L. 98–369, div. A, title IV, § 421(b)(2), July 18, 1984, 98 Stat. 794]

(f) Proceeds of flexible premium contracts issued before January 1, 1985 payable by reason of death

(1) In general

Any amount paid by reason of the death of the insured under a flexible premium life insurance contract issued before January 1, 1985 shall be excluded from gross income only if—

(A) under such contract—

(i) the sum of the premiums paid under such contract does not at any time exceed the guideline premium limitation as of such time, and

(ii) any amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) is not at any time less than the applicable percentage of the cash value of such contract at such time, or

(B) by the terms of such contract, the cash value of such contract may not at any time exceed the net single premium with respect to the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) at such time.

(2) Guideline premium limitation

For purposes of this subsection—

(A) Guideline premium limitation

The term ''guideline premium limitation'' means, as of any date, the greater of—

(i) the guideline single premium, or

(ii) the sum of the guideline level premiums to such date.

(B) Guideline single premium

The term ''guideline single premium'' means the premium at issue with respect to future benefits under the contract (without regard to any qualified additional benefit), and with respect to any charges for qualified additional benefits, at the time of a determination under subparagraph (A) or (E) and which is based on—

(i) the mortality and other charges guaranteed under the contract, and

(ii) interest at the greater of an annual effective rate of 6 percent or the minimum rate or rates guaranteed upon issue of the contract.

(C) Guideline level premium

The term ''guideline level premium'' means the level annual amount, payable over the longest period permitted under the contract (but ending not less than 20 years from date of issue or not later than age 95, if earlier), computed on the same basis as the guideline single premium, except that subparagraph (B)(ii) shall be applied by substituting ''4 percent'' for ''6 percent''.

(D) Computational rules

In computing the guideline single premium or guideline level premium under subparagraph (B) or (C)—

(i) the excess of the amount payable by reason of the death of the insured (deter-

mined without regard to any qualified additional benefit) over the cash value of the contract shall be deemed to be not greater than such excess at the time the contract was issued,

(ii) the maturity date shall be the latest maturity date permitted under the contract, but not less than 20 years after the date of issue or (if earlier) age 95, and

(iii) the amount of any endowment benefit (or sum of endowment benefits) shall be deemed not to exceed the least amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) at any time under the contract.

(E) Adjustments

The guideline single premium and guideline level premium shall be adjusted in the event of a change in the future benefits or any qualified additional benefit under the contract which was not reflected in any guideline single premiums or guideline level premium previously determined.

(3) Other definitions and special rules

For purposes of this subsection—

(A) Flexible premium life insurance contract

The terms ''flexible premium life insurance contract'' and ''contract'' mean a life insurance contract (including any qualified additional benefits) which provides for the payment of one or more premiums which are not fixed by the insurer as to both timing and amount. Such terms do not include that portion of any contract which is treated under State law as providing any annuity benefits other than as a settlement option.

(B) Premiums paid

The term ''premiums paid'' means the premiums paid under the contract less any amounts (other than amounts includible in gross income) to which section 72(e) applies. If, in order to comply with the requirements of paragraph (1)(A), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of a contract year—

(i) the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such year, and

(ii) notwithstanding the provisions of section 72(e), the amount of any interest so returned shall be includible in the gross income of the recipient.

(C) Applicable percentage

The term ''applicable percentage'' means—

(i) 140 percent in the case of an insured with an attained age at the beginning of the contract year of 40 or less, and

(ii) in the case of an insured with an attained age of more than 40 as of the beginning of the contract year, 140 percent reduced (but not below 105 percent) by one percent for each year in excess of 40.

(D) Cash value

The cash value of any contract shall be determined without regard to any deduction for any surrender charge or policy loan.

(E) Qualified additional benefits

The term ''qualified additional benefits'' means any—

(i) guaranteed insurability,

(ii) accidental death benefit,

(iii) family term coverage, or

(iv) waiver of premium.

(F) Premium payments not disqualifying contract

The payment of a premium which would result in the sum of the premiums paid exceeding the guideline premium limitation shall be disregarded for purposes of paragraph (1)(A)(i) if the amount of such premium does not exceed the amount necessary to prevent the termination of the contract without cash value on or before the end of the contract year.

(G) Net single premium

In computing the net single premium under paragraph (1)(B)—

(i) the mortality basis shall be that guaranteed under the contract (determined by reference to the most recent mortality table allowed under all State laws on the date of issuance),

(ii) interest shall be based on the greater of—

(I) an annual effective rate of 4 percent (3 percent for contracts issued before July 1, 1983), or

(II) the minimum rate or rates guaranteed upon issue of the contract, and

(iii) the computational rules of paragraph (2)(D) shall apply, except that the maturity date referred to in clause (ii) thereof shall not be earlier than age 95.

(H) Correction of errors

If the taxpayer establishes to the satisfaction of the Secretary that—

(i) the requirements described in paragraph (1) for any contract year was not satisfied due to reasonable error, and

(ii) reasonable steps are being taken to remedy the error,

the Secretary may waive the failure to satisfy such requirements.

(I) Regulations

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

(g) Treatment of certain accelerated death benefits

(1) In general

For purposes of this section, the following amounts shall be treated as an amount paid by reason of the death of an insured:

(A) Any amount received under a life insurance contract on the life of an insured who is a terminally ill individual.

(B) Any amount received under a life insurance contract on the life of an insured who is a chronically ill individual.

(2) Treatment of viatical settlements

(A) In general

If any portion of the death benefit under a life insurance contract on the life of an insured described in paragraph (1) is sold or assigned to a viatical settlement provider, the amount paid for the sale or assignment of such portion shall be treated as an amount paid under the life insurance contract by reason of the death of such insured.

(B) Viatical settlement provider

(i) In general

The term ''viatical settlement provider'' means any person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts on the lives of insureds described in paragraph (1) if—

(I) such person is licensed for such purposes (with respect to insureds described in the same subparagraph of paragraph (1) as the insured) in the State in which the insured resides, or

(II) in the case of an insured who resides in a State not requiring the licensing of such persons for such purposes with respect to such insured, such person meets the requirements of clause (ii) or (iii), whichever applies to such insured.

(ii) Terminally ill insureds

A person meets the requirements of this clause with respect to an insured who is a terminally ill individual if such person—

(I) meets the requirements of sections 8 and 9 of the Viatical Settlements Model Act of the National Association of Insurance Commissioners, and

(II) meets the requirements of the Model Regulations of the National Association of Insurance Commissioners (relating to standards for evaluation of reasonable payments) in determining amounts paid by such person in connection with such purchases or assignments.

(iii) Chronically ill insureds

A person meets the requirements of this clause with respect to an insured who is a chronically ill individual if such person—

(I) meets requirements similar to the requirements referred to in clause (ii)(I), and

(II) meets the standards (if any) of the National Association of Insurance Commissioners for evaluating the reasonableness of amounts paid by such person in connection with such purchases or assignments with respect to chronically ill individuals.

(3) Special rules for chronically ill insureds

In the case of an insured who is a chronically ill individual—

(A) In general

Paragraphs (1) and (2) shall not apply to any payment received for any period unless—

(i) such payment is for costs incurred by the payee (not compensated for by insurance or otherwise) for qualified long-term care services provided for the insured for such period, and

(ii) the terms of the contract giving rise to such payment satisfy—

(I) the requirements of section 7702B(b)(1)(B), and

(II) the requirements (if any) applicable under subparagraph (B).

For purposes of the preceding sentence, the rule of section 7702B(b)(2)(B) shall apply.

(B) Other requirements

The requirements applicable under this subparagraph are—

(i) those requirements of section 7702B(g) and section 4980C which the Secretary specifies as applying to such a purchase, assignment, or other arrangement,

(ii) standards adopted by the National Association of Insurance Commissioners which specifically apply to chronically ill individuals (and, if such standards are adopted, the analogous requirements specified under clause (i) shall cease to apply), and

(iii) standards adopted by the State in which the policyholder resides (and if such standards are adopted, the analogous requirements specified under clause (i) and (subject to section 4980C(f)) standards under clause (ii), shall cease to apply).

(C) Per diem payments

A payment shall not fail to be described in subparagraph (A) by reason of being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payment relates.

(D) Limitation on exclusion for periodic payments

For limitation on amount of periodic payments which are treated as described in paragraph (1), see section 7702B(d).

(4) Definitions

For purposes of this subsection—

(A) Terminally ill individual

The term ''terminally ill individual'' means an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification.

(B) Chronically ill individual

The term ''chronically ill individual'' has the meaning given such term by section 7702B(c)(2); except that such term shall not include a terminally ill individual.

(C) Qualified long-term care services

The term ''qualified long-term care services'' has the meaning given such term by section 7702B(c).

(D) Physician

The term ''physician'' has the meaning given to such term by section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)(1)).

(5) Exception for business-related policies

This subsection shall not apply in the case of any amount paid to any taxpayer other than the insured if such taxpayer has an insurable interest with respect to the life of the insured by reason of the insured being a director, officer, or employee of the taxpayer or by reason of the insured being financially interested in any trade or business carried on by the taxpayer.

(h) Survivor benefits attributable to service by a public safety officer who is killed in the line of duty

(1) In general

Gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) killed in the line of duty—

(A) if such annuity is provided, under a governmental plan which meets the requirements of section 401(a), to the spouse (or a former spouse) of the public safety officer or to a child of such officer; and

(B) to the extent such annuity is attributable to such officer's service as a public safety officer.

(2) Exceptions

Paragraph (1) shall not apply with respect to the death of any public safety officer if, as determined in accordance with the provisions of the Omnibus Crime Control and Safe Streets Act of 1968—

(A) the death was caused by the intentional misconduct of the officer or by such officer's intention to bring about such officer's death;

(B) the officer was voluntarily intoxicated (as defined in section 1204 of such Act) at the time of death;

(C) the officer was performing such officer's duties in a grossly negligent manner at the time of death; or

(D) the payment is to an individual whose actions were a substantial contributing factor to the death of the officer.

(i) Certain employee death benefits payable by reason of death of certain terrorist victims or astronauts

(1) In general

Gross income does not include amounts (whether in a single sum or otherwise) paid by an employer by reason of the death of an employee who is a specified terrorist victim (as defined in section 692(d)(4)).

(2) Limitation

(A) In general

Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to amounts which would have been payable after death if the individual had died other than as a specified terrorist victim (as so defined).

(B) Exception

Subparagraph (A) shall not apply to incidental death benefits paid from a plan described in section 401(a) and exempt from tax under section 501(a).

(3) Treatment of self-employed individuals

For purposes of paragraph (1), the term ''employee'' includes a self-employed individual (as defined in section 401(c)(1)).

(4) Relief with respect to astronauts

The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty.

(j) Treatment of certain employer-owned life insurance contracts

(1) General rule

In the case of an employer-owned life insurance contract, the amount excluded from gross income of an applicable policyholder by reason of paragraph (1) of subsection (a) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract.

(2) Exceptions

In the case of an employer-owned life insurance contract with respect to which the notice and consent requirements of paragraph (4) are met, paragraph (1) shall not apply to any of the following:

(A) Exceptions based on insured's status

Any amount received by reason of the death of an insured who, with respect to an applicable policyholder—

(i) was an employee at any time during the 12-month period before the insured's death, or

(ii) is, at the time the contract is issued—

(I) a director,

(II) a highly compensated employee within the meaning of section 414(q) (without regard to paragraph (1)(B)(ii) thereof), or

(III) a highly compensated individual within the meaning of section 105(h)(5), except that ''35 percent'' shall be substituted for ''25 percent'' in subparagraph (C) thereof.

(B) Exception for amounts paid to insured's heirs

Any amount received by reason of the death of an insured to the extent—

(i) the amount is paid to a member of the family (within the meaning of section 267(c)(4)) of the insured, any individual who is the designated beneficiary of the insured under the contract (other than the applicable policyholder), a trust established for the benefit of any such member of the family or designated beneficiary, or the estate of the insured, or

(ii) the amount is used to purchase an equity (or capital or profits) interest in the applicable policyholder from any person described in clause (i).

(3) Employer-owned life insurance contract

(A) In general

For purposes of this subsection, the term ''employer-owned life insurance contract'' means a life insurance contract which—

(i) is owned by a person engaged in a trade or business and under which such person (or a related person described in subparagraph (B)(ii)) is directly or indirectly a beneficiary under the contract, and

(ii) covers the life of an insured who is an employee with respect to the trade or business of the applicable policyholder on the date the contract is issued.

For purposes of the preceding sentence, if coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract.

(B) Applicable policyholder

For purposes of this subsection—

(i) In general

The term ''applicable policyholder'' means, with respect to any employer-owned life insurance contract, the person described in subparagraph (A)(i) which owns the contract.

(ii) Related persons

The term ''applicable policyholder'' includes any person which—

(I) bears a relationship to the person described in clause (i) which is specified in section 267(b) or 707(b)(1), or

(II) is engaged in trades or businesses with such person which are under common control (within the meaning of subsection (a) or (b) of section 52).

(4) Notice and consent requirements

The notice and consent requirements of this paragraph are met if, before the issuance of the contract, the employee—

(A) is notified in writing that the applicable policyholder intends to insure the employee's life and the maximum face amount for which the employee could be insured at the time the contract was issued,

(B) provides written consent to being insured under the contract and that such coverage may continue after the insured terminates employment, and

(C) is informed in writing that an applicable policyholder will be a beneficiary of any proceeds payable upon the death of the employee.

(5) Definitions

For purposes of this subsection—

(A) Employee

The term ''employee'' includes an officer, director, and highly compensated employee (within the meaning of section 414(q)).

(B) Insured

The term ''insured'' means, with respect to an employer-owned life insurance contract, an individual covered by the contract who is a United States citizen or resident. In the case of a contract covering the joint lives of 2 individuals, references to an insured include both of the individuals.

(Aug. 16, 1954, ch. 736, 68A Stat. 26; Pub. L. 85–866, title I, §23(d), Sept. 2, 1958, 72 Stat. 1622; Pub. L. 87–792, §7(c), Oct. 10, 1962, 76 Stat. 829; Pub. L. 89–365, §1(c), Mar. 8, 1966, 80 Stat. 32; Pub. L. 91–172, title I, §101(j)(l), Dec. 30, 1969, 83 Stat. 526; Pub. L. 93–406, title II, §§2005(c)(15), 2007(b)(3), Sept. 2, 1974, 88 Stat. 992, 994; Pub. L. 94–455, title XIX, §§1901(a)(16), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1765, 1834; Pub. L. 97–248, title II, §§239, 266(a), (b), Sept. 3, 1982, 96 Stat. 514, 547, 550; Pub. L. 98–369, div. A, title II, §221(b)(2), title IV, §421(b)(2), title VII, §713(e), July 18, 1984, 98 Stat. 772, 794, 958; Pub. L. 99–514, title X, §1001(a)–(c), Oct. 22, 1986, 100 Stat. 2387; Pub. L. 104–188, title I, §1402(a), (b)(1), Aug. 20, 1996, 110 Stat. 1789; Pub. L. 104–191, title III, §331(a), Aug. 21, 1996, 110 Stat. 2067; Pub. L. 105–34, title X, §1084(b)(2), title XV, §1528(a), Aug. 5, 1997, 111 Stat. 952, 1074; Pub. L. 107–134, title I, §102(a), Jan. 23, 2002, 115 Stat. 2429; Pub. L. 108–121, title I, §110(b)(1), (2), Nov. 11, 2003, 117 Stat. 1342; Pub. L. 109–280, title VIII, §863(a), (c)(1), Aug. 17, 2006, 120 Stat. 1021, 1024.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (h), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended. Section 1204 of the Act is classified to section 3796b of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of Title 42 and Tables.

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 805, 807, 812, and 832 of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, §863(c)(1), substituted ''subsection (f), and subsection (j)'' for ''and subsection (f)''.

Subsec. (j). Pub. L. 109–280, §863(a), added subsec. (j).

2003—Subsec. (i). Pub. L. 108–121, §110(b)(2), inserted ''or astronauts'' after ''victims'' in heading.

Subsec. (i)(4). Pub. L. 108–121, §110(b)(1), added par. (4).

2002—Subsec. (i). Pub. L. 107–134 added subsec. (i).

1997—Subsec. (a)(2). Pub. L. 105–34, §1084(b)(2), inserted at end ''The term 'other amounts' in the first sentence of this paragraph includes interest paid or accrued by the transferee on indebtedness with respect to such contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of section 264(a)(4).''

Subsec. (h). Pub. L. 105–34, §1528(a), added subsec. (h).

1996—Subsec. (b). Pub. L. 104–188, §1402(a), struck out subsec. (b) which related to employees' death benefits.

Subsec. (c). Pub. L. 104–188, §1402(b)(1), substituted ''subsection (a)'' for ''subsection (a) or (b)''.

Subsec. (g). Pub. L. 104–191 added subsec. (g).

1986—Subsec. (d)(1). Pub. L. 99–514, §1001(a), amended second sentence generally, which prior to amendment read as follows: ''There shall be excluded from the gross income of such beneficiary in the taxable year received—

''(A) any amount determined by such proration, and

''(B) in the case of the surviving spouse of the insured, that portion of the excess of the amounts received under one or more agreements specified in paragraph (2)(A) (whether or not payment of any part of such amounts is guaranteed by the insurer) over the amount determined in subparagraph (A) of this paragraph which is not greater than $1,000 with respect to any insured.''

Subsec. (d)(2)(B). Pub. L. 99–514, §1001(c)(2), substituted ''equal'' for ''is equal'' in introductory provisions.

Subsec. (d)(2)(B)(ii). Pub. L. 99–514, §1001(b), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as

follows: ''as discounted on the basis of the interest rate and mortality tables used by the insurer in calculating payments under the agreement.''

Subsec. (d)(3), (4). Pub. L. 99–514, § 1001(c)(1), redesignated par. (4) as (3), and struck out former par. (3), ''Surviving spouse'', which read as follows: ''For purposes of this subsection, the term 'surviving spouse' means the spouse of the insured as of the date of death, including a spouse legally separated but not under a decree of absolute divorce.''

1984—Subsec. (b)(3)(B). Pub. L. 98–369, § 713(e), amended subpar. (B) generally, substituting ''certain distributions'' for ''certain lump sum distributions'' in heading, substituting ''amount paid or distributed'' for ''lump sum distribution described in the second sentence of paragraph (2)(B)'' in introductory text and adding cls. (i) and (ii).

Subsec. (e). Pub. L. 98–369, § 421(b)(2), repealed subsec. (e) relating to payments of alimony or of income of an estate or trust in case of divorce, etc.

Subsec. (f). Pub. L. 98–369, § 221(b)(2)(B), inserted ''issued before January 1, 1985'' in heading.

Subsec. (f)(1). Pub. L. 98–369, § 221(b)(2)(A), inserted ''issued before January 1, 1985'' in introductory text.

1982—Subsec. (a)(1). Pub. L. 97–248, § 266(b), substituted '', subsection (d), and subsection (f)'' for ''and in subsection (d)''.

Subsec. (b)(3). Pub. L. 97–248, § 239, amended par. (3) generally, substituting ''Treatment of self-employed individuals'' for ''Self-employed individual not considered an employee'' in heading, designating existing provisions as subparagraph (A) and, as so designated, adding heading and exception for subpar. (B), and adding subparagraph (B).

Subsec. (f). Pub. L. 97–248, § 266(a), added subsec. (f).

1976—Subsec. (d)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, § 1901(a)(16), struck out subsec. (f) relating to effective date of section.

1974—Subsec. (b)(2)(B). Pub. L. 93–406, § 2005(c)(15), substituted ''a lump sum distribution (as defined in section 402(e)(4)'' for ''total distributions payable (as defined in section 402(a)(3)) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death''.

Subsec. (b)(2)(D). Pub. L. 93–406, § 2007(b)(3), substituted ''if the member or former member of the uniformed services by reason of whose death such annuity is payable'' for ''if the individual who made the election under such chapter''.

1969—Subsec. (b)(2)(B)(iii). Pub. L. 91–172 substituted references to section 170(b)(1)(A) (ii) and (vi), and to religious organizations, for references to section 503(b)(1), (2), or (3).

1966—Subsec. (b)(2)(D). Pub. L. 89–365 provided that par. (1) shall not apply in the case of an annuity under chapter 73 of title 10 if the individual who made the election under that chapter died after attaining retirement age.

1962—Subsec. (b)(2)(B)(ii). Pub. L. 87–792, § 7(c)(1), substituted ''described in section 403(a)'' for ''which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401(a)''.

Subsec. (b)(3). Pub. L. 87–792, § 7(c)(2), added par. (3).

1958—Subsec. (b)(2)(B). Pub. L. 85–866 substituted ''This subparagraph shall not apply to total distributions payable (as defined in section 402(a)(3) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death—'' for ''(other than total distributions payable, as defined in section 402(a)(3), which are paid to distributee, by a stock bonus, pension, or profit-sharing trust described in section 401(a) which is exempt from tax under section 501(a), or under an annuity contract under a plan which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401(a), within one taxable year of the distributee by reason of the employee's death)'', and added cls. (i), (ii), and (iii).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 863(d), Aug. 17, 2006, 120 Stat. 1024, provided that: ''The amendments made by this section [enacting section 6039I of this title and amending this section] shall apply to life insurance contracts issued after the date of the enactment of this Act [Aug. 17, 2006], except for a contract issued after such date pursuant to an exchange described in section 1035 of the Internal Revenue Code of 1986 for a contract issued on or prior to that date. For purposes of the preceding sentence, any material increase in the death benefit or other material change shall cause the contract to be treated as a new contract except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of such Code), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 110(b)(3), Nov. 11, 2003, 117 Stat. 1342, provided that: ''The amendments made by this subsection [amending this section] shall apply to amounts paid after December 31, 2002, with respect to deaths occurring after such date.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, § 102(b), Jan. 23, 2002, 115 Stat. 2429, provided that:

''(1) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to taxable years ending before, on, or after September 11, 2001.

''(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Jan. 23, 2002] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1084(d) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, § 6010(*o*)(3)(B), July 22, 1998, 112 Stat. 816, provided that: ''The amendments made by this section [amending this section and sections 264, 265, 805, 807, 812, and 832 of this title] shall apply to contracts issued after June 8, 1997, in taxable years ending after such date. For purposes of the preceding sentence, any material increase in the death benefit or other material change in the contract shall be treated as a new contract except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of the Internal Revenue Code of 1986), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives. For purposes of this subsection, an increase in the death benefit under a policy or contract issued in connection with a lapse described in section 501(d)(2) of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191, set out as a note under section 264 of this title] shall not be treated as a new contract.''

Section 1528(b) of Pub. L. 105–34, as amended by Pub. L. 107–15, § 2, June 5, 2001, 115 Stat. 37, provided that: ''The amendments made by this section [amending this section] shall apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after such date, and to amounts received in taxable years beginning after December 31, 2001, with respect to individuals dying on or before December 31, 1996.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 331(b) of Pub. L. 104–191 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts received after December 31, 1996.''

Section 1402(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 406, 407, and 7701 of this title] shall apply with respect to decedents dying after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1001(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to amounts received with respect to deaths occurring after the date of the enactment of this section [Oct. 22, 1986] in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 221(b)(2) of Pub. L. 98–369 effective Jan. 1, 1984, see section 221(d)(4) of Pub. L. 98–369, set out as an Effective Date note under section 7702 of this title.

Amendment by section 421(b)(2) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have repeal apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 266(c)(1) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title II, § 221(b)(1), July 18, 1984, 98 Stat. 772, provided that: ''The amendments made by this section [amending this section] shall apply to contracts entered into before January 1, 1985.''

Amendment by section 239 of Pub. L. 97–248 applicable to decedents dying after Dec. 31, 1983, see section 241(b) of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title. Such amendment is applicable, in the case of amounts received under the plan of an S corporation, with respect to decedents dying after Dec. 31, 1982, notwithstanding section 241(b) of Pub. L. 97–248, see section 6(b)(2) of Pub. L. 97–354, Oct. 19, 1982, 96 Stat. 1697, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(16) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2005(c)(15) of Pub. L. 93–406 applicable only with respect to distributions and payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

Amendment by section 2007(b)(3) of Pub. L. 93–406 applicable to taxable years ending on or after Sept. 21, 1972, with respect to individuals dying on or after Sept. 21, 1972, see section 2007(c) of Pub. L. 93–406, set out as a note under section 122 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–365 applicable with respect to individuals making an election under chapter 73 of Title 10 who died after Dec. 31, 1965, see section 1(d) of Pub. L. 89–365, set out as an Effective Date note under section 122 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1957, see section 23(g) of Pub. L. 85–866, set out as a note under section 403 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

FLEXIBLE PREMIUM CONTRACTS ISSUED DURING 1984 WHICH MEET REQUIREMENTS OF SECTION 7702 TREATED AS MEETING REQUIREMENTS OF SECTION 101(f)

Flexible premium contracts issued during 1984 which meet requirements of section 7702 of this title treated as meeting requirements of subsec. (f) of this section, see section 221(b)(3) of Pub. L. 98–369, as added by Pub. L. 99–514, set out as a note under section 7702 of this title.

SPECIAL RULES FOR CONTRACTS ENTERED INTO BEFORE JANUARY 1, 1983

Section 266(c)(2), (3) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(13), Jan. 12, 1983, 96 Stat. 2405; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(2) SPECIAL RULE FOR CONTRACTS ENTERED INTO BEFORE JANUARY 1, 1983.—Any contract entered into before January 1, 1983, which meets the requirements of section 101(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the date which is 1 year after the date of the enactment of this Act [Sept. 3, 1982] shall be treated as meeting the requirements of such section for any period before the date on which such contract meets such requirements. Any death benefits paid under a flexible premium life insurance contract (within the meaning of section 101(f)(3)(A) of such Code) before the date which is 1 year after such date of enactment [Sept. 3, 1982] shall be excluded from gross income.

''(3) SPECIAL RULE FOR CERTAIN CONTRACTS.—Any contract entered into before January 1, 1983, shall be treated as meeting the requirements of subparagraph (A) of section 101(f)(1) of such Code if such contract would meet such requirements if section 101(f)(2)(C) of such Code were applied by substituting '3 percent' for '4 percent'.''

§ 102. Gifts and inheritances

(a) General rule

Gross income does not include the value of property acquired by gift, bequest, devise, or inheritance.

(b) Income

Subsection (a) shall not exclude from gross income—

(1) the income from any property referred to in subsection (a); or

(2) where the gift, bequest, devise, or inheritance is of income from property, the amount of such income.

Where, under the terms of the gift, bequest, devise, or inheritance, the payment, crediting, or distribution thereof is to be made at intervals, then, to the extent that it is paid or credited or to be distributed out of income from property, it shall be treated for purposes of paragraph (2) as a gift, bequest, devise, or inheritance of income

from property. Any amount included in the gross income of a beneficiary under subchapter J shall be treated for purposes of paragraph (2) as a gift, bequest, devise, or inheritance of income from property.

(c) Employee gifts

(1) In general

Subsection (a) shall not exclude from gross income any amount transferred by or for an employer to, or for the benefit of, an employee.

(2) Cross references

For provisions excluding certain employee achievement awards from gross income, see section 74(c).

For provisions excluding certain de minimis fringes from gross income, see section 132(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 28; Pub. L. 99–514, title I, § 122(b), Oct. 22, 1986, 100 Stat. 2110.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

§ 103. Interest on State and local bonds

(a) Exclusion

Except as provided in subsection (b), gross income does not include interest on any State or local bond.

(b) Exceptions

Subsection (a) shall not apply to—

(1) Private activity bond which is not a qualified bond

Any private activity bond which is not a qualified bond (within the meaning of section 141).

(2) Arbitrage bond

Any arbitrage bond (within the meaning of section 148).

(3) Bond not in registered form, etc.

Any bond unless such bond meets the applicable requirements of section 149.

(c) Definitions

For purposes of this section and part IV—

(1) State or local bond

The term ''State or local bond'' means an obligation of a State or political subdivision thereof.

(2) State

The term ''State'' includes the District of Columbia and any possession of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 29; Pub. L. 90–364, title I, § 107(a), June 28, 1968, 82 Stat. 266; Pub. L. 90–634, title IV, § 401(a), Oct. 24, 1968, 82 Stat. 1349; Pub. L. 91–172, title VI, § 601(a), Dec. 30, 1969, 83 Stat. 656; Pub. L. 92–178, title III, § 315(a), (b), Dec. 10, 1971, 85 Stat. 529; Pub. L. 94–164, § 7(a), Dec. 23, 1975, 89 Stat. 976; Pub. L. 94–182, title III, § 301(a), Dec. 31, 1975, 89 Stat. 1056; Pub. L. 94–455, title XIX, §§ 1901(a)(17), (b)(8)(B), 1906(b)(13)(A), title XXI, §§ 2105(a)–(c), 2137(d), Oct. 4, 1976, 90 Stat. 1765, 1766, 1794, 1834, 1902, 1931; Pub. L. 95–339, title II, § 201(a), Aug. 8, 1978, 92 Stat. 467; Pub. L. 95–600, title III, §§ 331(a), (b), 332(a), 333(a), 334(a), (b), title VII, § 703(j)(1), (q)(1), Nov. 6, 1978, 92 Stat. 2839–2841, 2941, 2944; Pub. L. 96–222, title I, § 107(a)(3)(C), Apr. 1, 1980, 94 Stat. 223; Pub. L. 96–223, title II, §§ 241(a), 242(a), 244(a), Apr. 2, 1980, 94 Stat. 281, 283, 286; Pub. L. 96–499, title XI, § 1103, Dec. 5, 1980, 94 Stat. 2669; Pub. L. 97–34, title VIII, §§ 811(a), (b), 812(a), Aug. 13, 1981, 95 Stat. 349, 350; Pub. L. 97–248, title II, §§ 214(a)–(e), 215(a), (b), 217(a)–(d), 219(a), 221(a), (b), (c)(1), title III, § 310(b)(1), (c)(1), (2), Sept. 3, 1982, 96 Stat. 466–469, 472–474, 477, 478, 596, 599; Pub. L. 97–424, title V, § 547(a), Jan. 6, 1983, 96 Stat. 2199; Pub. L. 97–473, title II, § 202(b)(2), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–369, div. A, title IV, § 474(r)(4), title VI, §§ 621–624(a), (b)(2), (3), 626(a), 627, 628(a), (c)–(e), (g), 630, July 18, 1984, 98 Stat. 839, 915–922, 924, 926, 928, 931–933; Pub. L. 99–272, title XIII, § 13209(e), Apr. 7, 1986, 100 Stat. 323; Pub. L. 99–514, title XIII, § 1301(a), title XVIII, §§ 1864(a)(1), (b)–(e), 1865(a), 1869(a), (b), 1870, 1871(a)(1), (b), 1899A(2)–(4), Oct. 22, 1986, 100 Stat. 2602, 2885, 2886, 2888, 2890, 2891, 2958; Pub. L. 100–647, title I, § 1013(a)(34)(A), (c)(12)(A), Nov. 10, 1988, 102 Stat. 3544, 3547.)

AMENDMENTS

1988—Subsec. (b)(6)(N). Pub. L. 100–647, § 1013(c)(12)(A), amended subpar. (N), as in effect on the day before the date of the enactment of Pub. L. 99–514 [Oct. 22, 1986], by redesignating cls. (ii) and (iii) as (iii) and (iv), respectively, and by striking out cl. (i) and inserting in lieu thereof the following new cls.:

''(i) IN GENERAL.—Except as provided in clause (ii), this paragraph shall not apply to any obligation issued after December 31, 1986.

''(ii) CERTAIN REFUNDINGS.—This paragraph shall apply to any obligation (or series of obligations) issued to refund an obligation issued on or before December 31, 1986, if—

''(I) the average maturity date of the issue of which the refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue,

''(II) the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation, and

''(III) the proceeds of the refunding obligation are used to redeem the refunded obligation not later than 90 days after the date of the issuance of the refunding obligation.

For purposes of subclause (I), average maturity shall be determined in accordance with subsection (b)(14)(B)(i).''

Subsec. (c)(7). Pub. L. 100–647, § 1013(a)(34)(A), amended par. (7), as in effect on the day before the date of the enactment of Pub. L. 99–514 [Oct. 22, 1986], by substituting ''necessary'' for ''necessary''.

1986—Pub. L. 99–514, § 1301(a), in amending section generally, substituted ''Interest on State and local bonds'' for ''Interest on certain governmental obligations'' in section catchline.

Subsec. (a). Pub. L. 99–514, § 1301(a), substituted ''Exclusion'' for ''General rule'' in heading and amended text generally. Prior to amendment, text read as follows: ''Gross income does not include interest on—

''(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia; and

''(2) qualified scholarship funding bonds.''

Subsec. (b). Pub. L. 99–514, § 1301(a), in amending section generally, substituted provision relating to exceptions for provision relating to industrial development bonds.

Subsec. (b)(11). Pub. L. 99–272 struck out par. (11) relating to pollution control facilities acquired by regional pollution control authorities.

Subsec. (b)(13), (14)(A). Pub. L. 99–514, § 1871(b), substituted ''and (6)'' for ''(6), and (7)''.

Subsec. (b)(16)(A). Pub. L. 99–514, § 1870, substituted ''clause (ii)'' for ''clause (i)''.

Subsec. (b)(17)(A). Pub. L. 99–514, § 1871(b), substituted ''and (6)'' for ''(6), and (7)''.

Subsec. (c). Pub. L. 99–514, § 1301(a), in amending section generally, substituted provision relating to definitions for provision relating to arbitrage.

Subsecs. (d) to (g). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsecs. (d) to (g) which related to certain irrigation dams, qualified scholarship funding bonds, certain federally guaranteed obligations, and qualified steam-generating or alcohol-producing facilities, respectively.

Subsec. (h). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsec. (h) which provided that obligations must not be guaranteed.

Subsec. (h)(2)(A). Pub. L. 99–514, § 1899A(2), substituted ''guaranteed'' for ''guaranted''.

Subsec. (h)(5)(A). Pub. L. 99–514, § 1865(a), struck out ''the United States,'' after ''program of''.

Subsecs. (i) to (k). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsecs. (i) to (k) which related to obligations of certain volunteer fire departments, provided that obligations must be in registered form to be tax-exempt, and required public approval for industrial development bonds, respectively.

Subsec. (*l*). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsec. (*l*) which related to information reporting requirements for certain bonds.

Subsec. (*l*)(2)(F). Pub. L. 99–514, § 1864(d), added subpar. (F) which read: ''if such obligation is a private activity bond (as defined in subsection (n)(7)), such information as the Secretary may require for purposes of determining whether the requirements of subsection (n) are met with respect to such obligation.''

Subsec. (m). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsec. (m) which related to obligations exempt other than under this title.

Subsec. (m)(1). Pub. L. 99–514, § 1871(a)(1), substituted ''(j), (k), (*l*), (n), and (*o*)'' for ''(k), (*l*), and (n)''.

Subsec. (m)(3)(B). Pub. L. 99–514, § 1899A(3), substituted ''608(a)(6)(A)'' for ''608(6)(A)''.

Subsec. (n). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsec. (n) which related to limitation on aggregate amount of private activity bonds issued during any calendar year.

Subsec. (n)(6)(A), (B)(i). Pub. L. 99–514, § 1864(b), substituted ''governmental units or other authorities'' for ''governmental units''.

Subsec. (n)(7)(C)(i). Pub. L. 99–514, § 1864(c), substituted ''all of the property to be financed by the obligation'' for ''the property described in such paragraph''.

Subsec. (n)(10)(B). Pub. L. 99–514, § 1864(e), substituted ''identify project'' for ''specify project'' in heading and ''identify (with reasonable specificity) the project'' for ''specify the project'' in text of subpar. (B)(i).

Subsec. (n)(10)(D). Pub. L. 99–514, § 1864(e)(2), substituted ''any identification or specification'' for ''any specification''.

Subsec. (n)(13). Pub. L. 99–514, § 1864(a)(1), added par. (13).

Subsec. (*o*). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsec. (*o*) relating to consumer loan bonds.

Pub. L. 99–514, § 1869(a), (b)(1), substituted ''Private loan bonds'' for ''Consumer loan bonds'' in subsection and par. (2) headings, ''private loan bond'' for ''consumer loan bond'' in text of pars. (1), (2)(A) and (B), and ''subsection (c)(6)(H)(i)'' for ''subsection (c)(6)(G)(i)'' in par. (2)(C)(ii).

Pub. L. 99–514, § 1869(b)(2), redesignated subsec. (*o*), relating to cross references, as (p).

Subsec. (p). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsec. (p) which related to cross references.

Pub. L. 99–514, § 1869(b)(2), redesignated former subsec. (*o*), relating to cross references, as (p).

Subsec. (p)(4). Pub. L. 99–514, § 1899A(4), substituted ''October 27, 1949 (48 U.S.C. 1403)'' for ''October 27, 1919 (48 U.S.C. 1403)''.

1984—Subsec. (b)(4). Pub. L. 98–369, § 628(e), inserted ''For purposes of subparagraph (A), any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.''

Subsec. (b)(6)(F)(iv). Pub. L. 98–369, § 474(r)(4), substituted ''section 30(b)(2)(A)'' for ''section 44F(b)(2)(A)''.

Subsec. (b)(6)(N). Pub. L. 98–369, § 630, designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (b)(6)(P). Pub. L. 98–369, § 628(c), added subpar. (P).

Subsec. (b)(7). Pub. L. 98–369, § 628(g), repealed par. (7) which related to advance refunding of qualified public facilities.

Subsec. (b)(13). Pub. L. 98–369, § 628(d), inserted ''For purposes of this paragraph— (A) a partnership and each of its partners (and their spouses and minor children) shall be treated as related persons, and (B) an S corporation and each of its shareholders (and their spouses and minor children) shall be treated as related persons.''

Subsec. (b)(15). Pub. L. 98–369, § 623, added par. (15).

Subsec. (b)(16) to (18). Pub. L. 98–369, § 627, added pars. (16) to (18).

Subsec. (c). Pub. L. 98–369, § 624(b)(2), struck out ''bonds'' after ''Arbitrage'' in heading.

Subsec. (c)(1). Pub. L. 98–369, § 624(b)(3), inserted ''to arbitrage bonds'' in heading.

Subsec. (c)(6), (7). Pub. L. 98–369, § 624(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (h). Pub. L. 98–369, § 622, amended subsec. (h) generally, in par. (1) substituting provisions that obligations are not included in the section if they are federally guaranteed for provisions which excluded obligations guaranteed, in whole or part, by the U.S. under a program to conserve energy, or under other Federal or State programs, in par. (2) substituting provisions defining ''federally guaranteed'' for provisions setting forth obligations to which this subsection applies, and adding pars. (3) to (5).

Subsec. (m)(1). Pub. L. 98–369, § 628(a)(1), inserted ''In the case of an obligation issued after December 31, 1983, such obligation shall not be treated as described in this paragraph unless the appropriate requirements of subsections (b), (c), (h), (k), (*l*), and (n) of this section and section 103A are met with respect to such obligation. For purposes of applying such requirements, a possession of the United States shall be treated as a State; except that clause (ii) of subsection (n)(4)(A) shall not apply.''

Subsec. (m)(2)(B). Pub. L. 98–369, § 628(a)(2), substituted ''is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act'' for ''is exempt from taxation under any provision of this title''.

Subsec. (m)(3). Pub. L. 98–369, § 628(a)(3), added par. (3).

Subsec. (n). Pub. L. 98–369, § 621, added subsec. (n). Former subsec. (n), relating to cross references, redesignated (*o*).

Subsec. (*o*). Pub. L. 98–369, § 626(a), added subsec. (*o*) relating to consumer loan bonds.

Pub. L. 98–369, § 621, redesignated subsec. (n), relating to cross references, as (*o*).

1983—Subsec. (m). Pub. L. 97–424, § 547(a), added subsec. (m). Former subsec. (m) redesignated (n).

Pub. L. 97–473 amended subsec. (m) generally, adding pars. (1) and (2), redesignating former pars. (1) to (3) as

(3) to (5), respectively, and striking out par. (24) which had provided reference regarding exempt-interest dividends to section 852(b)(5)(B.) See section 722(b) of Pub. L. 98–369, set out as a note below.

Subsec. (n). Pub. L. 97–424, § 547(a), redesignated former subsec. (m), relating to cross references, as (n).

1982—Subsec. (b)(2). Pub. L. 97–248, § 215(b)(2), substituted ''For purposes of this section'' for ''For purposes of this subsection''.

Subsec. (b)(4). Pub. L. 97–248, §§ 217(a)(1), (b), 221(a), (c)(1), 310(c)(1), in subpar. (A) substituted ''if at all times during the qualified project period'' for ''if each obligation issued pursuant to the issue is in registered form and if'' after ''residential rental property'', and struck out ''(within the meaning of section 167(k)(3)(B))'' after ''low or moderate income'', added subpar. (J), struck out provision that for purposes of subpar. (A), ''targeted area project'' meant a project located in a qualified census tract (within the meaning of section 103A(k)(2)) or an area of chronic economic distress (within the meaning of section 103A(k)(3)) and, in last sentence, substituted ''electric energy or gas from'' for ''electric energy from''.

Subsec. (b)(6)(C). Pub. L. 97–248, § 217(a)(3), substituted ''paragraph (13)'' for ''paragraph (7)''.

Subsec. (b)(6)(F)(iv). Pub. L. 97–248, § 214(d), added cl. (iv).

Subsec. (b)(6)(K) to (O). Pub. L. 97–248, § 214(a)–(c), (e), added subpars. (K) to (O).

Subsec. (b)(9)(A). Pub. L. 97–248, § 217(c), inserted ''ferry,'' after ''rail car'' in provisions preceding cl. (i), and in cl. (ii), inserted ''(or, in the case of a ferry, mass transportation services)'' after ''mass commuting services''.

Subsec. (b)(10). Pub. L. 97–248, § 217(a)(2), added par. (10). Former par. (10) redesignated (13).

Subsec. (b)(11). Pub. L. 97–248, § 217(d), added par. (11).

Subsec. (b)(12). Pub. L. 97–248, § 221(b), added par. (12). [Provisions of par. (12)(A) were formerly contained, as undesignated provisions, in par. (4).]

Subsec. (b)(13). Pub. L. 97–248, § 217(a)(2), redesignated former par. (10) as (13).

Subsec. (b)(14). Pub. L. 97–248, § 219(a), added par. (14).

Subsec. (h). Pub. L. 97–248, § 310(c)(2), substituted ''must not be guaranteed or subsidized'' for ''must be in registered form and not guaranteed or subsidized'' in heading, and in par. (1) struck out subpar. (A) reading ''such obligation is not issued in registered form'', and redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (j). Pub. L. 97–248, § 310(b)(1), added subsec. (j). Former subsec. (j), relating to cross references, redesignated (m).

Subsec. (k). Pub. L. 97–248, § 215(a), added subsec. (k).

Subsec. (*l*). Pub. L. 97–248, § 215(b)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 97–248, §§ 215(a), (b)(1), 310(b)(1), redesignated former subsec. (j), relating to cross references, as (m).

1981—Subsec. (b)(4)(I). Pub. L. 97–34, § 811(a), added subpar. (I).

Subsec. (b)(9), (10). Pub. L. 97–34, § 811(b), added par. (9) and redesignated former par. (9) as (10).

Subsecs. (i), (j). Pub. L. 97–34, § 812(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1980—Subsec. (b)(4). Pub. L. 96–499, § 1103(b), inserted before last sentence provisions defining ''targeted area project'' for purposes of subpar. (A).

Subsec. (b)(4)(A). Pub. L. 96–499, § 1103(a), substituted provisions relating to low or moderate income residential rental property for provisions relating to residential real property for family units.

Subsec. (b)(4)(H). Pub. L. 96–223, § 242(a)(1), added subpar. (H).

Subsec. (b)(6)(J). Pub. L. 96–499, § 1103(c), added subpar. (J).

Subsec. (b)(8), (9). Pub. L. 96–223, § 242(a)(2), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c)(5). Pub. L. 96–222, § 107(a)(3)(C), amended the directory language of Pub. L. 96–500, § 703(q)(1). See 1978 Amendment note below for subsec. (c)(5).

Subsec. (g). Pub. L. 96–223, § 241(a), added subsec. (g). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 96–223, § 244(a), added subsec. (h).

Subsec. (i). Pub. L. 96–223, §§ 241(a), 244(a), redesignated former subsec. (g) as (i).

1978—Subsec. (b)(1). Pub. L. 95–600, § 703(j)(1)(A), substituted ''subsection (a)(1) or (2)'' for ''subsection (a)(1)'' in heading.

Subsec. (b)(4). Pub. L. 95–600, §§ 332(a), 333(a), in subpar. (G)(i) inserted reference to electric utility, industrial, agricultural, or commercial users and added subpar. (G)(ii) and provision following subpar. (G)(ii) relating to the local furnishing of electric energy.

Subsec. (b)(6)(D). Pub. L. 95–600, § 331(a), substituted in heading and cl. (i) ''$10,000,000'' for ''$5,000,000''.

Subsec. (b)(6)(I). Pub. L. 95–600, § 331(b), added subpar. (I).

Subsec. (b)(7), (8). Pub. L. 95–600, § 334(a), (b), added par. (7), redesignated former par. (7) as (8) and, as so redesignated, substituted ''(6), and (7)'' for ''and (6)''.

Subsec. (c)(1). Pub. L. 95–600, § 703(j)(1)(B), substituted in heading and text ''(a)(1) or (2)'' for ''(a)(1) or (4)''.

Subsec. (c)(2)(A). Pub. L. 95–600, § 703(j)(1)(C), substituted ''subsection (a)(1) or (2)'' for ''subsection (a)(1) or (2) or (4)''.

Subsec. (c)(5). Pub. L. 95–600, § 703(j)(1)(D), (q)(1), as amended by Pub. L. 96–222, § 107(a)(3)(C), substituted ''section 438 of the Higher Education Act of 1965'' for ''section 2 of the Emergency Insured Student Loan Act of 1969'' and ''paragraph (2)(A)'' for ''subsection (d)(2)(A)''.

Subsec. (d). Pub. L. 95–600, § 703(j)(1)(E), substituted ''subsection (b)(4)(G)'' for ''subsection (c)(4)(G)''.

Subsec. (e). Pub. L. 95–339 redesignated second subsec. (e), relating to cross references, as (g).

Subsec. (f). Pub. L. 95–339 added subsec. (f).

Subsec. (g). Pub. L. 95–339 redesignated second subsec. (e), relating to cross references, as (g).

1976—Subsec. (a). Pub. L. 94–455, §§ 1901(a)(17)(A), 2105(a), added par. (2) relating to qualified scholarship funding bonds. Former pars. (2) and (3), relating to obligations of the United States and to the obligations of corporations organized under an Act of Congress, were struck out.

Subsec. (b). Pub. L. 94–455, § 1901(a)(17)(B), (C), redesignated subsec. (c) as (b) and in par. (1) of subsec. (b) as so redesignated substituted ''subsection (a)(1) or (2)'' for ''subsection (a)(1)''. Former subsec. (b), which created an exception to the rule that gross income did not include interest on obligations of the United States, by providing that the exception did not apply to obligations of the United States (with specified exceptions) unless under the authorizing Acts such interest is wholly exempt from the taxes imposed by this subtitle, was struck out.

Subsec. (c). Pub. L. 94–455, §§ 1901(a)(17)(B), (D), (b)(8)(B), 1906(b)(13)(A), 2105(c), redesignated subsec. (d) as (c) and, in subsec. (c) as so redesignated, substituted ''(a)(1) or (4)'' for ''(a)(1)'' in par. (1) and ''(a)(1) or (2) or (4)'' for ''(a)(1)'' in par. (2)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (within the meaning of section 151(e)(4))'' in par. (3)(A), added par. (5), redesignated former par. (5) as (6), and in par. (6) as so redesignated substituted ''Secretary'' for ''Secretary or his delegate''. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 94–455, § 1901(a)(17)(B), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94–455, §§ 1901(a)(17)(B), (E), 2105(b), 2137(d), added subsec. (e) relating to qualified scholarship funding bonds, redesignated former subsec. (f) relating to cross references as a second subsec. (e), reduced the number of cross references in subsec. (e) as so redesignated from twenty-three (which made reference to various obligations of the United States and of corporations organized under Acts of Congress) to three, relating, respectively, to Puerto Rican bonds, Virgin Islands insular and municipal bonds, and certain obligations issued under title I of the Housing Act of

1949, and inserted a fourth cross reference, designated as par. (24) relating to the treatment of exempt-interest dividends. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 94–455, §1901(a)(17)(B), redesignated subsec. (f), relating to cross references, as (e).

1975—Subsecs. (e), (f). Pub. L. 94–182 and Pub. L. 94–164 made identical amendments, adding subsec. (e) and redesignating former subsec. (e) as (f).

1971—Subsec. (c)(4)(E). Pub. L. 92–178, §315(a)(1), substituted ''energy or gas,'' for ''energy, gas, or water or''.

Subsec. (c)(4)(F). Pub. L. 92–178, §315(a)(2), substituted '', or'' for a period.

Subsec. (c)(4)(G). Pub. L. 92–178, §315(a)(3), added subpar. (G).

Subsec. (c)(6)(F)(iii). Pub. L. 92–178, §315(b), substituted ''$1,000,000'' for ''$250,000''.

1969—Subsecs. (d), (e). Pub. L. 91–172 added subsec. (d) and redesignated former subsec. (d) as (e).

1968—Subsec. (c). Pub. L. 90–364 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(6)(D) to (H). Pub. L. 90–634 added subpars. (D) to (H).

Subsec. (d). Pub. L. 90–364 redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(a)(34)(B) of Pub. L. 100–647 provided that: ''Subparagraph (A) [amending this section] shall apply to obligations sold after May 2, 1978, and to which Treasury regulation section 1.103–13 (1979) was provided to apply.''

EFFECTIVE DATE OF 1986 AMENDMENT

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

Amendment by sections 1864(b)–(e), 1865(a), 1869(a), (b), 1870, and 1871(b) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1864(a)(2) of Pub. L. 99–514 provided that:

''(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Oct. 22, 1986] in taxable years ending after such date.

''(B) At the election of the issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe), the amendment made by paragraph (1) shall apply to any obligation issued on or before the date of the enactment of this Act.''

Section 1871(a)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to obligations issued after March 28, 1985, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 624(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, §1867(a), Oct. 22, 1986, 100 Stat. 2888, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 103A of this title] shall apply with respect to bonds issued after December 31, 1984.

''(2) EXCEPTION.—The amendments made by this section shall not apply to obligations issued for the Essex County New Jersey Resource Recovery Project authorized by the Port Authority of New York and New Jersey on November 10, 1983, as part of an agreement approved by Essex County, New Jersey, on July 7, 1981, and approved by the State of New Jersey on December 31, 1981. The aggregate face amount of bonds to which this paragraph applies shall not exceed $350,000,000.''

Section 626(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XIII, §1317(22), title XVIII, §1869(c)(5), Oct. 22, 1986, 100 Stat. 2095, 2698, 2890; Pub. L. 100–647, title I, §1013(g)(24), Nov. 10, 1988, 102 Stat. 3554, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection the amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of enactment of this Act [July 18, 1984].

''(2) EXCEPTIONS FOR CERTAIN STUDENT LOAN PROGRAMS.—

''(A) IN GENERAL.—The amendments made by this section [amending this section] shall not apply to obligations issued by a program described in the following table to the extent the aggregate face amount of such obligations does not exceed the amount of allowable obligations specified in the following table with respect to such program:

Program	Amount of Allowable Obligations
Colorado Student Obligation Bond Authority	$60 million
Connecticut Higher Education Supplementary Loan Authority	$15.5 million
District of Columbia	$50 million
Illinois Higher Education Authority	$70 million
State of Iowa	$16 million
Louisiana Public Facilities Authority	$75 million
Maine Health and Higher Education Facilities Authority	$5 million
Maryland Higher Education Supplemental Loan Program	$24 million
Massachusetts College Student Loan Authority	$90 million
Minnesota Higher Education Coordinating Board	$60 million
New Hampshire Higher Education and Health Facilities Authority	$39 million
New York Dormitory Authority	$120 million
Pennsylvania Higher Education Assistance Agency	$300 million
Georgia Private Colleges and University Authority	$31 million
Wisconsin State Building Commission	$60 million
South Dakota Health and Educational Facilities Authority	$6 million

''(B) PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY.—Subparagraph (A) shall apply to obligations issued by the Pennsylvania Higher Education Assistance Agency only if such obligations are issued solely for the purpose of refunding student loan bonds outstanding on March 15, 1984.

''(3) CERTAIN TAX-EXEMPT MORTGAGE SUBSIDY BONDS.—For purposes of applying section 103(*o*) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the term 'consumer loan bond' shall not include any mortgage subsidy bond (within the meaning of section 103A(b) of such Code) to which the amendments made by section 1102 of the Mortgage Subsidy Bond Tax Act of 1980 [enacting section 103A of this title] do not apply.

''(4) REFUNDING EXCEPTION.—The amendments made by this section [amending this section] shall not apply to any obligation or series of obligations the proceeds of which are used exclusively to refund obligations issued before March 15, 1984, except that—

''(A) the amount of the refunding obligations may not exceed 101 percent of the aggregate face amount of the refunded obligations, and

''(B) the maturity date of any refunding obligation may not be later than the date which is 17 years after the date on which the refunded obligation was issued (or, in the case of a series of refundings, the date on which the original obligation was issued).

''(5) EXCEPTION FOR CERTAIN ESTABLISHED PROGRAMS.—The amendments made by this section [amending this section] shall not apply to any obligation substantially all of the proceeds of which are used to carry out a program established under State law which has been in ef-

fect in substantially the same form during the 30-year period ending on the date of enactment of this Act [July 18, 1984], but only if such proceeds are used to make loans or to fund similar obligations—

''(A) in the same manner in which,

''(B) in the same (or lesser) amount per participant, and

''(C) for the same purposes for which,

such program was operated on March 15, 1984. This subparagraph shall not apply to obligations issued on or after March 15, 1987.

''(6) CERTAIN BONDS FOR RENEWABLE ENERGY PROPERTY.—The amendments made by this section [amending this section] shall not apply to any obligations described in section 243 of the Crude Oil Windfall Profit Tax Act of 1980 [Pub. L. 96–223, set out as a note below].

''(7) EXCEPTION FOR CERTAIN DOWNTOWN REDEVELOPMENT PROJECT.—The amendments made by this section [amending this section] shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if—

''(A) on August 15, 1985, a downtown redevelopment authority adopted a resolution to issue obligations for such project,

''(B) before September 26, 1985, the city expended, or entered into binding contracts to expend, more than $10,000,000 in connection with such project, and

''(C) the State supreme court issued a ruling regarding the proposed financing structure for such project on December 11, 1985.

The aggregate face amount of obligations to which this paragraph applies shall not exceed $85,000,000 and such obligations must be issued before January 1, 1992.''

Section 631 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XIII, §§ 1316(j), 1317(43), title XVIII, § 1872(a)–(c)(1), Oct. 22, 1986, 100 Stat. 2095, 2670, 2708, 2891, 2892; Pub. L. 100–647, title I, § 1013(f)(8), (g)(40), Nov. 10, 1988, 102 Stat. 3549, 3557, provided that:

''(a) PRIVATE ACTIVITY BOND CAP.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by section 621 [amending this section] shall apply to obligations issued after December 31, 1983.

''(2) INDUCEMENT RESOLUTION BEFORE JUNE 19, 1984.—The amendment made by section 621 shall not apply to any issue of obligations if—

''(A) there was an inducement resolution (or other comparable preliminary approval) for the issue before June 19, 1984, and

''(B) the issue is issued before January 1, 1985.

''(3) CERTAIN PROJECTS PRELIMINARILY APPROVED BEFORE OCTOBER 19, 1983, GIVEN APPROVAL.—If—

''(A) there was an inducement resolution (or other comparable preliminary approval) for a project before October 19, 1983, by any issuing authority,

''(B) a substantial user of such project notifies the issuing authority within 30 days after the date of the enactment of this Act [July 18, 1984] that it intends to claim its rights under this paragraph, and

''(C) construction of such project began before October 19, 1983, or the substantial user was under a binding contract on such date to incur significant expenditures with respect to such project,

such issuing authority shall allocate its share of the limitation under section 103(n) of such Code for the calendar year during which the obligations were to be issued pursuant to such resolution (or other approval) first to such project. If the amount of obligations required by all projects which meet the requirements of the preceding sentence exceeds the issuing authority's share of the limitation under section 103(n) of such Code, priority under the preceding sentence shall be provided first to those projects for which substantial expenditures were incurred before October 19, 1983. If any issuing authority fails to meet the requirements of this paragraph, the limitation under section 103(n) of such Code for the issuing authority for the calendar year following such failure shall be reduced by the amount of obligations with respect to which such failure occurred.

''(3) [(4)] EXCEPTION FOR CERTAIN BONDS FOR A CONVENTION CENTER AND RESOURCE RECOVERY PROJECT.—In the case of any city, if—

''(A) the city council of such city authorized a feasibility study for a convention center on June 10, 1982, and

''(B) on November 4, 1983, a municipal authority acting for such city accepted a proposal for the construction of a facility that is capable of generating steam and electricity through the combustion of municipal waste,

the amendment made by section 621 shall not apply to any issue, issued during 1984, 1985, 1986, or 1987 and substantially all of the proceeds of which are to be used to finance the convention center (or access ramps and parking facilities therefor) described in subparagraph (A) or the facility described in subparagraph (B).

''(b) PROPERTY FINANCED WITH TAX-EXEMPT BONDS REQUIRED TO BE DEPRECIATED ON STRAIGHT-LINE BASIS.—

''(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by section 628(b) [amending section 168 of this title] shall apply to property placed in service after December 31, 1983, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after October 18, 1983.

''(2) EXCEPTIONS.—

''(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments made by section 628(b) shall not apply with respect to facilities—

''(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, or

''(ii) with respect to which a binding contract to incur significant expenditures was entered into before October 19, 1983.

''(B) REFUNDING.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1983, which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before October 19, 1983, the amendments made by section 628(b) shall apply only with respect to an amount equal to the basis in such property which has not been recovered before the date such refunded obligation is issued.

''(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1984, the amendments made by section 628(b) shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before October 19, 1983.

''(C) FACILITIES.—In the case of an inducement resolution or other comparable preliminary approval adopted by an issuing authority before October 19, 1983, for purposes of applying subparagraphs (A)(i) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

''(c) OTHER PROVISIONS RELATING TO TAX-EXEMPT BONDS.—

''(1) IN GENERAL.—Except as otherwise provided in this subtitle, the amendments made by sections 622, 623, 627, and 628(c), (d), and (e) (and the provisions of sections 625(c), 628(f), and 629(b)) [amending this section and enacting provisions set out as notes under this section] shall apply to obligations issued after December 31, 1983.

''(2) OBLIGATIONS INVESTED IN FEDERALLY INSURED DEPOSITS.—Notwithstanding any other provision of

this section, clause (ii) of section 103(h)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle) shall apply to obligations issued after April 14, 1983; except that such clause shall not apply to any obligation issued pursuant to a binding contract in effect on March 4, 1983.

''(3) EXCEPTIONS.—

''(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments (and provisions) referred to in paragraph (1) shall not apply to obligations with respect to facilities—

''(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, and was completed on or after such date,

''(ii) the original use of which commences with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before October 19, 1983, and some of such expenditures are incurred on or after such date, or

''(iii) acquired after October 19, 1983, pursuant to a binding contract entered into on or before such date.

''(B) FACILITIES.—Subparagraph (C) of subsection (b)(2) shall apply for purposes of subparagraph (A) of this paragraph.

''(C) EXCEPTION.—Subparagraph (A) shall not apply with respect to the amendment made by section 628(e) and the provisions of sections 628(f) and 629(b) [amending this section and enacting provisions set out as notes under this section].

''(4) REPEAL OF ADVANCE REFUNDING OF QUALIFIED PUBLIC FACILITIES.—The amendment made by section 628(g) [amending this section] shall apply to refunding obligations issued after the date of the enactment of this Act [July 18, 1984]; except that if substantially all the proceeds of the refunded issue were used to provide airports or docks, such amendment shall only apply to refunding obligations issued after December 31, 1984. In the case of refunding obligations not to exceed $100,000,000 issued after October 21, 1986, by Dade County, Florida, for the purpose of advance refunding its Aviation Revenue Bonds (Series J), the first sentence of this paragraph shall be applied by substituting 'the date which is 1 year after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988]' for 'December 31, 1984' and the amendments made by section 1301 of the Tax Reform Act of 1986 [section 1301 of Pub. L. 99–514, enacting sections 141 to 150 and 7703 of this title, amending this section and sections 2, 22, 25, 32, 86, 105, 152, 153, 163, 194, 269A, 414, 879, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing section 103A of this title, enacting provisions set out as notes under sections 141 and 148 of this title, and amending provisions set out as a note under section 103A of this title] shall not apply. In the case of refunding obligations not exceeding $100,000,000 issued by the Alabama State Docks Department, the first sentence of this paragraph shall be applied by substituting 'December 31, 1987' for 'December 31, 1984' and the Internal Revenue Code of 1986 shall be applied without regard to section 149(d)(2)..[sic]

''(5) SPECIAL RULE FOR HEALTH CLUB FACILITIES.—In the case of any health club facility, with respect to the amendment made by section 627(c) [amending this section]—

''(A) paragraph (1) shall be applied by substituting 'April 12, 1984' for 'December 31, 1983', and

''(B) paragraph (3) shall be applied by substituting 'April 13, 1984' for 'October 19, 1983' each place it appears.

''(d) PROVISIONS OF THIS SUBTITLE NOT TO APPLY TO CERTAIN PROPERTY.—The amendments made by this subtitle [sections 621–632 of Pub. L. 98–369, amending this section and sections 103A and 168 of this title and enacting provisions set out as notes under this section] shall not apply to any property (and shall not apply to obligations issued to finance such property) if such property is described in any of the following paragraphs:

''(1) Any property described in paragraph (5), (6), or (7) of section 31(g) of this Act [set out as an Effective Date of 1984 Amendment note under section 168 of this title].

''(2) Any property described in paragraph (4), (8), or (17) of section 31(g) of this Act [set out as an Effective Date of 1984 Amendment note under section 168 of this title] but only if the obligation is issued before January 1, 1985, and only if before June 19, 1984, the issuer had evidenced an intent to issue obligations exempt from taxation under the Internal Revenue Code of 1986 in connection with such property.

''(3) Any property described in paragraph (3) of section 216(b) of the Tax Equity and Fiscal Responsibility Act of 1982 [set out as an Effective Date of 1982 Amendment note under section 168 of this title].

''(4) Any solid waste disposal facility described in section 103(b)(4)(E) of the Internal Revenue Code of 1986 if—

''(A) a State public authority created pursuant to State legislation which took effect on June 18, 1973, took formal action before October 19, 1983, to commit development funds for such facility.

''(B) such authority issues obligations for any such facility before January 1, 1987, and

''(C) expenditures have been made for the development of any such facility before October 19, 1983.

''(5) Any solid waste disposal facility described in section 103(b)(4)(E) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] if—

''(A) a city government, by resolutions adopted on April 10, 1980, and December 27, 1982, took formal action to authorize the submission of a proposal for a feasibility study for such facility and to authorize the presentation to the Department of the Army (U.S. Army Missile Command) of a proposed agreement to jointly pursue construction and operation of such facility,

''(B) such city government (or a public authority on its behalf) issues obligations for such facility before January 1, 1988, and

''(C) expenditures have been made for the development of such facility before October 19, 1983. Notwithstanding the foregoing provisions of this subsection, the amendments made by section 624 [amending sections 103 and 103A of this title and enacting provisions set out as a note under this section] (relating to arbitrage) shall apply to obligations issued to finance property described in paragraph (5).

''(e) DETERMINATION OF SIGNIFICANT EXPENDITURE.—

''(1) IN GENERAL.—For purposes of this section, the term 'significant expenditures' means expenditures which equal or exceed the lesser of—

''(A) $15,000,000, or

''(B) 20 percent of the estimated cost of the facilities.

''(2) CERTAIN GRANTS TREATED AS EXPENDITURES.—For purposes of paragraph (1), the amount of any UDAG grant preliminarily approved on May 5, 1981, or April 4, 1983, shall be treated as an expenditure with respect to the facility for which such grant was so approved.

''(f) EXCEPTIONS FOR CERTAIN OTHER AMENDMENTS.—If—

''(1) there was an inducement resolution (or other comparable preliminary approval) for an issue before June 19, 1984, by any issuing authority, and

''(2) such issue is issued before January 1, 1985, the following amendments shall not apply:

''(A) the amendments made by section 623 [amending this section],

''(B) the amendments made by subsections (a) and (b) of section 627 [amending this section] (except to the extent such amendments relate to farm land),

''(C) in the case of a race track, the amendment made by section 627(c) [amending this section], and

''(D) the amendments made by section 628(c) [amending this section].''

[Section 1872(a)(2)(B) of Pub. L. 99–514 provided that the amendment of section 631(c)(3) of Pub. L. 98–369, set out above, made by section 1872(a)(2)(B) of Pub. L. 99–514 is effective with respect to obligations issued after Mar. 28, 1985.]

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(2) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 214(f) of Pub. L. 97–248 provided that:

''(1) COMPOSITE ISSUES; SMALL ISSUE EXEMPTION.—The amendments made by subsections (a) and (b) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982].

''(2) TERMINATION.—The amendment made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 3, 1982].

''(3) RESEARCH EXPENDITURES.—The amendment made by subsection (d) [amending this section] shall apply with respect to expenditures made after the date of the enactment of this Act [Sept. 3, 1982].

''(4) CERTAIN FACILITIES.—The amendment made by subsection (e) [amending this section] shall apply to obligations issued after December 31, 1982.''

Section 215(c) of Pub. L. 97–248 provided that:

''(1) PUBLIC APPROVAL.—The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 1982, other than obligations issued solely to refund any obligation which—

''(A) was issued before July 1, 1982, and

''(B) has a maturity which does not exceed 3 years.

''(2) INFORMATION REPORTING.—The amendments made by subsection (b) [amending this section] shall apply to obligations issued after December 31, 1982 (including any obligation issued to refund an obligation issued before such date).''

Section 217(e) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title VII, § 712(h), July 18, 1984, 98 Stat. 947; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982]. For purposes of applying section 168(f)(8)(D)(v) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by subsection (c) [amending this section] shall apply to agreements entered into after the date of the enactment of this Act.''

Section 219(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 1982.''

Section 221(d) of Pub. L. 97–248 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1104 of Pub. L. 96–499, formerly set out as a note under section 103A of this title] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982].

''(2) EXCEPTION.—The amendments made by this section shall not apply with respect to any obligation to which the amendments made by section 1103 of the Mortgage Subsidy Bond Tax Act of 1980 [section 1103 of Pub. L. 96–499, amending this section] do not apply by reason of section 1104 of such Act [section 1104 of Pub. L. 96–499, formerly set out as a note under section 103A of this title].''

Section 310(d) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(b)(2), 96 Stat. 2405; Pub. L. 98–216, § 6(b), Feb. 14, 1984, 98 Stat. 8; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 4701 of this title and section 757c–5 of former Title 31, Money and Finance, and amending this section and sections 103A, 163, 165, 312, and 1232 of this title] shall apply to obligations issued after December 31, 1982.

''(2) [Repealed. Pub. L. 98–216, § 6(b), Feb. 14, 1984, 98 Stat. 8.]

''(3) EXCEPTION FOR CERTAIN WARRANTS, ETC.—The amendments made by subsection (b) [enacting section 4701 of this title and amending this section and sections 163, 165, 312, and 1232 of this title] shall not apply to any obligations issued after December 31, 1982, on the exercise of a warrant or the conversion of a convertible obligation if such warrant or obligation was offered or sold outside the United States without registration under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and was issued before August 10, 1982. A rule similar to the rule of the preceding sentence shall also apply in the case of any regulations issued under section 163(f)(2)(C) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) except that the date on which such regulations take effect shall be substituted for 'August 10, 1982'.

''(4) [Repealed. Pub. L. 98–216, § 6(b), Feb. 14, 1984, 98 Stat. 8.]''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 811(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 13, 1981].''

Section 812(b)(1) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 1980.''

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–499, see section 1104 of Pub. L. 96–499, set out as an Effective Date note under section 103A of this title.

Section 241(d) of Pub. L. 96–223 provided that: ''The amendments made by subsection (a) [amending this section] and the provisions of subsections (b) and (c) [set out as notes under this section] shall apply with respect to obligations issued after October 18, 1979.''

Section 242(c) of Pub. L. 96–223 provided that: ''The amendments made by subsection (a) [amending this section] and the provisions of subsection (b) [set out as a note under this section] shall apply with respect to obligations issued after October 18, 1979.''

Section 244(b) of Pub. L. 96–223 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to obligations issued on or after October 18, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 201(c) of Pub. L. 95–339 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 1978].''

Section 331(c) of Pub. L. 95–600 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply to—

''(A) obligations issued after December 31, 1978, in taxable years ending after such date, and

''(B) capital expenditures made after December 31, 1978, with respect to obligations issued before January 1, 1979.

''(2) The amendment made by subsection (b) [amending this section] shall apply to—

''(A) obligations issued after September 30, 1979, in taxable years ending after such date, and

''(B) capital expenditures made after September 30, 1979, with respect to obligations issued after such date.''

Section 332(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after April 30, 1968, but only with respect to obligations issued after such date.''

Section 333(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to obligations issued after the date of the enactment of this Act [Nov. 6, 1978] in taxable years ending after such date.''

Section 334(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Nov. 6, 1978].''

Section 703(q)(2) of Pub. L. 95–600 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to payments made by the Commissioner of Education after December 31, 1976.''

Amendment by section 703(j)(1) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(17), (b)(8)(B) of Pub. L. 94–455 applicable with respect to taxable years ending after Oct. 4, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

Section 2105(d) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section] apply to obligations issued on or after the date of the enactment of this Act [Oct. 4, 1976].''

Amendment by section 2137(d) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 2137(e) of Pub. L. 94–455, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 301(b) of Pub. L. 94–182 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Dec. 31, 1975].''

Section 7(b) of Pub. L. 94–164 provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of enactment of this Act [Dec. 23, 1975].''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 315(c) of Pub. L. 92–178 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to obligations issued after January 1, 1969. The amendment made by subsection (b) [amending this section] shall apply with respect to expenditures incurred after the date of the enactment of this Act [Dec. 10, 1971].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 601(b) of Pub. L. 91–172 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to obligations issued after October 9, 1969.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 401(b) of Pub. L. 90–634 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to obligations issued after the date of the enactment of this Act [Oct. 24, 1968].''

Section 107(b)(1) of Pub. L. 90–364 provided that: ''Except as provided by paragraph (2) [set out as a note below], the amendment made by subsection (a) [amending this section] shall apply to taxable years ending after April 30, 1968, but only with respect to obligations issued after such date.''

TRANSFER OF FUNCTIONS

Functions of Commissioner of Education transferred to Secretary of Education by section 3441(a)(1) of Title 20, Education.

COORDINATION OF CERTAIN AMENDMENTS MADE BY PUB. L. 97–424 AND PUB. L. 97–473

Section 722(b) of Pub. L. 98–369 provided that: ''For purposes of applying the amendments made by section 547 of the Highway Revenue Act of 1982 [Pub. L. 97–424, amending this section] and the amendment made by section 202(b)(2) of Public Law 97–473 [amending this section], Public Law 97–473 shall be deemed to have been enacted immediately before the Highway Revenue Act of 1982.''

VALIDATION OF SINKING FUND REGULATIONS

Section 1013(a)(35) of Pub. L. 100–647 provided that:

''(A) Treasury Regulation section 1.103–13(g) (1979) is hereby enacted into positive law.

''(B)(i) Except as provided in clause (ii), subparagraph (A) shall apply to obligations sold after May 2, 1978, and to which such regulation was provided to apply.

''(ii) Treasury Regulation section 1.103–13(g) (1979) as enacted into positive law by subparagraph (A) shall cease to apply to the extent hereafter modified by the Secretary of the Treasury or his delegate by regulations.''

BONDS ISSUED TO REFUND SUBSECTION (*o*)(3) OBLIGATIONS

Section 1013(c)(15) of Pub. L. 100–647 provided that: ''A bond issued to refund an obligation described in section 103(*o*)(3) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) shall not be treated as described in section 144(b) of the 1986 Code unless it is described in section 144(b)(1)(A) of the 1986 Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN GUARANTEES BY FARMERS HOME ADMINISTRATION

Section 1865(b) of Pub. L. 99–514 provided that: ''An obligation shall not be treated as federally guaranteed for purposes of section 103(h) of the Internal Revenue Code of 1954 [now 1986] by reason of a guarantee by the Farmers Home Administration if—

''(1) such guarantee is pursuant to a commitment made by the Farmers Home Administration before July 1, 1984, and

''(2) such obligation is issued to finance a convention center project in Carbondale, Illinois.''

TREATMENT OF CERTAIN OBLIGATIONS USED TO FINANCE SOLID WASTE DISPOSAL FACILITY

Section 1865(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Any obligation which is part of an issue a substantial portion of the proceeds of which is to be used to finance a solid waste disposal facility described in paragraph (2) shall not, for purposes of section 103(h) of the Internal Revenue Code of 1954 [now 1986], be treated as an obligation which is federally guaranteed by reason of the sale of fuel, steam, electricity, or other forms of usable energy to the Federal Government or any agency or instrumentality thereof.

''(2) SOLID WASTE DISPOSAL FACILITY.—A solid waste disposal facility is described in this paragraph if such facility is described in section 103(b)(4)(E) of such Code and—

''(A) if—

''(i) a public State authority created pursuant to State legislation which took effect on July 1, 1980, took formal action before October 19, 1983, to commit development funds for such facility,

''(ii) such authority issues obligations for such facility before January 1, 1988, and

''(iii) expenditures have been made for the development of such facility before October 19, 1983,

''(B) if—

''(i) such facility is operated by the South Eastern Public Service Authority of Virginia, and

''(ii) on December 20, 1984, the Internal Revenue Service issued a ruling concluding that a portion of the obligations with respect to such facility would not be treated as federally guaranteed under section 103(h) of such Code by reason of the transitional rule contained in section 631(c)(3)(A)(i) of the Tax Reform Act of 1984 [section 631(c)(3)(A)(i) of Pub. L. 98–369, set out as a note above],

''(C) if—

''(i) a political subdivision of a State took formal action on April 1, 1980, to commit development funds for such facility,

''(ii) such facility has a contract to sell steam to a naval base,

''(iii) such political subdivision issues obligations for such facility before January 1, 1988, and

''(iv) expenditures have been made for the development of such facility before October 19, 1983, or

''(D) if—

''(i) such facility is a thermal transfer facility,

''(ii) is to be built and operated by the Elk Regional Resource Authority, and

''(iii) is to be on land leased from the United States Air Force at Arnold Engineering Development Center near Tullahoma, Tennessee.

''(3) LIMITATIONS.—

''(A) In the case of a solid waste disposal facility described in paragraph (2)(A), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $65,000,000.

''(B) In the case of a solid waste disposal facility described in paragraph (2)(B), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $20,000,000. Such amount shall be in addition to the amount permitted under the Internal Revenue Service ruling referred to in paragraph (2)(B)(ii).

''(C) In the case of a solid waste disposal facility described in paragraph (2)(C), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $75,000,000.

''(D) In the case of a solid waste disposal facility described in paragraph (2)(D), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $25,000,000.''

TRANSITIONAL RULE FOR LIMIT ON SMALL ISSUE EXCEPTION

Section 1866 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(m)(1)–(4), Nov. 10, 1988, 102 Stat. 3584, provided that: ''The amendment made by section 623 of the Tax Reform Act of 1984 [section 623 of Pub. L. 98–369, amending this section] shall not apply to any obligation (or series of obligations) issued to refund another tax-exempt IDB to which the amendment made by such section 623 did not apply if—

''(1) the average maturity of the issue of which the refunding obligation is a part does not exceed the average maturity of the obligations to be refunded by such issue,

''(2) the amount of the refunding obligation does not exceed the amount of the refunded obligation, and

''(3) the proceeds of the refunding obligation are used to redeem the refunded obligation not later than 90 days after the date of the issuance of the refunding obligation.

For purposes of the preceding sentence, the term 'tax-exempt IDB' means any industrial development bond (as defined in section 103(b) of the Internal Revenue Code of 1954 [now 1986]) the interest on which is exempt from tax under section 103(a) of such Code. For purposes of paragraph (1), average maturity shall be determined in accordance with subsection (b)(14)(B)(i) of such Code.''

[Section 1018(m)(5) of Pub. L. 100–647 provided that: ''A refunding obligation issued before July 1, 1987, shall be treated as meeting the requirement of paragraph (1) of section 1866 of the Reform Act [Pub. L. 99–514, set out above] if such obligation met the requirement of such paragraph as enacted by the Reform Act [Pub. L. 99–514].'']

EXCEPTION FROM 1984 AMENDMENT FOR DOWNTOWN MUSKOGEE REVITALIZATION PROJECT

Section 1867(b) of Pub. L. 99–514 provided that: ''The amendment made by section 624 of the Tax Reform Act of 1984 [amending sections 103 and 103A of this title and enacting provisions set out as a note under this section] shall not apply to obligations issued with respect to the Downtown Muskogee Revitalization Project for which a UDAG grant was preliminarily approved on May 5, 1981, if—

''(1) such obligation is issued before January 1, 1986, or

''(2) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this subsection applies shall not exceed $10,000,000.''

TRANSITIONAL RULES

Section 1869(c)(1)–(4) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(n), Nov. 10, 1988, 102 Stat. 3584, provided that:

''(1) TREATMENT OF CERTAIN OBLIGATIONS ISSUED BY THE CITY OF BALTIMORE.—Obligations issued by the city of Baltimore, Maryland, after June 30, 1985, shall not be treated as private loan bonds for purposes of section 103(*o*) of the Internal Revenue Code of 1954 [now 1986] (or as private activity bonds for purposes of section 103 and part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by title XIII of this Act [sections 1301 to 1318 of Pub. L. 99–514]) by reason of the use of a portion of the proceeds of such obligations to finance or refinance temporary advances made by the city of Baltimore in connection with loans to persons who are not exempt persons (within the meaning of section 103(b)(3) of such Code) if—

''(A) such obligations are not industrial development bonds (within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954 [now 1986]),

''(B) the portion of the proceeds of such obligations so used is attributable to debt approved by voter referendum on or before November 2, 1982,

''(C) the loans to such nonexempt persons were approved by the Board of Estimates of the city of Baltimore on or before October 19, 1983, and

''(D) the aggregate amount of such temporary advances financed or refinanced by such obligations does not exceed $27,000,000.

''(2) WHITE PINE POWER PROJECT.—The amendment made by section 626(a) of the Tax Reform Act of 1984 [section 626(a) of Pub. L. 98–369, amending this section] shall not apply to any obligation issued during 1984 to provide financing for the White Pine Power Project in Nevada.

''(3) TAX INCREMENT BONDS.—The amendment made by section 626(a) of the Tax Reform Act of 1984 shall not apply to any tax increment financing obligation issued before August 16, 1986, if—

''(A) substantially all of the proceeds of the issue are to be used to finance—

''(i) sewer, street, lighting, or other governmental improvements to real property,

''(ii) the acquisition of any interest in real property (by a governmental unit having the power to exercise eminent domain), the preparation of such property for new use, or the transfer of such interest to a private developer, or

''(iii) payments of reasonable relocation costs of prior users of such real property,

''(B) all of the activities described in subparagraph (A) are pursuant to a redevelopment plan adopted by the issuing authority before the issuance of such issue,

''(C) repayment of such issue is secured exclusively by pledges of that portion of any increase in real

property tax revenues (or their equivalent) attributable to the redevelopment resulting from the issue (or similar issues), and

''(D) none of the property described in subparagraph (A) is subject to a real property or other tax based on a rate or valuation method which differs from the rate and valuation method applicable to any other similar property located within the jurisdiction of the issuing authority.

''(4) EASTERN MAINE ELECTRIC COOPERATIVE.—The amendment made by section 626(a) of the Tax Reform Act of 1984 shall not apply to obligations issued by Massachusetts Municipal Wholesale Electric Company Project No. 6 if—

''(A) such obligation is issued before January 1, 1986,

''(B) such obligation is issued after such date to refund a prior obligation for such project, except that the aggregate amount of obligations to which this subparagraph applies shall not exceed $100,000,000, or

''(C) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this subparagraph applies shall not exceed $45,000,000.

Subparagraph (B) shall not apply to any obligation issued for the advance refunding of any obligation.''

TREATMENT OF OBLIGATIONS TO FINANCE ST. JOHNS RIVER POWER PARK

Section 1869(c)(6) of Pub. L. 99–514 provided that:

''(A) IN GENERAL.—The amendment made by section 626(a) of the Tax Reform Act of 1984 [section 626(a) of Pub. L. 98–369, amending this section] shall not apply to any obligation issued to finance the project described in subparagraph (B) if—

''(i) such obligation is issued before September 27, 1985,

''(ii) such obligation is issued after such date to refund a prior tax exemption obligation for such project, the amount of such obligation does not exceed the outstanding amount of the refunded obligation, and such prior tax exempt obligation is retired not later than the date 30 days after the issuance of the refunding obligation, or

''(iii) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this clause applies shall not exceed $150,000,000.

Clause (ii) shall not apply to any obligation issued for the advance refunding of any obligation.

''(B) DESCRIPTION OF PROJECT.—The project described in this subparagraph in the St. Johns River Power Park system in Florida which was authorized by legislation enacted by the Florida Legislature in February of 1982.''

CERTAIN PUBLIC UTILITIES TREATED AS EXEMPTED PERSONS UNDER SECTION 103(b); SPECIAL RULES FOR CERTAIN RAILROADS

Section 629 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XIII, § 1316(g)(8)(B), Oct. 22, 1986, 100 Stat. 2095, 2670, provided that:

''(a) CERTAIN PUBLIC UTILITIES.—For purposes of applying section 103(b)(3) of the Internal Revenue Code [of 1986] with respect to—

''(1) any obligations issued after the date of enactment of this Act [July 18, 1984], and

''(2) any obligations issued after December 31, 1969, which were treated as obligations described in section 103(a) of such Code on the day on which such obligations were issued,

the term 'exempt person' shall include a regulated public utility having any customer service area within a State served by a public power authority which was required as a condition of a Federal Power Commission license specified by an Act of Congress enacted prior to the enactment of section 107 of the Revenue and Expenditure Control Act of 1968 (Public Law 90–364) [June 28, 1968] to contract to sell power to one such utility and which is authorized by State law to sell power to other such utilities, but only with respect to the purchase by any such utility and resale to its customers of any output of any electrical generation facility or any portion thereof or any use of any electrical transmission facility or any portion thereof financed by such power authority and owned by it or by such State, and provided that by agreement between such power authority and any such utility there shall be no markup in the resale price charged by such utility of that component of the resale price which represents the price paid by such utility for such output or use. The preceding sentence shall be applied by inserting 'and a rural electric cooperative utility' after 'regulated public utility' but only if not more than 1 percent of the load of the public power authority is sold to such rural electric cooperative utility.

''(b) CERTAIN RAILROADS.—Section 103(b)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any obligation which is described in section 103(b)(6)(A) of such Code if—

''(1) substantially all of the proceeds of such obligation are used to acquire railroad track and right-of-way from a railroad involved in a title 11 or similar proceeding (within the meaning of section 368(a)(3)(A) of such Code), and

''(2) the Federal Railroad Administration provides joint financing for such acquisitions.

''(c) SPECIAL RULES FOR SUBSECTION (a).—

''(1) OBLIGATIONS SUBJECT TO CAP.—Any obligation described in subsection (a) shall be treated as a private activity bond for purposes of section 103(n) of the Internal Revenue Code of 1986.

''(2) LIMITATION ON AMOUNT OF OBLIGATIONS TO WHICH SUBSECTION (a)(1) APPLIES—The aggregate amount of obligations to which subsection (a)(1) applies shall not exceed $911,000,000.

''(3) LIMITATION ON PURPOSES.—Subsection (a)(1) shall only apply to obligations issued as part of an issue substantially all the proceeds of which are used to provide 1 or more of the following:

''(A) Cable facilities.

''(B) Small hydroelectric facilities.

''(C) The acquisition of an interest in an electrical generating facility.

''(D) Improvements to existing generating facilities.

''(E) Transmission lines.

''(F) Electric generating facilities.''

TREATMENT OF CERTAIN RESIDENTIAL REAL PROPERTY AS RESIDENTIAL RENTAL PROPERTY

Treatment of Pub. L. 98–369, § 631(d)(3), residential real property as residential rental property, see section 1809(a)(4)(C) of Pub. L. 99–514, set out as a note under section 168 of this title.

PUBLIC APPROVAL REQUIREMENT IN THE CASE OF PUBLIC AIRPORT

Section 628(f) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(1) the proceeds of any issue are to be used to finance a facility or facilities located on a public airport, and

''(2) the governmental unit issuing such obligations is the owner or operator of such airport,

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport for purposes of subsection (k) of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to public approval for industrial development bonds).''

SMALL ISSUE LIMIT IN CASE OF CERTAIN URBAN DEVELOPMENT ACTION GRANTS

Section 628(h) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any obligation issued on December 11,

1981, section 103(b)(6)(I) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied by substituting '$15,000,000' for '$10,000,000' if—

''(1) such obligation is part of an issue,

''(2) substantially all of the proceeds of such issue are used to provide facilities with respect to which an urban development action grant under section 119 of the Housing and Community Development Act of 1974 [42 U.S.C. 5318] was preliminarily approved by the Secretary of Housing and Urban Development on January 10, 1980, and

''(3) the Secretary of Housing and Urban Development determines, at the time such grant is approved, that the amount of such grant will equal or exceed 5 percent of the total capital expenditures incurred with respect to such facilities.''

STUDENT LOAN BONDS

Pub. L. 98–369, div. A, title VI, § 625, July 18, 1984, 98 Stat. 924, as amended by Pub. L. 99–514, § 2, title XVIII, § 1868, Oct. 22, 1986, 100 Stat. 2095, 2888, provided that:

''(a) ARBITRAGE REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall prescribe regulations which specify the circumstances under which a qualified student loan bond shall be treated as an arbitrage bond for purposes of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. Such regulations may provide that—

''(A) paragraphs (4) and (5) of section 103(c) of such Code shall not apply, and

''(B) rules similar to section 103(c)(6) shall apply, to qualified student loan bonds.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) QUALIFIED STUDENT LOAN BOND.—The term 'qualified student loan bond' has the meaning given to such term by section 103(*o*)(3) of the Internal Revenue Code of 1986 (as amended by this Act).

''(B) ARBITRAGE BOND.—The term 'arbitrage bond' has the meaning given to such term by section 103(c)(2).

''(3) EFFECTIVE DATE.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, any regulations prescribed by the Secretary under paragraph (1) shall apply to obligations issued after the qualified date.

''(B) QUALIFIED DATE.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'qualified date' means the earlier of—

''(I) the date on which the Higher Education Act of 1965 [20 U.S.C. 1001 et seq., 42 U.S.C. 2751 et seq.] expires, or

''(II) the date, after the date of enactment of this Act [July 18, 1984], on which the Higher Education Act of 1965 is reauthorized.

''(ii) PUBLICATION OF REGULATIONS.—Notwithstanding clause (i), the qualified date shall not be a date which is prior to the date that is 6 months after the date on which the regulations prescribed under paragraph (1) are published in the Federal Register.

''(C) REFUNDING OBLIGATIONS.—Regulations prescribed by the Secretary under paragraph (1) shall not apply to any obligation (or series of refunding obligations) issued exclusively to refund any qualified student loan bond which was issued before the qualified date, except that the requirements of subparagraphs (A) and (B) of section 626(b)(4) of this Act [set out in Effective Date of 1984 Amendment note above] must be met with respect to such refunding.

''(D) FULFILLMENT OF COMMITMENTS.—Regulations prescribed by the Secretary under paragraph (1) shall not apply to any obligations which are needed to fulfill written commitments to acquire or finance student loans which are originated after June 30, 1984, and before the qualified date, but only if—

''(i) such commitments are binding on the qualified date, and

''(ii) the amount of such commitments is consistent with practices of the issuer which were in effect on March 15, 1984, with respect to establishing secondary markets for student loans.

''(b) ARBITRAGE LIMITATION ON STUDENT LOAN BONDS WHICH ARE NOT QUALIFIED STUDENT LOAN BONDS.—Under regulations prescribed by the Secretary of the Treasury or his delegate, any student loan bond (other than a qualified student loan bond) issued after December 31, 1985, shall be treated as an obligation not described in subsection (a)(1) or (2) of section 103 of the Internal Revenue Code of 1986 unless the issue of which such obligation is a part meets requirements similar to those of sections 103(c)(6) and 103A(i) of such Code.

''(c) ISSUANCE OF STUDENT LOAN BONDS WHICH ARE NOT TAX-EXEMPT.—Any issuer who may issue obligations described in section 103(a) of the Internal Revenue Code of 1986 may elect to issue student loan bonds which are not described in such section 103(a) of such Code without prejudice to—

''(1) the status of any other obligations issued, or to be issued, by such issuer as obligations described in section 103(a) of such Code, or

''(2) the status of the issuer as an organization exempt from taxation under such Code.

''(d) FEDERAL EXECUTIVE BRANCH JURISDICTION OVER TAX-EXEMPT STATUS.—For purposes of Federal law, any determination by the executive branch of the Federal Government of whether interest on any obligation is exempt from taxation under the Internal Revenue Code of 1986 shall be exclusively within the jurisdiction of the Department of the Treasury.

''(e) STUDY ON TAX-EXEMPT STUDENT LOAN BONDS.—

''(1) IN GENERAL.—The Comptroller General of the United States and the Director of the Congressional Budget Office, shall conduct studies of—

''(A) the appropriate role of tax-exempt bonds which are issued in connection with the guaranteed student loan program and the PLUS program established under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq., 42 U.S.C. 2751 et seq.], and

''(B) the appropriate arbitrage rules for such bonds.

''(2) REPORT.—The Comptroller General of the United States and the Director of the Congressional Budget Office, shall submit to the Committee on Finance and the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate and the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives reports on the studies conducted under paragraph (1) by no later than 9 months after the date of enactment of this Act [July 18, 1984].''

OBLIGATIONS ISSUED TO PROVIDE SOLID WASTE-ENERGY PRODUCING FACILITIES

Section 241(b) of Pub. L. 96–223, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—For purposes of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any obligation issued by an authority for 2 or more political subdivisions of a State which is part of an issue substantially all of the proceeds of which are to be used to provide solid waste-energy producing facilities shall be treated as an obligation of a political subdivision of a State which meets the requirements of section 103(b)(4)(E) of such Code (relating to solid waste disposal, etc., facilities). Nothing in the preceding sentence shall be construed to override the limitations of section 103(c) of such Code (relating to arbitrage bonds).

''(2) SOLID WASTE-ENERGY PRODUCING FACILITIES.—For purposes of paragraph (1), the term 'solid waste-energy producing facilities' means any solid waste disposal facility and any facility for the production of steam and electrical energy if—

''(A) substantially all of the fuel for the facility producing steam and electrical energy is derived from solid waste from such solid waste disposal facility,

''(B) both such solid waste disposal facility and the facility producing steam and electrical energy are owned and operated by the authority referred to in paragraph (1), and

''(C) all of the electrical energy and steam produced by the facility for producing steam and electricity which is not used by such facility is sold, for purposes other than resale, to an agency or instrumentality of the United States.

''(3) SOLID WASTE DISPOSAL FACILITY.—For purposes of paragraph (2), the term 'solid waste disposal facility' means any solid waste disposal facility within the meaning of section 103(b)(4)(E) of the Internal Revenue Code of 1986 (determined without regard to section 103(g) of such Code).

''(4) OBLIGATIONS MUST BE IN REGISTERED FORM.—This subsection shall not apply to any obligation which is not issued in registered form.''

ALCOHOL-PRODUCING FACILITIES

Section 241(c) of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Subparagraph (C) of section 103(g)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall not apply to any facility for the production of alcohol from solid waste if—

''(A) substantially all of the solid waste derived feedstock for such facility is produced at a facility which—

''(i) went into full production in 1977,

''(ii) is located within the limits of a city, and

''(iii) is located in the same metropolitan area as the alcohol-producing facility, and

''(B) before March 1, 1980, there were negotiations between a governmental body and an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 with respect to the utilization of a special process for the production of alcohol at such alcohol-producing facility.

''(2) LIMITATION.—The aggregate amount of obligations which may be issued by reason of paragraph (1) with respect to any project shall not exceed $30,000,000.

''(3) TERMINATION.—This subsection shall not apply to obligations issued after December 31, 1985.''

HYDROELECTRIC GENERATING FACILITIES

Section 242(b) of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—For purposes of section 103(b)(4)(H) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to qualified hydroelectric generating facilities), in the case of a hydroelectric generating facility described in paragraph (2)—

''(A) the facility shall be treated as a qualified hydroelectric generating facility (as defined in section 103(b)(8)(A) of such Code) without regard to clause (ii) of section 48(*l*)(13)(B) of such Code (relating to maximum generating capacity), and

''(B) the fraction referred to in subparagraph (C) of section 103(b)(8) of such Code shall be deemed to be 1.

''(2) FACILITIES TO WHICH PARAGRAPH (1) APPLIES.—A facility is described in this paragraph if—

''(A) it would be a qualified hydroelectric generating facility (as defined in section 103(b)(8)(A) of such Code) if clause (ii) of section 48(*l*)(13)(B) did not apply,

''(B) it constitutes an expansion of generating capacity at an existing hydroelectric generating facility,

''(C) such facility is located at 1 of 2 dams located in the same county where—

''(i) the rated capacity of the hydroelectric generating facilities at each such dam on October 18, 1979, was more than 750 megawatts,

''(ii) the construction of the first such dam began in 1956, power at such first dam was first generated in 1959, and full power production at such first dam began in 1961, and

''(iii) the construction of the second such dam began in 1959, power at such second dam was first generated in 1963, and full power production at such second dam began in 1964,

''(D) acquisition or construction of the existing facility referred to in subparagraph (B) was financed with the proceeds of an obligation described in section 103(a)(1) of such Code,

''(E) the existing facility is owned and operated by a State, political subdivision of a State, or agency or instrumentality of any of the foregoing,

''(F) no more than 60 percent of the electric power and energy produced by such existing facility and of the qualified hydroelectric generating facility is to be sold to anyone other than an exempt person (within the meaning of section 103(b)(3) of such Code), and

''(G) the agency of the State in which the facility is located which has jurisdiction over water rights had granted, before October 18, 1979, a water right under which expanded power and energy generating capacity for the facility was contemplated.''

STATE OBLIGATIONS FOR RENEWABLE ENERGY PROPERTY

Section 243 of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) CERTAIN STATE OBLIGATIONS FOR RENEWABLE ENERGY PROPERTY.—

''(1) IN GENERAL.—Paragraph (1) of subsection (b) of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any obligation issued as part of an issue substantially all of the proceeds of which are to be used to provide renewable energy property, if—

''(A) the obligations are general obligations of a State,

''(B) the authority for the issuance of the obligations requires that taxes be levied in sufficient amount to provide for the payment of principal and interest on such obligations,

''(C) the amount of such obligations, when added to the sum of the amounts of all such obligations previously issued by the State which are outstanding, does not exceed the smaller of—

''(i) $500,000,000 or

''(ii) one-half of 1 percent of the value of all property in the State,

''(D) such obligations are issued pursuant to a program to provide financing for small scale energy projects which was established by a State the legislature of which, before October 18, 1979, approved a constitutional amendment to provide for such a program, and

''(E) such obligations meet the requirements of paragraph (1) of section 103(h) of the Internal Revenue Code of 1986.

''(2) RENEWABLE ENERGY PROPERTY.—For purposes of this subsection, the term 'renewable energy property' means property used to produce energy (including heat, electricity, and substitute fuels) from renewable energy sources (including wind, solar, and geothermal energy, waste heat, biomass, and water).

''(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to obligations issued after the date of enactment of this Act [Apr. 2, 1980].''

DISPOSITION OF AMOUNTS GENERATED BY ADVANCE REFUNDING OF CERTAIN GOVERNMENTAL OBLIGATIONS

Section 337 of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §103(a)(8), Apr. 1, 1980, 94 Stat. 212; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—The payment to a charitable organization of a refund profit held in a trust fund or escrow arrangement, or held by an underwriter or other person under a qualified agreement in accordance with that agreement—

''(1) shall not cause the refunding obligations out of which the refund profit arose to be treated as arbitrage bonds (within the meaning of section 103(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and

''(2) may be paid without penalty imposed on the issuer of such obligations.

''(b) RULE FOR GOVERNMENTS WHICH HAVE ALREADY PAID ARBITRAGE PROFITS TO THE UNITED STATES.—In the case of a State or local government which, before January 1, 1977—

''(1) requested in writing a rule by the Internal Revenue Service with respect to the tax consequences of paying refund profit to charitable organizations,

''(2) failed to receive a favorable ruling and did not pay the refund profit to a charitable organization, and

which accounted to the United States for refund profit by direct payment to the United States, or by the purchase of low-interest United States obligations, the Secretary of the Treasury shall pay, out of any amounts in the Treasury not otherwise appropriated, an amount equal to the refund profit for which the State or local government has accounted to the United States. Amounts paid to a State or local government under this subsection shall be distributed to such charitable organizations within 90 days after the date on which the payment is received by the State or local government in the same manner as if the refund profit had not been paid to the United States and met the requirements of subsection (a).

''(c) DEFINITIONS.—For purposes of this section—

''(1) REFUND PROFIT.—The term 'Refund profit' means interest, profit, or other amounts generated by, or arising out of, the advance refunding, before September 24, 1976, of an obligation of a State or local government described in section 103 of such Code.

''(2) CHARITABLE ORGANIZATION.—The term 'charitable organization' means an organization described in section 501(c)(3) of such Code and exempt from taxation under section 501(a) of such Code other than an organization described in section 509(a) of such Code.

''(3) QUALIFIED AGREEMENT.—The term 'qualified agreement' means an agreement (whether or not enforceable) which provides for, or contemplates, the payment of refund profit to one or more charitable organizations.

''(4) LOW-INTEREST UNITED STATES OBLIGATIONS.—The term 'low-interest United States obligations' means United States obligations which bear an interest rate lower than the highest rate of interest borne by public debt securities generally available for purchase at the time such obligations were purchased.''

TRANSITIONAL PROVISIONS FOR INDUSTRIAL DEVELOPMENT BONDS ISSUED BEFORE JANUARY 1, 1969

Section 107(b)(2) of Pub. L. 90–364, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Section 103(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a) [subsec. (b)(1), formerly subsec. (c)(1) of this section], shall not apply with respect to any obligation issued before January 1, 1969, if before May 1, 1968—

''(A) the issuance of the obligation (or the project in connection with which the proceeds of the obligations are to be used) was authorized or approved by the governing body of the governmental unit issuing the obligation or by the voters of such governmental unit;

''(B) in connection with the issuance of such obligation or with the use of the proceeds to be derived from the sale of such obligation or the property to be acquired or improved with such proceeds, a governmental unit has made a significant financial commitment;

''(C) any person (other than a governmental unit) who will use the proceeds to be derived from the sale of such obligation or the property to be acquired or improved with such proceeds has expended (or has entered into a binding contract to expend) for purposes which are related to the use of such proceeds or property, an amount equal to or in excess of 20 percent of such proceeds; or

''(D) in the case of an obligation issued in conjunction with a project where financial assistance will be provided by a governmental agency concerned with economic development, such agency has approved the project or an application for financial assistance is pending.''

[§ 103A. Repealed. Pub. L. 99–514, title XIII, § 1301(j)(1), Oct. 22, 1986, 100 Stat. 2657]

Section, added Pub. L. 96–499, title XI, § 1102(a), Dec. 5, 1980, 94 Stat. 2660; amended Pub. L. 96–595, § 5(a), (b), Dec. 24, 1980, 94 Stat. 3467; Pub. L. 97–248, title II, § 220(a)–(e), title III, § 310(c)(3), (4), Sept. 3, 1982, 96 Stat. 475, 476, 599; Pub. L. 98–369, div. A, title I, § 42(a)(2), title VI, §§ 611(a)–(c), 612(b), 624(b)(1), July 18, 1984, 98 Stat. 556, 901–903, 911, 924; Pub. L. 99–514, title XVIII, § 1861, Oct. 22, 1986, 100 Stat. 2883, related to mortgage subsidy bonds. See section 143 of this title.

EFFECTIVE DATE OF REPEAL

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

§ 104. Compensation for injuries or sickness

(a) In general

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—

(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;

(3) amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);

(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980; and

(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a terroristic or military action (as defined in section 692(c)(2)).

For purposes of paragraph (3), in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), contributions made on behalf of such individual while he was such an employee to a trust described in section 401(a) which is exempt from tax under section 501(a), or under a plan described in section 403(a), shall, to the extent allowed as deductions under section 404, be treated as contributions by the employer which were not includible in the

gross income of the employee. For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress.

(b) Termination of application of subsection (a)(4) in certain cases

(1) In general

Subsection (a)(4) shall not apply in the case of any individual who is not described in paragraph (2).

(2) Individuals to whom subsection (a)(4) continues to apply

An individual is described in this paragraph if—

(A) on or before September 24, 1975, he was entitled to receive any amount described in subsection (a)(4),

(B) on September 24, 1975, he was a member of any organization (or reserve component thereof) referred to in subsection (a)(4) or under a binding written commitment to become such a member,

(C) he receives an amount described in subsection (a)(4) by reason of a combat-related injury, or

(D) on application therefor, he would be entitled to receive disability compensation from the Veterans' Administration.

(3) Special rules for combat-related injuries

For purposes of this subsection, the term ''combat-related injury'' means personal injury or sickness—

(A) which is incurred—

(i) as a direct result of armed conflict,

(ii) while engaged in extrahazardous service, or

(iii) under conditions simulating war; or

(B) which is caused by an instrumentality of war.

In the case of an individual who is not described in subparagraph (A) or (B) of paragraph (2), except as provided in paragraph (4), the only amounts taken into account under subsection (a)(4) shall be the amounts which he receives by reason of a combat-related injury.

(4) Amount excluded to be not less than veterans' disability compensation

In the case of any individual described in paragraph (2), the amounts excludable under subsection (a)(4) for any period with respect to any individual shall not be less than the maximum amount which such individual, on application therefor, would be entitled to receive as disability compensation from the Veterans' Administration.

(c) Application of prior law in certain cases

The phrase ''(other than punitive damages)'' shall not apply to punitive damages awarded in a civil action—

(1) which is a wrongful death action, and

(2) with respect to which applicable State law (as in effect on September 13, 1995 and without regard to any modification after such date) provides, or has been construed to provide by a court of competent jurisdiction pursuant to a decision issued on or before September 13, 1995, that only punitive damages may be awarded in such an action.

This subsection shall cease to apply to any civil action filed on or after the first date on which the applicable State law ceases to provide (or is no longer construed to provide) the treatment described in paragraph (2).

(d) Cross references

(1) For exclusion from employee's gross income of employer contributions to accident and health plans, see section 106.

(2) For exclusion of part of disability retirement pay from the application of subsection (a)(4) of this section, see section 1403 of title 10, United States Code (relating to career compensation laws).

(Aug. 16, 1954, ch. 736, 68A Stat. 30; Pub. L. 86–723, §51, Sept. 8, 1960, 74 Stat. 847; Pub. L. 87–792, §7(d), Oct. 10, 1962, 76 Stat. 829; Pub. L. 94–455, title V, §505(b), (e)(1), title XIX, §1901(a)(18), Oct. 4, 1976, 90 Stat. 1567, 1568, 1766; Pub. L. 96–465, title II, §2206(e)(1), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 97–473, title I, §101(a), Jan. 14, 1983, 96 Stat. 2605; Pub. L. 101–239, title VII, §7641(a), Dec. 19, 1989, 103 Stat. 2379; Pub. L. 104–188, title I, §1605(a)–(c), Aug. 20, 1996, 110 Stat. 1838; Pub. L. 104–191, title III, §311(b), Aug. 21, 1996, 110 Stat. 2053; Pub. L. 107–134, title I, §113(a), Jan. 23, 2002, 115 Stat. 2435.)

REFERENCES IN TEXT

Section 808 of the Foreign Service Act of 1980, referred to in subsec. (a)(4), is Pub. L. 96–465, title I, §808, Oct. 17, 1980, 94 Stat. 2110, which is classified to section 4048 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2002—Subsec. (a)(5). Pub. L. 107–134 substituted ''a terroristic or military action (as defined in section 692(c)(2)).'' for ''a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States.''

1996—Subsec. (a). Pub. L. 104–188, §1605(b), in closing provisions, substituted ''For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress.'' for ''Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness.''

Subsec. (a)(2). Pub. L. 104–188, §1605(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness;''.

Subsec. (a)(3). Pub. L. 104–191 inserted ''(or through an arrangement having the effect of accident or health insurance)'' after ''accident or health insurance''.

Subsecs. (c), (d). Pub. L. 104–188, §1605(c), added subsec. (c) and redesignated former subsec. (c) as (d).

1989—Subsec. (a). Pub. L. 101–239 inserted at end ''Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness.''

1983—Subsec. (a)(2). Pub. L. 97–473 substituted ''whether by suit or agreement and whether as lump

sums or as periodic payments'' for ''whether by suit or agreement''.

1980—Subsec. (a)(4). Pub. L. 96–465 substituted reference to section 808 of the Foreign Service Act of 1980 for reference to section 831 of the Foreign Service Act of 1946.

1976—Subsec. (a)(4). Pub. L. 94–455, § 1901(a)(18)(A), struck out ''; 60 Stat. 1021'' after ''(22 U.S.C. 1081''.

Subsec. (a)(5). Pub. L. 94–455, § 505(e)(1), added par. (5).

Subsecs. (b), (c). Pub. L. 94–455, § 505(b), added subsec. (b), redesignated former subsec. (b) as (c) and, as so redesignated, § 1901(a)(18)(B), substituted ''1403 of title 10, United States Code (relating to career compensation laws)'' for ''402(h) of the Career Compensation Act of 1949 (37 U.S.C. 272(h))''.

1962—Subsec. (a). Pub. L. 87–792 inserted sentence requiring contributions made on behalf of an individual who is, or has been, an employee within the meaning of section 401(c)(1), while he was such an employee to a trust which is exempt from tax, or under a plan described in section 403(a), to be treated as contributions by the employer which were not includible in the gross income of the employee.

1960—Subsec. (a)(4). Pub. L. 86–723 provided for exclusion from gross income of amounts received as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended.

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 FR 8819, 79 Stat. 1318. Environmental Science Services Administration abolished in 1970 and its personnel, property, records, etc., transferred to National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 FR 15627, 84 Stat. 2090. By order of Acting Associate Administrator of National Oceanic and Atmospheric Administration, 35 FR 19249, Dec. 19, 1970, Coast and Geodetic Survey redesignated National Ocean Survey. See notes under section 311 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, § 113(c), Jan. 23, 2002, 115 Stat. 2435, provided that: ''The amendments made by this section [amending this section and section 692 of this title] shall apply to taxable years ending on or after September 11, 2001.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 311(c) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section and section 162 of this title] shall apply to taxable years beginning after December 31, 1996.''

Section 1605(d) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to amounts received after the date of the enactment of this Act [Aug. 20, 1996], in taxable years ending after such date.

''(2) EXCEPTION.—The amendments made by this section shall not apply to any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7641(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to amounts received after July 10, 1989, in taxable years ending after such date.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any amount received—

''(A) under any written binding agreement, court decree, or mediation award in effect on (or issued on or before) July 10, 1989, or

''(B) pursuant to any suit filed on or before July 10, 1989.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 505(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Section 505(e)(2) of Pub. L. 94–455 provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1976.''

Amendment by section 1901(a)(18)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 56(e) of Pub. L. 86–723 provided that: ''The amendment made by section 51 of this Act [amending this section] shall be effective with respect to taxable years ending after the date of enactment of this Act [Sept. 8, 1960].''

TRANSFER OF FUNCTIONS

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

§ 105. Amounts received under accident and health plans

(a) Amounts attributable to employer contributions

Except as otherwise provided in this section, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer.

(b) Amounts expended for medical care

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medi-

cal care (as defined in section 213(d)) of the taxpayer, his spouse, his dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), and any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27. Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection.

(c) Payments unrelated to absence from work

Gross income does not include amounts referred to in subsection (a) to the extent such amounts—

(1) constitute payment for the permanent loss or loss of use of a member or function of the body, or the permanent disfigurement, of the taxpayer, his spouse, or a dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), and

(2) are computed with reference to the nature of the injury without regard to the period the employee is absent from work.

[(d) Repealed. Pub. L. 98–21, title I, § 122(b), Apr. 20, 1983, 97 Stat. 87]

(e) Accident and health plans

For purposes of this section and section 104—

(1) amounts received under an accident or health plan for employees, and

(2) amounts received from a sickness and disability fund for employees maintained under the law of a State or the District of Columbia,

shall be treated as amounts received through accident or health insurance.

(f) Rules for application of section 213

For purposes of section 213(a) (relating to medical, dental, etc., expenses) amounts excluded from gross income under subsection (c) or (d) shall not be considered as compensation (by insurance or otherwise) for expenses paid for medical care.

(g) Self-employed individual not considered an employee

For purposes of this section, the term ''employee'' does not include an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(h) Amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan

(1) In general

In the case of amounts paid to a highly compensated individual under a self-insured medical reimbursement plan which does not satisfy the requirements of paragraph (2) for a plan year, subsection (b) shall not apply to such amounts to the extent they constitute an excess reimbursement of such highly compensated individual.

(2) Prohibition of discrimination

A self-insured medical reimbursement plan satisfies the requirements of this paragraph only if—

(A) the plan does not discriminate in favor of highly compensated individuals as to eligibility to participate; and

(B) the benefits provided under the plan do not discriminate in favor of participants who are highly compensated individuals.

(3) Nondiscriminatory eligibility classifications

(A) In general

A self-insured medical reimbursement plan does not satisfy the requirements of subparagraph (A) of paragraph (2) unless such plan benefits—

(i) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all employees are eligible to benefit under the plan; or

(ii) such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated individuals.

(B) Exclusion of certain employees

For purposes of subparagraph (A), there may be excluded from consideration—

(i) employees who have not completed 3 years of service;

(ii) employees who have not attained age 25;

(iii) part-time or seasonal employees;

(iv) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; and

(v) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(4) Nondiscriminatory benefits

A self-insured medical reimbursement plan does not meet the requirements of subparagraph (B) of paragraph (2) unless all benefits provided for participants who are highly compensated individuals are provided for all other participants.

(5) Highly compensated individual defined

For purposes of this subsection, the term ''highly compensated individual'' means an individual who is—

(A) one of the 5 highest paid officers,

(B) a shareholder who owns (with the application of section 318) more than 10 percent in value of the stock of the employer, or

(C) among the highest paid 25 percent of all employees (other than employees described in paragraph (3)(B) who are not participants).

(6) Self-insured medical reimbursement plan

The term ''self-insured medical reimbursement plan'' means a plan of an employer to re-

imburse employees for expenses referred to in subsection (b) for which reimbursement is not provided under a policy of accident and health insurance.

(7) Excess reimbursement of highly compensated individual

For purposes of this section, the excess reimbursement of a highly compensated individual which is attributable to a self-insured medical reimbursement plan is—

(A) in the case of a benefit available to highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph (2)(B)), the amount reimbursed under the plan to the employee with respect to such benefit, and

(B) in the case of benefits (other than benefits described in subparagraph (A)[1] paid to a highly compensated individual by a plan which fails to satisfy the requirements of paragraph (2), the total amount reimbursed to the highly compensated individual for the plan year multiplied by a fraction—

(i) the numerator of which is the total amount reimbursed to all participants who are highly compensated individuals under the plan for the plan year, and

(ii) the denominator of which is the total amount reimbursed to all employees under the plan for such plan year.

In determining the fraction under subparagraph (B), there shall not be taken into account any reimbursement which is attributable to a benefit described in subparagraph (A).

(8) Certain controlled groups, etc.

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(9) Regulations

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

(10) Time of inclusion

Any amount paid for a plan year that is included in income by reason of this subsection shall be treated as received or accrued in the taxable year of the participant in which the plan year ends.

(i) Sick pay under Railroad Unemployment Insurance Act

Notwithstanding any other provision of law, gross income includes benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness; except to the extent such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

(j) Special rule for certain governmental plans

(1) In general

For purposes of subsection (b), amounts paid (directly or indirectly) to the taxpayer from an accident or health plan described in paragraph (2) shall not fail to be excluded from gross income solely because such plan, on or before January 1, 2008, provides for reimbursements of health care expenses of a deceased plan participant's beneficiary.

(2) Plan described

An accident or health plan is described in this paragraph if such plan is funded by a medical trust that is established in connection with a public retirement system and that—

(A) has been authorized by a State legislature, or

(B) has received a favorable ruling from the Internal Revenue Service that the trust's income is not includible in gross income under section 115.

(Aug. 16, 1954, ch. 736, 68A Stat. 30; Pub. L. 87–792, § 7(e), Oct. 10, 1962, 76 Stat. 829; Pub. L. 88–272, title II, § 205(a), Feb. 26, 1964, 78 Stat. 38; Pub. L. 94–455, title V, § 505(a), title XIX, § 1901(c)(2), Oct. 4, 1976, 90 Stat. 1566, 1803; Pub. L. 95–600, title III, § 366(a), title VII, § 701(c)(1), Nov. 6, 1978, 92 Stat. 2855, 2899; Pub. L. 96–222, title I, § 103(a)(13)(B), (C), Apr. 1, 1980, 94 Stat. 213; Pub. L. 96–605, title II, § 201(b)(1), Dec. 28, 1980, 94 Stat. 3527; Pub. L. 96–613, § 5(b)(1), Dec. 28, 1980, 94 Stat. 3581; Pub. L. 97–34, title I, §§ 103(c)(2), 111(b)(4), Aug. 13, 1981, 95 Stat. 188, 194; Pub. L. 97–248, title II, § 202(b)(3)(C), Sept. 3, 1982, 96 Stat. 421; Pub. L. 98–21, title I, § 122(b), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–76, title II, § 241(a), Aug. 12, 1983, 97 Stat. 430; Pub. L. 98–369, div. A, title IV, § 423(b)(2), July 18, 1984, 98 Stat. 800; Pub. L. 99–514, title XI, § 1151(c)(2), title XIII, § 1301(j)(9), Oct. 22, 1986, 100 Stat. 2503, 2658; Pub. L. 101–140, title II, § 203(a)(1), Nov. 8, 1989, 103 Stat. 830; Pub. L. 108–311, title II, § 207(9), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110–458, title I, § 124(a), Dec. 23, 2008, 122 Stat. 5114; Pub. L. 111–152, title I, § 1004(d)(1), Mar. 30, 2010, 124 Stat. 1035.)

REFERENCES IN TEXT

Section 2(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (i), is classified to section 352(a) of Title 45, Railroads.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–152 substituted ''his dependents'' for ''and his dependents'' and inserted '', and any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27'' after ''thereof)''.

2008—Subsec. (j). Pub. L. 110–458 added subsec. (j).

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

1989—Subsecs. (h), (i). Pub. L. 101–140 amended subsecs. (h) and (i) to read as if amendments by Pub. L. 99–514, § 1151(c)(2), had not been enacted, see 1986 Amendment note below.

1986—Subsec. (d)(5)(C). Pub. L. 99–514, § 1301(j)(9), which directed that subpar. (C) be amended by substituting ''section 7703(a)'' for ''section 143(a)'', could not be executed because subsec. (d) was previously repealed by Pub. L. 98–21. See 1983 Amendment note below.

Subsecs. (h), (i). Pub. L. 99–514, § 1151(c)(2), redesignated subsec. (i) as (h) and struck out former subsec. (h) which related to amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan.

1984—Subsec. (b). Pub. L. 98–369 inserted ''Any child to whom section 152(e) applies shall be treated as a de-

[1] So in original. Probably should be followed by a closing parenthesis.

pendent of both parents for purposes of this subsection.''

1983—Subsec. (d). Pub. L. 98–21 struck out subsec. (d) which provided that no deduction or credit would be allowed with respect to any expenditure which is properly associated with any amount excluded from gross income under subsec. (a).

Subsec. (i). Pub. L. 98–76 added subsec. (i).

1982—Subsec. (b). Pub. L. 97–248 substituted ''section 213(d)'' for ''section 213(e)''.

1981—Subsec. (d)(3). Pub. L. 97–34, §103(c)(2), substituted ''this subsection and section 221'' for ''this subsection'' in parenthetical provision.

Subsec. (h)(3)(B)(v). Pub. L. 97–34, §111(b)(4), substituted ''section 911(d)(2)'' for ''section 911(b)''.

1980—Subsec. (h)(3)(A). Pub. L. 96–222, §103(a)(13)(B), substituted ''highly compensated individuals'' for ''highly compensated participants''.

Subsec. (h)(7)(A). Pub. L. 96–222, §103(a)(13)(C), substituted ''highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph (2)(B))'' for ''a highly compensated individual but not to a broad cross-section of employees''.

Subsec. (h)(8). Pub. L. 96–613 and Pub. L. 96–605 made identical amendments by substituting in heading ''controlled groups, etc.'' for ''controlled groups'', and by substituting in text ''subsection (b), (c), or (m) of section 414'' for ''subsection (b) or (c) of section 414''.

1978—Subsec. (d)(4). Pub. L. 95–600, §701 (c)(1), redesignated par. (5) as (4). Former par. (4) redesignated (5)(A) and (C).

Subsec. (d)(5). Pub. L. 95–600, §701(c)(1), added heading and subpar. (B), redesignated former par. (4) as subpars. (A) and (C), adding subpar. (C) heading and substituting ''section 143(a)'' for ''section 143''; and redesignated former par. (6) as subpar. (D), inserting ''defined'' in heading.

Subsec. (d)(6), (7). Pub. L. 95–600, §701(c)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5)(D).

Subsec. (h). Pub. L. 95–600, §366(a), added subsec. (h).

1976—Subsec. (d). Pub. L. 94–455, §505(a), substituted provisions relating to an exclusion of up to $5,200 a year for taxpayers retiring on disability prior to age 65; dollar-for-dollar phase out of exclusion for adjusted annual gross income (including disability income) in excess of $15,000; requirement that married couple must file joint return; defined ''permanent and total disability'' and ''joint return''; and inserted special rule for coordination with section 72 of this title for provisions relating to wage continuation plans.

Subsec. (e)(2). Pub. L. 94–455, §1901(c)(2), struck out ''a territory'' after ''of a State''.

1964—Subsec. (d). Pub. L. 88–272 substituted provisions stating that ''The preceding sentence shall not apply to amounts attributable to the first 30'' days if the amounts exceed 75 percent of regular weekly wages, and if they do not exceed said 75 percent, the first sentence of this subsection shall not apply to the extent the amounts exceed $75 weekly and shall not apply to amounts attributable to the first 7 calendar days unless the employee is hospitalized for injury or sickness for at least 1 day in such period, for provisions stating that said ''preceding sentence'' did not apply in cases of sickness, to amounts attributable to the first 7 days unless the employee was hospitalized for sickness for at least 1 day during such period.

1962—Subsec. (g). Pub. L. 87–792 added subsec. (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §124(b), Dec. 23, 2008, 122 Stat. 5115, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments before, on, or after the date of the enactment of this Act [Dec. 23, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1151(c)(2) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1301(j)(9) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 241(b) of Pub. L. 98–76 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts received after December 31, 1983, in taxable years ending after such date.''

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under subsec. (d)(6) as in effect the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21 set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1983, see section 202(c) of Pub. L. 97–248, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see sections 103(d) and 115 of Pub. L. 97–34, set out as notes under sections 62 and 911, respectively, of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendments by Pub. L. 96–605 and 96–613 applicable to years ending after Nov. 30, 1980, except in the case of a plan in existence on Nov. 30, 1980, where amendments applicable to plan years beginning after Nov. 30, 1980, see section 201(c) of Pub. L. 96–605 and section 5(c) of Pub. L. 96–613, set out as a note under section 414 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 366(b) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §103(a)(13)(D), Apr. 1, 1980, 94 Stat. 213, provided that: ''The amendment made by this section [amending this section] shall apply to amounts reimbursed after December 31, 1979. For purposes of applying such amendment, there shall not be taken into account any amount reimbursed before January 1, 1980.''

Section 701(c)(3) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) The amendments made by paragraphs (1) and (2)(A) [amending this section and provisions set out as

a note under this section] shall take effect as if included in section 105(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as such section was amended by section 505(a) of the Tax Reform Act of 1976.

''(B) The amendments made by paragraph (2)(B) [amending provisions set out as notes under this section] shall take effect as if included in section 301 of the Tax Reduction and Simplification Act of 1977 [Pub. L. 95–30, title III, § 301, May 23, 1977, 91 Stat. 152].''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 505(f) of Pub. L. 94–455, as added by Pub. L. 95–30, title III, § 301(a), May 23, 1977, 91 Stat. 151, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.''

Amendment by section 1901(c)(2) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 205(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts attributable to periods of absence commencing after December 31, 1963.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

REVOCATION OF ELECTION

Pub. L. 95–30, title III, § 301(c), May 23, 1977, 91 Stat. 151, as amended by Pub. L. 95–600, title VII, § 701(c)(2)(B), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Any election made under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or under section 505(d) of the Tax Reform Act of 1976 [set out below] for a taxable year beginning in 1976 may be revoked (in such manner as may be prescribed by regulations) at any time before the expiration of the period for assessing a deficiency with respect to such taxable year (determined without regard to subsection (d) of this section) [set out below].''

PERIOD FOR ASSESSING DEFICIENCY

Pub. L. 95–30, title III, § 301(d), May 23, 1977, 91 Stat. 152, provided that: ''In the case of any revocation made under subsection (c) [set out above], the period for assessing a deficiency with respect to any taxable year affected by the revocation shall not expire before the date which is 1 year after the date of the making of the revocation, and, notwithstanding any law or rule of law, such deficiency, to the extent attributable to such revocation, may be assessed at any time during such 1-year period.''

EFFECTIVE DATE OF CHANGES IN EXCLUSION FOR SICK PAY

Pub. L. 95–30, title III, § 301(e), May 23, 1977, 91 Stat. 152, as amended by Pub. L. 95–600, title VII, § 701(c)(2)(B), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting and amending provisions set out as notes under this section] shall take effect on October 4, 1976, but shall not apply—

''(1) with respect to any taxpayer who makes or has made an election under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or under section 505(d) of the Tax Reform Act of 1976 [set out below] (as such sections were in effect before the enactment of this Act [May 23, 1977]) for a taxable year beginning in 1976, if such election is not revoked under subsection (c) of this section [set out above], and

''(2) with respect to any taxpayer (other than a taxpayer described in paragraph (1)) who has an annuity starting date at the beginning of a taxable year beginning in 1976 by reason of the amendments made by section 505 of the Tax Reform Act of 1976 [amending this section and section 104 of this title and enacting provisions set out as notes under this section] (as in effect before the enactment of this Act [May 23, 1977]), unless such person elects (in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to have such amendments apply.''

SPECIAL RULE FOR EXISTING PERMANENT AND TOTAL DISABILITY CASES

Section 505(c) of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, § 301(b)(1), (2), May 23, 1977, 91 Stat. 151; Pub. L. 95–600, title VII, § 701(c)(2)(A), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any individual who—

''(1) retired before January 1, 1977,

''(2) either retired on disability or was entitled to retire on disability, and

''(3) on January 1, 1976, or January 1, 1977, was permanently and totally disabled (within the meaning of section 105(d)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]),

such individual shall be deemed to have met the requirements of section 105(d)(1)(B) of such Code (as amended by subsection (a) of this section).''

SPECIAL RULE FOR COORDINATION WITH SECTION 72 OF THIS TITLE

Section 505(d) of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, § 301(b)(3)–(5), May 23, 1977, 91 Stat. 151; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of an individual who—

''(1) retired on disability before January 1, 1977, and

''(2) on December 31, 1975, or December 31, 1976, was entitled to exclude any amount with respect to such retirement disability from gross income under section 105(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954],

for purposes of section 72 the annuity starting date shall not be deemed to occur before the beginning of the taxable year in which the taxpayer attains age 65, or before the beginning of an earlier taxable year for which the taxpayer makes an irrevocable election not to seek the benefits of such section 105(d) for such year and all subsequent years.''

§ 106. Contributions by employer to accident and health plans

(a) General rule

Except as otherwise provided in this section, gross income of an employee does not include employer-provided coverage under an accident or health plan.

(b) Contributions to Archer MSAs

(1) In general

In the case of an employee who is an eligible individual, amounts contributed by such employee's employer to any Archer MSA of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under

section 220(b)(1) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) No constructive receipt

No amount shall be included in the gross income of any employee solely because the employee may choose between the contributions referred to in paragraph (1) and employer contributions to another health plan of the employer.

(3) Special rule for deduction of employer contributions

Any employer contribution to an Archer MSA, if otherwise allowable as a deduction under this chapter, shall be allowed only for the taxable year in which paid.

(4) Employer MSA contributions required to be shown on return

Every individual required to file a return under section 6012 for the taxable year shall include on such return the aggregate amount contributed by employers to the Archer MSAs of such individual or such individual's spouse for such taxable year.

(5) MSA contributions not part of COBRA coverage

Paragraph (1) shall not apply for purposes of section 4980B.

(6) Definitions

For purposes of this subsection, the terms ''eligible individual'' and ''Archer MSA'' have the respective meanings given to such terms by section 220.

(7) Cross reference

For penalty on failure by employer to make comparable contributions to the Archer MSAs of comparable employees, see section 4980E.

(c) Inclusion of long-term care benefits provided through flexible spending arrangements

(1) In general

Effective on and after January 1, 1997, gross income of an employee shall include employer-provided coverage for qualified long-term care services (as defined in section 7702B(c)) to the extent that such coverage is provided through a flexible spending or similar arrangement.

(2) Flexible spending arrangement

For purposes of this subsection, a flexible spending arrangement is a benefit program which provides employees with coverage under which—

(A) specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions), and

(B) the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 500 percent of the value of such coverage.

In the case of an insured plan, the maximum amount reasonably available shall be determined on the basis of the underlying coverage.

(d) Contributions to health savings accounts

(1) In general

In the case of an employee who is an eligible individual (as defined in section 223(c)(1)), amounts contributed by such employee's employer to any health savings account (as defined in section 223(d)) of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under section 223(b) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) Special rules

Rules similar to the rules of paragraphs (2), (3), (4), and (5) of subsection (b) shall apply for purposes of this subsection.

(3) Cross reference

For penalty on failure by employer to make comparable contributions to the health savings accounts of comparable employees, see section 4980G.

(e) FSA and HRA terminations to fund HSAs

(1) In general

A plan shall not fail to be treated as a health flexible spending arrangement or health reimbursement arrangement under this section or section 105 merely because such plan provides for a qualified HSA distribution.

(2) Qualified HSA distribution

The term ''qualified HSA distribution'' means a distribution from a health flexible spending arrangement or health reimbursement arrangement to the extent that such distribution—

(A) does not exceed the lesser of the balance in such arrangement on September 21, 2006, or as of the date of such distribution, and

(B) is contributed by the employer directly to the health savings account of the employee before January 1, 2012.

Such term shall not include more than 1 distribution with respect to any arrangement.

(3) Additional tax for failure to maintain high deductible health plan coverage

(A) In general

If, at any time during the testing period, the employee is not an eligible individual, then the amount of the qualified HSA distribution—

(i) shall be includible in the gross income of the employee for the taxable year in which occurs the first month in the testing period for which such employee is not an eligible individual, and

(ii) the tax imposed by this chapter for such taxable year on the employee shall be increased by 10 percent of the amount which is so includible.

(B) Exception for disability or death

Clauses (i) and (ii) of subparagraph (A) shall not apply if the employee ceases to be an eligible individual by reason of the death of the employee or the employee becoming disabled (within the meaning of section 72(m)(7)).

(4) Definitions and special rules

For purposes of this subsection—

(A) Testing period

The term ''testing period'' means the period beginning with the month in which the qualified HSA distribution is contributed to the health savings account and ending on the last day of the 12th month following such month.

(B) Eligible individual

The term ''eligible individual'' has the meaning given such term by section 223(c)(1).

(C) Treatment as rollover contribution

A qualified HSA distribution shall be treated as a rollover contribution described in section 223(f)(5).

(5) Tax treatment relating to distributions

For purposes of this title—

(A) In general

A qualified HSA distribution shall be treated as a payment described in subsection (d).

(B) Comparability excise tax

(i) In general

Except as provided in clause (ii), section 4980G shall not apply to qualified HSA distributions.

(ii) Failure to offer to all employees

In the case of a qualified HSA distribution to any employee, the failure to offer such distribution to any eligible individual covered under a high deductible health plan of the employer shall (notwithstanding section 4980G(d)) be treated for purposes of section 4980G as a failure to meet the requirements of section 4980G(b).

(f) Reimbursements for medicine restricted to prescribed drugs and insulin

For purposes of this section and section 105, reimbursement for expenses incurred for a medicine or a drug shall be treated as a reimbursement for medical expenses only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.

(Aug. 16, 1954, ch. 736, 68A Stat. 32; Pub. L. 99–272, title X, § 10001(b), Apr. 7, 1986, 100 Stat. 223; Pub. L. 99–514, title XI, §§ 1114(b)(1), 1151(j)(2), Oct. 22, 1986, 100 Stat. 2450, 2508; Pub. L. 100–647, title I, § 1018(t)(7)(A), title III, § 3011(b)(1), Nov. 10, 1988, 102 Stat. 3589, 3624; Pub. L. 101–239, title VII, § 7862(c)(1)(A), Dec. 19, 1989, 103 Stat. 2432; Pub. L. 104–191, title III, §§ 301(c)(1), 321(c)(2), Aug. 21, 1996, 110 Stat. 2048, 2058; Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(2), (b)(2)(A), (6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 108–173, title XII, § 1201(d)(1), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 109–432, div. A, title III, § 302(a), Dec. 20, 2006, 120 Stat. 2948; Pub. L. 111–148, title IX, § 9003(c), Mar. 23, 2010, 124 Stat. 854.)

REFERENCES IN TEXT

COBRA, referred to in the heading for subsec. (b)(5), probably means the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, Apr. 7, 1986, 100 Stat. 82, as amended. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–148 added subsec. (f).

2006—Subsec. (e). Pub. L. 109–432 added subsec. (e).

2003—Subsec. (d). Pub. L. 108–173 added subsec. (d).

2000—Subsec. (b). Pub. L. 106–554 § 1(a)(7) [title II, § 202(b)(6)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading.

Subsec. (b)(1). Pub. L. 106–554 § 1(a)(7) [title II, § 202(a)(2)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (b)(3). Pub. L. 106–554 § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554 § 1(a)(7) [title II, § 202(a)(2)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (b)(4). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(A)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (b)(6). Pub. L. 106–554 § 1(a)(7) [title II, § 202(a)(2)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (b)(7). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(A)], substituted ''Archer MSAs'' for ''medical savings accounts''.

1996—Pub. L. 104–191, § 301(c)(1), amended text generally. Prior to amendment, text read as follows: ''Gross income of an employee does not include employer-provided coverage under an accident or health plan.''

Subsec. (c). Pub. L. 104–191, § 321(c)(2), added subsec. (c).

1989—Subsec. (b)(2). Pub. L. 101–239 amended subsec. (b)(2) as it existed prior to general amendment by Pub. L. 100–647 by striking out the last sentence which read as follows: ''Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 (relating to employers under common control) shall apply for purposes of subparagraph (A).'' See Effective Date of 1989 Amendment note below.

1988—Pub. L. 100–647, § 3011(b)(1), amended section generally, substituting a single undesignated par. for former subsec. (a) providing that gross income does not include employer-provided coverage under an accident or health plan and subsec. (b) providing for an exception for highly compensated individuals where a plan fails to provide certain continuation coverage.

Subsec. (b)(1). Pub. L. 100–647, § 1018(t)(7)(A), substituted ''any employer-provided coverage'' for ''any amount contributed by an employer'' and ''under a group'' for ''to a group''.

1986—Pub. L. 99–272 designated existing provisions as subsec. (a) and added subsec. (a) heading and subsec. (b).

Subsec. (a). Pub. L. 99–514, § 1151(j)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Gross income does not include contributions by the employer to accident or health plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness.''

Subsec. (b)(1). Pub. L. 99–514, § 1114(b)(1), substituted ''highly compensated employee (within the meaning of section 414(q))'' for ''highly compensated individual (within the meaning of section 105(h)(5))''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, § 9003(d)(2), Mar. 23, 2010, 124 Stat. 854, provided that: ''The amendment made by subsection (c) [amending this section] shall apply to expenses incurred with respect to taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title III, § 302(c)(1), Dec. 20, 2006, 120 Stat. 2949, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions on or after the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of

Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 301(c)(1) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 321(c)(2) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7862(c)(1)(C) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section and section 1161 of Title 29, Labor] shall apply to years beginning after December 31, 1986.''

Section 7863 of Pub. L. 101–239 provided that: ''Except as otherwise provided in this subpart any amendment made by this subpart [subpart A (§§ 7861–7863) of part V of title VII of Pub. L. 101–239, amending this section and sections 162, 411, 417, and 4980B of this title and sections 1052 to 1055, 1161, 1162, 1167, 1398, and 1461 of Title 29, Labor, enacting provisions set out as notes under this section and sections 162, 417, 1167, 4980, and 4980B of this title, and amending provisions set out as notes under sections 401 and 411 of this title and sections 1001 and 1054 of Title 29], shall take effect as if included in the provision of the Reform Act [Pub. L. 99–514] to which such amendment relates.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(t)(7)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3011(b)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1114(b)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(j)(2) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Section 10001(e) of Pub. L. 99–272 provided that:

''(1) GENERAL RULE.—The amendments made by this section [amending this section and section 162 of this title] shall apply to plan years beginning on or after July 1, 1986.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this section shall not apply to plan years beginning before the later of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 107. Rental value of parsonages

In the case of a minister of the gospel, gross income does not include—

(1) the rental value of a home furnished to him as part of his compensation; or

(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

(Aug. 16, 1954, ch. 736, 68A Stat. 32; Pub. L. 107–181, § 2(a), May 20, 2002, 116 Stat. 583.)

AMENDMENTS

2002—Par. (2). Pub. L. 107–181 inserted ''and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities'' before period at end.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–181, § 2(b), May 20, 2002, 116 Stat. 583, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.

''(2) RETURNS POSITIONS.—The amendment made by this section also shall apply to any taxable year beginning before January 1, 2002, for which the taxpayer—

''(A) on a return filed before April 17, 2002, limited the exclusion under section 107 of the Internal Revenue Code of 1986 as provided in such amendment, or

''(B) filed a return after April 16, 2002.

''(3) OTHER YEARS BEFORE 2002.—Except as provided in paragraph (2), notwithstanding any prior regulation, revenue ruling, or other guidance issued by the Internal Revenue Service, no person shall be subject to the limitations added to section 107 of such Code by this Act for any taxable year beginning before January 1, 2002.''

§ 108. Income from discharge of indebtedness

(a) Exclusion from gross income

(1) In general

Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent,

(C) the indebtedness discharged is qualified farm indebtedness,

(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or

(E) the indebtedness discharged is qualified principal residence indebtedness which is discharged before January 1, 2013.

(2) Coordination of exclusions

(A) Title 11 exclusion takes precedence

Subparagraphs (B), (C), (D), and (E) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

(B) Insolvency exclusion takes precedence over qualified farm exclusion and qualified real property business exclusion

Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.

(C) Principal residence exclusion takes precedence over insolvency exclusion unless elected otherwise

Paragraph (1)(B) shall not apply to a discharge to which paragraph (1)(E) applies unless the taxpayer elects to apply paragraph (1)(B) in lieu of paragraph (1)(E).

(3) Insolvency exclusion limited to amount of insolvency

In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

(b) Reduction of tax attributes

(1) In general

The amount excluded from gross income under subparagraph (A), (B), or (C) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

(2) Tax attributes affected; order of reduction

Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

(A) NOL

Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

(B) General business credit

Any carryover to or from the taxable year of a discharge of an amount for purposes for determining the amount allowable as a credit under section 38 (relating to general business credit).

(C) Minimum tax credit

The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge.

(D) Capital loss carryovers

Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.

(E) Basis reduction

(i) In general

The basis of the property of the taxpayer.

(ii) Cross reference

For provisions for making the reduction described in clause (i), see section 1017.

(F) Passive activity loss and credit carryovers

Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge.

(G) Foreign tax credit carryovers

Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 27.

(3) Amount of reduction

(A) In general

Except as provided in subparagraph (B), the reductions described in paragraph (2) shall be one dollar for each dollar excluded by subsection (a).

(B) Credit carryover reduction

The reductions described in subparagraphs (B), (C), and (G) shall be 33⅓ cents for each dollar excluded by subsection (a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 33⅓ cents for each dollar excluded by subsection (a).

(4) Ordering rules

(A) Reductions made after determination of tax for year

The reductions described in paragraph (2) shall be made after the determination of the tax imposed by this chapter for the taxable year of the discharge.

(B) Reductions under subparagraph (A) or (D) of paragraph (2)

The reductions described in subparagraph (A) or (D) of paragraph (2) (as the case may be) shall be made first in the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose.

(C) Reductions under subparagraphs (B) and (G) of paragraph (2)

The reductions described in subparagraphs (B) and (G) of paragraph (2) shall be made in the order in which carryovers are taken into

account under this chapter for the taxable year of the discharge.

(5) Election to apply reduction first against depreciable property

(A) In general

The taxpayer may elect to apply any portion of the reduction referred to in paragraph (1) to the reduction under section 1017 of the basis of the depreciable property of the taxpayer.

(B) Limitation

The amount to which an election under subparagraph (A) applies shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(C) Other tax attributes not reduced

Paragraph (2) shall not apply to any amount to which an election under this paragraph applies.

(c) Treatment of discharge of qualified real property business indebtedness

(1) Basis reduction

(A) In general

The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

(B) Cross reference

For provisions making the reduction described in subparagraph (A), see section 1017.

(2) Limitations

(A) Indebtedness in excess of value

The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of—

(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over

(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

(B) Overall limitation

The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

(3) Qualified real property business indebtedness

The term ''qualified real property business indebtedness'' means indebtedness which—

(A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,

(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

(4) Qualified acquisition indebtedness

For purposes of paragraph (3)(B), the term ''qualified acquisition indebtedness'' means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

(5) Regulations

The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means.

(d) Meaning of terms; special rules relating to certain provisions

(1) Indebtedness of taxpayer

For purposes of this section, the term ''indebtedness of the taxpayer'' means any indebtedness—

(A) for which the taxpayer is liable, or

(B) subject to which the taxpayer holds property.

(2) Title 11 case

For purposes of this section, the term ''title 11 case'' means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

(3) Insolvent

For purposes of this section, the term ''insolvent'' means the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge.

[(4) Repealed. Pub. L. 99–514, title VIII, § 822(b)(3)(A), Oct. 22, 1986, 100 Stat. 2373]

(5) Depreciable property

The term ''depreciable property'' has the same meaning as when used in section 1017.

(6) Certain provisions to be applied at partner level

In the case of a partnership, subsections (a), (b), (c), and (g) shall be applied at the partner level.

(7) Special rules for S corporation

(A) Certain provisions to be applied at corporate level

In the case of an S corporation, subsections (a), (b), (c), and (g) shall be applied at the corporate level, including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section.

(B) Reduction in carryover of disallowed losses and deductions

In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year. The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.

(C) Coordination with basis adjustments under section 1367(b)(2)

For purposes of subsection (e)(6), a shareholder's adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2).

(8) Reductions of tax attributes in title 11 cases of individuals to be made by estate

In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

(9) Time for making election, etc.

(A) Time

An election under paragraph (5) of subsection (b) or under paragraph (3)(C) of subsection (c) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary.

(B) Revocation only with consent

An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(C) Manner

An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

(10) Cross reference

For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

(e) General rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)

For purposes of this title—

(1) No other insolvency exception

Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness.

(2) Income not realized to extent of lost deductions

No income shall be realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

(3) Adjustments for unamortized premium and discount

The amount taken into account with respect to any discharge shall be properly adjusted for unamortized premium and unamortized discount with respect to the indebtedness discharged.

(4) Acquisition of indebtedness by person related to debtor

(A) Treated as acquisition by debtor

For purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor. Such regulations shall provide for such adjustments in the treatment of any subsequent transactions involving the indebtedness as may be appropriate by reason of the application of the preceding sentence.

(B) Members of family

For purposes of this paragraph, sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren.

(C) Entities under common control treated as related

For purposes of this paragraph, two entities which are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as bearing a relationship to each other which is described in section 267(b).

(5) Purchase-money debt reduction for solvent debtor treated as price reduction

If—

(A) the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced,

(B) such reduction does not occur—

(i) in a title 11 case, or

(ii) when the purchaser is insolvent, and

(C) but for this paragraph, such reduction would be treated as income to the purchaser from the discharge of indebtedness,

then such reduction shall be treated as a purchase price adjustment.

(6) Indebtedness contributed to capital

Except as provided in regulations, for purposes of determining income of the debtor

from discharge of indebtedness, if a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital—

(A) section 118 shall not apply, but

(B) such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

(7) Recapture of gain on subsequent sale of stock

(A) In general

If a creditor acquires stock of a debtor corporation in satisfaction of such corporation's indebtedness, for purposes of section 1245—

(i) such stock (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) shall be treated as section 1245 property,

(ii) the aggregate amount allowed to the creditor—

(I) as deductions under subsection (a) or (b) of section 166 (by reason of the worthlessness or partial worthlessness of the indebtedness), or

(II) as an ordinary loss on the exchange,

shall be treated as an amount allowed as a deduction for depreciation, and

(iii) an exchange of such stock qualifying under section 354(a), 355(a), or 356(a) shall be treated as an exchange to which section 1245(b)(3) applies.

The amount determined under clause (ii) shall be reduced by the amount (if any) included in the creditor's gross income on the exchange.

(B) Special rule for cash basis taxpayers

In the case of any creditor who computes his taxable income under the cash receipts and disbursements method, proper adjustment shall be made in the amount taken into account under clause (ii) of subparagraph (A) for any amount which was not included in the creditor's gross income but which would have been included in such gross income if such indebtedness had been satisfied in full.

(C) Stock of parent corporation

For purposes of this paragraph, stock of a corporation in control (within the meaning of section 368(c)) of the debtor corporation shall be treated as stock of the debtor corporation.

(D) Treatment of successor corporation

For purposes of this paragraph, the term ''debtor corporation'' includes a successor corporation.

(E) Partnership rule

Under regulations prescribed by the Secretary, rules similar to the rules of the foregoing subparagraphs of this paragraph shall apply with respect to the indebtedness of a partnership.

(8) Indebtedness satisfied by corporate stock or partnership interest

For purposes of determining income of a debtor from discharge of indebtedness, if—

(A) a debtor corporation transfers stock, or

(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.

(9) Discharge of indebtedness income not taken into account in determining whether entity meets REIT qualifications

Any amount included in gross income by reason of the discharge of indebtedness shall not be taken into account for purposes of paragraphs (2) and (3) of section 856(c).

(10) Indebtedness satisfied by issuance of debt instrument

(A) In general

For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

(B) Issue price

For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274. For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter.

(f) Student loans

(1) In general

In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

(2) Student loan

For purposes of this subsection, the term ''student loan'' means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by—

(A) the United States, or an instrumentality or agency thereof,

(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof,

(C) a public benefit corporation—

(i) which is exempt from taxation under section 501(c)(3),

(ii) which has assumed control over a State, county, or municipal hospital, and

(iii) whose employees have been deemed to be public employees under State law, or

(D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made—

(i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

(ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term ''student loan'' includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).

(3) Exception for discharges on account of services performed for certain lenders

Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

(4) Payments under national health service corps loan repayment program and certain state loan repayment programs

In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act, under a State program described in section 338I of such Act, or under any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State).

(g) Special rules for discharge of qualified farm indebtedness

(1) Discharge must be by qualified person

(A) In general

Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

(B) Qualified person

For purposes of subparagraph (A), the term ''qualified person'' has the meaning given to such term by section 49(a)(1)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

(2) Qualified farm indebtedness

For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

(3) Amount excluded cannot exceed sum of tax attributes and business and investment assets

(A) In general

The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of—

(i) the adjusted tax attributes of the taxpayer, and

(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(B) Adjusted tax attributes

For purposes of subparagraph (A), the term ''adjusted tax attributes'' means the sum of the tax attributes described in subparagraphs (A), (B), (C), (D), (F), and (G) of subsection (b)(2) determined by taking into account $3 for each $1 of the attributes described in subparagraphs (B), (C), and (G) of subsection (b)(2) and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover.

(C) Qualified property

For purposes of this paragraph, the term ''qualified property'' means any property which is used or is held for use in a trade or business or for the production of income.

(D) Coordination with insolvency exclusion

For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B).

(h) Special rules relating to qualified principal residence indebtedness

(1) Basis reduction

The amount excluded from gross income by reason of subsection (a)(1)(E) shall be applied to reduce (but not below zero) the basis of the principal residence of the taxpayer.

(2) Qualified principal residence indebtedness

For purposes of this section, the term ''qualified principal residence indebtedness''

means acquisition indebtedness (within the meaning of section 163(h)(3)(B), applied by substituting ''$2,000,000 ($1,000,000'' for ''$1,000,000 ($500,000'' in clause (ii) thereof) with respect to the principal residence of the taxpayer.

(3) Exception for certain discharges not related to taxpayer's financial condition

Subsection (a)(1)(E) shall not apply to the discharge of a loan if the discharge is on account of services performed for the lender or any other factor not directly related to a decline in the value of the residence or to the financial condition of the taxpayer.

(4) Ordering rule

If any loan is discharged, in whole or in part, and only a portion of such loan is qualified principal residence indebtedness, subsection (a)(1)(E) shall apply only to so much of the amount discharged as exceeds the amount of the loan (as determined immediately before such discharge) which is not qualified principal residence indebtedness.

(5) Principal residence

For purposes of this subsection, the term ''principal residence'' has the same meaning as when used in section 121.

(i) Deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument

(1) In general

At the election of the taxpayer, income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument shall be includible in gross income ratably over the 5-taxable-year period beginning with—

(A) in the case of a reacquisition occurring in 2009, the fifth taxable year following the taxable year in which the reacquisition occurs, and

(B) in the case of a reacquisition occurring in 2010, the fourth taxable year following the taxable year in which the reacquisition occurs.

(2) Deferral of deduction for original issue discount in debt for debt exchanges

(A) In general

If, as part of a reacquisition to which paragraph (1) applies, any debt instrument is issued for the applicable debt instrument being reacquired (or is treated as so issued under subsection (e)(4) and the regulations thereunder) and there is any original issue discount determined under subpart A of part V of subchapter P of this chapter with respect to the debt instrument so issued—

(i) except as provided in clause (ii), no deduction otherwise allowable under this chapter shall be allowed to the issuer of such debt instrument with respect to the portion of such original issue discount which—

(I) accrues before the 1st taxable year in the 5-taxable-year period in which income from the discharge of indebtedness attributable to the reacquisition of the debt instrument is includible under paragraph (1), and

(II) does not exceed the income from the discharge of indebtedness with respect to the debt instrument being reacquired, and

(ii) the aggregate amount of deductions disallowed under clause (i) shall be allowed as a deduction ratably over the 5-taxable-year period described in clause (i)(I).

If the amount of the original issue discount accruing before such 1st taxable year exceeds the income from the discharge of indebtedness with respect to the applicable debt instrument being reacquired, the deductions shall be disallowed in the order in which the original issue discount is accrued.

(B) Deemed debt for debt exchanges

For purposes of subparagraph (A), if any debt instrument is issued by an issuer and the proceeds of such debt instrument are used directly or indirectly by the issuer to reacquire an applicable debt instrument of the issuer, the debt instrument so issued shall be treated as issued for the debt instrument being reacquired. If only a portion of the proceeds from a debt instrument are so used, the rules of subparagraph (A) shall apply to the portion of any original issue discount on the newly issued debt instrument which is equal to the portion of the proceeds from such instrument used to reacquire the outstanding instrument.

(3) Applicable debt instrument

For purposes of this subsection—

(A) Applicable debt instrument

The term ''applicable debt instrument'' means any debt instrument which was issued by—

(i) a C corporation, or

(ii) any other person in connection with the conduct of a trade or business by such person.

(B) Debt instrument

The term ''debt instrument'' means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

(4) Reacquisition

For purposes of this subsection—

(A) In general

The term ''reacquisition'' means, with respect to any applicable debt instrument, any acquisition of the debt instrument by—

(i) the debtor which issued (or is otherwise the obligor under) the debt instrument, or

(ii) a related person to such debtor.

(B) Acquisition

The term ''acquisition'' shall, with respect to any applicable debt instrument, include an acquisition of the debt instrument for cash, the exchange of the debt instrument for another debt instrument (including an

exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, and the contribution of the debt instrument to capital. Such term shall also include the complete forgiveness of the indebtedness by the holder of the debt instrument.

(5) Other definitions and rules

For purposes of this subsection—

(A) Related person

The determination of whether a person is related to another person shall be made in the same manner as under subsection (e)(4).

(B) Election

(i) In general

An election under this subsection with respect to any applicable debt instrument shall be made by including with the return of tax imposed by chapter 1 for the taxable year in which the reacquisition of the debt instrument occurs a statement which—

(I) clearly identifies such instrument, and

(II) includes the amount of income to which paragraph (1) applies and such other information as the Secretary may prescribe.

(ii) Election irrevocable

Such election, once made, is irrevocable.

(iii) Pass-thru entities

In the case of a partnership, S corporation, or other pass-thru entity, the election under this subsection shall be made by the partnership, the S corporation, or other entity involved.

(C) Coordination with other exclusions

If a taxpayer elects to have this subsection apply to an applicable debt instrument, subparagraphs (A), (B), (C), and (D) of subsection (a)(1) shall not apply to the income from the discharge of such indebtedness for the taxable year of the election or any subsequent taxable year.

(D) Acceleration of deferred items

(i) In general

In the case of the death of the taxpayer, the liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), the cessation of business by the taxpayer, or similar circumstances, any item of income or deduction which is deferred under this subsection (and has not previously been taken into account) shall be taken into account in the taxable year in which such event occurs (or in the case of a title 11 or similar case, the day before the petition is filed).

(ii) Special rule for pass-thru entities

The rule of clause (i) shall also apply in the case of the sale or exchange or redemption of an interest in a partnership, S corporation, or other pass-thru entity by a partner, shareholder, or other person holding an ownership interest in such entity.

(6) Special rule for partnerships

In the case of a partnership, any income deferred under this subsection shall be allocated to the partners in the partnership immediately before the discharge in the manner such amounts would have been included in the distributive shares of such partners under section 704 if such income were recognized at such time. Any decrease in a partner's share of partnership liabilities as a result of such discharge shall not be taken into account for purposes of section 752 at the time of the discharge to the extent it would cause the partner to recognize gain under section 731. Any decrease in partnership liabilities deferred under the preceding sentence shall be taken into account by such partner at the same time, and to the extent remaining in the same amount, as income deferred under this subsection is recognized.

(7) Secretarial authority

The Secretary may prescribe such regulations, rules, or other guidance as may be necessary or appropriate for purposes of applying this subsection, including—

(A) extending the application of the rules of paragraph (5)(D) to other circumstances where appropriate,

(B) requiring reporting of the election (and such other information as the Secretary may require) on returns of tax for subsequent taxable years, and

(C) rules for the application of this subsection to partnerships, S corporations, and other pass-thru entities, including for the allocation of deferred deductions.

(Aug. 16, 1954, ch. 736, 68A Stat. 32; June 29, 1956, ch. 463, § 5, 70 Stat. 403; Pub. L. 88–496, § 1(a), June 8, 1960, 74 Stat. 164; Pub. L. 94–455, title XIX, §§ 1906(b)(13)(A), 1951(b)(2)(A), Oct. 4, 1976, 90 Stat. 1834, 1836; Pub. L. 96–589, § 2(a), Dec. 24, 1980, 94 Stat. 3389; Pub. L. 97–354, § 3(e), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 97–448, title I, § 102(h)(1), title III, § 304(d), Jan. 12, 1983, 96 Stat. 2372, 2398; Pub. L. 98–369, div. A, title I, § 59(a), (b)(1), title IV, § 474(r)(5), title VII, § 721(b)(2), title X, § 1076(a), July 18, 1984, 98 Stat. 576, 839, 966, 1053; Pub. L. 99–514, title I, § 104(b)(2), title II, § 231(d)(3)(D), title IV, § 405(a), title VI, § 621(e)(1), title VIII, §§ 805(c)(2)–(4), 822(a), (b)(1)–(3), title XI, § 1171(b)(4), title XVIII, § 1847(b)(7), Oct. 22, 1986, 100 Stat. 2105, 2179, 2224, 2266, 2362, 2373, 2513, 2856; Pub. L. 100–647, title I, § 1004(a)(1)–(4), (6), Nov. 10, 1988, 102 Stat. 3385, 3387; Pub. L. 101–508, title XI, §§ 11325(a)(1), (b), 11813(b)(6), Nov. 5, 1990, 104 Stat. 1388–466, 1388–551; Pub. L. 103–66, title XIII, §§ 13150(a)–(c)(5), 13226(a)(1), (2)(B), (b)(1)–(3), Aug. 10, 1993, 107 Stat. 446–448, 487, 488; Pub. L. 104–188, title I, § 1703(n)(2), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title II, § 225(a), Aug. 5, 1997, 111 Stat. 820; Pub. L. 105–206, title VI, § 6004(f), July 22, 1998, 112 Stat. 795; Pub. L. 107–147, title IV, § 402(a), Mar. 9, 2002, 116 Stat. 40; Pub. L. 108–357, title III, § 320(a), title VIII, § 896(a), Oct. 22, 2004, 118 Stat. 1473, 1648; Pub. L. 110–142, § 2(a)–(c), Dec. 20, 2007, 121 Stat. 1803, 1804; Pub. L. 110–343, div. A, title III, § 303(a), Oct. 3, 2008, 122 Stat. 3807; Pub. L. 111–5, div. B, title I, § 1231(a), Feb. 17, 2009, 123 Stat. 338; Pub. L. 111–148, title X, § 10908(a), Mar. 23, 2010, 124 Stat. 1021.)

REFERENCES IN TEXT

Sections 338B(g) and 338I of the Public Health Service Act, referred to in subsec. (f)(4), are classified to sections 254*l*–1(g) and 254q–1, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (f)(4). Pub. L. 111–148 amended par. (4) generally. Prior to amendment, text read as follows: ''In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act or under a State program described in section 338I of such Act.''

2009—Subsec. (i). Pub. L. 111–5 added subsec. (i).

2008—Subsec. (a)(1)(E). Pub. L. 110–343 substituted ''January 1, 2013'' for ''January 1, 2010''.

2007—Subsec. (a)(1)(E). Pub. L. 110–142, §2(a), added subpar. (E).

Subsec. (a)(2)(A). Pub. L. 110–142, §2(c)(1), substituted ''(D), and (E)'' for ''and (D)''.

Subsec. (a)(2)(C). Pub. L. 110–142, §2(c)(2), added subpar. (C).

Subsec. (h). Pub. L. 110–142, §2(b), added subsec. (h).

2004—Subsec. (e)(8). Pub. L. 108–357, §896(a), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock.''

Subsec. (f)(4). Pub. L. 108–357, §320(a), added par. (4).

2002—Subsec. (d)(7)(A). Pub. L. 107–147 inserted '', including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section'' before period at end.

1998—Subsec. (f)(2). Pub. L. 105–206, §6004(f)(1), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''The term 'student loan' includes any loan made by an educational organization so described or by an organization exempt from tax under section 501(a) to refinance a loan meeting the requirements of the preceding sentence.''

Subsec. (f)(3). Pub. L. 105–206, §6004(f)(2), struck out ''(or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D))'' after ''paragraph (2)(D)''.

1997—Subsec. (f)(2). Pub. L. 105–34, §225(a)(1), added subpar. (D) and concluding provisions and struck out former subpar. (D) which read as follows: ''any educational organization so described pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization.''

Subsec. (f)(2)(B). Pub. L. 105–34, §225(a)(1), struck out ''or'' at end.

Subsec. (f)(3). Pub. L. 105–34, §225(a)(2), added par. (3).

1996—Subsec. (d)(9)(A). Pub. L. 104–188 substituted ''paragraph (3)(C)'' for ''paragraph (3)(B)''.

1993—Subsec. (a)(1)(D). Pub. L. 103–66, §13150(a), added subpar. (D).

Subsec. (a)(2)(A). Pub. L. 103–66, §13150(c)(1), substituted '', (C), and (D)'' for ''and (C)''.

Subsec. (a)(2)(B). Pub. L. 103–66, §13150(c)(2), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''Subparagraph (C) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.''

Subsec. (b)(2)(C) to (E). Pub. L. 103–66, §13226(b)(1), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively. Former subpar. (E) redesignated (F).

Subsec. (b)(2)(F). Pub. L. 103–66, §13226(b)(2), added subpar. (F). Former subpar. (F) redesignated (G).

Pub. L. 103–66, §13226(b)(1), redesignated subpar. (E) as (F).

Subsec. (b)(2)(G). Pub. L. 103–66, §13226(b)(2), redesignated subpar. (F) as (G).

Subsec. (b)(3)(B). Pub. L. 103–66, §13226(b)(3)(A), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The reductions described in subparagraphs (B) and (E) of paragraph (2) shall be 33⅓ cents for each dollar excluded by subsection (a).''

Subsec. (b)(4)(B). Pub. L. 103–66, §13226(b)(3)(B), substituted ''(D)'' for ''(C)'' in heading and text.

Subsec. (b)(4)(C). Pub. L. 103–66, §13226(b)(3)(C), substituted ''(G)'' for ''(E)'' in heading and text.

Subsec. (c). Pub. L. 103–66, §13150(b), added subsec. (c).

Subsec. (d). Pub. L. 103–66, §13150(c)(3)(B), substituted ''certain provisions'' for ''subsections (a), (b) and (g)'' in heading.

Subsec. (d)(6), (7)(A). Pub. L. 103–66, §13150(c)(3)(A), (C), substituted ''Certain provisions'' for ''Subsections (a), (b) and (g)'' in heading and ''subsections (a), (b), (c), and (g)'' for ''subsections (a), (b), and (g)'' in text.

Subsec. (d)(7)(B). Pub. L. 103–66, §13150(c)(4), inserted at end ''The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.''

Subsec. (d)(9)(A). Pub. L. 103–66, §13150(c)(5), inserted ''or under paragraph (3)(B) of subsection (c)'' after ''subsection (b)''.

Subsec. (e)(6). Pub. L. 103–66, §13226(a)(2)(B), substituted ''Except as provided in regulations, for'' for ''For''.

Subsec. (e)(8). Pub. L. 103–66, §13226(a)(1)(B), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''For purposes of determining income of the debtor from discharge of indebtedness, the stock for debt exception shall not apply—

''(A) to the issuance of nominal or token shares, or

''(B) with respect to an unsecured creditor, where the ratio of the value of the stock received by such unsecured creditor to the amount of his indebtedness cancelled or exchanged for stock in the workout is less than 50 percent of a similar ratio computed for all unsecured creditors participating in the workout. Any stock which is disqualified stock (as defined in paragraph (10)(B)(ii)) shall not be treated as stock for purposes of this paragraph.''

Subsec. (e)(10), (11). Pub. L. 103–66, §13226(a)(1)(A), redesignated par. (11) as (10) and struck out former par. (10) which related to satisfaction of indebtedness by transfer of corporation's stock.

Subsec. (g)(3)(B). Pub. L. 103–66, §13226(b)(3)(D), substituted ''subparagraphs (A), (B), (C), (D), (F), and (G)'' for ''subparagraphs (A), (B), (C), and (E)'' and ''subparagraphs (B), (C), and (G)'' for ''subparagraphs (B) and (E)'' and inserted before period at end ''and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover''.

1990—Subsec. (e)(8). Pub. L. 101–508, §11325(b)(2), inserted provision at end that any stock which is a disqualified stock, as so defined, not be treated as stock for purposes of this paragraph.

Subsec. (e)(10)(B). Pub. L. 101–508, §11325(b)(1), substituted heading for one which read: ''Exception for title 11 cases and insolvent debtors'' and amended text generally. Prior to amendment, text read as follows: ''Subparagraph (A) shall not apply in the case of a debtor in a title 11 case or to the extent the debtor is insolvent.''

Subsec. (e)(11). Pub. L. 101–508, §11325(a)(1), added par. (11).

Subsec. (g)(1)(B). Pub. L. 101–508, §11813(b)(6), substituted ''section 49(a)(1)(D)(iv)'' for ''section 46(c)(8)(D)(iv)''.

1988—Subsec. (a)(1)(C). Pub. L. 100–647, §1004(a)(1), added subpar. (C).

Subsec. (a)(2). Pub. L. 100–647, §1004(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Subparagraph (B) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.''

Subsec. (b). Pub. L. 100–647, §1004(a)(3), struck out ''in title 11 case or insolvency'' after ''Reduction of tax at-

tributes'' in heading and substituted ''subparagraph (A), (B), or (C)'' for ''subparagraph (A) or (B)'' in text of par. (1).

Subsec. (d). Pub. L. 100–647, §1004(a)(6)(B), which directed amendment of subsec. (d) heading by substituting ''subsections (a), (b), and (g)'' for ''subsections (a), and (b)'', was executed by making the substitution for ''subsections (a) and (b)'' as the probable intent of Congress.

Subsec. (d)(6). Pub. L. 100–647, §1004(a)(6)(A), (C), substituted ''Subsections (a), (b), and (g)'' for ''Subsections (a) and (b)'' in heading and ''subsections (a), (b), and (g)'' for ''subsections (a) and (b)'' in text.

Subsec. (d)(7)(A). Pub. L. 100–647, §1004(a)(6)(A), (C), substituted ''Subsections (a), (b), and (g)'' for ''Subsections (a) and (b)'' in heading and ''subsections (a), (b), and (g)'' for ''subsections (a) and (b)'' in text.

Subsec. (g). Pub. L. 100–647, §1004(a)(4), substituted ''indebtedness'' for ''indebtedness of solvent farmers'' in heading and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—For purposes of this section and section 1017, the discharge by a qualified person of qualified farm indebtedness of a taxpayer who is not insolvent at the time of the discharge shall be treated in the same manner as if the discharge had occurred when the taxpayer was insolvent.

''(2) QUALIFIED FARM INDEBTEDNESS.—For purposes of this subsection, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

''(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

''(B) 50 percent or more of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

''(3) QUALIFIED PERSON.—For purposes of this subsection, the term 'qualified person' means a person described in section 46(c)(8)(D)(iv).''

1986—Subsec. (a)(1)(C). Pub. L. 99–514, §822(a), struck out subpar. (C) relating to exclusion from gross income if the indebtedness discharged is qualified business indebtedness.

Subsec. (a)(2). Pub. L. 99–514, §822(b)(1), substituted ''Subparagraph (B) of paragraph (1)'' for ''Subparagraphs (B) and (C) of paragraph (1)'' in subpar. (A), struck out subpar. (A) designation and heading, and struck out subpar. (B) providing that insolvency exclusion takes precedence over qualified business exclusion.

Subsec. (b)(2)(B). Pub. L. 99–514, §231(d)(3)(D), substituted ''General business credit'' for ''Research credit and general business credit'' in heading and amended text, as amended by this Act (Pub. L. 99–514, §1171(b)(4) (see below)), generally. Prior to amendment, text read as follows: ''Any carryover to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under—

''(i) section 30 (relating to credit for increasing research activities), or

''(ii) section 38 (relating to general business credit). For purposes of this subparagraph, there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41.''

Pub. L. 99–514, §1171(b)(4), struck out last sentence which had been eliminated by the general amendment of subpar. (B) by Pub. L. 99–514, §231(d)(3)(D). See above.

Subsec. (b)(2)(E). Pub. L. 99–514, §1847(b)(7), substituted ''section 27'' for ''section 33''.

Subsec. (b)(3). Pub. L. 99–514, §104(b)(2), substituted ''33⅓ cents'' for ''50 cents''.

Subsec. (c). Pub. L. 99–514, §822(b)(2), struck out subsec. (c) relating to tax treatment of discharge of qualified business indebtedness.

Subsec. (d). Pub. L. 99–514, §822(b)(3)(B), struck out reference to subsec. (c) in heading.

Subsec. (d)(4). Pub. L. 99–514, §822(b)(3)(A), struck out par. (4) relating to treatment of indebtedness as qualified business indebtedness.

Subsec. (d)(6), (7)(A). Pub. L. 99–514, §822(b)(3)(B), struck out reference to subsec. (c) in heading and text.

Subsec. (d)(7)(B). Pub. L. 99–514, §822(b)(3)(C), struck out ''The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(C) applies to such discharge.''

Subsec. (d)(9)(A). Pub. L. 99–514, §822(b)(3)(D), struck out ''under paragraph (4) of this subsection or'' after ''An election''.

Subsec. (e)(7)(A)(ii)(I). Pub. L. 99–514, §805(c)(2), substituted ''subsection (a) or (b) of section 166'' for ''subsection (a), (b), or (c) of section 166''.

Subsec. (e)(7)(B) to (D). Pub. L. 99–514, §805(c)(3), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which related to taxpayers on reserve method.

Subsec. (e)(7)(E), (F). Pub. L. 99–514, §805(c)(3), (4), redesignated subpar. (F) as (E) and substituted ''the foregoing subparagraphs'' for ''subparagraphs (A), (B), (C), (D), and (E)''. Former subpar. (E) redesignated (D).

Subsec. (e)(10)(C). Pub. L. 99–514, §621(e), repealed the amendment by Pub. L. 98–369, §59(b)(1), which had added subpar. (C) creating an exception for transfers in certain workouts of the satisfaction of indebtedness by corporation's stock. See 1984 Amendment note below.

Subsec. (g). Pub. L. 99–514, §405(a), added subsec. (g).

1984—Subsec. (b)(2)(B). Pub. L. 98–369, §474(r)(5), substituted provisions relating to research credits and general business credits covering carryovers to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under section 30 (relating to credit for increasing research activities), or section 38 (relating to general business credit), and directing that there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41 for former provisions covering carryovers to or from the taxable year of the discharge of an amount for purposes of determining the amount of a credit allowable under section 38 (relating to investment in certain depreciable property), section 40 (relating to expenses of work incentive programs), section 44B (relating to credit for employment of certain new employees), section 44E (relating to alcohol used as a fuel), or section 44F (relating to credit for increasing research activities), and directing that, for purposes of clause (i), there could not be taken into account any portion of a carryover which was attributable to the employee plan credit (within the meaning of section 48(*o*)(3)).

Subsec. (d)(6). Pub. L. 98–369, §721(b)(2), struck out ''or S corporation shareholder level'' in heading and second sentence which provided that ''In the case of an S corporation, subsections (a), (b), and (c) shall apply at the shareholder level.''. See par. (7)(A).

Subsec. (d)(7) to (10). Pub. L. 98–369, §721(b)(2), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

Subsec. (e)(10). Pub. L. 98–369, §59(a), added par. (10).

Subsec. (e)(10)(C). Pub. L. 98–369, §59(b)(1), which added subpar. (C), effective as if included in the amendments made by section 806(e) and (f) of Pub. L. 94–455, was repealed by Pub. L. 99–514, §621(e), (f)(2), eff. Jan. 1, 1986, with certain exceptions, see Effective Date of 1986 Amendment note below.

Subsec. (f). Pub. L. 98–369, §1076(a), added subsec. (f).

1983—Subsec. (b)(2)(B)(v). Pub. L. 97–448, §102(h)(1), added cl. (v).

Subsec. (e)(7)(A)(iii). Pub. L. 97–448, §304(d), added cl. (iii).

1982—Subsec. (d)(6). Pub. L. 97–354 inserted ''or S corporation shareholder level'' in heading and inserted ''In the case of an S corporation, subsections (a), (b), and (c) shall be applied at the shareholder level.''

1980—Pub. L. 96–589 completely revised and expanded provisions by specifying the types of indebtedness and by setting out priorities among the exclusions, to reflect the revision of Title 11, Bankruptcy, in 1978.

1976—Pub. L. 94–455, §1951(b)(2)(A), struck out ''(a) Special rule of exclusion.—'' after ''Income from dis-

charge of indebtedness'' and struck out subsec. (b) which related to discharge, cancellation, or modification of indebtedness of certain railroad corporations.

Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1960—Subsec. (b). Pub. L. 86–496 provided that if the discharge, cancellation, or modification of any indebtedness is effected pursuant to a court order in a receivership proceeding or in a proceeding under section 77 of the Bankruptcy Act, commenced before Jan. 1, 1960, then no amount is to be included in gross income with respect to it, and struck out provisions which made subsection inapplicable to discharges occurring in a taxable year beginning after Dec. 31, 1957.

1956—Subsec. (b). Act June 29, 1956, substituted ''December 31, 1957'' for ''December 31, 1955''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, § 10908(b), Mar. 23, 2010, 124 Stat. 1021, provided that: ''The amendment made by this section [amending this section] shall apply to amounts received by an individual in taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1231(b), Feb. 17, 2009, 123 Stat. 341, provided that: ''The amendments made by this section [amending this section] shall apply to discharges in taxable years ending after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title III, § 303(b), Oct. 3, 2008, 122 Stat. 3807, provided that: ''The amendment made by this section [amending this section] shall apply to discharges of indebtedness occurring on or after January 1, 2010.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, § 2(d), Dec. 20, 2007, 121 Stat. 1804, provided that: ''The amendments made by this section [amending this section] shall apply to discharges of indebtedness on or after January 1, 2007.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 320(c), Oct. 22, 2004, 118 Stat. 1473, provided that: ''The amendments made by this section [amending this section, sections 3121, 3231, 3306, and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply to amounts received by an individual in taxable years beginning after December 31, 2003.''

Pub. L. 108–357, title VIII, § 896(b), Oct. 22, 2004, 118 Stat. 1649, provided that: ''The amendment made by this section [amending this section] shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 402(b), Mar. 9, 2002, 116 Stat. 40, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to discharges of indebtedness after October 11, 2001, in taxable years ending after such date.

''(2) EXCEPTION.—The amendment made by this section shall not apply to any discharge of indebtedness before March 1, 2002, pursuant to a plan of reorganization filed with a bankruptcy court on or before October 11, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 225(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to discharges of indebtedness after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13150(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 703 and 1017 of this title] shall apply to discharges after December 31, 1992, in taxable years ending after such date.''

Section 13226(a)(3) of Pub. L. 103–66 provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 382 of this title] shall apply to stock transferred after December 31, 1994, in satisfaction of any indebtedness.

''(B) EXCEPTION FOR TITLE 11 CASES.—The amendments made by this subsection shall not apply to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before December 31, 1993.''

Section 13226(b)(4) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section] shall apply to discharges of indebtedness in taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11325(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1275 of this title] shall apply to debt instruments issued, and stock transferred, after October 9, 1990, in satisfaction of any indebtedness.

''(2) EXCEPTIONS.—The amendments made by this section shall not apply to any debt instrument issued, or stock transferred, in satisfaction of any indebtedness if such issuance or transfer (as the case may be)—

''(A) is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before October 9, 1990,

''(B) is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance or transfer,

''(C) is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

''(D) is pursuant to a transaction—

''(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

''(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

''(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.''

Amendment by section 11813(b)(6) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 231(d)(3)(D) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Section 405(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 1017 of this title] shall apply to discharges of indebtedness occurring after April 9, 1986, in taxable years ending after such date.''

Repeal by section 621(e)(1) of Pub. L. 99–514 of amendment by section 59(b)(1) of Pub. L. 99–369, which was effective as if included in the amendments made by section 806(e) and (f) of Pub. L. 94–455, effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99–514, set out as a note under section 382 of this title.

Amendment by section 805(c)(2), (4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99–514, set out as a note under section 166 of this title.

Section 822(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 1017 of this title] shall apply to discharges after December 31, 1986.''

Amendment by section 1171(b)(4) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Amendment by section 1847(b)(7) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 59(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if it had been included in the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 [Pub. L. 94–455].'' See Effective Date of 1976 Amendment note set out under section 382 of this title.

Section 59(b)[(c)] of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to transfers after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) TRANSITIONAL RULE.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act if such transfer is—

''(A) pursuant to a written contract requiring such transfer which was binding on the corporation at all times on June 7, 1984, and at all times after such date but only if the transfer takes place before January 1, 1985, and only if the transferee held the debt at all times on June 7, 1984, or

''(B) pursuant to the exercise of an option to exchange debt for stock but only if such option was in effect at all times on June 7, 1984, and at all times after such date and only if at all times on June 7, 1984, the option and the debt were held by the same person.

''(3) CERTAIN TRANSFERS TO CONTROLLING SHAREHOLDER.—The amendment made by subsection (a) shall not apply to any transfer before January 1, 1985, by a corporation of its stock in exchange for debt of such corporation if—

''(A) such transfer is to another corporation which at all times on June 7, 1984, owned 75 percent or more of the total value of the stock of the corporation making such transfer, and

''(B) immediately after such transfer, the transferee corporation owns 80 percent or more of the total value of the stock of the transferor corporation.

''(4) CERTAIN TRANSFERS PURSUANT TO DEBT RESTRUCTURE AGREEMENT.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act and before January 1, 1985, if—

''(A) such transfer is covered by a debt restructure agreement entered into by the corporation during November 1983, and

''(B) such agreement was specified in a registration statement filed with the Securities and Exchange Commission by the corporation on March 7, 1984.''

Amendment by section 474(r)(5) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 721(b) of Pub. L. 98–369 applicable to contributions to capital after Dec. 31, 1980, in taxable years ending after such date, see section 721(y)(2) of Pub. L. 98–369, set out as a note under section 1361 of this title.

Section 1076(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to discharges of indebtedness made on or after January 1, 1983.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 7 of Pub. L. 96–589, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) FOR SECTION 2 (RELATING TO TAX TREATMENT OF DISCHARGE OF INDEBTEDNESS).—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 2 [amending this section and sections 111, 118, 382, 703 and 1017 of this title] shall apply to any transaction which occurs after December 31, 1980, other than a transaction which occurs in a proceeding in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) [Title 11, Bankruptcy] commencing on or before December 31, 1980.

''(2) TRANSITIONAL RULE.—In the case of any discharge of indebtedness to which subparagraph (A) or (B) of section 108(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to exclusion from gross income), as amended by section 2, applies and which occurs before January 1, 1982, or which occurs in a proceeding in a bankruptcy case or similar judicial proceedings commencing before January 1, 1982, then—

''(A) section 108(b)(2) of the such Code (relating to reduction of tax attributes), as so amended, shall be applied without regard to subparagraphs (A), (B), (C), and (E) thereof, and

''(B) the basis of any property shall not be reduced under section 1017 of such Code (relating to

reduction in basis in connection with discharges of indebtedness), as so amended, below the fair market value of such property on the date the debt is discharged.

''(b) FOR SECTION 3 (RELATING TO RULES RELATING TO TITLE 11 CASES FOR INDIVIDUALS).—The amendments made by section 3 [enacting sections 1398 and 1399 of this title and amending sections 443, 6012 and 6103 of this title] shall apply to any bankruptcy case commencing more than 90 days after the date of the enactment of this Act [Dec. 24, 1980].

''(c) FOR SECTION 4 (RELATING TO CORPORATE REORGANIZATION PROVISIONS).—

''(1) IN GENERAL.—The amendments made by section 4 [enacting section 370 of this title and amending sections 354, 355, 357, 368 and 381 of this title] shall apply to any bankruptcy case or similar judicial proceeding commencing after December 31, 1980.

''(2) EXCHANGES OF PROPERTY FOR ACCRUED INTEREST.—The amendments made by subsection (e) of section 4 [amending sections 354 and 355 of this title] (relating to treatment of property attributable to accrued interest) shall also apply to any exchange—

''(A) which occurs after December 31, 1980, and

''(B) which does not occur in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) commenced on or before December 31, 1980.

''(d) FOR SECTION 5 (RELATING TO MISCELLANEOUS CORPORATE AMENDMENTS).—

''(1) FOR SUBSECTION (a) (RELATING TO EXEMPTION FROM PERSONAL HOLDING COMPANY TAX).—The amendments made by subsection (a) of section 5 [amending section 542 of this title] shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

''(2) FOR SUBSECTION (b) (RELATING TO REPEAL OF SPECIAL TREATMENT FOR CERTAIN RAILROAD REDEMPTIONS).—The amendments made by subsection (b) of section 5 [amending section 302 of this title] shall apply to stock which is issued after December 31, 1980 (other than stock issued pursuant to a plan of reorganization approved on or before that date).

''(3) FOR SUBSECTION (c) (RELATING TO APPLICATION OF 12-MONTH LIQUIDATION RULE).—The amendment made by subsection (c) of section 5 [amending section 337 of this title] shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

''(4) FOR SUBSECTION (d) (RELATING TO PERMITTING BANKRUPTCY ESTATE TO BE SUBCHAPTER S SHAREHOLDER).—The amendment made by subsection (d) of section 5 [amending section 1371 of this title] shall apply to any bankruptcy case commenced on or after October 1, 1979.

''(5) FOR SUBSECTION (e) (RELATING TO CERTAIN TRANSFERS TO CONTROLLED CORPORATIONS).—The amendments made by subsection (e) of section 5 [amending section 351 of this title] shall apply as provided in subsection (a) of this section.

''(6) FOR SUBSECTION (f) (RELATING TO EFFECT OF DEBT DISCHARGE ON EARNINGS AND PROFITS).—The amendment made by subsection (f) of section 5 [amending section 312 of this title] shall apply as provided in subsection (a) of this section.

''(e) FOR SECTION 6 (RELATING TO CHANGES IN TAX PROCEDURES).—The amendments made by section 6 [enacting sections 6658 and 7464 of this title, amending sections 128, 354, 422, 1023, 3302, 6012, 6036, 6155, 6161, 6212, 6213, 6216, 6326 [now 6327], 6404, 6503, 6512, 6532, 6871, 6872, 6873, 7430, and 7508 of this title, repealing section 1018 of this title, and redesignating former section 7464 of this title as 7465] shall take effect on October 1, 1979, but shall not apply to any proceeding under the Bankruptcy Act [Title 11] commenced before October 1, 1979.

''(f) ELECTION TO SUBSTITUTE SEPTEMBER 30, 1979, FOR DECEMBER 31, 1980.—

''(1) IN GENERAL.—The debtor (or debtors) in a bankruptcy case or similar judicial proceeding may (with the approval of the court) elect to apply subsections (a), (c), and (d) by substituting 'September 30, 1979' for 'December 31, 1980' each place it appears in such subsections.

''(2) EFFECT OF ELECTION.—Any election made under paragraph (1) with respect to any proceeding shall apply to all parties to the proceeding.

''(3) REVOCATION ONLY WITH CONSENT.—Any election under this subsection may be revoked only with the consent of the Secretary of the Treasury or his delegate.

''(4) TIME AND MANNER OF ELECTION.—Any election under this subsection shall be made at such time, and in such manner, as the Secretary of the Treasury or his delegate may by regulations prescribe.

''(g) DEFINITIONS.—For purposes of this section—

''(1) BANKRUPTCY CASE.—The term 'bankruptcy case' means any case under title 11 of the United States Code (as recodified by Public Law 95–598).

''(2) SIMILAR JUDICIAL PROCEEDING.—The term 'similar judicial proceeding' means a receivership, foreclosure, or similar proceeding in a Federal or State court (as modified by section 368(a)(3)(D) of the Internal Revenue Code of 1986).''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1951(b)(2)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 1(b) of Pub. L. 86–496 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1959, but only with respect to discharges occurring after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Section 1951(b)(2)(B) of Pub. L. 94–455 provided that: ''If any discharge, cancellation, or modification of indebtedness of a railroad corporation occurs in a taxable year beginning after December 31, 1976, pursuant to an order of a court in a proceeding referred to in section 108(b)(A) or (B) which commenced before January 1, 1960, then, notwithstanding the amendments made by subparagraph (A) [amending this section] the provisions of subsection (b) of section 108 shall be considered as not repealed with respect to such discharge, cancellation, or modification of indebtedness.''

EXCLUSION OF CERTAIN CANCELLATIONS OF INDEBTEDNESS

Pub. L. 107–134, title I, §105, Jan. 23, 2002, 115 Stat. 2432, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—

''(1) gross income shall not include any amount which (but for this section) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of any taxpayer if the discharge is by reason of the death of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or as the result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002; and

''(2) return requirements under section 6050P of such Code shall not apply to any discharge described in paragraph (1).

''(b) EFFECTIVE DATE.—This section shall apply to discharges made on or after September 11, 2001, and before January 1, 2002.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 109. Improvements by lessee on lessor's property

Gross income does not include income (other than rent) derived by a lessor of real property on the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee.

(Aug. 16, 1954, ch. 736, 68A Stat. 33.)

§ 110. Qualified lessee construction allowances for short-term leases

(a) In general

Gross income of a lessee does not include any amount received in cash (or treated as a rent reduction) by a lessee from a lessor—

(1) under a short-term lease of retail space, and

(2) for the purpose of such lessee's constructing or improving qualified long-term real property for use in such lessee's trade or business at such retail space,

but only to the extent that such amount does not exceed the amount expended by the lessee for such construction or improvement.

(b) Consistent treatment by lessor

Qualified long-term real property constructed or improved in connection with any amount excluded from a lessee's income by reason of subsection (a) shall be treated as nonresidential real property of the lessor (including for purposes of section 168(i)(8)(B)).

(c) Definitions

For purposes of this section—

(1) Qualified long-term real property

The term ''qualified long-term real property'' means nonresidential real property which is part of, or otherwise present at, the retail space referred to in subsection (a) and which reverts to the lessor at the termination of the lease.

(2) Short-term lease

The term ''short-term lease'' means a lease (or other agreement for occupancy or use) of retail space for 15 years or less (as determined under the rules of section 168(i)(3)).

(3) Retail space

The term ''retail space'' means real property leased, occupied, or otherwise used by a lessee in its trade or business of selling tangible personal property or services to the general public.

(d) Information required to be furnished to Secretary

Under regulations, the lessee and lessor described in subsection (a) shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary—

(1) information concerning the amounts received (or treated as a rent reduction) and expended as described in subsection (a), and

(2) any other information which the Secretary deems necessary to carry out the provisions of this section.

(Added Pub. L. 105–34, title XII, § 1213(a), Aug. 5, 1997, 111 Stat. 1000.)

PRIOR PROVISIONS

A prior section 110, act Aug. 16, 1954, ch. 736, 68A Stat. 33, related to income taxes paid by lessee corporations, prior to repeal by Pub. L. 101–508, title XI, § 11801(a)(6), Nov. 5, 1990, 104 Stat. 1388–520.

EFFECTIVE DATE

Section 1213(e) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this section and amending sections 168 and 6724 of this title] shall apply to leases entered into after the date of the enactment of this Act [Aug. 5, 1997].''

§ 111. Recovery of tax benefit items

(a) Deductions

Gross income does not include income attributable to the recovery during the taxable year of any amount deducted in any prior taxable year to the extent such amount did not reduce the amount of tax imposed by this chapter.

(b) Credits

(1) In general

If—

(A) a credit was allowable with respect to any amount for any prior taxable year, and

(B) during the taxable year there is a downward price adjustment or similar adjustment,

the tax imposed by this chapter for the taxable year shall be increased by the amount of the credit attributable to the adjustment.

(2) Exception where credit did not reduce tax

Paragraph (1) shall not apply to the extent that the credit allowable for the recovered amount did not reduce the amount of tax imposed by this chapter.

(3) Exception for investment tax credit and foreign tax credit

This subsection shall not apply with respect to the credit determined under section 46 and the foreign tax credit.

(c) Treatment of carryovers

For purposes of this section, an increase in a carryover which has not expired before the beginning of the taxable year in which the recovery or adjustment takes place shall be treated as reducing tax imposed by this chapter.

(d) Special rules for accumulated earnings tax and for personal holding company tax

In applying subsection (a) for the purpose of determining the accumulated earnings tax under section 531 or the tax under section 541 (relating to personal holding companies)—

(1) any excluded amount under subsection (a) allowed for the purposes of this subtitle (other than section 531 or section 541) shall be

allowed whether or not such amount resulted in a reduction of the tax under section 531 or the tax under section 541 for the prior taxable year; and

(2) where any excluded amount under subsection (a) was not allowable as a deduction for the prior taxable year for purposes of this subtitle other than of section 531 or section 541 but was allowable for the same taxable year under section 531 or section 541, then such excluded amount shall be allowable if it did not result in a reduction of the tax under section 531 or the tax under section 541.

(Aug. 16, 1954, ch. 736, 68A Stat. 33; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, § 2(c), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 98–369, div. A, title I, § 171(a), July 18, 1984, 98 Stat. 698; Pub. L. 99–514, title XVIII, § 1812(a)(1), (2), Oct. 22, 1986, 100 Stat. 2833.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, § 1812(a)(1), substituted ''did not reduce the amount of tax imposed by this chapter'' for ''did not reduce income subject to tax''.

Subsec. (c). Pub. L. 99–514, § 1812(a)(2), substituted ''reducing tax imposed by this chapter'' for ''reducing income subject to tax or reducing tax imposed by this chapter, as the case may be''.

1984—Pub. L. 98–369 amended section generally, substituting provisions relating to recovery of tax benefit items for provisions relating to recovery of bad debts, prior taxes, and delinquency amounts.

1980—Subsec. (d). Pub. L. 96–589 added subsec. (d).

1976—Subsec. (b)(4). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 171(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to amounts recovered after December 31, 1983, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 112. Certain combat zone compensation of members of the Armed Forces

(a) Enlisted personnel

Gross income does not include compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which such member—

(1) served in a combat zone, or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone.

With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month after January 1978.

(b) Commissioned officers

Gross income does not include so much of the compensation as does not exceed the maximum enlisted amount received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer—

(1) served in a combat zone, or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone.

With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month after January 1978.

(c) Definitions

For purposes of this section—

(1) The term ''commissioned officer'' does not include a commissioned warrant officer.

(2) The term ''combat zone'' means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(3) Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone; except that June 25, 1950, shall be considered the date of the commencing of combatant activities in the combat zone designated in Executive Order 10195.

(4) The term ''compensation'' does not include pensions and retirement pay.

(5) The term ''maximum enlisted amount'' means, for any month, the sum of—

(A) the highest rate of basic pay payable for such month to any enlisted member of the Armed Forces of the United States at the highest pay grade applicable to enlisted members, and

(B) in the case of an officer entitled to special pay under section 310 of title 37, United States Code, for such month, the amount of such special pay payable to such officer for such month.

(d) Prisoners of war, etc.

(1) Members of the Armed Forces

Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status (as defined in section 551(2) of title 37, United States Code) during the Vietnam conflict as a result of such conflict, other than a period with respect to which it is officially determined under section 552(c) of such title 37 that he is officially absent from his post of duty without authority.

(2) Civilian employees

Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam conflict as a result of such conflict. For purposes of this paragraph, the terms ''active service'', ''employee'', and ''missing status'' have the respective meanings given to such terms by section 5561 of title 5 of the United States Code.

(3) Period of conflict

For purposes of this subsection, the Vietnam conflict began February 28, 1961, and ends on the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam. For purposes of this subsection, an individual is in a missing status as a result of the Vietnam conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam.

(Aug. 16, 1954, ch. 736, 68A Stat. 34; Pub. L. 89–739, § 1, Nov. 2, 1966, 80 Stat. 1165; Pub. L. 92–279, § 1, Apr. 26, 1972, 86 Stat. 124; Pub. L. 93–597, § 2(a), (b), Jan. 2, 1975, 88 Stat. 1950; Pub. L. 94–569, § 3(b), Oct. 20, 1976, 90 Stat. 2699; Pub. L. 104–117, § 1(d), Mar. 20, 1996, 110 Stat. 828; Pub. L. 104–188, title I, § 1704(t)(4)(A), Aug. 20, 1996, 110 Stat. 1887.)

AMENDMENTS

1996—Pub. L. 104–188 substituted ''combat zone compensation'' for ''combat pay'' in section catchline.

Subsec. (b). Pub. L. 104–117, § 1(d)(1), substituted ''the maximum enlisted amount'' for ''$500'' in introductory provisions.

Subsec. (c)(5). Pub. L. 104–117, § 1(d)(2), added par. (5).

1976—Subsec. (a). Pub. L. 94–569 substituted ''after January 1978'' for ''beginning more than 2 years after the date of the enactment of this sentence'' after ''With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month''.

Subsec. (b). Pub. L. 94–569 substituted ''after January 1978'' for ''beginning more than 2 years after the date of enactment of this sentence'' after ''With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month''.

1975—Subsec. (a). Pub. L. 93–597, § 2(a)(3), inserted provision relating to the applicability of par. (2) with respect to service in the combat zone designated for purposes of the Vietnam conflict.

Subsec. (a)(1). Pub. L. 93–597, § 2(a)(1), struck out ''during an induction period'' after ''served in a combat zone''.

Subsec. (a)(2). Pub. L. 93–597, § 2(a)(2), substituted ''; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone'' for ''during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section''.

Subsec. (b). Pub. L. 93–597, § 2(a)(3), inserted provision relating to applicability of par. (2) with respect to service in the combat zone designated for purposes of the Vietnam conflict.

Subsec. (b)(1). Pub. L. 93–597, § 2(a)(1), struck out ''during an induction period'' after ''served in a combat zone''.

Subsec. (b)(2). Pub. L. 93–597, § 2(a)(2), substituted ''; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone'' for ''during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section''.

Subsec. (c)(5). Pub. L. 93–597, § 2(b), struck out par. (5) which defined ''induction period''.

1972—Subsec. (d). Pub. L. 92–279 added subsec. (d).

1966—Subsec. (b). Pub. L. 89–739 substituted ''$500'' for ''$200''.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2(c) of Pub. L. 93–597 provided that: ''The amendments made by this section [amending this section] shall take effect on July 1, 1973.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3(a)(1) of Pub. L. 92–279 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending on or after February 28, 1961.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89–739 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply with respect to compensation received in taxable years ending after December 31, 1965, for periods of active service after such date.''

SENSE OF CONGRESS REGARDING TAX TREATMENT OF MEMBERS RECEIVING SPECIAL PAY FOR DUTY SUBJECT TO HOSTILE FIRE OR IMMINENT DANGER

Pub. L. 106–398, § 1 [[div. A], title X, § 1089], Oct. 30, 2000, 114 Stat. 1654, 1654A–294, provided that: ''It is the sense of Congress that members of the Armed Forces who receive special pay under section 310 of title 37, United States Code, for duty subject to hostile fire or imminent danger should receive the same treatment under Federal income tax laws as members serving in combat zones.''

SENSE OF CONGRESS REGARDING TREATMENT UNDER INTERNAL REVENUE CODE OF MEMBERS RECEIVING HOSTILE FIRE OR IMMINENT DANGER SPECIAL PAY DURING CONTINGENCY OPERATIONS

Pub. L. 106–65, div. A, title VI, § 677, Oct. 5, 1999, 113 Stat. 676, provided that: ''It is the sense of Congress that a member of the Armed Forces who is receiving special pay under section 310 of title 37, United States Code, while assigned to duty in support of a contingency operation should be treated under the Internal Revenue Code of 1986 in the same manner as a member of the Armed Forces serving in a combat zone (as defined in section 112 of the Internal Revenue Code of 1986).''

AVAILABILITY OF CERTAIN TAX BENEFITS FOR SERVICES AS PART OF OPERATION ALLIED FORCE

Pub. L. 106–21, §1, Apr. 19, 1999, 113 Stat. 34, provided that:

''(a) GENERAL RULE.—For purposes of the following provisions of the Internal Revenue Code of 1986, a qualified hazardous duty area shall be treated in the same manner as if it were a combat zone (as determined under section 112 of such Code):

''(1) Section 2(a)(3) (relating to special rule where deceased spouse was in missing status).

''(2) Section 112 (relating to the exclusion of certain combat pay of members of the Armed Forces).

''(3) Section 692 (relating to income taxes of members of Armed Forces on death).

''(4) Section 2201 (relating to members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.).

''(5) Section 3401(a)(1) (defining wages relating to combat pay for members of the Armed Forces).

''(6) Section 4253(d) (relating to the taxation of phone service originating from a combat zone from members of the Armed Forces).

''(7) Section 6013(f)(1) (relating to joint return where individual is in missing status).

''(8) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

''(b) QUALIFIED HAZARDOUS DUTY AREA.—For purposes of this section, the term 'qualified hazardous duty area' means any area of the Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the Adriatic Sea, and the northern Ionian Sea (above the 39th parallel) during the period (which includes the date of the enactment of this Act [Apr. 19, 1999]) that any member of the Armed Forces of the United States is entitled to special pay under section 310 of title 37, United States Code (relating to special pay: duty subject to hostile fire or imminent danger) for services performed in such area.

''(c) SPECIAL RULE FOR SECTION 7508.—Solely for purposes of applying section 7508 of the Internal Revenue Code of 1986, in the case of an individual who is performing services as part of Operation Allied Force outside the United States while deployed away from such individual's permanent duty station, the term 'qualified hazardous duty area' includes, during the period for which the entitlement referred to in subsection (b) is in effect, any area in which such services are performed.

''(d) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on March 24, 1999.

''(2) WITHHOLDING.—Subsection (a)(5) shall apply to remuneration paid after the date of the enactment of this Act [Apr. 19, 1999].''

TREATMENT OF CERTAIN INDIVIDUALS PERFORMING SERVICES IN CERTAIN HAZARDOUS DUTY AREAS; EFFECTIVE DATE

Section 1 of Pub. L. 104–117 provided that:

''(a) GENERAL RULE.—For purposes of the following provisions of the Internal Revenue Code of 1986, a qualified hazardous duty area shall be treated in the same manner as if it were a combat zone (as determined under section 112 of such Code):

''(1) Section 2(a)(3) (relating to special rule where deceased spouse was in missing status).

''(2) Section 112 (relating to the exclusion of certain combat pay of members of the Armed Forces).

''(3) Section 692 (relating to income taxes of members of Armed Forces on death).

''(4) Section 2201 (relating to members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.).

''(5) Section 3401(a)(1) (defining wages relating to combat pay for members of the Armed Forces).

''(6) Section 4253(d) (relating to the taxation of phone service originating from a combat zone from members of the Armed Forces).

''(7) Section 6013(f)(1) (relating to joint return where individual is in missing status).

''(8) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

''(b) QUALIFIED HAZARDOUS DUTY AREA.—For purposes of this section, the term 'qualified hazardous duty area' means Bosnia and Herzegovina, Croatia, or Macedonia, if as of the date of the enactment of this section [Mar. 20, 1996] any member of the Armed Forces of the United States is entitled to special pay under section 310 of title 37, United States Code (relating to special pay; duty subject to hostile fire or imminent danger) for services performed in such country. Such term includes any such country only during the period such entitlement is in effect. Solely for purposes of applying section 7508 of the Internal Revenue Code of 1986, in the case of an individual who is performing services as part of Operation Joint Endeavor outside the United States while deployed away from such individual's permanent duty station, the term 'qualified hazardous duty area' includes, during the period for which such entitlement is in effect, any area in which such services are performed.

''(c) EXCLUSION OF COMBAT PAY FROM WITHHOLDING LIMITED TO AMOUNT EXCLUDABLE FROM GROSS INCOME.—[Amended section 3401 of this title.]

''(d) INCREASE IN COMBAT PAY EXCLUSION FOR OFFICERS TO HIGHEST AMOUNT APPLICABLE TO ENLISTED PERSONNEL.—

''(1) IN GENERAL.—[Amended this section.]

''(2) MAXIMUM ENLISTED AMOUNT.—[Amended this section.]

''(e) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the provisions of and amendments made by this section shall take effect on November 21, 1995.

''(2) WITHHOLDING.—Subsection (a)(5) and the amendment made by subsection (c) shall apply to remuneration paid after the date of the enactment of this Act [Mar. 20, 1996].''

REFUND OR CREDIT OF OVERPAYMENT; APPLICABLE PERIOD

Section 3(a)(2), (3) of Pub. L. 92–279, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(2) If refund or credit of any overpayment for any taxable year resulting from the application of the amendment made by the first section of this Act [amending this section] (including interest, additions to the tax, and additional amounts) is prevented at any time before the expiration of the applicable period specified in paragraph (3) by the operation of any law or rule of law, such refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such applicable period.

''(3) For purposes of paragraph (2), the applicable period for any individual with respect to any compensation is the period ending on whichever of the following days is the later:

''(A) the day which is one year after the date of the enactment of this Act [Apr. 26, 1972], or

''(B) the day which is 2 years after the date on which it is determined that the individual's missing status (within the meaning of section 112(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) has terminated for purposes of such section 112.''

EX. ORD. NO. 10585. TERMINATION OF COMBATANT ACTIVITIES IN KOREA

Ex. Ord. No. 10585, Jan. 1, 1955, 20 F.R. 17, provided:

By virtue of the authority vested in me by section 112(c)(3) of the Internal Revenue Code of 1954 [now I.R.C. 1986], January 31, 1955, as of midnight thereof, is hereby designated as the date of termination of combatant activities in the zone comprised of the area described in Executive Order No. 10195 of December 20, 1950 (15 F.R. 9177).

DWIGHT D. EISENHOWER.

EX. ORD. NO. 11216. DESIGNATION OF VIETNAM AND ADJACENT WATERS AS COMBAT ZONE

Ex. Ord. No. 11216, Apr. 24, 1965, 30 F.R. 5817, provided:

Pursuant to the authority vested in me by section 112 of the Internal Revenue Code of 1954 [now I.R.C. 1986], I hereby designate, for the purposes of that section, as an area in which Armed Forces of the United States are and have been engaged in combat:

Vietnam, including the waters adjacent thereto within the following-described limits: From a point on the East Coast of Vietnam at the juncture of Vietnam with China southeastward to 21° N Lat., 108°15′ E Long.; thence southward to 18° N Lat., 108°15′ E Long.; thence southeastward to 17°30 N Lat., 111° E Long.; thence southward to 11° N Lat., 111° E Long.; thence southwestward to 7° N Lat., 105° E Long.; thence westward to 7° N Lat., 103° E Long.; thence northward to 9°30′ N Lat., 103° E Long.; thence northeastward to 10°15′ N Lat., 104°27′ E Long.; thence northward to a point on the West Coast of Vietnam at the juncture of Vietnam with Cambodia.

The date of the commencing of combatant activities in such area is hereby designated as January 1, 1964.

LYNDON B. JOHNSON.

EX. ORD. NO. 12744. DESIGNATION OF ARABIAN PENINSULA AREAS, AIRSPACE, AND ADJACENT WATERS AS COMBAT ZONE

Ex. Ord. No. 12744, Jan. 21, 1991, 56 F.R. 2663, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I hereby designate, for purposes of that section, the following locations, including the airspace above such locations, as an area in which Armed Forces of the United States are and have been engaged in combat:

—the Persian Gulf
—the Red Sea
—the Gulf of Oman
—that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude
—the Gulf of Aden
—the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.

For the purposes of this order, the date of the commencing of combatant activities in such zone is hereby designated as January 17, 1991.

GEORGE BUSH.

EX. ORD. NO. 13002. TERMINATION OF COMBAT ZONE DESIGNATION IN VIETNAM AND WATERS ADJACENT THERETO

Ex. Ord. No. 13002, May 13, 1996, 61 F.R. 24665, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 112(c)(3)), June 30, 1996, as of midnight thereof, is hereby designated as the date of termination of combatant activities in the zone comprised of the area described in Executive Order No. 11216 of April 24, 1965 [set out above].

WILLIAM J. CLINTON.

EX. ORD. NO. 13119. DESIGNATION OF FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA/MONTENEGRO), ALBANIA, THE AIRSPACE ABOVE, AND ADJACENT WATERS AS A COMBAT ZONE

Ex. Ord. No. 13119, April 13, 1999, 64 F.R. 18797, provided:

Pursuant to the authority vested in me as President by the Constitution and laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I designate, for the purposes of that section, the following locations, including the airspace above such locations, as an area in which Armed Forces of the United States are and have been engaged in combat:

—The Federal Republic of Yugoslavia (Serbia/Montenegro);
—Albania;
—the Adriatic Sea;
—the Ionian Sea north of the 39th parallel.

For the purposes of this order, I designate March 24, 1999, as the date of the commencement of combatant activities in such zone.

WILLIAM J. CLINTON.

EX. ORD. NO. 13239. DESIGNATION OF AFGHANISTAN AND THE AIRSPACE ABOVE AS A COMBAT ZONE

Ex. Ord. No. 13239, Dec. 12, 2001, 66 F.R. 64907, provided:

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I designate, for purposes of that section, Afghanistan, including the airspace above, as an area in which Armed Forces of the United States are and have been engaged in combat.

For purposes of this order, I designate September 19, 2001, as the date of the commencement of combatant activities in such zone.

GEORGE W. BUSH.

[§ 113. Repealed. Pub. L. 101–508, title XI, § 11801(a)(7), Nov. 5, 1990, 104 Stat. 1388–520]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 35, related to mustering-out payments for members of Armed Forces.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 114. Repealed. Pub. L. 108–357, title I, § 101(a), Oct. 22, 2004, 118 Stat. 1423]

Section, added Pub. L. 106–519, § 3(a), Nov. 15, 2000, 114 Stat. 2423, related to exclusion of extraterritorial income from gross income.

A prior section 114, act Aug. 16, 1954, ch. 736, 68A Stat. 35, related to sports programs conducted for American National Red Cross, prior to repeal by Pub. L. 101–508, title XI, § 11801(a)(8), Nov. 5, 1990, 104 Stat. 1388–520.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

TRANSITION PROVISIONS

Pub. L. 108–357, title I, § 101(d)–(f), Oct. 22, 2004, 118 Stat. 1423, 1424, as amended by Pub. L. 109–222, title V, § 513(b), May 17, 2006, 120 Stat. 366, provided that:

''(d) TRANSITIONAL RULE FOR 2005 AND 2006.—

''(1) IN GENERAL.—In the case of transactions during 2005 or 2006, the amount includible in gross income by reason of the amendments made by this section [amending sections 56, 275, 864, 903, and 999 of this title and repealing this section and sections 941 to 943 of this title] shall not exceed the applicable percentage of the amount which would have been so included but for this subsection.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be as follows:

''(A) For 2005, the applicable percentage shall be 20 percent.

''(B) For 2006, the applicable percentage shall be 40 percent.

''(e) REVOCATION OF ELECTION TO BE TREATED AS DOMESTIC CORPORATION.—If, during the 1-year period beginning on the date of the enactment of this Act [Oct. 22, 2004], a corporation for which an election is in effect under section 943(e) of the Internal Revenue Code of 1986 revokes such election, no gain or loss shall be recognized with respect to property treated as transferred under clause (ii) of section 943(e)(4)(B) of such Code to the extent such property—

''(1) was treated as transferred under clause (i) thereof, or

''(2) was acquired during a taxable year to which such election applies and before May 1, 2003, in the ordinary course of its trade or business.

The Secretary of the Treasury (or such Secretary's delegate) may prescribe such regulations as may be necessary to prevent the abuse of the purposes of this subsection.

''[(f) Repealed. Pub. L. 109–222, title V, §513(b), May 17, 2006, 120 Stat. 366.]''

§ 115. Income of States, municipalities, etc.

Gross income does not include—

(1) income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof, or the District of Columbia; or

(2) income accruing to the government of any possession of the United States, or any political subdivision thereof.

(Aug. 16, 1954, ch. 736, 68A Stat. 35; Pub. L. 94–455, title XIX, §1901(a)(19), Oct. 4, 1976, 90 Stat. 1766.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''(a) General rule'' before ''Gross income does not include'', struck out subsecs. (b) and (c) which related to contracts concerning public utilities made before Sept. 8, 1916, and contracts concerning bridge acquisition made before May 29, 1928, respectively, and in par. (1) of former subsec. (a), struck out ''or territory'' after ''accruing to a State''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

TAX TREATMENT OF STATE OWNERSHIP OF RAILROAD REAL ESTATE INVESTMENT TRUST

Pub. L. 109–59, title XI, §11146, Aug. 10, 2005, 119 Stat. 1966, provided that:

''(a) IN GENERAL.—If a State owns all of the outstanding stock of a corporation—

''(1) which is a real estate investment trust on the date of the enactment of this Act [Aug. 10, 2005],

''(2) which is a non-operating class III railroad, and

''(3) substantially all of the activities of which consist of the ownership, leasing, and operation by such corporation of facilities, equipment, and other property used by the corporation or other persons for railroad transportation and for economic development purposes for the benefit of the State and its citizens, then, to the extent such activities are of a type which are an essential governmental function within the meaning of section 115 of the Internal Revenue Code of 1986, income derived from such activities by the corporation shall be treated as accruing to the State for purposes of section 115 of such Code.

''(b) GAIN OR LOSS NOT RECOGNIZED ON CONVERSION.—Notwithstanding section 337(d) of the Internal Revenue Code of 1986—

''(1) no gain or loss shall be recognized under section 336 or 337 of such Code, and

''(2) no change in basis of the property of such corporation shall occur, because of any change of status of a corporation to a tax-exempt entity by reason of the application of subsection (a).

''(c) TAX-EXEMPT FINANCING.—

''(1) IN GENERAL.—Any obligation issued by a corporation described in subsection (a) at least 95 percent of the net proceeds (as defined in section 150(a) of the Internal Revenue Code of 1986) of which are to be used to provide for the acquisition, construction, or improvement of railroad transportation infrastructure (including railroad terminal facilities)—

''(A) shall be treated as a State or local bond (within the meaning of section 103(c) of such Code), and

''(B) shall not be treated as a private activity bond (within the meaning of section 103(b)(1) of such Code) solely by reason of the ownership or use of such railroad transportation infrastructure by the corporation.

''(2) NO INFERENCE.—Except as provided in paragraph (1), nothing in this subsection shall be construed to affect the treatment of the private use of proceeds or property financed with obligations issued by the corporation for purposes of section 103 of the Internal Revenue Code of 1986 and part IV of subchapter B [probably means part IV of subchapter B of chapter 1] of such Code.

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

''(1) REAL ESTATE INVESTMENT TRUST.—The term 'real estate investment trust' has the meaning given such term by section 856(a) of the Internal Revenue Code of 1986.

''(2) NON-OPERATING CLASS III RAILROAD.—The term 'non-operating class III railroad' has the meaning given such term by part A of subtitle IV of title 49, United States Code (49 U.S.C. 10101 et seq.), and the regulations thereunder.

''(3) STATE.—The term 'State' includes—

''(A) the District of Columbia and any possession of the United States, and

''(B) any authority, agency, or public corporation of a State.

''(e) APPLICABILITY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply on and after the date on which a State becomes the owner of all of the outstanding stock of a corporation described in subsection (a) through action of such corporation's board of directors.

''(2) EXCEPTION.—This section shall not apply to any State which—

''(A) becomes the owner of all of the voting stock of a corporation described in subsection (a) after December 31, 2003, or

''(B) becomes the owner of all of the outstanding stock of a corporation described in subsection (a) after December 31, 2006.''

[§ 116. Repealed. Pub. L. 99–514, title VI, § 612(a), Oct. 22, 1986, 100 Stat. 2250]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 37; June 25, 1959, Pub. L. 86–69, §3(a)(2), 73 Stat. 139; Sept. 14, 1960, Pub. L. 86–779, §10(f), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88–272, title II, §201(c), (d)(6)(C), 78 Stat. 32; Nov. 13, 1966, Pub. L. 89–809, title I, §103(g), 80 Stat. 1552; Oct. 4, 1976, Pub. L. 94–455, title X, §§1051(h)(2), 1053(d)(1), title XIX, §1901(a)(20), 90 Stat. 1647, 1649, 1766; Apr. 2, 1980, Pub. L. 96–223, title IV, §404(a), 94 Stat. 305; Aug. 13, 1981, Pub. L. 97–34, title III, §302(b)(2), 95 Stat. 272; July 18, 1984, Pub. L. 98–369, div. A, title V, §542(b), 98 Stat. 891, authorized partial exclusion of dividends received by individuals.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 301 of this title.

§ 117. Qualified scholarships

(a) General rule

Gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii).

(b) Qualified scholarship

For purposes of this section—

(1) In general

The term ''qualified scholarship'' means any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses.

(2) Qualified tuition and related expenses

For purposes of paragraph (1), the term ''qualified tuition and related expenses'' means—

(A) tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii), and

(B) fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

(c) Limitation

(1) In general

Except as provided in paragraph (2), subsections (a) and (d) shall not apply to that portion of any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving the qualified scholarship or qualified tuition reduction.

(2) Exceptions

Paragraph (1) shall not apply to any amount received by an individual under—

(A) the National Health Service Corps Scholarship Program under section 338A(g)(1)(A) of the Public Health Service Act, or

(B) the Armed Forces Health Professions Scholarship and Financial Assistance program under subchapter I of chapter 105 of title 10, United States Code.

(d) Qualified tuition reduction

(1) In general

Gross income shall not include any qualified tuition reduction.

(2) Qualified tuition reduction

For purposes of this subsection, the term ''qualified tuition reduction'' means the amount of any reduction in tuition provided to an employee of an organization described in section 170(b)(1)(A)(ii) for the education (below the graduate level) at such organization (or another organization described in section 170(b)(1)(A)(ii)) of—

(A) such employee, or

(B) any person treated as an employee (or whose use is treated as an employee use) under the rules of section 132(h).

(3) Reduction must not discriminate in favor of highly compensated, etc.

Paragraph (1) shall apply with respect to any qualified tuition reduction provided with respect to any highly compensated employee only if such reduction is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

[(4) Repealed. Pub. L. 101–140, title II, § 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830]

(5) Special rules for teaching and research assistants

In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, paragraph (2) shall be applied as if it did not contain the phrase ''(below the graduate level)''.

(Aug. 16, 1954, ch. 736, 68A Stat. 38; Pub. L. 87–256, § 110(a), Sept. 21, 1961, 75 Stat. 535; Pub. L. 94–455, title XIX, § 1901(b)(8)(A), (c)(3), Oct. 4, 1976, 90 Stat. 1794, 1803; Pub. L. 96–541, § 5(a)(1), Dec. 17, 1980, 94 Stat. 3205; Pub. L. 98–369, div. A, title V, § 532(a), July 18, 1984, 98 Stat. 887; Pub. L. 99–514, title I, § 123(a), title XI, §§ 1114(b)(2), 1151(g)(2), Oct. 22, 1986, 100 Stat. 2112, 2450, 2506; Pub. L. 100–647, title I, § 1011B(a)(31)(B), title IV, § 4001(b)(2), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101–140, title II, § 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 104–188, title I, § 1703(n)(14), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 107–16, title IV, § 413(a), June 7, 2001, 115 Stat. 64.)

AMENDMENT OF SECTION

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

REFERENCES IN TEXT

Section 338A(g)(1)(A) of the Public Health Service Act, referred to in subsec. (c)(2)(A), is classified to section 254*l*(g)(1)(A) of Title 42, The Public Health and Welfare.

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–16, §§ 413(a), 901, temporarily designated existing provisions as par. (1), inserted par. heading, substituted ''Except as provided in paragraph (2), subsections (a)'' for ''Subsections (a)'', and added par. (2). See Effective and Termination Dates of 2001 Amendment note below.

1996—Subsec. (d)(2)(B). Pub. L. 104–188 substituted ''section 132(h)'' for ''section 132(f)''.

1989—Subsec. (d)(4). Pub. L. 101–140, § 203(a)(2), amended par. (4) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended subsec. (d) to read as if amendments by Pub. L. 99–514, § 1151(g)(2), which added par. (4), had not been enacted, see 1986 Amendment note below.

1988—Subsec. (d)(4). Pub. L. 100–647, § 1011B(a)(31)(B), substituted ''there shall'' for ''there may'' and ''who are'' for ''who may be''.

Subsec. (d)(5). Pub. L. 100–647, §4001(b)(2), added par. (5).

1986—Pub. L. 99–514, §123(a), in amending section generally, substituted ''Qualified scholarships'' for ''Scholarships and fellowship grants'' in section catchline.

Subsec. (a). Pub. L. 99–514, §123(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''In the case of an individual, gross income does not include—

''(1) any amount received—

''(A) as a scholarship at an educational organization described in section 170(b)(1)(A)(ii), or

''(B) as a fellowship grant, including the value of contributed services and accommodations; and

''(2) any amount received to cover expenses for—

''(A) travel,

''(B) research,

''(C) clerical help, or

''(D) equipment,

which are incident to such a scholarship or to a fellowship grant, but only to the extent that the amount is so expended by the recipient.''

Subsec. (b). Pub. L. 99–514, §123(a), in amending subsec. (b) generally, substituted qualified scholarship provision for former limitations provision, which related in par. (1) to individuals who were candidates for degrees, and in par. (2) to individuals who were not candidates for degrees, describing in subpar. (A) conditions for exclusion and in subpar. (B) extent of exclusion, such detailed provision now covered in subsec. (c).

Subsec. (c). Pub. L. 99–514, §123(a), in amending subsec. (c) generally, substituted limitation provision for former provision relating to Federal grants for tuition and related expenses not includable merely because there was requirement of future service as Federal employee.

Subsec. (d). Pub. L. 99–514, §123(a), in amending subsec. (d) generally, substituted ''reduction'' for ''reductions'' in heading and inserted ''(within the meaning of section 414(q))'' after ''highly compensated employees'' in par. (3).

Subsec. (d)(3). Pub. L. 99–514, §1114(b)(2), struck out ''officer, owner, or'' after ''with respect to any'' and ''officers, owners, or'' after ''in favor of'' and inserted at end ''For purposes of this paragraph, the term 'highly compensated employee' has the meaning given such term by section 414(q).''

Subsec. (d)(4). Pub. L. 99–514, §1151(g)(2), added par. (4).

1984—Subsec. (d). Pub. L. 98–369 added subsec. (d).

1980—Subsec. (c). Pub. L. 96–541 added subsec. (c).

1976—Subsecs. (a)(1)(A), (b)(1), (2). Pub. L. 94–455, §1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))'' after ''scholarship at an''.

Subsec. (b)(2)(A)(iv). Pub. L. 94–455, §1901(c)(3), struck out ''a territory'' after ''or a State''.

Subsec. (b)(2)(B). Pub. L. 94–455, §1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))'' after ''degree at an''.

1961—Subsec. (b)(2)(A). Pub. L. 87–256 included cases where the grantor of the scholarship or fellowship grant is a foreign government, an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §413(b), June 7, 2001, 115 Stat. 64, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to amounts received in taxable years beginning after December 31, 2001.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4001(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 127 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 123(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1114(b)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(g)(2) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 532(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply to qualified tuition reductions (as defined in section 117(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for education furnished after June 30, 1985, in taxable years ending after such date.''

Provisions of subsec. (d) treated as in effect on and after Jan. 1, 1984, in case of education described in section 127(c)(8) of this title, see section 1(g)(5) of Pub. L. 98–611, set out as a note under section 127 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(a)(2) of Pub. L. 96–541 provided: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1980.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 110(h)(1) of Pub. L. 87–256 provided that: ''The amendments made by subsections (a), (b), and (c) of this section [amending this section and sections 871 and 872 of this title] shall apply to taxable years beginning after December 31, 1961.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amend-

ments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 123(a) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULES FOR TREATMENT OF CERTAIN REDUCTIONS IN TUITION

Section 1853(f) of Pub. L. 99–514 provided that:

''(1) A tuition reduction plan shall be treated as meeting the requirements of section 117(d)(3) of the Internal Revenue Code of 1954 [now 1986] if—

''(A) such plan would have met the requirements of such section (as amended by this section but without regard to the lack of evidence that benefits under such plan were the subject of good faith bargaining) on the day on which eligibility to participate in the plan was closed,

''(B) at all times thereafter, the tuition reductions available under such plan are available on substantially the same terms to all employees eligible to participate in such plan, and

''(C) the eligibility to participate in such plan closed on June 30, 1972, June 30, 1974, or December 31, 1975.

''(2) For purposes of applying section 117(d)(3) of the Internal Revenue Code of 1954 [now 1986] to all tuition reduction plans of an employer with at least 1 such plan described in paragraph (1) of this subsection, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement that the Secretary of the Treasury or his delegate finds to be a collective bargaining agreement between employee representatives and 1 or more employers, if, with respect to plans other than plans described in paragraph (1), there is evidence that such benefits were the subject of good faith bargaining.

''(3) Any reduction in tuition provided with respect to a full-time course of education furnished at the graduate level before July 1, 1988, shall not be included in gross income if—

''(A) such reduction would not be included in gross income under the Internal Revenue Service regulations in effect on the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984], and

''(B) such reduction is provided with respect to a student who was accepted for admission to such course of education before July 1, 1984, and began such course of education before June 30, 1985.''

NATIONAL RESEARCH SERVICE AWARDS

Pub. L. 95–600, title I, § 161(b), Nov. 6, 1978, 92 Stat. 2810, as amended by Pub. L. 96–167, § 9(b), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 96–541, § 5(b), Dec. 17, 1980, 94 Stat. 3206; Pub. L. 97–248, title II, § 285, Sept. 3, 1982, 96 Stat. 569; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that any amount paid to, or on behalf of, an individual as a national research service award under former section 289*l*–1 of title 42 during calendar years 1974 through 1983 was to be treated as a scholarship or fellowship grant under this section.

SCHOLARSHIP PROGRAMS FOR MEMBERS OF THE UNIFORMED SERVICES

Pub. L. 93–483, § 4, Oct. 26, 1974, 88 Stat. 1458, as amended Pub. L. 94–455, title XXI, § 2130, Oct. 4, 1976, 90 Stat. 1922; Pub. L. 95–171, § 5, Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–600, title I, § 161(a), Nov. 6, 1978, 92 Stat. 2810; Pub. L. 95–615, title I, § 6, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96–167, § 9(a), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—Any amount received from appropriated funds as a scholarship, including the value of contributed services and accommodations, by a member of a uniformed service who is receiving training under the Armed Forces Health Professions Scholarship Program (or any other program determined by the Secretary of the Treasury or his delegate to have substantially similar objectives) from an educational institution (as defined in section 151(e)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) [see section 170(b)(1)(A)(ii) of this title] shall be treated as a scholarship under section 117 of such Code [this section], whether that member is receiving training while on active duty or in an off-duty or inactive status, and without regard to whether a period of active duty is required of the member as a condition of receiving those payments.

''(b) DEFINITION OF UNIFORMED SERVICES.—For purposes of this section, the term 'uniformed service' has the meaning given it by section 101(3) of title 37, United States Code.

''(c) EFFECTIVE DATE.—The provisions of this section shall apply with respect to amounts received during calendar years 1973, 1974, and 1975, and, in the case of a member of a uniformed service receiving training after 1975 and before 1981 in programs described in subsection (a), with respect to amounts received after 1975 and before 1985.''

[Section 6 of Pub. L. 95–615, which reenacted § 4(c) of Pub. L. 93–483 without change, to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a note under section 61 of this title.]

§ 118. Contributions to the capital of a corporation

(a) General rule

In the case of a corporation, gross income does not include any contribution to the capital of the taxpayer.

(b) Contributions in aid of construction, etc.

For purposes of subsection (a), except as provided in subsection (c), the term ''contribution to the capital of the taxpayer'' does not include any contribution in aid of construction or any other contribution as a customer or potential customer.

(c) Special rules for water and sewerage disposal utilities

(1) General rule

For purposes of this section, the term ''contribution to the capital of the taxpayer'' includes any amount of money or other property

received from any person (whether or not a shareholder) by a regulated public utility which provides water or sewerage disposal services if—

(A) such amount is a contribution in aid of construction,

(B) in the case of contribution of property other than water or sewerage disposal facilities, such amount meets the requirements of the expenditure rule of paragraph (2), and

(C) such amount (or any property acquired or constructed with such amount) is not included in the taxpayer's rate base for rate-making purposes.

(2) Expenditure rule

An amount meets the requirements of this paragraph if—

(A) an amount equal to such amount is expended for the acquisition or construction of tangible property described in section 1231(b)—

(i) which is the property for which the contribution was made or is of the same type as such property, and

(ii) which is used predominantly in the trade or business of furnishing water or sewerage disposal services,

(B) the expenditure referred to in subparagraph (A) occurs before the end of the second taxable year after the year in which such amount was received, and

(C) accurate records are kept of the amounts contributed and expenditures made, the expenditures to which contributions are allocated, and the year in which the contributions and expenditures are received and made.

(3) Definitions

For purposes of this subsection—

(A) Contribution in aid of construction

The term ''contribution in aid of construction'' shall be defined by regulations prescribed by the Secretary, except that such term shall not include amounts paid as service charges for starting or stopping services.

(B) Predominantly

The term ''predominantly'' means 80 percent or more.

(C) Regulated public utility

The term ''regulated public utility'' has the meaning given such term by section 7701(a)(33), except that such term shall not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

(4) Disallowance of deductions and credits; adjusted basis

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure which constitutes a contribution in aid of construction to which this subsection applies. The adjusted basis of any property acquired with contributions in aid of construction to which this subsection applies shall be zero.

(d) Statute of limitations

If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (c), then—

(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

(A) the amount of the expenditure referred to in subparagraph (A) of subsection (c)(2),

(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (c)(2), and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(e) Cross references

(1) For basis of property acquired by a corporation through a contribution to its capital, see section 362.

(2) For special rules in the case of contributions of indebtedness, see section 108(e)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 39; Pub. L. 94–455, title XXI, §2120(a), Oct. 4, 1976, 90 Stat. 1912; Pub. L. 95–600, title III, §364(a), Nov. 6, 1978, 92 Stat. 2854; Pub. L. 96–589, §2(e)(2), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 98–369, div. A, title I, §163(a), July 18, 1984, 98 Stat. 697; Pub. L. 99–514, title VIII, §824(a), Oct. 22, 1986, 100 Stat. 2374; Pub. L. 104–188, title I, §1613(a)(1), (2), Aug. 20, 1996, 110 Stat. 1848–1850.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–188, §1613(a)(2), inserted ''except as provided in subsection (c),'' before ''the term''.

Subsecs. (c) to (e). Pub. L. 104–188, §1613(a)(1), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1986—Subsec. (b). Pub. L. 99–514, §824(a), added subsec. (b) and struck out former subsec. (b) relating to contributions in aid of construction, containing par. (1) general rule, par. (2) expenditure rule, par. (3) definitions, and par. (4) disallowance of deductions and investment credit; adjusted basis.

Subsecs. (c), (d). Pub. L. 99–514, §824(a), redesignated former subsec. (d) as (c) and struck out former subsec. (c), statute of limitations, which read as follows: ''If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (b), then—

''(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

''(A) the amount of the expenditure referred to in subparagraph (A) of subsection (b)(2),

''(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

''(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (b)(2); and

''(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.''

1984—Subsecs. (c), (d). Pub. L. 98–369 added subsec. (c) and redesignated former subsec. (c) as (d).

1980—Subsec. (c). Pub. L. 96–589 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (b)(1). Pub. L. 95–600, § 364(a)(1), (2), substituted in provisions preceding subpar. (A) ''electric energy, gas (through a local distribution system or transportation by pipeline), water,'' for ''water'' and in subpar. (B) ''electric energy, gas, steam, water,'' for ''water''.

Subsec. (b)(2)(A)(ii). Pub. L. 95–600, § 364(a)(3), substituted ''electric energy, gas, steam, water,'' for ''water''.

Subsec. (b)(3)(A). Pub. L. 95–600, § 364(a)(4), substituted ''line to an electric line, a gas main, a steam line, or a main water or sewer line'' for ''property to a main water or sewer line''.

Subsec. (b)(3)(C). Pub. L. 95–600, § 364(a)(5), substituted ''electric energy, gas, water,'' for ''water'' and inserted ''(including in the case of a gas transmission utility, the provision of gas services by sale for resale to the general public)'' after ''members of the general public''.

1976—Subsecs. (b), (c). Pub. L. 94–455, § 2120(a), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1613(a)(3) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section] shall apply to amounts received after June 12, 1996.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 824(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1008(j)(2), Nov. 10, 1988, 102 Stat. 3445, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 362 of this title] shall apply to amounts received after December 31, 1986, in taxable years ending after such date.

''(2) TREATMENT OF CERTAIN WATER SUPPLY PROJECTS.—The amendments made by this section shall not apply to amounts which are paid by the New Jersey Department of Environmental Protection for construction of alternative water supply projects in zones of drinking water contamination and which are designated by such department as being taken into account under this paragraph. Not more than $4,631,000 of such amounts may be designated under the preceding sentence.

''(3) TREATMENT OF CERTAIN CONTRIBUTIONS BY TRANSPORTATION AUTHORITY.—The amendments made by this section shall not apply to contributions in aid of construction by a qualified transportation authority which were clearly identified in a master plan in existence on September 13, 1984, and which are designated by such authority as being taken into account under this paragraph. Not more than $68,000,000 of such contributions may be designated under the preceding sentence. For purposes of this paragraph, a qualified transportation authority is an entity which was created on February 20, 1967, and which was established by an interstate compact and consented to by Congress in Public Law 89–774, 80 Stat. 1324 (1966).

''(4) TREATMENT OF CERTAIN PARTNERSHIPS.—In the case of a partnership with a taxable year beginning May 1, 1986, if such partnership realized net capital gain during the period beginning on the 1st day of such taxable year and ending on May 29, 1986, pursuant to an underwriting agreement dated May 6, 1986, then such partnership may elect to treat each asset to which such net capital gain relates as having been distributed to the partners of such partnership in proportion to their distributive share of the capital gain or loss realized by the partnership with respect to such asset and to treat each such asset as having been sold by each partner on the date of the sale of the asset by the partnership. If such an election is made, the consideration received by the partnership in connection with the sale of such assets shall be treated as having been received by the partners in connection with the deemed sale of such assets. In the case of a tiered partnership, for purposes of this paragraph each partnership shall be treated as having realized net capital gain equal to its proportionate share of the net capital gain of each partnership in which it is a partner, and the election provided by this paragraph shall apply to each tier.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 163(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and sections 6501 and 6511 of this title] shall apply to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] ends after December 31, 1984.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 364(b) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to contributions made after January 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2120(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 362 of this title] apply to contributions made after January 31, 1976.''

§ 119. Meals or lodging furnished for the convenience of the employer

(a) Meals and lodging furnished to employee, his spouse, and his dependents, pursuant to employment

There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if—

(1) in the case of meals, the meals are furnished on the business premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

(b) Special rules

For purposes of subsection (a)—

(1) Provisions of employment contract or State statute not to be determinative

In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

(2) Certain factors not taken into account with respect to meals

In determining whether meals are furnished for the convenience of the employer, the fact

that a charge is made for such meals, and the fact that the employee may accept or decline such meals, shall not be taken into account.

(3) Certain fixed charges for meals

(A) In general

If—

(i) an employee is required to pay on a periodic basis a fixed charge for his meals, and

(ii) such meals are furnished by the employer for the convenience of the employer,

there shall be excluded from the employee's gross income an amount equal to such fixed charge.

(B) Application of subparagraph (A)

Subparagraph (A) shall apply—

(i) whether the employee pays the fixed charge out of his stated compensation or out of his own funds, and

(ii) only if the employee is required to make the payment whether he accepts or declines the meals.

(4) Meals furnished to employees on business premises where meals of most employees are otherwise excludable

All meals furnished on the business premises of an employer to such employer's employees shall be treated as furnished for the convenience of the employer if, without regard to this paragraph, more than half of the employees to whom such meals are furnished on such premises are furnished such meals for the convenience of the employer.

(c) Employees living in certain camps

(1) In general

In the case of an individual who is furnished lodging in a camp located in a foreign country by or on behalf of his employer, such camp shall be considered to be part of the business premises of the employer.

(2) Camp

For purposes of this section, a camp constitutes lodging which is—

(A) provided by or on behalf of the employer for the convenience of the employer because the place at which such individual renders services is in a remote area where satisfactory housing is not available on the open market,

(B) located, as near as practicable, in the vicinity of the place at which such individual renders services, and

(C) furnished in a common area (or enclave) which is not available to the public and which normally accommodates 10 or more employees.

(d) Lodging furnished by certain educational institutions to employees

(1) In general

In the case of an employee of an educational institution, gross income shall not include the value of qualified campus lodging furnished to such employee during the taxable year.

(2) Exception in cases of inadequate rent

Paragraph (1) shall not apply to the extent of the excess of—

(A) the lesser of—

(i) 5 percent of the appraised value of the qualified campus lodging, or

(ii) the average of the rentals paid by individuals (other than employees or students of the educational institution) during such calendar year for lodging provided by the educational institution which is comparable to the qualified campus lodging provided to the employee, over

(B) the rent paid by the employee for the qualified campus lodging during such calendar year.

The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins.

(3) Qualified campus lodging

For purposes of this subsection, the term ''qualified campus lodging'' means lodging to which subsection (a) does not apply and which is—

(A) located on, or in the proximity of, a campus of the educational institution, and

(B) furnished to the employee, his spouse, and any of his dependents by or on behalf of such institution for use as a residence.

(4) Educational institution, etc.

For purposes of this subsection—

(A) In general

The term ''educational institution'' means—

(i) an institution described in section 170(b)(1)(A)(ii) (or an entity organized under State law and composed of public institutions so described), or

(ii) an academic health center.

(B) Academic health center

For purposes of subparagraph (A), the term ''academic health center'' means an entity—

(i) which is described in section 170(b)(1)(A)(iii),

(ii) which receives (during the calendar year in which the taxable year of the taxpayer begins) payments under subsection (d)(5)(B) or (h) of section 1886 of the Social Security Act (relating to graduate medical education), and

(iii) which has as one of its principal purposes or functions the providing and teaching of basic and clinical medical science and research with the entity's own faculty.

(Aug. 16, 1954, ch. 736, 68A Stat. 39; Pub. L. 95–427, §4(a), Oct. 7, 1978, 92 Stat. 997; Pub. L. 95–615, title II, §205, Nov. 8, 1978, 92 Stat. 3107; Pub. L. 96–222, title I, §108(a)(1)(G), Apr. 1, 1980, 94 Stat. 225; Pub. L. 97–34, title I, §113, Aug. 13, 1981, 95 Stat. 195; Pub. L. 99–514, title XI, §1164(a), Oct. 22, 1986, 100 Stat. 2511; Pub. L. 100–647, title I, §1011B(d), Nov. 10, 1988, 102 Stat. 3489; Pub. L. 104–188, title I, §1123(a), Aug. 20, 1996, 110 Stat. 1768; Pub. L. 105–206, title V, §5002(a), July 22, 1998, 112 Stat. 788.)

REFERENCES IN TEXT

Section 1886(d)(5)(B) or (h) of the Social Security Act, referred to in subsec. (d)(4)(B)(ii), is classified to sec-

tion 1395ww(d)(5)(B) or (h) of Title 42, The Public Health and Welfare.

AMENDMENTS

1998—Subsec. (b)(4). Pub. L. 105–206 added par. (4).

1996—Subsec. (d)(4). Pub. L. 104–188 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''EDUCATIONAL INSTITUTION.—For purposes of this paragraph, the term 'educational institution' means an institution described in section 170(b)(1)(A)(ii).''

1988—Subsec. (d). Pub. L. 100–647 struck out ''(as of the close of the calendar year in which the taxable year begins)'' after ''appraised value'' in par. (2)(A)(i) and inserted at end ''The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins.'' as concluding provision.

1986—Subsec. (d). Pub. L. 99–514 added subsec. (d).

1981—Subsec. (c). Pub. L. 97–34 added subsec. (c).

1980—Subsec. (a). Pub. L. 96–222 struck out ''General rule'' in subsec. (a) as in effect on the day before the date of enactment of the Foreign Earned Income Act of 1978 to correct a legislative oversight in the amendment of subsec. (a) of this section by section 205 of Pub. L. 95–615. The amendment by Pub. L. 95–615, however, was executed without reference to ''General rule'' as the probable intent of Congress, thereby requiring no change in text.

1978—Subsec. (a). Pub. L. 95–615 designated existing provisions as subsec. (a), added subsec. (a) heading, and substituted ''furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer'' for ''furnished to him by his employer for the convenience of the employer''.

Pub. L. 95–427 inserted provisions relating to factors not taken into account with respect to meals and certain fixed charges for meals.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title v, § 5002(b), July 22, 1998, 112 Stat. 789, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning before, on, or after the date of the enactment of this Act [July 22, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1123(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.''

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1164(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1985.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective as if included in the Foreign Earned Income Act of 1978, Pub. L. 95–615, see section 108(a)(2)(A) of Pub. L. 96–222, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(b) of Pub. L. 95–427 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as a note under section 911 of this title.

STATUTE OF LIMITATIONS

Pub. L. 96–605, title I, § 107(b), Dec. 28, 1980, 94 Stat. 3524, provided that: ''In the case of any allowance received during calendar year 1974, 1975, 1976, or 1977, subsections (a)(2) and (e) of such section 3 [section 3 of Pub. L. 95–427, set out below] shall be applied by substituting the date one year after the date of the enactment of this Act [Dec. 28, 1980] for 'April 15, 1979' each place it appears.''

TREATMENT OF CERTAIN STATUTORY SUBSISTENCE ALLOWANCES OR SUBSISTENCE ALLOWANCES NEGOTIATED IN ACCORDANCE WITH STATE LAW RECEIVED BY STATE POLICE OFFICERS BEFORE JANUARY 1, 1978

Section 3 of Pub. L. 95–427, as amended by Pub. L. 96–605, title I, § 107(a), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—If—

''(1) an individual who was employed as a State police officer received a statutory subsistence allowance or a subsistence allowance negotiated in accordance with State law while so employed,

''(2) such individual elects, on or before April 15, 1979, and in such manner and form as the Secretary of the Treasury may prescribe, to have this section apply to such allowance, and

''(3) this section applies to such allowance,

then, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], such allowance shall not be included in such individual's gross income.

''(b) ALLOWANCES TO WHICH SECTION APPLIES.—For purposes of this section, this section applies to any statutory subsistence allowance or subsistence allowance negotiated in accordance with State law which was received—

''(1) after December 31, 1969, and before January 1, 1974, to the extent such individual did not include such allowance in gross income on his income tax return for the taxable year in which such allowance was received, or

''(2) during the calendar year 1974, 1975, 1976, or 1977.

''(c) OTHER DEFINITIONS.—For purposes of this section—

''(1) STATE POLICE OFFICER.—The term 'State police officer' means any police officer (including a highway patrolman) employed by a State (or the District of Columbia) on a full-time basis with the power to arrest.

''(2) INCOME TAX RETURN.—The term 'income tax return' means the return of the taxes imposed by subtitle A of the Internal Revenue Code of 1986. If an individual filed before November 29, 1977, an amended return for any taxable year, such amended return shall be treated as the return for such taxable year.

''(d) LIMITATION ON DEDUCTION.—If any individual receives a subsistence allowance which is excluded from gross income under subsection (a), no deduction shall be allowed under any provision of chapter 1 of the Internal Revenue Code of 1986 for expenses in respect of which he has received such allowance, except to the extent that such expenses exceed the amount excludable from gross income under subsection (a) and the excess is otherwise allowed as a deduction under such chapter 1.

''(e) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the application of this section is prevented at any time on or before April 15, 1979, by the operation of any law or rule of law

(including res judicata), refund or credit of such overpayment (to the extent attributable to the application of this section) may, nevertheless, be made or allowed if claim therefor is filed on or before April 15, 1979.''

§ 120. Amounts received under qualified group legal services plans

(a) Exclusion by employee for contributions and legal services provided by employer

Gross income of an employee, his spouse, or his dependents, does not include—

(1) amounts contributed by an employer on behalf of an employee, his spouse, or his dependents under a qualified group legal services plan (as defined in subsection (b)); or

(2) the value of legal services provided, or amounts paid for legal services, under a qualified group legal services plan (as defined in subsection (b)) to, or with respect to, an employee, his spouse, or his dependents.

No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds $70.

(b) Qualified group legal services plan

For purposes of this section, a qualified group legal services plan is a separate written plan of an employer for the exclusive benefit of his employees or their spouses or dependents to provide such employees, spouses, or dependents with specified benefits consisting of personal legal services through prepayment of, or provision in advance for, legal fees in whole or in part by the employer, if the plan meets the requirements of subsection (c).

(c) Requirements

(1) Discrimination

The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

(2) Eligibility

The plan shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are described in paragraph (1). For purposes of this paragraph, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that group legal services plan benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Contribution limitation

Not more than 25 percent of the amounts contributed under the plan during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) Notification

The plan shall give notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of the status of a qualified group legal services plan.

(5) Contributions

Amounts contributed under the plan shall be paid only (A) to insurance companies, or to organizations or persons that provide personal legal services, or indemnification against the cost of personal legal services, in exchange for a prepayment or payment of a premium, (B) to organizations or trusts described in section 501(c)(20), (C) to organizations described in section 501(c) which are permitted by that section to receive payments from an employer for support of one or more qualified group legal services plan or plans, except that such organizations shall pay or credit the contribution to an organization or trust described in section 501(c)(20), (D) as prepayments to providers of legal services under the plan, or (E) a combination of the above.

(d) Other definitions and special rules

For purposes of this section—

(1) Employee

The term ''employee'' includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(2) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(3) Allocations

Allocations of amounts contributed under the plan shall be made in accordance with regulations prescribed by the Secretary and shall take into account the expected relative utilization of benefits to be provided from such contributions or plan assets and the manner in which any premium or other charge was developed.

(4) Dependent

The term ''dependent'' has the meaning given to it by section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(5) Exclusive benefit

In the case of a plan to which contributions are made by more than one employer, in determining whether the plan is for the exclusive benefit of an employer's employees or their spouses or dependents, the employees of any employer who maintains the plan shall be considered to be the employees of each employer who maintains the plan.

(6) Attribution rules

For purposes of this section—

(A) ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)), and

(B) the interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(7) Time of notice to Secretary

A plan shall not be a qualified group legal services plan for any period prior to the time notification was provided to the Secretary in accordance with subsection (c)(4), if such notice is given after the time prescribed by the Secretary by regulations for giving such notice.

(e) Termination

This section and section 501(c)(20) shall not apply to taxable years beginning after June 30, 1992.

(f) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(Added Pub. L. 94–455, title XXI, § 2134(a), Oct. 4, 1976, 90 Stat. 1926; amended Pub. L. 97–34, title VIII, § 802(a), Aug. 13, 1981, 95 Stat. 349; Pub. L. 97–448, title I, § 108(a), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98–612, § 1(a), (b)(3)(A), Oct. 31, 1984, 98 Stat. 3180, 3181; Pub. L. 99–514, title XI, §§ 1114(b)(3), 1151(c)(3), (g)(1), 1162(b), Oct. 22, 1986, 100 Stat. 2450, 2503, 2506, 2510; Pub. L. 100–647, title I, § 1011B(a)(31)(B), title IV, § 4002(a), (b)(1), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101–140, title II, § 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, § 7102(a)(1), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, § 11404(a), Nov. 5, 1990, 104 Stat. 1388–473; Pub. L. 102–227, title I, § 104(a)(1), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 108–311, title II, § 207(10), Oct. 4, 2004, 118 Stat. 1177.)

PRIOR PROVISIONS

A prior section 120, act Aug. 16, 1954, ch. 736, 68A Stat. 39, related to statutory subsistence allowance received by police, prior to repeal by Pub. L. 85–866, title I, § 3(a), (c), Sept. 2, 1958, 72 Stat. 1607, effective with respect to taxable years ending after Sept. 30, 1958, but only with respect to amounts received as a statutory subsistence allowance for any day after Sept. 30, 1958.

AMENDMENTS

2004—Subsec. (d)(4). Pub. L. 108–311 inserted ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152''.

1991—Subsec. (e). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Subsec. (e). Pub. L. 101–508 substituted ''December 31, 1991'' for ''September 30, 1990''.

1989—Subsec. (b). Pub. L. 101–140, § 203(a)(1), amended subsec. (b) to read as if amendments by Pub. L. 99–514, § 1151(c)(3), had not been enacted, see 1986 Amendment note below.

Subsec. (c)(2). Pub. L. 101–140, § 203(a)(2), amended par. (2) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended par. (2) to read as if amendments by Pub. L. 99–514, § 1151(g)(1), had not been enacted, see 1986 Amendment note below.

Subsec. (e). Pub. L. 101–239 substituted ''taxable years beginning after September 30, 1990'' for ''taxable years ending after December 31, 1988''.

1988—Subsec. (a). Pub. L. 100–647, § 4002(b)(1), inserted at end ''No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds $70.''

Subsec. (c)(2). Pub. L. 100–647, § 1011B(a)(31)(B), substituted ''there shall'' for ''there may'' and ''who are'' for ''who may be''.

Subsec. (e). Pub. L. 100–647, § 4002(a), substituted ''1988'' for ''1987''.

1986—Subsec. (b). Pub. L. 99–514, § 1151(c)(3), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For purposes of this section, a qualified group legal services plan is a separate written plan of an employer for the exclusive benefit of his employees or their spouses or dependents to provide such employees, spouses, or dependents with specified benefits consisting of personal legal services through prepayment of, or provision in advance for, legal fees in whole or in part by the employer, if the plan meets the requirements of subsection (c).''

Subsec. (c)(1). Pub. L. 99–514, § 1114(b)(3)(A), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, shareholders, self-employed individuals, or highly compensated''.

Subsec. (c)(2). Pub. L. 99–514, § 1151(g)(1), substituted ''For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).'' for ''For purposes of this paragraph, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that group legal services plan benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.''

Subsec. (d)(1). Pub. L. 99–514, § 1114(b)(3)(B), struck out reference to self-employed individuals in heading, and substituted ''The'' for ''The term 'self-employed individual' means, and the'' in text.

Subsec. (e). Pub. L. 99–514, § 1162(b), substituted ''December 31, 1987'' for ''December 31, 1985''.

1984—Subsec. (e). Pub. L. 98–612, § 1(a), substituted ''December 31, 1985'' for ''December 31, 1984''.

Subsec. (f). Pub. L. 98–612, § 1(b)(3)(A), added subsec. (f).

1983—Subsec. (e). Pub. L. 97–448 substituted ''This section and section 501(c)(20) shall not apply'' for ''This section shall not apply''.

1981—Subsec. (e). Pub. L. 97–34 added subsec. (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 104(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11404(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 7102(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to taxable years ending after December 31, 1988.''

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4002(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 125 of this title] shall apply to taxable years ending after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(3) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(c)(3), (g)(1) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Section 1162(c) of Pub. L. 99–514 provided that:

''(1) SUBSECTION (a).—The amendments made by subsection (a) [amending section 127 of this title] shall apply to taxable years beginning after December 31, 1985.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to years ending after December 31, 1985.

''(3) CAFETERIA PLAN WITH GROUP LEGAL BENEFITS.—If, within 60 days after the date of the enactment of this Act [Oct. 22, 1986], an employee elects under a cafeteria plan under section 125 of the Internal Revenue Code of 1986 coverage for group legal benefits to which section 120 of such Code applies, such election may, at the election of the taxpayer, apply to all legal services provided during 1986. The preceding sentence shall not apply to any plan which on August 16, 1986, offered such group legal benefits under such plan.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1(d)(1) of Pub. L. 98–612 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1984.''

Amendment by section 1(b)(3)(A) of Pub. L. 98–612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98–612.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 2134(e) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, § 703(b)(1), Nov. 6, 1978, 92 Stat. 2939; Pub. L. 97–34, title VIII, § 802(b), Aug. 13, 1981, 95 Stat. 349; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 501 of this title] shall apply to taxable years beginning after December 31, 1976.

''(2) NOTICE REQUIREMENT.—For purposes of section 120(d)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] the time prescribed by the Secretary of the Treasury by regulations for giving the notice required by section 120(c)(4) of such Code shall not expire before the 90th day after the day on which regulations prescribed under such section 120(c)(4) first become final.

''(3) EXISTING PLANS.—

''(A) For purposes of section 120 of the Internal Revenue Code of 1986, a written group legal services plan which was in existence on June 4, 1976, shall be considered as satisfying the requirements of subsections (b) and (c) of such section 120 for the period ending with the compliance date (determined under subparagraph (B)).

''(B) COMPLIANCE DATE.—For purposes of this paragraph, the term 'compliance date' means—

''(i) the date occurring 180 days after the date of the enactment of this Act [Oct. 4, 1976], or

''(ii) if later, in the case of a plan which is maintained pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements, the earlier of December 31, 1981, or the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Oct. 4, 1976]).''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

EXTENSION OF EMPLOYER-PROVIDED GROUP LEGAL SERVICES

Section 104(a)(2) of Pub. L. 102–227 provided that: ''In the case of any taxable year beginning in 1992, only amounts paid before July 1, 1992, by the employer for coverage for the employee, his spouse, or his dependents, under a qualified group legal services plan for periods before July 1, 1992, shall be taken into account in determining the amount excluded under section 120 of the Internal Revenue Code of 1986 with respect to such employee for such taxable year.''

SPECIAL RULE FOR TAXABLE YEARS BEGINNING IN 1990

Section 7102(a)(2) of Pub. L. 101–239 provided that in the case of any taxable year beginning in 1990, only amounts paid before October 1, 1990, by the employer for coverage for the employee, his spouse, or his dependents under a qualified group legal services plan for periods before October 1, 1990, would be taken into account in determining the amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 101–508, title XI, § 11404(b), Nov. 5, 1990, 104 Stat. 1388–473.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

STUDY AND REPORT

Section 2134(d) of Pub. L. 94–455 provided that a complete study and investigation with respect to the desir-

ability and feasibility of continuing the exclusion from income of certain prepaid group legal services benefits under section 120 of the Internal Revenue Code of 1954 be made by the Secretary of Labor and the Secretary of the Treasury, with a report to the President and the Congress not later than Dec. 31, 1980.

§ 121. Exclusion of gain from sale of principal residence

(a) Exclusion

Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

(b) Limitations

(1) In general

The amount of gain excluded from gross income under subsection (a) with respect to any sale or exchange shall not exceed $250,000.

(2) Special rules for joint returns

In the case of a husband and wife who make a joint return for the taxable year of the sale or exchange of the property—

(A) $500,000 Limitation for certain joint returns

Paragraph (1) shall be applied by substituting ''$500,000'' for ''$250,000'' if—

(i) either spouse meets the ownership requirements of subsection (a) with respect to such property;

(ii) both spouses meet the use requirements of subsection (a) with respect to such property; and

(iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

(B) Other joint returns

If such spouses do not meet the requirements of subparagraph (A), the limitation under paragraph (1) shall be the sum of the limitations under paragraph (1) to which each spouse would be entitled if such spouses had not been married. For purposes of the preceding sentence, each spouse shall be treated as owning the property during the period that either spouse owned the property.

(3) Application to only 1 sale or exchange every 2 years

(A) In general

Subsection (a) shall not apply to any sale or exchange by the taxpayer if, during the 2-year period ending on the date of such sale or exchange, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

(B) Pre-May 7, 1997, sales not taken into account

Subparagraph (A) shall be applied without regard to any sale or exchange before May 7, 1997.

(4) [1] Special rule for certain sales by surviving spouses

In the case of a sale or exchange of property by an unmarried individual whose spouse is deceased on the date of such sale, paragraph (1) shall be applied by substituting ''$500,000'' for ''$250,000'' if such sale occurs not later than 2 years after the date of death of such spouse and the requirements of paragraph (2)(A) were met immediately before such date of death.

(4) [1] Exclusion of gain allocated to nonqualified use

(A) In general

Subsection (a) shall not apply to so much of the gain from the sale or exchange of property as is allocated to periods of nonqualified use.

(B) Gain allocated to periods of nonqualified use

For purposes of subparagraph (A), gain shall be allocated to periods of nonqualified use based on the ratio which—

(i) the aggregate periods of nonqualified use during the period such property was owned by the taxpayer, bears to

(ii) the period such property was owned by the taxpayer.

(C) Period of nonqualified use

For purposes of this paragraph—

(i) In general

The term ''period of nonqualified use'' means any period (other than the portion of any period preceding January 1, 2009) during which the property is not used as the principal residence of the taxpayer or the taxpayer's spouse or former spouse.

(ii) Exceptions

The term ''period of nonqualified use'' does not include—

(I) any portion of the 5-year period described in subsection (a) which is after the last date that such property is used as the principal residence of the taxpayer or the taxpayer's spouse,

(II) any period (not to exceed an aggregate period of 10 years) during which the taxpayer or the taxpayer's spouse is serving on qualified official extended duty (as defined in subsection (d)(9)(C)) described in clause (i), (ii), or (iii) of subsection (d)(9)(A), and

(III) any other period of temporary absence (not to exceed an aggregate period of 2 years) due to change of employment, health conditions, or such other unforeseen circumstances as may be specified by the Secretary.

(D) Coordination with recognition of gain attributable to depreciation

For purposes of this paragraph—

(i) subparagraph (A) shall be applied after the application of subsection (d)(6), and

(ii) subparagraph (B) shall be applied without regard to any gain to which subsection (d)(6) applies.

(c) Exclusion for taxpayers failing to meet certain requirements

(1) In general

In the case of a sale or exchange to which this subsection applies, the ownership and use

[1] So in original. Two pars. (4) have been enacted.

requirements of subsection (a), and subsection (b)(3), shall not apply; but the dollar limitation under paragraph (1) or (2) of subsection (b), whichever is applicable, shall be equal to—

(A) the amount which bears the same ratio to such limitation (determined without regard to this paragraph) as

(B)(i) the shorter of—

(I) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence; or

(II) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to

(ii) 2 years.

(2) Sales and exchanges to which subsection applies

This subsection shall apply to any sale or exchange if—

(A) subsection (a) would not (but for this subsection) apply to such sale or exchange by reason of—

(i) a failure to meet the ownership and use requirements of subsection (a), or

(ii) subsection (b)(3), and

(B) such sale or exchange is by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances.

(d) Special rules

(1) Joint returns

If a husband and wife make a joint return for the taxable year of the sale or exchange of the property, subsections (a) and (c) shall apply if either spouse meets the ownership and use requirements of subsection (a) with respect to such property.

(2) Property of deceased spouse

For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period such unmarried individual owned and used such property shall include the period such deceased spouse owned and used such property before death.

(3) Property owned by spouse or former spouse

For purposes of this section—

(A) Property transferred to individual from spouse or former spouse

In the case of an individual holding property transferred to such individual in a transaction described in section 1041(a), the period such individual owns such property shall include the period the transferor owned the property.

(B) Property used by former spouse pursuant to divorce decree, etc.

Solely for purposes of this section, an individual shall be treated as using property as such individual's principal residence during any period of ownership while such individual's spouse or former spouse is granted use of the property under a divorce or separation instrument (as defined in section 71(b)(2)).

(4) Tenant-stockholder in cooperative housing corporation

For purposes of this section, if the taxpayer holds stock as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), then—

(A) the holding requirements of subsection (a) shall be applied to the holding of such stock, and

(B) the use requirements of subsection (a) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

(5) Involuntary conversions

(A) In general

For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property.

(B) Application of section 1033

In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

(C) Property acquired after involuntary conversion

If the basis of the property sold or exchanged is determined (in whole or in part) under section 1033(b) (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

(6) Recognition of gain attributable to depreciation

Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after May 6, 1997, in respect of such property.

(7) Determination of use during periods of out-of-residence care

In the case of a taxpayer who—

(A) becomes physically or mentally incapable of self-care, and

(B) owns property and uses such property as the taxpayer's principal residence during the 5-year period described in subsection (a) for periods aggregating at least 1 year,

then the taxpayer shall be treated as using such property as the taxpayer's principal residence during any time during such 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

(8) Sales of remainder interests

For purposes of this section—

(A) In general

At the election of the taxpayer, this section shall not fail to apply to the sale or exchange of an interest in a principal residence by reason of such interest being a remainder interest in such residence, but this section shall not apply to any other interest in such residence which is sold or exchanged separately.

(B) Exception for sales to related parties

Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is described in section 267(b) or 707(b).

(9) Uniformed services, Foreign Service, and intelligence community

(A) In general

At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on qualified official extended duty—

(i) as a member of the uniformed services,

(ii) as a member of the Foreign Service of the United States, or

(iii) as an employee of the intelligence community.

(B) Maximum period of suspension

The 5-year period described in subsection (a) shall not be extended more than 10 years by reason of subparagraph (A).

(C) Qualified official extended duty

For purposes of this paragraph—

(i) In general

The term ''qualified official extended duty'' means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.

(ii) Uniformed services

The term ''uniformed services'' has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

(iii) Foreign Service of the United States

The term ''member of the Foreign Service of the United States'' has the meaning given the term ''member of the Service'' by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980, as in effect on the date of the enactment of this paragraph.

(iv) Employee of intelligence community

The term ''employee of the intelligence community'' means an employee (as defined by section 2105 of title 5, United States Code) of—

(I) the Office of the Director of National Intelligence,

(II) the Central Intelligence Agency,

(III) the National Security Agency,

(IV) the Defense Intelligence Agency,

(V) the National Geospatial-Intelligence Agency,

(VI) the National Reconnaissance Office,

(VII) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs,

(VIII) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard,

(IX) the Bureau of Intelligence and Research of the Department of State, or

(X) any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.

(v) Extended duty

The term ''extended duty'' means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(D) Special rules relating to election

(i) Election limited to 1 property at a time

An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

(ii) Revocation of election

An election under subparagraph (A) may be revoked at any time.

(10) Property acquired in like-kind exchange

If a taxpayer acquires property in an exchange with respect to which gain is not recognized (in whole or in part) to the taxpayer under subsection (a) or (b) of section 1031, subsection (a) shall not apply to the sale or exchange of such property by such taxpayer (or by any person whose basis in such property is determined, in whole or in part, by reference to the basis in the hands of such taxpayer) during the 5-year period beginning with the date of such acquisition.

[(11) Repealed. Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]

(12) Peace Corps

(A) In general

At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving outside the United States—

(i) on qualified official extended duty (as defined in paragraph (9)(C)) as an employee of the Peace Corps, or

(ii) as an enrolled volunteer or volunteer leader under section 5 or 6 (as the case

may be) of the Peace Corps Act (22 U.S.C. 2504, 2505).

(B) Applicable rules

For purposes of subparagraph (A), rules similar to the rules of subparagraphs (B) and (D)[2] shall apply.

(e) Denial of exclusion for expatriates

This section shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) applies to such individual.

(f) Election to have section not apply

This section shall not apply to any sale or exchange with respect to which the taxpayer elects not to have this section apply.

(g) Residences acquired in rollovers under section 1034

For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under section 1034[3] (as in effect on the day before the date of the enactment of this section) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used such property as the taxpayer's principal residence, there shall be included the aggregate periods for which such other residence (and each prior residence taken into account under section 1223(6) in determining the holding period of such property) had been so owned and used.

(Added Pub. L. 88–272, title II, §206(a), Feb. 26, 1964, 78 Stat. 38; amended Pub. L. 94–455, title XIV, §1404(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1733, 1834; Pub. L. 95–600, title IV, §404(a)–(c)(2), Nov. 6, 1978, 92 Stat. 2869, 2870; Pub. L. 97–34, title I, §123(a), Aug. 13, 1981, 95 Stat. 197; Pub. L. 100–647, title VI, §6011(a), Nov. 10, 1988, 102 Stat. 3691; Pub. L. 105–34, title III, §312(a), Aug. 5, 1997, 111 Stat. 836; Pub. L. 105–206, title VI, §6005(e)(1), (2), July 22, 1998, 112 Stat. 805; Pub. L. 107–16, title V, §542(c), June 7, 2001, 115 Stat. 84; Pub. L. 108–121, title I, §101(a), Nov. 11, 2003, 117 Stat. 1336; Pub. L. 108–357, title VIII, §840(a), Oct. 22, 2004, 118 Stat. 1597; Pub. L. 109–135, title IV, §§402(a)(3), 403(ee), Dec. 21, 2005, 119 Stat. 2610, 2631; Pub. L. 109–432, div. A, title IV, §417(a)–(d), Dec. 20, 2006, 120 Stat. 2965, 2966; Pub. L. 110–142, §7(a), Dec. 20, 2007, 121 Stat. 1806; Pub. L. 110–172, §11(a)(11)(A), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–245, title I, §§110(a), 113(a), (b), June 17, 2008, 122 Stat. 1633, 1635; Pub. L. 110–289, div. C, title III, §3092(a), July 30, 2008, 122 Stat. 2911; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENT OF SECTION

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note below.

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

[2] So in original.

[3] See References in Text note below.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (d)(9)(C)(ii), (iii), is the date of enactment of Pub. L. 108–121, which was approved Nov. 11, 2003.

Section 103 of the Foreign Service Act of 1980, referred to in subsec. (d)(9)(C)(iii), is classified to section 3903 of Title 22, Foreign Relations and Intercourse.

Section 1034 (as in effect on the day before the date of the enactment of this section), referred to in subsec. (g), probably means section 1034 of this title as in effect on the day before the date of enactment of Pub. L. 105–34 which amended this section generally and was approved Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105–34, title III, §312(b), Aug. 5, 1997, 111 Stat. 839.

CODIFICATION

Pub. L. 109–135, title IV, §403(ee)(1), (nn), Dec. 21, 2005, 119 Stat. 2631, 2632, which directed that subsec. (d) of this section be amended by redesignating the paragraph (10) relating to property acquired from a decedent as paragraph (11), effective as if included in the provisions to which such amendment relates of the American Jobs Creation Act of 2004, Pub. L. 108–357, was executed as the probable intent of Congress by redesignating as paragraph (11) the paragraph (10) directed to be added to subsec. (d) of this section by Pub. L. 107–16, §542(c), (f)(1), applicable to estates of decedents dying after Dec. 31, 2009. See Codification note, 2001, 2003, and 2005 Amendment notes, and Effective Date of 2005 Amendment note below.

Pub. L. 108–121, title I, §101(a), (b)(1), Nov. 11, 2003, 117 Stat. 1336, which directed that subsec. (d) of this section be amended by redesignating paragraph (9) as (10) and adding a new paragraph (9), effective as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997, Pub. L. 105–34, could not literally be executed insofar as it directed the redesignation because subsec. (d), as amended by Pub. L. 105–34, did not contain a paragraph (9). However, to reflect the probable intent of Congress, the amendment was executed by redesignating as paragraph (10) the paragraph (9) directed to be added to subsec. (d) of this section by Pub. L. 107–16, §542(c), (f)(1), applicable to estates of decedents dying after Dec. 31, 2009. See Codification note above and 2001, 2003, and 2005 Amendment notes and Effective Date of 2003 Amendment note below.

PRIOR PROVISIONS

A prior section 121 was renumbered section 140 of this title.

AMENDMENTS

2010—Subsec. (d)(11). Pub. L. 111–312, §§301(a), 304, temporarily amended subsec. (d) to read as if amendment by Pub. L. 107–16, §542(c), which originally added par. (9), had never been enacted. See Codification notes above and 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below. Prior to amendment, par. (11) read as follows: ''PROPERTY ACQUIRED FROM A DECEDENT.—The exclusion under this section shall apply to property sold by—

''(A) the estate of a decedent,

''(B) any individual who acquired such property from the decedent (within the meaning of section 1022), and

''(C) a trust which, immediately before the death of the decedent, was a qualified revocable trust (as defined in section 645(b)(1)) established by the decedent, determined by taking into account the ownership and use by the decedent.''

2008—Subsec. (b)(4). Pub. L. 110–289 added par. (4) relating to exclusion of gain allocated to nonqualified use.

Subsec. (d)(9)(C)(vi). Pub. L. 110–245, §113(b), struck out heading and text of cl. (vi). Text read as follows: ''An employee of the intelligence community shall not be treated as serving on qualified extended duty unless such duty is at a duty station located outside the United States.''

Subsec. (d)(9)(E). Pub. L. 110–245, § 113(a), struck out heading and text of subpar. (E). Text read as follows: ''Clause (iii) of subparagraph (A) shall not apply with respect to any sale or exchange after December 31, 2010.''

Subsec. (d)(12). Pub. L. 110–245, § 110(a), added par. (12).

2007—Subsec. (b)(4). Pub. L. 110–142 added par. (4) relating to special rule for certain sales by surviving spouses.

Subsec. (d)(9)(E). Pub. L. 110–172 added subpar. (E).

2006—Subsec. (d)(9). Pub. L. 109–432, § 417(d), substituted ''Uniformed services, Foreign Service, and intelligence community'' for ''Members of uniformed services and Foreign Service'' in heading.

Subsec. (d)(9)(A). Pub. L. 109–432, § 417(a), substituted ''duty—

''(i) as a member of the uniformed services,

''(ii) as a member of the Foreign Service of the United States, or

''(iii) as an employee of the intelligence community.''

for ''duty as a member of the uniformed services or of the Foreign Service of the United States.''

Subsec. (d)(9)(C)(iv), (v). Pub. L. 109–432, § 417(b), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (d)(9)(C)(vi). Pub. L. 109–432, § 417(c), added cl. (vi).

2005—Subsec. (d)(10). Pub. L. 109–135, § 403(ee)(2), amended heading and text of par. (10) relating to property acquired in like-kind exchange generally. Prior to amendment, text read as follows: ''If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.''

Subsec. (d)(11). Pub. L. 109–135, § 403(ee)(1), redesignated par. (10), formerly par. (9), as temporarily added by Pub. L. 107–16, as (11). See Codification notes above and 2001 and 2003 Amendment notes and Effective and Termination Dates of 2001 Amendment note below.

Subsec. (g). Pub. L. 109–135, § 402(a)(3), substituted ''section 1223(6)'' for ''section 1223(7)''.

2004—Subsec. (d)(10). Pub. L. 108–357 added par. (10) relating to property acquired in like-kind exchange.

2003—Subsec. (d)(9), (10). Pub. L. 108–121 added par. (9) and redesignated former par. (9), as temporarily added by Pub. L. 107–16, as (10). See Codification notes above and 2001 Amendment note and Effective and Termination Dates of 2001 Amendment note below.

2001—Subsec. (d)(9). Pub. L. 107–16, §§ 542(c), 901, temporarily added par. (9). See Codification notes above and Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(2). Pub. L. 105–206, § 6005(e)(1), substituted ''Special rules for joint returns'' for ''$500,000 limitation for certain joint returns'' in heading and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall be applied by substituting '$500,000' for '$250,000' if—

''(A) a husband and wife make a joint return for the taxable year of the sale or exchange of the property,

''(B) either spouse meets the ownership requirements of subsection (a) with respect to such property,

''(C) both spouses meet the use requirements of subsection (a) with respect to such property, and

''(D) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).''

Subsec. (c)(1). Pub. L. 105–206, § 6005(e)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a) shall not apply and subsection (b)(3) shall not apply; but the amount of gain excluded from gross income under subsection (a) with respect to such sale or exchange shall not exceed—

''(A) the amount which bears the same ratio to the amount which would be so excluded under this section if such requirements had been met, as

''(B) the shorter of—

''(i) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence, or

''(ii) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange,

bears to 2 years.''

1997—Pub. L. 105–34 amended section catchline and text generally. Prior to amendment, section related to one-time exclusion of gain from sale of principal residence by individual who had attained age 55.

1988—Subsec. (d)(9). Pub. L. 100–647 added par. (9).

1981—Subsec. (b)(1). Pub. L. 97–34 substituted ''$125,000 ($62,500'' for ''$100,000 ($50,000''.

1978—Pub. L. 95–600, § 404(a), substituted ''One-time exclusion of gain from sale of principal residence by individual who has attained age 55'' for ''Gain from sale or exchange of residence of individual who has attained age 65'' in section catchline.

Subsec. (a). Pub. L. 95–600, § 404(a), substituted ''55'' for ''65'', ''5-year'' for ''8-year'', and ''3 years'' for ''5 years''.

Subsec. (b). Pub. L. 95–600, § 404(a), in par. (1) substituted provisions respecting dollar limitations for amount of gain for provisions setting forth applicable limitations where the adjusted sales price exceeds $35,000 and added par. (3).

Subsec. (d)(2). Pub. L. 95–600, § 404(c)(1), substituted ''5-year period'' for ''8-year period''.

Subsec. (d)(5). Pub. L. 95–600, § 404(c)(2), substituted ''5-year period'' for ''8-year period'' and ''3 years'' for ''5 years''.

Subsec. (d)(8). Pub. L. 95–600, § 404(b), added par. (8).

1976—Subsec. (b)(1). Pub. L. 94–455, § 1404(a), substituted ''$35,000'' for ''$20,000'' in three places.

Subsecs. (c), (d)(5). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111–312, title III, § 301(e), Dec. 17, 2010, 124 Stat. 3301, provided that: ''Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 2505, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2664, and 6716 of this title] shall apply to estates of decedents dying, and transfers made, after December 31, 2009.''

Pub. L. 111–312, title III, § 304, Dec. 17, 2010, 124 Stat. 3304, provided that: ''Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, set out as a note under section 1 of this title] shall apply to the amendments made by this title [amending this section and sections 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 2001, 2010, 2502, 2505, 2511, 2631, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2664, and 6716 of this title].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title III, § 3092(b), July 30, 2008, 122 Stat. 2912, provided that: ''The amendment made by this section [amending this section] shall apply to sales and exchanges after December 31, 2008.''

Pub. L. 110–245, title I, § 110(b), June 17, 2008, 122 Stat. 1634, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2007.''

Pub. L. 110–245, title I, § 113(c), June 17, 2008, 122 Stat. 1635, provided that: ''The amendments made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [June 17, 2008].''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, § 7(b), Dec. 20, 2007, 121 Stat. 1806, provided that: ''The amendment made by this section

[amending this section] shall apply to sales or exchanges after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §417(e), Dec. 20, 2006, 120 Stat. 2966, as amended by Pub. L. 110–172, §11(a)(11)(B), Dec. 29, 2007, 121 Stat. 2485, provided that: ''The amendments made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 402(a)(3) of Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

Amendment by section 403(ee) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §840(b), Oct. 22, 2004, 118 Stat. 1597, provided that: ''The amendment made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §101(b), Nov. 11, 2003, 117 Stat. 1336, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997 [Pub. L. 105–34].

''(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section [amending this section] is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Nov. 11, 2003] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title V, §542(f), June 7, 2001, 115 Stat. 86, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting sections 1022 and 6716 of this title and amending this section and sections 170, 684, 1040, 1221, 1246, 1291, 1296, 4947, 6018, 6019, 6075, and 7701 of this title] shall apply to estates of decedents dying after December 31, 2009.

''(2) TRANSFERS TO NONRESIDENTS.—The amendments made by subsection (e)(1) [amending section 684 of this title] shall apply to transfers after December 31, 2009.

''(3) SECTION 4947.—The amendment made by subsection (e)(4) [amending section 4947 of this title] shall apply to deductions for taxable years beginning after December 31, 2009.''

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 312(d) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, §6005(e)(3), July 22, 1998, 112 Stat. 806, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 25, 32, 56, 143, 163, 215, 280A, 464, 512, 1016, 1033, 1038, 1223, 1250, 1274, 6012, 6045, 6212, 6334, 6504, and 7872 of this title and repealing section 1034 of this title] shall apply to sales and exchanges after May 6, 1997.

''(2) SALES ON OR BEFORE DATE OF ENACTMENT.—At the election of the taxpayer, the amendments made by this section shall not apply to any sale or exchange on or before the date of the enactment of this Act [Aug. 5, 1997].

''(3) CERTAIN SALES WITHIN 2 YEARS AFTER DATE OF ENACTMENT.—Section 121 of the Internal Revenue Code of 1986 (as amended by this section) shall be applied without regard to subsection (c)(2)(B) thereof in the case of any sale or exchange of property during the 2-year period beginning on the date of the enactment of this Act if the taxpayer held such property on the date of the enactment of this Act and fails to meet the ownership and use requirements of subsection (a) thereof with respect to such property.

''(4) BINDING CONTRACTS.—At the election of the taxpayer, the amendments made by this section shall not apply to a sale or exchange after the date of the enactment of this Act, if—

''(A) such sale or exchange is pursuant to a contract which was binding on such date, or

''(B) without regard to such amendments, gain would not be recognized under section 1034 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) on such sale or exchange by reason of a new residence acquired on or before such date or with respect to the acquisition of which by the taxpayer a binding contract was in effect on such date.

This paragraph shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) of the Internal Revenue Code of 1986 applies to such individual.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6011(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to any sale or exchange after September 30, 1988, in taxable years ending after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 123(b) of Pub. L. 97–34 provided that: ''The amendment made by this section [amending this section] shall apply to residences sold or exchanged after July 20, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 404(d)(1) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and sections 1033, 1034, 1038, 1250, and 6012 of this title] shall apply to sales or exchanges after July 26, 1978, in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1404(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE

Section 206(c) of Pub. L. 88–272 provided that: ''The amendments made by this section [enacting this section, redesignating former section 121 as 122, and

amending sections 1033, 1034, and 6012 of this title] shall apply to dispositions after Dec. 31, 1963, in taxable years ending after such date.''

SENSE OF CONGRESS CONCERNING TAX TREATMENT OF PRINCIPAL RESIDENCE OF MEMBERS OF ARMED FORCES WHILE AWAY FROM HOME ON ACTIVE DUTY

Pub. L. 105–261, div. A, title X, § 1074, Oct. 17, 1998, 112 Stat. 2138, provided that: ''It is the sense of Congress that a member of the Armed Forces should be treated for purposes of section 121 of the Internal Revenue Code of 1986 as using property as a principal residence during any continuous period that the member is serving on active duty for 180 days or more with the Armed Forces, but only if the member used the property as a principal residence for any period during or immediately before that period of active duty.''

TRANSITIONAL RULE IN CASE OF SALE OR EXCHANGE OF RESIDENCE BEFORE JULY 26, 1981

Section 404(d)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have section 121 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applied by substituting '8-year period' for '5-year period' and '5 years' for '3 years' in subsections (a), (d)(2), and (d)(5) of such section.''

§ 122. Certain reduced uniformed services retirement pay

(a) General rule

In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code.

(b) Special rule

(1) Amount excluded from gross income

In the case of any individual referred to in subsection (a), all amounts received after December 31, 1965, as retired or retainer pay shall be excluded from gross income until there has been so excluded an amount equal to the consideration for the contract. The preceding sentence shall apply only to the extent that the amounts received would, but for such sentence, be includible in gross income.

(2) Consideration for the contract

For purposes of paragraph (1) and section 72(n), the term ''consideration for the contract'' means, in respect of any individual, the sum of—

(A) the total amount of the reductions before January 1, 1966, in his retired or retainer pay by reason of an election under chapter 73 of title 10 of the United States Code, and

(B) any amounts deposited at any time by him pursuant to section 1438 or 1452(d) of such title 10.

(Added Pub. L. 89–365, § 1(a)(1), Mar. 8, 1966, 80 Stat. 32; amended Pub. L. 93–406, title II, §§ 2005(c)(10), 2007(a), (b)(1), Sept. 2, 1974, 88 Stat. 992, 994.)

PRIOR PROVISIONS

A prior section 122 was renumbered section 140 of this title.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–406, § 2007(a), substituted ''United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code'' for ''United States who has made an election under chapter 73 of title 10 of the United States Code to receive a reduced amount of retired or retainer pay, gross income does not include the amount of any reduction after December 31, 1965, in his retired or retainer pay by reason of such election''.

Subsec. (b)(2). Pub. L. 93–406, § 2005(c)(10), substituted ''72(n)'' for ''72(*o*)''.

Subsec. (b)(2)(B). Pub. L. 93–406, § 2007(b)(1), inserted reference to section 1452(d) of title 10.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2005(c)(10) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

Section 2007(c) of Pub. L. 93–406 provided that: ''The amendments made by this section [amending this section and sections 72, 101, and 2039 of this title] apply to taxable years ending on or after September 21, 1972. The amendments made by paragraphs (3) and (4) of subsection (b) [amending sections 101 and 2039 of this title] apply with respect to individuals dying on or after such date''.

EFFECTIVE DATE

Section 1(d) of Pub. L. 89–365 provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending section 72 of this title] shall apply with respect to taxable years ending after December 31, 1965. The amendment made by subsection (c) [amending section 101 of this title] shall apply with respect to individuals making an election under chapter 73 of title 10 of the United States Code who die after December 31, 1965.''

§ 123. Amounts received under insurance contracts for certain living expenses

(a) General rule

In the case of an individual whose principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or threat of occurrence of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence.

(b) Limitation

Subsection (a) shall apply to amounts received by the taxpayer for living expenses incurred during any period only to the extent the amounts received do not exceed the amount by which—

(1) the actual living expenses incurred during such period for himself and members of his household resulting from the loss of use or occupancy of their residence, exceed

(2) the normal living expenses which would have been incurred for himself and members of his household during such period.

(Added Pub. L. 91–172, title IX, § 901(a), Dec. 30, 1969, 83 Stat. 709.)

PRIOR PROVISIONS

A prior section 123 was renumbered section 140 of this title.

EFFECTIVE DATE

Section 901(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to amounts received on or after January 1, 1969.''

[§ 124. Repealed. Pub. L. 101–508, title XI, § 11801(a)(9), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 95–618, title II, § 242(a), Nov. 9, 1978, 92 Stat. 3193, related to qualified transportation provided by employers.

A prior section 124 was renumbered section 140 of this title.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 125. Cafeteria plans

(a) General rule

Except as provided in subsection (b), no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan.

(b) Exception for highly compensated participants and key employees

(1) Highly compensated participants

In the case of a highly compensated participant, subsection (a) shall not apply to any benefit attributable to a plan year for which the plan discriminates in favor of—

(A) highly compensated individuals as to eligibility to participate, or

(B) highly compensated participants as to contributions and benefits.

(2) Key employees

In the case of a key employee (within the meaning of section 416(i)(1)), subsection (a) shall not apply to any benefit attributable to a plan for which the statutory nontaxable benefits provided to key employees exceed 25 percent of the aggregate of such benefits provided for all employees under the plan. For purposes of the preceding sentence, statutory nontaxable benefits shall be determined without regard to the second sentence of subsection (f).

(3) Year of inclusion

For purposes of determining the taxable year of inclusion, any benefit described in paragraph (1) or (2) shall be treated as received or accrued in the taxable year of the participant or key employee in which the plan year ends.

(c) Discrimination as to benefits or contributions

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan does not discriminate where qualified benefits and total benefits (or employer contributions allocable to qualified benefits and employer contributions for total benefits) do not discriminate in favor of highly compensated participants.

(d) Cafeteria plan defined

For purposes of this section—

(1) In general

The term ''cafeteria plan'' means a written plan under which—

(A) all participants are employees, and

(B) the participants may choose among 2 or more benefits consisting of cash and qualified benefits.

(2) Deferred compensation plans excluded

(A) In general

The term ''cafeteria plan'' does not include any plan which provides for deferred compensation.

(B) Exception for cash and deferred arrangements

Subparagraph (A) shall not apply to a profit-sharing or stock bonus plan or rural cooperative plan (within the meaning of section 401(k)(7)) which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

(C) Exception for certain plans maintained by educational institutions

Subparagraph (A) shall not apply to a plan maintained by an educational organization described in section 170(b)(1)(A)(ii) to the extent of amounts which a covered employee may elect to have the employer pay as contributions for post-retirement group life insurance if—

(i) all contributions for such insurance must be made before retirement, and

(ii) such life insurance does not have a cash surrender value at any time.

For purposes of section 79, any life insurance described in the preceding sentence shall be treated as group-term life insurance.

(D) Exception for health savings accounts

Subparagraph (A) shall not apply to a plan to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a health savings account established on behalf of the employee.

(e) Highly compensated participant and individual defined

For purposes of this section—

(1) Highly compensated participant

The term ''highly compensated participant'' means a participant who is—

(A) an officer,

(B) a shareholder owning more than 5 percent of the voting power or value of all classes of stock of the employer,

(C) highly compensated, or

(D) a spouse or dependent (within the meaning of section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of an individual described in subparagraph (A), (B), or (C).

(2) Highly compensated individual

The term ''highly compensated individual'' means an individual who is described in sub-

paragraphs[1] (A), (B), (C), or (D) of paragraph (1).

(f) Qualified benefits defined

For purposes of this section, the term ''qualified benefit'' means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 106(b), 117, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79 and such term includes any other benefit permitted under regulations. Such term shall not include any product which is advertised, marketed, or offered as long-term care insurance.

(g) Special rules

(1) Collectively bargained plan not considered discriminatory

For purposes of this section, a plan shall not be treated as discriminatory if the plan is maintained under an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and one or more employers.

(2) Health benefits

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan which provides health benefits shall not be treated as discriminatory if—

(A) contributions under the plan on behalf of each participant include an amount which—

(i) equals 100 percent of the cost of the health benefit coverage under the plan of the majority of the highly compensated participants similarly situated, or

(ii) equals or exceeds 75 percent of the cost of the health benefit coverage of the participant (similarly situated) having the highest cost health benefit coverage under the plan, and

(B) contributions or benefits under the plan in excess of those described in subparagraph (A) bear a uniform relationship to compensation.

(3) Certain participation eligibility rules not treated as discriminatory

For purposes of subparagraph (A) of subsection (b)(1), a classification shall not be treated as discriminatory if the plan—

(A) benefits a group of employees described in section 410(b)(2)(A)(i), and

(B) meets the requirements of clauses (i) and (ii):

(i) No employee is required to complete more than 3 years of employment with the employer or employers maintaining the plan as a condition of participation in the plan, and the employment requirement for each employee is the same.

(ii) Any employee who has satisfied the employment requirement of clause (i) and who is otherwise entitled to participate in the plan commences participation no later than the first day of the first plan year beginning after the date the employment requirement was satisfied unless the employee was separated from service before the first day of that plan year.

(4) Certain controlled groups, etc.

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(h) Special rule for unused benefits in health flexible spending arrangements of individuals called to active duty

(1) In general

For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan or health flexible spending arrangement merely because such arrangement provides for qualified reservist distributions.

(2) Qualified reservist distribution

For purposes of this subsection, the term ''qualified reservist distribution'' means,[2] any distribution to an individual of all or a portion of the balance in the employee's account under such arrangement if—

(A) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

(B) such distribution is made during the period beginning on the date of such order or call and ending on the last date that reimbursements could otherwise be made under such arrangement for the plan year which includes the date of such order or call.

(i) Limitation on health flexible spending arrangements

For purposes of this section, if a benefit is provided under a cafeteria plan through employer contributions to a health flexible spending arrangement, such benefit shall not be treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of $2,500 made to such arrangement.

(j) Simple cafeteria plans for small businesses

(1) In general

An eligible employer maintaining a simple cafeteria plan with respect to which the requirements of this subsection are met for any year shall be treated as meeting any applicable nondiscrimination requirement during such year.

(2) Simple cafeteria plan

For purposes of this subsection, the term ''simple cafeteria plan'' means a cafeteria plan—

(A) which is established and maintained by an eligible employer, and

(B) with respect to which the contribution requirements of paragraph (3), and the eligi-

[1] So in original. Probably should be ''subparagraph''.

[2] So in original. The comma probably should not appear.

bility and participation requirements of paragraph (4), are met.

(3) Contribution requirements

(A) In general

The requirements of this paragraph are met if, under the plan the employer is required, without regard to whether a qualified employee makes any salary reduction contribution, to make a contribution to provide qualified benefits under the plan on behalf of each qualified employee in an amount equal to—

(i) a uniform percentage (not less than 2 percent) of the employee's compensation for the plan year, or

(ii) an amount which is not less than the lesser of—

(I) 6 percent of the employee's compensation for the plan year, or

(II) twice the amount of the salary reduction contributions of each qualified employee.

(B) Matching contributions on behalf of highly compensated and key employees

The requirements of subparagraph (A)(ii) shall not be treated as met if, under the plan, the rate of contributions with respect to any salary reduction contribution of a highly compensated or key employee at any rate of contribution is greater than that with respect to an employee who is not a highly compensated or key employee.

(C) Additional contributions

Subject to subparagraph (B), nothing in this paragraph shall be treated as prohibiting an employer from making contributions to provide qualified benefits under the plan in addition to contributions required under subparagraph (A).

(D) Definitions

For purposes of this paragraph—

(i) Salary reduction contribution

The term ''salary reduction contribution'' means, with respect to a cafeteria plan, any amount which is contributed to the plan at the election of the employee and which is not includible in gross income by reason of this section.

(ii) Qualified employee

The term ''qualified employee'' means, with respect to a cafeteria plan, any employee who is not a highly compensated or key employee and who is eligible to participate in the plan.

(iii) Highly compensated employee

The term ''highly compensated employee'' has the meaning given such term by section 414(q).

(iv) Key employee

The term ''key employee'' has the meaning given such term by section 416(i).

(4) Minimum eligibility and participation requirements

(A) In general

The requirements of this paragraph shall be treated as met with respect to any year if, under the plan—

(i) all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate, and

(ii) each employee eligible to participate in the plan may, subject to terms and conditions applicable to all participants, elect any benefit available under the plan.

(B) Certain employees may be excluded

For purposes of subparagraph (A)(i), an employer may elect to exclude under the plan employees—

(i) who have not attained the age of 21 before the close of a plan year,

(ii) who have less than 1 year of service with the employer as of any day during the plan year,

(iii) who are covered under an agreement which the Secretary of Labor finds to be a collective bargaining agreement if there is evidence that the benefits covered under the cafeteria plan were the subject of good faith bargaining between employee representatives and the employer, or

(iv) who are described in section 410(b)(3)(C) (relating to nonresident aliens working outside the United States).

A plan may provide a shorter period of service or younger age for purposes of clause (i) or (ii).

(5) Eligible employer

For purposes of this subsection—

(A) In general

The term ''eligible employer'' means, with respect to any year, any employer if such employer employed an average of 100 or fewer employees on business days during either of the 2 preceding years. For purposes of this subparagraph, a year may only be taken into account if the employer was in existence throughout the year.

(B) Employers not in existence during preceding year

If an employer was not in existence throughout the preceding year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current year.

(C) Growing employers retain treatment as small employer

(i) In general

If—

(I) an employer was an eligible employer for any year (a ''qualified year''), and

(II) such employer establishes a simple cafeteria plan for its employees for such year,

then, notwithstanding the fact the employer fails to meet the requirements of subparagraph (A) for any subsequent year, such employer shall be treated as an eligible employer for such subsequent year with respect to employees (whether or not employees during a qualified year) of any

trade or business which was covered by the plan during any qualified year.

(ii) Exception

This subparagraph shall cease to apply if the employer employs an average of 200 or more employees on business days during any year preceding any such subsequent year.

(D) Special rules

(i) Predecessors

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(ii) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (n) or (*o*) of section 414, shall be treated as one person.

(6) Applicable nondiscrimination requirement

For purposes of this subsection, the term ''applicable nondiscrimination requirement'' means any requirement under subsection (b) of this section, section 79(d), section 105(h), or paragraph (2), (3), (4), or (8) of section 129(d).

(7) Compensation

The term ''compensation'' has the meaning given such term by section 414(s).

(k) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(*l*) Regulations

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

(Added Pub. L. 95–600, title I, §134(a), Nov. 6, 1978, 92 Stat. 2783; amended Pub. L. 96–222, title I, §101(a)(6)(A), Apr. 1, 1980, 94 Stat. 196; Pub. L. 96–605, title II, §§201(b)(2), 226(a), Dec. 28, 1980, 94 Stat. 3527, 3529; Pub. L. 96–613, §5(b)(2), Dec. 28, 1980, 94 Stat. 3581; Pub. L. 98–369, div. A, title V, §531(b)(1)–(4)(A), July 18, 1984, 98 Stat. 881, 882; Pub. L. 98–611, §1(d)(3)(A), Oct. 31, 1984, 98 Stat. 3177; Pub. L. 98–612, §1(b)(3)(B), Oct. 31, 1984, 98 Stat. 3181; Pub. L. 99–514, title XI, §1151(d)(1), title XVIII, §1853(b)(1), Oct. 22, 1986, 100 Stat. 2504, 2870; Pub. L. 100–647, title I, §§1011B(a)(11)–(13), 1018(t)(6), title IV, §4002(b)(2), title VI, §6051(b), Nov. 10, 1988, 102 Stat. 3484, 3485, 3589, 3643, 3696; Pub. L. 101–140, title II, §203(a)(1), (3), (b)(2), Nov. 8, 1989, 103 Stat. 830, 831; Pub. L. 101–239, title VII, §7814(b), Dec. 19, 1989, 103 Stat. 2413; Pub. L. 101–508, title XI, §11801(c)(3), Nov. 5, 1990, 104 Stat. 1388–523; Pub. L. 104–191, title III, §§301(d), 321(c)(1), Aug. 21, 1996, 110 Stat. 2051, 2058; Pub. L. 108–173, title XII, §1201(i), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 108–311, title II, §207(11), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110–172, §11(a)(12), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–245, title I, §114(a), June 17, 2008, 122 Stat. 1636; Pub. L. 111–148, title I, §1515(a), (b), title IX, §§9005(a), 9022(a), title X, §10902(a), Mar. 23, 2010, 124 Stat. 258, 854, 874, 1016; Pub. L. 111–152, title I, §1403(b), Mar. 30, 2010, 124 Stat. 1063.)

AMENDMENT OF SUBSECTION (f)

Pub. L. 111–148, title I, §1515, Mar. 23, 2010, 124 Stat. 258, provided that, applicable to taxable years beginning after Dec. 31, 2013, subsection (f) of this section is amended as follows:

(1) by striking ''For purposes of this section, the term'' and inserting ''For purposes of this section—

''(1) In general

''The term'';

(2) by striking ''Such term shall not include'' and inserting the following:

''(2) Long-term care insurance not qualified

''The term 'qualified benefit' shall not include''; and

(3) by adding at the end the following new paragraph:

(3) Certain exchange-participating qualified health plans not qualified

(A) In general

The term ''qualified benefit'' shall not include any qualified health plan (as defined in section 1301(a) of the Patient Protection and Affordable Care Act) offered through an Exchange established under section 1311 of such Act.

(B) Exception for exchange-eligible employers

Subparagraph (A) shall not apply with respect to any employee if such employee's employer is a qualified employer (as defined in section 1312(f)(2) of the Patient Protection and Affordable Care Act) offering the employee the opportunity to enroll through such an Exchange in a qualified health plan in a group market.

AMENDMENT OF SUBSECTION (i)

Pub. L. 111–148, title X, §10902, Mar. 23, 2010, 124 Stat. 1016; Pub. L. 111–152, title I, §1403, Mar. 30, 2010, 124 Stat. 1063, provided that, applicable to taxable years beginning after Dec. 31, 2012, subsection (i) of this section is amended to read as follows:

(i) Limitation on health flexible spending arrangements

(1) In general

For purposes of this section, if a benefit is provided under a cafeteria plan through employer contributions to a health flexible spending arrangement, such benefit shall not be treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of $2,500 made to such arrangement.

(2) Adjustment for inflation

In the case of any taxable year beginning after December 31, 2013, the dollar amount in paragraph (1) shall be increased by an amount equal to—

(A) such amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins by substituting ''calendar year 2012'' for ''calendar year 1992'' in subparagraph (B) thereof.

If any increase determined under this paragraph is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

CODIFICATION

Pub. L. 101–140, §203(a)(1), amended this section to read as if the amendments made by section 1151(d)(1) of

Pub. L. 99–514 (amending this section generally) had not been enacted. Subsequent to amendment by Pub. L. 99–514, this section was amended by Pub. L. 100–647 and Pub. L. 101–239. See 1989 and 1988 Amendment notes below.

PRIOR PROVISIONS

A prior section 125 was renumbered section 140 of this title.

AMENDMENTS

2010—Subsec. (i). Pub. L. 111–148, §9005(a)(2), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 111–148, §9022(a), added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 111–148, §9005(a)(1), redesignated subsec. (j) as (k).

Subsec. (k). Pub. L. 111–148, §9022(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Pub. L. 111–148, §9005(a)(1), redesignated subsec. (j) as (k).

Subsec. (*l*). Pub. L. 111–148, §9022(a), redesignated subsec. (k) as (*l*).

2008—Subsecs. (h) to (j). Pub. L. 110–245 added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

2007—Subsec. (b)(2). Pub. L. 110–172 substituted ''second sentence'' for ''last sentence''.

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

2003—Subsec. (d)(2)(D). Pub. L. 108–173, which directed the amendment of section 125(d)(2) by adding subpar. (D), was executed to this section, which is section 125(d)(2) of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1996—Subsec. (f). Pub. L. 104–191, §321(c)(1), inserted at end ''Such term shall not include any product which is advertised, marketed, or offered as long-term care insurance.''

Pub. L. 104–191, §301(d), inserted ''106(b),'' before ''117''.

1990—Subsec. (f). Pub. L. 101–508 substituted ''section 117,'' for ''section 117, 124,''.

1989—Pub. L. 101–140, §203(a)(1), amended section to read as if amendments by Pub. L. 99–514, §1151(d)(1), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(2). Pub. L. 101–140, §203(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'cafeteria plan' does not include any plan which provides for deferred compensation. The preceding sentence shall not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.''

Subsec. (e)(2)(A). Pub. L. 101–239 substituted ''includible only because'' for ''includable only because'', see Codification note above.

Subsec. (g)(3)(A). Pub. L. 101–140, §203(a)(3), substituted ''section 410(b)(2)(A)(i)'' for ''subparagraph (B) of section 410(b)(1)''.

1988—Subsec. (a). Pub. L. 100–647, §1011B(a)(11)(A), amended subsec. (a) generally, see Codification note above. Prior to amendment, subsec. (a) read as follows: ''In the case of a cafeteria plan—

''(1) amounts shall not be included in gross income of a participant in such plan solely because, under the plan, the participant may choose among the benefits of the plan, and

''(2) if the plan fails to meet the requirements of subsection (b) for any plan year—

''(A) paragraph (1) shall not apply, and

''(B) notwithstanding any other provision of part III of this subchapter, any qualified benefits received under such cafeteria plan by a highly compensated employee for such plan year shall be included in the gross income of such employee for the taxable year with or within which such plan year ends.''

Subsec. (b)(1). Pub. L. 100–647, §1011B(a)(11)(B), substituted ''In the case of a highly compensated employee, subsection (a) shall not apply to any benefit attributable to a plan year'' for ''A plan shall be treated as failing to meet the requirements of this subsection'', see Codification note above.

Subsec. (b)(2). Pub. L. 100–647, §1011B(a)(11)(C), substituted ''subsection (a) shall not apply to any plan year'' for ''a plan shall be treated as failing to meet the requirements of this subsection'' in first sentence, see Codification note above.

Pub. L. 100–647, §1011B(a)(13)(B), substituted ''shall not include benefits which (without regard to this paragraph) are includible in gross income'' for ''shall be determined without regard to the last sentence of subsection (e)'', see Codification note above.

Subsec. (c)(1)(B). Pub. L. 100–647, §1011B(a)(12), amended subpar. (B) generally, see Codification note above. Prior to amendment, subpar. (B) read as follows: ''the participants may choose—

''(i) among 2 or more benefits consisting of cash and qualified benefits, or

''(ii) among 2 or more qualified benefits.''

Subsec. (c)(2)(B). Pub. L. 100–647, §1018(t)(6), inserted ''or rural electric cooperative plan (within the meaning of section 401(k)(7))'' after ''stock bonus plan'', see Codification note above.

Subsec. (c)(2)(C). Pub. L. 100–647, §6051(b), inserted at end ''In applying section 89 to a plan described in this subparagraph, contributions under the plan shall be tested as of the time the contributions were made.'', see Codification note above.

Subsec. (e)(1). Pub. L. 100–647, §1011B(a)(13)(A), inserted ''and without regard to section 89(a)'' after ''subsection (a)'', see Codification note above.

Subsec. (e)(2)(A). Pub. L. 100–647, §4002(b)(2), inserted ''or any insurance under a qualified group legal services plan the value of which is so includable only because it exceeds the limitation of section 120(a)'' after ''section 79'', see Codification note above.

1986—Pub. L. 99–514, §1151(d)(1), amended section generally, revising and restating as subsecs. (a) to (g) provisions of former subsecs. (a) to (i) so as to coincide with the coming into effect of section 89 of this title.

Subsecs. (c), (d)(1)(B). Pub. L. 99–514, §1853(b)(1)(A), substituted ''qualified benefits'' for ''statutory nontaxable benefits'' wherever appearing.

Subsec. (f). Pub. L. 99–514, §1853(b)(1)(B), substituted ''Qualified benefits defined'' for ''Statutory nontaxable benefits defined'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'statutory nontaxable benefit' means any benefit which, with the application of subsection (a) is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79.''

1984—Subsec. (b). Pub. L. 98–369, §531(b)(3), amended subsec. (b) generally, substituting ''and key employees'' for ''where plan is discriminatory'' in heading and ''Highly compensated participants'' for ''In general'' in par. (1) heading, adding par. (2), redesignating former par. (2) as (3), and inserting therein references to par. (2) and to taxable year of key employee.

Subsec. (c). Pub. L. 98–369, §531(b)(2)(B), inserted ''statutory'' before ''nontaxable benefits'' in two places.

Subsec. (d)(1). Pub. L. 98–369, §531(b)(1), substituted ''among 2 or more benefits consisting of cash and statutory nontaxable benefits'' for ''among two or more benefits'' in cl. (B) and struck out ''The benefits which may be chosen may be nontaxable benefits, or cash, property, or other taxable benefits.''

Subsec. (f). Pub. L. 98–369, §531(b)(2)(A), amended subsec. (f) generally, inserting ''Statutory'' in heading and

''statutory'' before ''nontaxable benefit'' in text, providing that the benefit be excluded by reason of an express provision of this chapter (other than section 117, 124, 127, or 132), and extending the benefit to include group term life insurance.

Subsec. (h). Pub. L. 98–611 and Pub. L. 98–612, made identical amendments, substituting cross reference provision for reporting requirements provisions.

Pub. L. 98–369, § 531(b)(4)(A), added subsec. (h) relating to reporting requirements provisions. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 98–369, § 531(b)(4)(A), redesignated subsec. (h) as (i).

1980—Subsec. (d)(2). Pub. L. 96–605, § 226(a), inserted provision that the sentence excluding deferred compensation plans not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement, as defined in section 401(k)(2) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

Subsec. (g)(3)(B). Pub. L. 96–222 substituted ''employment requirement'' for ''service requirement'' in cls. (i) and (ii).

Subsec. (g)(4). Pub. L. 96–613, § 5(b)(2), and Pub. L. 96–605, § 201(b)(2), made identical amendments by substituting ''controlled groups, etc.'' for ''controlled groups'' in heading, and by substituting ''subsection (b), (c), or (m) of section 414'' for ''subsection (b) or (c) of section 414'' in text.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title I, § 1515(c), Mar. 23, 2010, 124 Stat. 258, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2013.''

Pub. L. 111–148, title IX, § 9005(b), Mar. 23, 2010, 124 Stat. 855, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010.''

Pub. L. 111–148, title IX, § 9022(b), Mar. 23, 2010, 124 Stat. 876, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2010.''

Pub. L. 111–148, title X, § 10902(b), Mar. 23, 2010, 124 Stat. 1016, as amended by Pub. L. 111–152, title I, § 1403(a), Mar. 30, 2010, 124 Stat. 1063, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2012.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, § 114(b), June 17, 2008, 122 Stat. 1636, provided that: ''The amendment made by this section [amending this section] shall apply to distributions made after the date of the enactment of this Act [June 17, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 301(d) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 321(c)(1) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011B(a)(11)–(13) and 1018(t)(6) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4002(b)(2) of Pub. L. 100–647 applicable to taxable years ending after Dec. 31, 1987, see section 4002(c) of Pub. L. 100–647, set out as a note under section 120 of this title.

Section 6051(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 89 of this title] shall take effect as if included in the amendments made by section 1151 of the Reform Act [Pub. L. 99–514, see Effective Date of 1986 Amendment note set out under section 79 of this title].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1151(d)(1) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1853(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98–612.

Amendment by Pub. L. 98–611 effective Jan. 1, 1985, see section 1(g)(2) of Pub. L. 98–611, set out as a note under section 127 of this title.

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendments by section 201(b)(2) of Pub. L. 96–605 and section 5(b)(2) of Pub. L. 96–613 applicable to years ending after Nov. 30, 1980, except in the case of a plan in existence on Nov. 30, 1980 where amendments by section 201(b)(2) of Pub. L. 96–605 and section 5(b)(2) of Pub. L. 96–613 applicable to plan years beginning after Nov. 30, 1980, see section 201(c) of Pub. L. 96–605 and section 5(c) of Pub. L. 96–613, set out as a note under section 414 of this title.

Section 226(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1980.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 134(c) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 101(a)(6)(B), Apr. 1, 1980, 94 Stat. 197, provided that: ''The amendments made by this section

[enacting this section] shall apply to plan years beginning after December 31, 1978.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

TREATMENT OF PRE-1989 ELECTIONS FOR DEPENDENT CARE ASSISTANCE UNDER CAFETERIA PLANS

Section 6063 of Pub. L. 100–647 provided that: ''For purposes of section 125 of the 1986 Code, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1989, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1988, and such assistance is includible in gross income under the provisions of the Family Support Act of 1988 [Pub. L. 100–485, see Tables for classification].''

For provision that for purposes of section 125 of the Internal Revenue Code of 1986, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1988, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1987, and such assistance included reimbursement for expenses at a camp where the dependent stays overnight, see section 10101(b)(2) of Pub. L. 100–203, as added by Pub. L. 100–647, set out as an Effective Date of 1987 Amendment note under section 21 of this title.

EXCEPTION FOR CERTAIN CAFETERIA PLANS AND BENEFITS

Section 531(b)(5) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, §1853(b)(2), (3), Oct. 22, 1986, 100 Stat. 2870, 2871, provided that:

''(A) GENERAL TRANSITIONAL RULE.—Any cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules relating to section 125 under proposed Treasury regulations, and any benefit offered under such a cafeteria plan which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations, will not fail to be a cafeteria plan under section 125 or a nontaxable benefit under section 105, 106, 120, or 129 solely because of such failures. The preceding sentence shall apply only with respect to cafeteria plans and benefits provided under cafeteria plans before the earlier of—

''(i) January 1, 1985, or

''(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

''(B) SPECIAL TRANSITION RULE FOR ADVANCE ELECTION BENEFIT BANKS.—Any benefit offered under a cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations because an employee was assured of receiving (in cash or any other benefit) amounts available but unused for covered reimbursement during the year without regard to whether he incurred covered expenses, will not fail to be a nontaxable benefit under such applicable section solely because of such failure. The preceding sentence shall apply only with respect to benefits provided under cafeteria plans before the earlier of—

''(i) July 1, 1985, or

''(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

Except as provided in Treasury regulations, the special transition rule is available only for benefits with respect to which, after December 31, 1984, contributions are fixed before the period of coverage and taxable cash is not available until the end of such period of coverage.

''(C) PLANS FOR WHICH SUBSTANTIAL IMPLEMENTATION COSTS WERE INCURRED.—For purposes of this paragraph, any plan with respect to which substantial implementation costs had been incurred before February 10, 1984, shall be treated as in existence on February 10, 1984.

''(D) COLLECTIVE BARGAINING AGREEMENTS.—In the case of any cafeteria plan in existence on February 10, 1984, and maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof agreed to after July 18, 1984) shall be substituted for 'January 1, 1985' in subparagraph (A) and for 'July 1, 1985' in subparagraph (B). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section (or any requirement in the regulations under section 125 of the Internal Revenue Code of 1954 [now 1986] proposed on May 6, 1984) shall not be treated as a termination of such collective bargaining agreement.

''(E) SPECIAL RULE WHERE CONTRIBUTIONS OR REIMBURSEMENTS SUSPENDED.—For purposes of subparagraphs (A) and (B), a plan shall not be treated as not continuing to fail to satisfy the rules referred to in such subparagraphs with respect to any benefit provided in the form of a flexible spending arrangement merely because contributions or reimbursements (or both) with respect to such plan were suspended before January 1, 1985.''

§ 126. Certain cost-sharing payments

(a) General rule

Gross income does not include the excludable portion of payments received under—

(1) The rural clean water program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. 1288(j)).

(2) The rural abandoned mine program authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236).

(3) The water bank program authorized by the Water Bank Act (16 U.S.C. 1301 et seq.).

(4) The emergency conservation measures program authorized by title IV of the Agricultural Credit Act of 1978.

(5) The agricultural conservation program authorized by the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a).

(6) The great plains conservation program authorized by section 16[1] of the Soil Conservation and Domestic Policy Act (16 U.S.C. 590p(b)).

(7) The resource conservation and development program authorized by the Bankhead-Jones Farm Tenant Act and by the Soil Conservation and Domestic Allotment Act (7 U.S.C. 1010; 16 U.S.C. 590a et seq.).

(8) The forestry incentives program authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

[1] See References in Text note below.

(9) Any small watershed program administered by the Secretary of Agriculture which is determined by the Secretary of the Treasury or his delegate to be substantially similar to the type of programs described in paragraphs (1) through (8).

(10) Any program of a State, possession of the United States, a political subdivision of any of the foregoing, or the District of Columbia under which payments are made to individuals primarily for the purpose of conserving soil, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

(b) Excludable portion

For purposes of this section—

(1) In general

The term ''excludable portion'' means that portion (or all) of a payment made to any person under any program described in subsection (a) which—

(A) is determined by the Secretary of Agriculture to be made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife, and

(B) is determined by the Secretary of the Treasury or his delegate as not increasing substantially the annual income derived from the property.

(2) Payments not chargeable to capital account

The term ''excludable portion'' does not include that portion of any payment which is properly associated with an amount which is allowable as a deduction for the taxable year in which such amount is paid or incurred.

(c) Election for section not to apply

(1) In general

The taxpayer may elect not to have this section (and section 1255) apply to any excludable portion (or portion thereof).

(2) Manner and time for making election

Any election under paragraph (1) shall be made in the manner prescribed by the Secretary by regulations and shall be made not later than the due date prescribed by law (including extensions) for filing the return of tax under this chapter for the taxable year in which the payment was received or accrued.

(d) Denial of double benefits

No deduction or credit shall be allowed with respect to any expenditure which is properly associated with any amount excluded from gross income under subsection (a).

(e) Basis of property not increased by reason of excludable payments

Notwithstanding any provision of section 1016 to the contrary, no adjustment to basis shall be made with respect to property acquired or improved through the use of any payment, to the extent that such adjustment would reflect any amount which is excluded from gross income under subsection (a).

(Added Pub. L. 95–600, title V, § 543(a), Nov. 6, 1978, 92 Stat. 2888; amended Pub. L. 96–222, title I, § 105(a)(7)(A), (C), (E), Apr. 1, 1980, 94 Stat. 220, 221.)

REFERENCES IN TEXT

The Water Bank Act, referred to in subsec. (a)(3), is Pub. L. 91–559, Dec. 19, 1970, 84 Stat. 1468, as amended, which is classified generally to chapter 29 (§ 1301 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 16 and Tables.

The Agricultural Credit Act of 1978, referred to in subsec. (a)(4), is Pub. L. 95–334, Aug. 4, 1978, 92 Stat. 420, as amended. Title IV of the Agricultural Credit Act of 1978 is classified generally to chapter 42 (§ 2201 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

The Soil Conservation and Domestic Allotment Act, referred to in subsec. (a)(5), (7), is act Apr. 27, 1935, ch. 85, 49 Stat. 163, as amended, which is classified generally to chapter 3B (§ 590a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 590q of Title 16 and Tables.

Section 16 of the Soil Conservation and Domestic Policy Act, referred to in subsec. (a)(6), probably means section 16 of the Soil Conservation and Domestic Allotment Act, which was classified to section 590p of Title 16, Conservation, prior to repeal by Pub. L. 104–127, title III, § 336(b)(1), Apr. 4, 1996, 110 Stat. 1006.

The Bankhead-Jones Farm Tenant Act, referred to in subsec. (a)(7), is act July 22, 1937, ch. 517, 50 Stat. 522, as amended, which is classified generally to chapter 33 (§ 1000 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1000 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 126 was renumbered section 140 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–222, § 105(a)(7)(C), (E), inserted in par. (9) ''or his delegate'' after ''Secretary of the Treasury'' and substituted in par. (10) ''Any program of a State, possession of the United States, a political subdivision of any of the foregoing, or the District of Columbia'' for ''Any State program''.

Subsec. (b). Pub. L. 96–222, § 105(a)(7)(A), inserted provisions relating to payments not chargeable to capital account.

Subsec. (c). Pub. L. 96–222, § 105(a)(7)(A), substituted provisions allowing the taxpayer to elect not to have this section apply to any excludable portion for provisions relating to the application of subsec. (a) of this section with other sections.

Subsecs. (d), (e). Pub. L. 96–222, § 105(a)(7)(A), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section 543(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [enacting this section and section 1255 of this title] shall apply with respect to grants made under the programs after September 30, 1979.''

§ 127. Educational assistance programs

(a) Exclusion from gross income

(1) In general

Gross income of an employee does not include amounts paid or expenses incurred by

the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in subsection (b).

(2) $5,250 maximum exclusion

If, but for this paragraph, this section would exclude from gross income more than $5,250 of educational assistance furnished to an individual during a calendar year, this section shall apply only to the first $5,250 of such assistance so furnished.

(b) Educational assistance program

(1) In general

For purposes of this section an educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet the requirements of paragraphs (2) through (6) of this subsection.

(2) Eligibility

The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents. For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Principal shareholders or owners

Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) Other benefits as an alternative

A program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income. For purposes of this section, the business practices of the employer (as well as the written program) will be taken into account.

(5) No funding required

A program referred to in paragraph (1) is not required to be funded.

(6) Notification of employees

Reasonable notification of the availability and terms of the program must be provided to eligible employees.

(c) Definitions; special rules

For purposes of this section—

(1) Educational assistance

The term ''educational assistance'' means—

(A) the payment, by an employer, of expenses incurred by or on behalf of an employee for education of the employee (including, but not limited to, tuition, fees, and similar payments, books, supplies, and equipment), and

(B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment),

but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation. The term ''educational assistance'' also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies.

(2) Employee

The term ''employee'' includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(3) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (2).

(4) Attribution rules

(A) Ownership of stock

Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business

The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(5) Certain tests not applicable

An educational assistance program shall not be held or considered to fail to meet any requirements of subsection (b) merely because—

(A) of utilization rates for the different types of educational assistance made available under the program; or

(B) successful completion, or attaining a particular course grade, is required for or considered in determining reimbursement under the program.

(6) Relationship to current law

This section shall not be construed to affect the deduction or inclusion in income of amounts (not within the exclusion under this section) which are paid or incurred, or received as reimbursement, for educational expenses under section 117, 162 or 212.

(7) Disallowance of excluded amounts as credit or deduction

No deduction or credit shall be allowed to the employee under any other section of this

chapter for any amount excluded from income by reason of this section.

(d) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(Added Pub. L. 95–600, title I, § 164(a), Nov. 6, 1978, 92 Stat. 2811; amended Pub. L. 98–611, § 1(a)–(c), (d)(3)(B), (e), Oct. 31, 1984, 98 Stat. 3176–3178; Pub. L. 99–514, title XI, §§ 1114(b)(4), 1151(c)(4), (g)(3), 1162(a), Oct. 22, 1986, 100 Stat. 2450, 2503, 2507, 2510; Pub. L. 100–647, title I, § 1011B(a)(31)(B), title IV, § 4001(a), (b)(1), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101–140, title II, § 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§ 7101(a)(1), 7814(a), Dec. 19, 1989, 103 Stat. 2304, 2413; Pub. L. 101–508, title XI, § 11403(a), (b), Nov. 5, 1990, 104 Stat. 1388–473; Pub. L. 102–227, title I, § 103(a)(1), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, § 13101(a)(1), Aug. 10, 1993, 107 Stat. 420; Pub. L. 104–188, title I, § 1202(a), (b), Aug. 20, 1996, 110 Stat. 1772, 1773; Pub. L. 105–34, title II, § 221(a), Aug. 5, 1997, 111 Stat. 818; Pub. L. 106–170, title V, § 506(a), Dec. 17, 1999, 113 Stat. 1922; Pub. L. 107–16, title IV, § 411(a), (b), June 7, 2001, 115 Stat. 63.)

AMENDMENT OF SECTION

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

PRIOR PROVISIONS

A prior section 127 was renumbered section 140 of this title.

AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107–16, §§ 411(b), 901, temporarily struck out before period at end ", and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree". See Effective and Termination Dates of 2001 Amendment note below.

Subsecs. (d), (e). Pub. L. 107–16, §§ 411(a), 901, temporarily redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: "This section shall not apply to expenses paid with respect to courses beginning after December 31, 2001." See Effective and Termination Dates of 2001 Amendment note below.

1999—Subsec. (d). Pub. L. 106–170 substituted "December 31, 2001" for "May 31, 2000".

1997—Subsec. (d). Pub. L. 105–34 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "This section shall not apply to taxable years beginning after May 31, 1997. In the case of any taxable year beginning in 1997, only expenses paid with respect to courses beginning before July 1, 1997, shall be taken into account in determining the amount excluded under this section."

1996—Subsec. (c)(1). Pub. L. 104–188, § 1202(b), in closing provisions, inserted before period at end ", and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree".

Subsec. (d). Pub. L. 104–188, § 1202(a), substituted "May 31, 1997. In the case of any taxable year beginning in 1997, only expenses paid with respect to courses beginning before July 1, 1997, shall be taken into account in determining the amount excluded under this section." for "December 31, 1994."

1993—Subsec. (d). Pub. L. 103–66 substituted "December 31, 1994" for "June 30, 1992".

1991—Subsec. (d). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991".

1990—Subsec. (c)(1). Pub. L. 101–508, § 11403(b), struck out at end "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree."

Subsec. (d). Pub. L. 101–508, § 11403(a), substituted "December 31, 1991" for "September 30, 1990".

1989—Subsec. (b)(1). Pub. L. 101–140, § 203(a)(1), amended par. (1) to read as if amendments by Pub. L. 99–514, § 1151(c)(4)(A), had not been enacted, see 1986 Amendment note below.

Subsec. (b)(2). Pub. L. 101–140, § 203(a)(2), amended par. (2) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended par. (2) to read as if amendments by Pub. L. 99–514, § 1151(g)(3), had not been enacted, see 1986 Amendment note below.

Subsec. (b)(6). Pub. L. 101–140, § 203(a)(1), amended par. (6) to read as if amendments by Pub. L. 99–514, § 1151(c)(4)(B), had not been enacted, see 1986 Amendment note below.

Subsec. (c)(8). Pub. L. 101–239, § 7814(a), struck out par. (8) which read as follows: "COORDINATION WITH SECTION 117(d).—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, section 117(d)(2) shall be applied as if it did not contain the phrase '(below the graduate level)'."

Subsec. (d). Pub. L. 101–239, § 7101(a)(1), substituted "September 30, 1990" for "December 31, 1988".

1988—Subsec. (b)(2). Pub. L. 100–647, § 1011B(a)(31)(B), substituted "there shall" for "there may" and "who are" for "who may be" in last sentence.

Subsec. (c)(1). Pub. L. 100–647, § 4001(b)(1), inserted at end "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree."

Subsec. (d). Pub. L. 100–647, § 4001(a), substituted "1988" for "1987".

1986—Subsec. (a)(2). Pub. L. 99–514, § 1162(a)(2), substituted "$5,250" for "$5,000" in heading and twice in text.

Subsec. (b)(1). Pub. L. 99–514, § 1151(c)(4)(A), added par. (1) and struck out former par (1) which read as follows: "For purposes of this section an educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet the requirements of paragraphs (2) through (6) of this subsection."

Subsec. (b)(2). Pub. L. 99–514, § 1151(g)(3), substituted "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)." for "For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers."

Pub. L. 99–514, § 1114(b)(4), substituted "highly compensated employees (within the meaning of section 414(q))" for "officers, owners, or highly compensated,".

Subsec. (b)(6). Pub. L. 99–514, § 1151(c)(4)(B), struck out par. (6) which read as follows: "NOTIFICATION OF EMPLOYEES.—Reasonable notification of the availability

and terms of the program must be provided to eligible employees.''

Subsec. (d). Pub. L. 99–514, §1162(a)(1), substituted ''December 31, 1987'' for ''December 31, 1985''.

1984—Subsec. (a). Pub. L. 98–611, §1(b), amended subsec. generally, substituting ''Exclusion from gross income'' for ''General rule'' in heading, designating existing provision as par. ''(1) In general'' and adding par. (2).

Subsec. (c)(7). Pub. L. 98–611, §1(e), substituted ''allowed to the employee'' for ''allowed''.

Subsec. (c)(8). Pub. L. 98–611, §1(c), added par. (8).

Subsec. (d). Pub. L. 98–611, §1(a), substituted ''December 31, 1985'' for ''December 31, 1983''.

Subsec. (e). Pub. L. 98–611, §1(d)(3)(B), added subsec. (e).

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §411(d), June 7, 2001, 115 Stat. 63, provided that: ''The amendments made by this section [amending this section and former section 51A of this title] shall apply with respect to expenses relating to courses beginning after December 31, 2001.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §506(b), Dec. 17, 1999, 113 Stat. 1922, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to courses beginning after May 31, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 221(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1202(c)(1), (2) of Pub. L. 104–188 provided that:

''(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1994.

''(2) GRADUATE EDUCATION.—The amendment made by subsection (b) [amending this section] shall apply with respect to expenses relating to courses beginning after June 30, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13101(c)(1) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section and repealing provisions set out below] shall apply to taxable years ending after June 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 103(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11403(d) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 7101(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 132 of this title] shall apply to taxable years beginning after December 31, 1988.''

Amendment by section 7814(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4001(a), (b)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1987, see section 4001(c) of Pub. L. 100–647, set out as a note under section 117 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(4) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(c)(4), (g)(3) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1162(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 1162(c) of Pub. L. 99–514, set out as a note under section 120 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1(g) of Pub. L. 98–611, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6039D of this title and amending this section and sections 125, 3231, and 6652 of this title] shall apply to taxable years beginning after December 31, 1983.

''(2) SUBSECTION (d).—The amendments made by subsection (d) [enacting section 6039D and amending this section and sections 125 and 6652 of this title] shall take effect on January 1, 1985.

''(3) SUBSECTION (f).—The amendment made by subsection (f) [amending section 3231 of this title] shall apply to remuneration paid after December 31, 1984.

''(4) NO PENALTIES OR INTEREST ON FAILURE TO WITHHOLD.—No penalty or interest shall be imposed on any failure to withhold under subtitle C of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to employment taxes) with respect to amounts excluded from gross income under section 127 of such Code (as amended by this section and determined without regard to subsection (a)(2) thereof) with respect to periods during 1984.

''(5) COORDINATION WITH SECTION 117(d).—In the case of education described in section 127(c)(8) of the Internal Revenue Code of 1986, as added by this section, section 117(d) of such Code shall be treated as in effect on and after January 1, 1984.''

EFFECTIVE DATE

Section 164(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [enacting this section and amending sections 3121, 3306, and 3401 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to taxable years beginning after December 31, 1978.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amend-

ments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

EXPEDITED PROCEDURES FOR REFUNDS OF OVERPAYMENTS

Section 1202(c)(3) of Pub. L. 104–188 provided that: ''The Secretary of the Treasury shall establish expedited procedures for the refund of any overpayment of taxes imposed by the Internal Revenue Code of 1986 which is attributable to amounts excluded from gross income during 1995 or 1996 under section 127 of such Code, including procedures waiving the requirement that an employer obtain an employee's signature where the employer demonstrates to the satisfaction of the Secretary that any refund collected by the employer on behalf of the employee will be paid to the employee.''

SPECIAL RULE FOR CERTAIN TAXABLE YEARS

Section 103(a)(2) of Pub. L. 102–227 provided that, in the case of any taxable year beginning in 1992, only amounts paid before July 1, 1992, by employer for educational assistance for employee be taken into account in determining amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 103–66, title XIII, § 13101(a)(2), Aug. 10, 1993, 107 Stat. 420.

Section 7101(a)(2) of Pub. L. 101–239 provided that, in the case of any taxable year beginning in 1990, only amounts paid before Oct. 1, 1990, by employer for educational assistance for employee be taken into account in determining amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 101–508, title XI, § 11403(c), Nov. 5, 1990, 104 Stat. 1388–473.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 128. Repealed. Pub. L. 101–508, title XI, § 11801(a)(10), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added and amended Pub. L. 97–34, title III, §§ 301(a), 302(a), (d)(1), Aug. 13, 1981, 95 Stat. 267, 270, 274; Pub. L. 97–448, title I, §§ 103(a)(1), (5), (b), 109, Jan. 12, 1983, 96 Stat. 2374, 2375, 2391; Pub. L. 98–21, title I, §§ 121(f)(2), (g), 122(c)(3), (d), Apr. 20, 1983, 97 Stat. 84, 87; Pub. L. 98–369, div. A, title I, § 16(a), July 18, 1984, 98 Stat. 505, related to interest on certain savings certificates.

A prior section 128 was renumbered section 140 of this title.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 129. Dependent care assistance programs

(a) Exclusion

(1) In general

Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d).

(2) Limitation of exclusion

(A) In general

The amount which may be excluded under paragraph (1) for dependent care assistance with respect to dependent care services provided during a taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual).

(B) Year of inclusion

The amount of any excess under subparagraph (A) shall be included in gross income in the taxable year in which the dependent care services were provided (even if payment of dependent care assistance for such services occurs in a subsequent taxable year).

(C) Marital status

For purposes of this paragraph, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).

(b) Earned income limitation

(1) In general

The amount excluded from the income of an employee under subsection (a) for any taxable year shall not exceed—

(A) in the case of an employee who is not married at the close of such taxable year, the earned income of such employee for such taxable year, or

(B) in the case of an employee who is married at the close of such taxable year, the lesser of—

(i) the earned income of such employee for such taxable year, or

(ii) the earned income of the spouse of such employee for such taxable year.

(2) Special rule for certain spouses

For purposes of paragraph (1), the provisions of section 21(d)(2) shall apply in determining the earned income of a spouse who is a student or incapable of caring for himself.

(c) Payments to related individuals

No amount paid or incurred during the taxable year of an employee by an employer in providing dependent care assistance to such employee shall be excluded under subsection (a) if such amount was paid or incurred to an individual—

(1) with respect to whom, for such taxable year, a deduction is allowable under section 151(c) (relating to personal exemptions for dependents) to such employee or the spouse of such employee, or

(2) who is a child of such employee (within the meaning of section 152(f)(1)) under the age of 19 at the close of such taxable year.

(d) Dependent care assistance program

(1) In general

For purposes of this section a dependent care assistance program is a separate written

plan of an employer for the exclusive benefit of his employees to provide such employees with dependent care assistance which meets the requirements of paragraphs (2) through (8) of this subsection. If any plan would qualify as a dependent care assistance program but for a failure to meet the requirements of this subsection, then, notwithstanding such failure, such plan shall be treated as a dependent care assistance program in the case of employees who are not highly compensated employees.

(2) Discrimination

The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents.

(3) Eligibility

The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees described in paragraph (2), or their dependents.

(4) Principal shareholders or owners

Not more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(5) No funding required

A program referred to in paragraph (1) is not required to be funded.

(6) Notification of eligible employees

Reasonable notification of the availability and terms of the program shall be provided to eligible employees.

(7) Statement of expenses

The plan shall furnish to an employee, on or before January 31, a written statement showing the amounts paid or expenses incurred by the employer in providing dependent care assistance to such employee during the previous calendar year.

(8) Benefits

(A) In general

A plan meets the requirements of this paragraph if the average benefits provided to employees who are not highly compensated employees under all plans of the employer is at least 55 percent of the average benefits provided to highly compensated employees under all plans of the employer.

(B) Salary reduction agreements

For purposes of subparagraph (A), in the case of any benefits provided through a salary reduction agreement, a plan may disregard any employees whose compensation is less than $25,000. For purposes of this subparagraph, the term ''compensation'' has the meaning given such term by section 414(q)(4), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees.

(9) Excluded employees

For purposes of paragraphs (3) and (8), there shall be excluded from consideration—

(A) subject to rules similar to the rules of section 410(b)(4), employees who have not attained the age of 21 and completed 1 year of service (as defined in section 410(a)(3)), and

(B) employees not included in a dependent care assistance program who are included in a unit of employees covered by an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and 1 or more employees, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(e) Definitions and special rules

For purposes of this section—

(1) Dependent care assistance

The term ''dependent care assistance'' means the payment of, or provision of, those services which if paid for by the employee would be considered employment-related expenses under section 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment).

(2) Earned income

The term ''earned income'' shall have the meaning given such term in section 32(c)(2), but such term shall not include any amounts paid or incurred by an employer for dependent care assistance to an employee.

(3) Employee

The term ''employee'' includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(4) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (3).

(5) Attribution rules

(A) Ownership of stock

Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business

The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(6) Utilization test not applicable

A dependent care assistance program shall not be held or considered to fail to meet any

requirements of subsection (d) (other than paragraphs (4) and (8) thereof) merely because of utilization rates for the different types of assistance made available under the program.

(7) Disallowance of excluded amounts as credit or deduction

No deduction or credit shall be allowed to the employee under any other section of this chapter for any amount excluded from the gross income of the employee by reason of this section.

(8) Treatment of onsite facilities

In the case of an onsite facility maintained by an employer, except to the extent provided in regulations, the amount of dependent care assistance provided to an employee excluded with respect to any dependent shall be based on—

(A) utilization of the facility by a dependent of the employee, and

(B) the value of the services provided with respect to such dependent.

(9) Identifying information required with respect to service provider

No amount paid or incurred by an employer for dependent care assistance provided to an employee shall be excluded from the gross income of such employee unless—

(A) the name, address, and taxpayer identification number of the person performing the services are included on the return to which the exclusion relates, or

(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return to which the exclusion relates.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

(Added Pub. L. 97–34, title I, § 124(e)(1), Aug. 13, 1981, 95 Stat. 198; amended Pub. L. 97–448, title I, § 101(e), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 98–369, div. A, title IV, § 474(r)(6), July 18, 1984, 98 Stat. 839; Pub. L. 99–514, title I, § 104(b)(1), title XI, §§ 1114(b)(4), 1151(c)(5), (f), (g)(4), 1163(a), (b), Oct. 22, 1986, 100 Stat. 2104, 2450, 2503, 2506, 2507, 2510; Pub. L. 100–485, title VII, § 703(c)(2), Oct. 13, 1988, 102 Stat. 2427; Pub. L. 100–647, title I, § 1011B(a)(14), (15), (18), (30), (31)(A), (c)(1), (2)(A), title III, § 3021(a)(14), Nov. 10, 1988, 102 Stat. 3485, 3487–3489, 3631; Pub. L. 101–140, title II, §§ 203(a)(1), (2), 204(a)(1)–(3)(C), Nov. 8, 1989, 103 Stat. 830, 832; Pub. L. 101–239, title VII, § 7811(h)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 104–188, title I, § 1431(c)(1)(B), Aug. 20, 1996, 110 Stat. 1803; Pub. L. 108–311, title II, § 207(12), Oct. 4, 2004, 118 Stat. 1177.)

CODIFICATION

Pub. L. 101–140, § 203(a)(1), amended this section to read as if the amendments made by section 1151(c)(5)(A) of Pub. L. 99–514 (amending subsec. (d)(1)) had not been enacted. Subsequent to amendment by Pub. L. 99–514, subsec. (d)(1) was amended by Pub. L. 100–647. See 1988 Amendment note below.

PRIOR PROVISIONS

A prior section 129 was renumbered section 140 of this title.

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–311 substituted ''152(f)(1)'' for ''151(c)(3)''.

1996—Subsec. (d)(8)(B). Pub. L. 104–188 substituted ''section 414(q)(4)'' for ''section 414(q)(7)''.

1989—Subsec. (a). Pub. L. 101–239 struck out at end ''For purposes of the preceding sentence, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).''

Subsec. (d)(1). Pub. L. 101–140, § 204(a)(3)(B), substituted ''paragraphs (2) through (8)'' for ''paragraphs (2) through (7)''.

Pub. L. 101–140, § 204(a)(1), inserted at end ''If any plan would qualify as a dependent care assistance program but for a failure to meet the requirements of this subsection, then, notwithstanding such failure, such plan shall be treated as a dependent care assistance program in the case of employees who are not highly compensated employees.''

Pub. L. 101–140, § 203(a)(1), amended par. (1) to read as if the amendments by Pub. L. 99–514, § 1151(c)(5)(A), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(3). Pub. L. 101–140, § 204(a)(2)(B), struck out at end ''For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).'' for ''For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.''

Pub. L. 101–140, § 203(a)(2), amended par. (3) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(A)(i), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended par. (3) to read as if amendments by Pub. L. 99–514, § 1151(g)(4), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(6). Pub. L. 101–140, § 203(a)(1), amended par. (6) to read as if amendments by Pub. L. 99–514, § 1151(c)(5)(B), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(7). Pub. L. 101–140, § 204(a)(3)(A), redesignated par. (7) as (8).

Pub. L. 101–140, § 203(a)(1), amended par. (7) to read as if amendments by Pub. L. 99–514, § 1151(c)(5)(B), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(8). Pub. L. 101–140, § 204(a)(3)(A), redesignated par. (7) as (8).

Pub. L. 101–140, § 203(a)(2), amended par. (8) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(A)(ii), had not been enacted, see 1988 Amendment note below.

Subsec. (d)(9). Pub. L. 101–140, § 204(a)(2)(A), added par. (9).

Subsec. (e)(6). Pub. L. 101–140, § 204(a)(3)(C), substituted ''(8)'' for ''(7)''.

1988—Subsec. (a)(2). Pub. L. 100–647, § 1011B(c)(2)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The aggregate amount excluded from the gross income of the taxpayer under this section for any taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual).''

Subsec. (d)(1)(B). Pub. L. 100–647, § 1011B(a)(30), substituted ''(7)'' for ''(6)'', see Codification note above.

Subsec. (d)(3). Pub. L. 100–647, § 1011B(a)(31)(A)(i), struck out at end ''For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).''

Subsec. (d)(7). Pub. L. 100–647, § 1011B(a)(14), redesignated par. (8) as (7).

Subsec. (d)(7)(A). Pub. L. 100–647, §1011B(a)(15)(A), inserted ''under all plans of the employer'' after second and third reference to ''employees''.

Subsec. (d)(7)(B). Pub. L. 100–647, §3021(a)(14), struck out ''(within the meaning of section 414(q)(7))'' after ''whose compensation'' and inserted at end ''For purposes of this subparagraph, the term 'compensation' has the meaning given such term by section 414(q)(7), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees.''

Pub. L. 100–647, §1011B(a)(15)(B), (C), substituted ''a plan may disregard'' for ''there shall be disregarded'' and ''414(q)(7)'' for ''415(q)(7)''.

Subsec. (d)(8). Pub. L. 100–647, §1011B(a)(31)(A)(ii), added par. (8). Former par. (8) redesignated (7).

Subsec. (e)(6). Pub. L. 100–647, §1011B(a)(18), inserted ''(other than paragraphs (4) and (7) thereof)'' after ''subsection (d)''.

Subsec. (e)(8). Pub. L. 100–647, §1011B(c)(1), in introductory provisions, inserted ''maintained by an employer'' after ''onsite facility'' and ''of dependent care assistance provided to an employee'' after ''the amount'', in subpar. (A), inserted ''of the facility by a dependent of the employee'' after ''utilization'', and in subpar. (B), inserted ''with respect to such dependent'' after ''provided''.

Subsec. (e)(9). Pub. L. 100–485 added par. (9).

1986—Subsec. (a). Pub. L. 99–514, §1163(a), substituted ''Exclusion'' for ''In general'' in heading and amended text generally. Prior to amendment, text read as follows: ''Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d).''

Subsec. (c)(1). Pub. L. 99–514, §104(b)(1)(A), substituted ''section 151(c)'' for ''section 151(e)''.

Subsec. (c)(2). Pub. L. 99–514, §104(b)(1)(B), substituted ''section 151(c)(3)'' for ''section 151(e)(3)''.

Subsec. (d)(1). Pub. L. 99–514, §1151(c)(5)(A), added par. (1) and struck out former par. (1) which read as follows: ''For purposes of this section a dependent care assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with dependent care assistance which meets the requirements of paragraphs (2) through (7) of this subsection.''

Subsec. (d)(2). Pub. L. 99–514, §1114(b)(4), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, owners, or highly compensated,''.

Subsec. (d)(3). Pub. L. 99–514, §1151(g)(4), substituted ''For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).'' for ''For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.''

Subsec. (d)(6), (7). Pub. L. 99–514, §1151(c)(5)(B), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''NOTIFICATION OF ELIGIBLE EMPLOYEES.—Reasonable notification of the availability and terms of the program shall be provided to eligible employees.''

Subsec. (d)(8). Pub. L. 99–514, §1151(f), added par. (8).

Subsec. (e)(8). Pub. L. 99–514, §1163(b), added par. (8).

1984—Subsec. (b)(2). Pub. L. 98–369, §474(r)(6)(A), substituted ''section 21(d)(2)'' for ''section 44A(e)(2)''.

Subsec. (e)(1). Pub. L. 98–369, §474(r)(6)(B), substituted ''section 21(b)(2)'' for ''section 44A(c)(2)''.

Subsec. (e)(2). Pub. L. 98–369, §474(r)(6)(C), substituted ''section 32(c)(2)'' for ''section 43(c)(2)''.

1983—Subsec. (d)(1). Pub. L. 97–448, §101(e)(1)(C), substituted ''paragraphs (2) through (7)'' for ''paragraphs (2) through (6)''.

Subsec. (d)(2). Pub. L. 97–448, §101(e)(1)(A), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 97–448, §101(e)(1)(A), (B), redesignated former par. (2) as (3) and substituted ''employees described in paragraph (2), or their dependents'' for ''employees who are officers, owners, or highly compensated, or their dependents''. Former par. (3) redesignated (4).

Subsec. (d)(4) to (7). Pub. L. 97–448, §101(e)(1)(A), redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (e)(7). Pub. L. 97–448, §101(e)(2), substituted ''shall be allowed to the employee under any other section of this chapter for any amount excluded from the gross income of the employee'' for ''shall be allowed under any other section of this chapter for any amount excluded from income''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104–188, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 203(a)(1), (2) of Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

Section 204(a)(3)(D) of Pub. L. 101–140 provided that: ''Section 129(d)(8) (as redesignated by subparagraph (A)) shall apply to plan years beginning after December 31, 1989.''

Section 204(d)(1), (2) of Pub. L. 101–140 provided that:

''(1) The amendments made by subsections (a)(1), (a)(2), and (b)(2) [amending this section and section 414 of this title] shall apply to years beginning after December 31, 1988.

''(2) The amendments made by subsection (a)(3) [amending this section] shall apply to plan years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1011B(a)(14), (15), (18), (30), (31)(A), (c)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 1011B(c)(2)(C) of Pub. L. 100–647 provided that:

''(i) Except as provided in this subparagraph, the amendments made by this paragraph [amending this section and section 6051 of this title] shall apply to taxable years beginning after December 31, 1987.

''(ii) A taxpayer may elect to have the amendment made by subparagraph (A) [amending this section] apply to taxable years beginning in 1987.

''(iii) In the case of a taxpayer not making an election under clause (ii), any dependent care assistance provided in a taxable year beginning in 1987 with respect to which reimbursement was not received in such

taxable year shall be treated as provided in the taxpayer's first taxable year beginning after December 31, 1987.''

Section 3021(d) of Pub. L. 100–647 provided that:

''(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and sections 89, 410, 4976, 6039D, and 6652 of this title] shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see Effective Date note below]; except that the amendment made by subsection (a)(8) [amending section 89 of this title] shall apply to testing years beginning after December 31, 1989.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending sections 89 and 414 of this title] shall apply to years beginning after December 31, 1986.''

Amendment by Pub. L. 100–485 applicable to taxable years beginning after Dec. 31, 1988, see section 703(d) of Pub. L. 100–485, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1114(b)(4) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(c)(5), (f), (g)(4) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Section 1163(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 21 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 130. Certain personal injury liability assignments

(a) In general

Any amount received for agreeing to a qualified assignment shall not be included in gross income to the extent that such amount does not exceed the aggregate cost of any qualified funding assets.

(b) Treatment of qualified funding asset

In the case of any qualified funding asset—

(1) the basis of such asset shall be reduced by the amount excluded from gross income under subsection (a) by reason of the purchase of such asset, and

(2) any gain recognized on a disposition of such asset shall be treated as ordinary income.

(c) Qualified assignment

For purposes of this section, the term ''qualified assignment'' means any assignment of a liability to make periodic payments as damages (whether by suit or agreement), or as compensation under any workmen's compensation act, on account of personal injury or sickness (in a case involving physical injury or physical sickness)—

(1) if the assignee assumes such liability from a person who is a party to the suit or agreement, or the workmen's compensation claim, and

(2) if—

(A) such periodic payments are fixed and determinable as to amount and time of payment,

(B) such periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of such payments,

(C) the assignee's obligation on account of the personal injuries or sickness is no greater than the obligation of the person who assigned the liability, and

(D) such periodic payments are excludable from the gross income of the recipient under paragraph (1) or (2) of section 104(a).

The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor.

(d) Qualified funding asset

For purposes of this section, the term ''qualified funding asset'' means any annuity contract

issued by a company licensed to do business as an insurance company under the laws of any State, or any obligation of the United States, if—

(1) such annuity contract or obligation is used by the assignee to fund periodic payments under any qualified assignment,

(2) the periods of the payments under the annuity contract or obligation are reasonably related to the periodic payments under the qualified assignment, and the amount of any such payment under the contract or obligation does not exceed the periodic payment to which it relates,

(3) such annuity contract or obligation is designated by the taxpayer (in such manner as the Secretary shall by regulations prescribe) as being taken into account under this section with respect to such qualified assignment, and

(4) such annuity contract or obligation is purchased by the taxpayer not more than 60 days before the date of the qualified assignment and not later than 60 days after the date of such assignment.

(Added Pub. L. 97–473, title I, §101(b)(1), Jan. 14, 1983, 96 Stat. 2605; amended Pub. L. 99–514, title X, §1002(a), Oct. 22, 1986, 100 Stat. 2388; Pub. L. 100–647, title VI, §6079(b)(1), Nov. 10, 1988, 102 Stat. 3709; Pub. L. 105–34, title IX, §962(a), Aug. 5, 1997, 111 Stat. 891.)

PRIOR PROVISIONS

A prior section 130 was renumbered section 140 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34, §962(a)(1), inserted '', or as compensation under any workmen's compensation act,'' after ''(whether by suit or agreement)'' in introductory provisions.

Subsec. (c)(1). Pub. L. 105–34, §962(a)(2), inserted ''or the workmen's compensation claim,'' after ''agreement,''.

Subsec. (c)(2)(D). Pub. L. 105–34, §962(a)(3), substituted ''paragraph (1) or (2) of section 104(a)'' for ''section 104(a)(2)''.

1988—Subsec. (c). Pub. L. 100–647, in par. (2), redesignated subpars. (D) and (E) as (C) and (D), respectively, struck out former subpar. (C) which provided that the assignee does not provide to the recipient of such payments rights against the assignee which are greater than those of a general creditor, and as concluding provisions, inserted at end ''The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor.''

1986—Subsec. (c). Pub. L. 99–514 inserted ''(in a case involving physical injury or physical sickness)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 962(b) of Pub. L. 105–34 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to claims under workmen's compensation acts filed after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6079(b)(2) of Pub. L. 100–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to assignments after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1002(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to assignments entered into after December 31, 1986, in taxable years ending after such date.''

EFFECTIVE DATE

Section 101(c) of Pub. L. 97–473 provided that: ''The amendments made by this section [enacting this section and amending section 104 of this title] shall apply to taxable years ending after December 31, 1982.''

§ 131. Certain foster care payments

(a) General rule

Gross income shall not include amounts received by a foster care provider during the taxable year as qualified foster care payments.

(b) Qualified foster care payment defined

For purposes of this section—

(1) In general

The term ''qualified foster care payment'' means any payment made pursuant to a foster care program of a State or political subdivision thereof—

(A) which is paid by—

(i) a State or political subdivision thereof, or

(ii) a qualified foster care placement agency, and

(B) which is—

(i) paid to the foster care provider for caring for a qualified foster individual in the foster care provider's home, or

(ii) a difficulty of care payment.

(2) Qualified foster individual

The term ''qualified foster individual'' means any individual who is living in a foster family home in which such individual was placed by—

(A) an agency of a State or political subdivision thereof, or

(B) a qualified foster care placement agency.

(3) Qualified foster care placement agency

The term ''qualified foster care placement agency'' means any placement agency which is licensed or certified by—

(A) a State or political subdivision thereof, or

(B) an entity designated by a State or political subdivision thereof,

for the foster care program of such State or political subdivision to make foster care payments to providers of foster care.

(4) Limitation based on number of individuals over the age of 18

In the case of any foster home in which there is a qualified foster care individual who has attained age 19, foster care payments (other than difficulty of care payments) for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than 5 such qualified foster individuals.

(c) Difficulty of care payments

For purposes of this section—

(1) Difficulty of care payments

The term ''difficulty of care payments'' means payments to individuals which are not described in subsection (b)(1)(B)(i), and which—

(A) are compensation for providing the additional care of a qualified foster individual which is—

(i) required by reason of a physical, mental, or emotional handicap of such individual with respect to which the State has determined that there is a need for additional compensation, and

(ii) provided in the home of the foster care provider, and

(B) are designated by the payor as compensation described in subparagraph (A).

(2) Limitation based on number of individuals

In the case of any foster home, difficulty of care payments for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than—

(A) 10 qualified foster individuals who have not attained age 19, and

(B) 5 qualified foster individuals not described in subparagraph (A).

(Added Pub. L. 97–473, title I, § 102(a), Jan. 14, 1983, 96 Stat. 2606; amended Pub. L. 99–514, title XVII, § 1707(a), Oct. 22, 1986, 100 Stat. 2781; Pub. L. 107–147, title IV, § 404(a)–(c), Mar. 9, 2002, 116 Stat. 41.)

PRIOR PROVISIONS

A prior section 131 was renumbered section 140 of this title.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–147, § 404(a), amended provisions preceding subpar. (B) generally. Prior to amendment, text of such provisions read as follows: ''The term 'qualified foster care payment' means any amount—

''(A) which is paid by a State or political subdivision thereof or by a placement agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and''.

Subsec. (b)(2)(B). Pub. L. 107–147, § 404(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''in the case of an individual who has not attained age 19, an organization which is licensed by a State (or political subdivision thereof) as a placement agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).''

Subsec. (b)(3), (4). Pub. L. 107–147, § 404(c), added par. (3) and redesignated former par. (3) as (4).

1986—Subsec. (a). Pub. L. 99–514 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Gross income shall not include amounts received by a foster parent during the taxable year as qualified foster care payments.''

Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally. Prior to amendment, par. (1) ''In general'' read as follows: ''The term 'qualified foster care payment' means any amount—

''(A) which is paid by a State or political subdivision thereof or by a child-placing agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and

''(B) which is—

''(i) paid to reimburse the foster parent for the expenses of caring for a qualified foster child in the foster parent's home, or

''(ii) a difficulty of care payment.''

and par. (2) ''Qualified foster child'' read as follows: ''The term 'qualified foster child' means any individual who—

''(A) has not attained age 19, and

''(B) is living in a foster family home in which such individual was placed by—

''(i) an agency of a State or political subdivision thereof, or

''(ii) an organization which is licensed by a State (or political subdivision thereof) as a child-placing agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).''

Subsec. (c). Pub. L. 99–514, in amending subsec. (c) generally, in par. (1)(A), substituted references to ''qualified foster individual'', ''such individual'', and ''foster care provider'' for references to ''qualified foster child'', ''such child'', and ''foster parent'', respectively, and in par. (2) substituted ''more than (A) 10 qualified foster individuals who have not attained age 19, and (B) 5 qualified foster individuals not described in subparagraph (A)'' for ''more than 10 qualified foster children''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 404(d), Mar. 9, 2002, 116 Stat. 42, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1707(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1985.''

EFFECTIVE DATE

Section 102(c) of Pub. L. 97–473 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1978.''

§ 132. Certain fringe benefits

(a) Exclusion from gross income

Gross income shall not include any fringe benefit which qualifies as a—

(1) no-additional-cost service,
(2) qualified employee discount,
(3) working condition fringe,
(4) de minimis fringe,
(5) qualified transportation fringe,
(6) qualified moving expense reimbursement,
(7) qualified retirement planning services, or
(8) qualified military base realignment and closure fringe.

(b) No-additional-cost service defined

For purposes of this section, the term ''no-additional-cost service'' means any service provided by an employer to an employee for use by such employee if—

(1) such service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services, and

(2) the employer incurs no substantial additional cost (including forgone revenue) in providing such service to the employee (determined without regard to any amount paid by the employee for such service).

(c) Qualified employee discount defined

For purposes of this section—

(1) Qualified employee discount

The term ''qualified employee discount'' means any employee discount with respect to

qualified property or services to the extent such discount does not exceed—

(A) in the case of property, the gross profit percentage of the price at which the property is being offered by the employer to customers, or

(B) in the case of services, 20 percent of the price at which the services are being offered by the employer to customers.

(2) Gross profit percentage

(A) In general

The term ''gross profit percentage'' means the percent which—

(i) the excess of the aggregate sales price of property sold by the employer to customers over the aggregate cost of such property to the employer, is of

(ii) the aggregate sale price of such property.

(B) Determination of gross profit percentage

Gross profit percentage shall be determined on the basis of—

(i) all property offered to customers in the ordinary course of the line of business of the employer in which the employee is performing services (or a reasonable classification of property selected by the employer), and

(ii) the employer's experience during a representative period.

(3) Employee discount defined

The term ''employee discount'' means the amount by which—

(A) the price at which the property or services are provided by the employer to an employee for use by such employee, is less than

(B) the price at which such property or services are being offered by the employer to customers.

(4) Qualified property or services

The term ''qualified property or services'' means any property (other than real property and other than personal property of a kind held for investment) or services which are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is peforming[1] services.

(d) Working condition fringe defined

For purposes of this section, the term ''working condition fringe'' means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.

(e) De minimis fringe defined

For purposes of this section—

(1) In general

The term ''de minimis fringe'' means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(2) Treatment of certain eating facilities

The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe if—

(A) such facility is located on or near the business premises of the employer, and

(B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.

The preceding sentence shall apply with respect to any highly compensated employee only if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees. For purposes of subparagraph (B), an employee entitled under section 119 to exclude the value of a meal provided at such facility shall be treated as having paid an amount for such meal equal to the direct operating costs of the facility attributable to such meal.

(f) Qualified transportation fringe

(1) In general

For purposes of this section, the term ''qualified transportation fringe'' means any of the following provided by an employer to an employee:

(A) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment.

(B) Any transit pass.

(C) Qualified parking.

(D) Any qualified bicycle commuting reimbursement.

(2) Limitation on exclusion

The amount of the fringe benefits which are provided by an employer to any employee and which may be excluded from gross income under subsection (a)(5) shall not exceed—

(A) $100 per month in the case of the aggregate of the benefits described in subparagraphs (A) and (B) of paragraph (1),

(B) $175 per month in the case of qualified parking, and

(C) the applicable annual limitation in the case of any qualified bicycle commuting reimbursement.

In the case of any month beginning on or after the date of the enactment of this sentence and before January 1, 2012, subparagraph (A) shall be applied as if the dollar amount therein were the same as the dollar amount in effect for such month under subparagraph (B).

(3) Cash reimbursements

For purposes of this subsection, the term ''qualified transportation fringe'' includes a cash reimbursement by an employer to an employee for a benefit described in paragraph (1). The preceding sentence shall apply to a cash reimbursement for any transit pass only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

[1] So in original. Probably should be ''performing''.

(4) No constructive receipt

No amount shall be included in the gross income of an employee solely because the employee may choose between any qualified transportation fringe (other than a qualified bicycle commuting reimbursement) and compensation which would otherwise be includible in gross income of such employee.

(5) Definitions

For purposes of this subsection—

(A) Transit pass

The term ''transit pass'' means any pass, token, farecard, voucher, or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is—

(i) on mass transit facilities (whether or not publicly owned), or

(ii) provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle meeting the requirements of subparagraph (B)(i).

(B) Commuter highway vehicle

The term ''commuter highway vehicle'' means any highway vehicle—

(i) the seating capacity of which is at least 6 adults (not including the driver), and

(ii) at least 80 percent of the mileage use of which can reasonably be expected to be—

(I) for purposes of transporting employees in connection with travel between their residences and their place of employment, and

(II) on trips during which the number of employees transported for such purposes is at least ½ of the adult seating capacity of such vehicle (not including the driver).

(C) Qualified parking

The term ''qualified parking'' means parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by transportation described in subparagraph (A), in a commuter highway vehicle, or by carpool. Such term shall not include any parking on or near property used by the employee for residential purposes.

(D) Transportation provided by employer

Transportation referred to in paragraph (1)(A) shall be considered to be provided by an employer if such transportation is furnished in a commuter highway vehicle operated by or for the employer.

(E) Employee

For purposes of this subsection, the term ''employee'' does not include an individual who is an employee within the meaning of section 401(c)(1).

(F) Definitions related to bicycle commuting reimbursement

(i) Qualified bicycle commuting reimbursement

The term ''qualified bicycle commuting reimbursement'' means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment.

(ii) Applicable annual limitation

The term ''applicable annual limitation'' means, with respect to any employee for any calendar year, the product of $20 multiplied by the number of qualified bicycle commuting months during such year.

(iii) Qualified bicycle commuting month

The term ''qualified bicycle commuting month'' means, with respect to any employee, any month during which such employee—

(I) regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment, and

(II) does not receive any benefit described in subparagraph (A), (B), or (C) of paragraph (1).

(6) Inflation adjustment

(A) In general

In the case of any taxable year beginning in a calendar year after 1999, the dollar amounts contained in subparagraphs (A) and (B) of paragraph (2) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1998'' for ''calendar year 1992''.

In the case of any taxable year beginning in a calendar year after 2002, clause (ii) shall be applied by substituting ''calendar year 2001'' for ''calendar year 1998'' for purposes of adjusting the dollar amount contained in paragraph (2)(A).

(B) Rounding

If any increase determined under subparagraph (A) is not a multiple of $5, such increase shall be rounded to the next lowest multiple of $5.

(7) Coordination with other provisions

For purposes of this section, the terms ''working condition fringe'' and ''de minimis fringe'' shall not include any qualified transportation fringe (determined without regard to paragraph (2)).

(g) Qualified moving expense reimbursement

For purposes of this section, the term ''qualified moving expense reimbursement'' means any

amount received (directly or indirectly) by an individual from an employer as a payment for (or a reimbursement of) expenses which would be deductible as moving expenses under section 217 if directly paid or incurred by the individual. Such term shall not include any payment for (or reimbursement of) an expense actually deducted by the individual in a prior taxable year.

(h) Certain individuals treated as employees for purposes of subsections (a)(1) and (2)

For purposes of paragraphs (1) and (2) of subsection (a)—

(1) Retired and disabled employees and surviving spouse of employee treated as employee

With respect to a line of business of an employer, the term ''employee'' includes—

(A) any individual who was formerly employed by such employer in such line of business and who separated from service with such employer in such line of business by reason of retirement or disability, and

(B) any widow or widower of any individual who died while employed by such employer in such line of business or while an employee within the meaning of subparagraph (A).

(2) Spouse and dependent children

(A) In general

Any use by the spouse or a dependent child of the employee shall be treated as use by the employee.

(B) Dependent child

For purposes of subparagraph (A), the term ''dependent child'' means any child (as defined in section 152(f)(1)) of the employee—

(i) who is a dependent of the employee, or

(ii) both of whose parents are deceased and who has not attained age 25.

For purposes of the preceding sentence, any child to whom section 152(e) applies shall be treated as the dependent of both parents.

(3) Special rule for parents in the case of air transportation

Any use of air transportation by a parent of an employee (determined without regard to paragraph (1)(B)) shall be treated as use by the employee.

(i) Reciprocal agreements

For purposes of paragraph (1) of subsection (a), any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if—

(1) such service is provided pursuant to a written agreement between such employers, and

(2) neither of such employers incurs any substantial additional costs (including foregone revenue) in providing such service or pursuant to such agreement.

(j) Special rules

(1) Exclusions under subsection (a)(1) and (2) apply to highly compensated employees only if no discrimination

Paragraphs (1) and (2) of subsection (a) shall apply with respect to any fringe benefit described therein provided with respect to any highly compensated employee only if such fringe benefit is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees.

(2) Special rule for leased sections of department stores

(A) In general

For purposes of paragraph (2) of subsection (a), in the case of a leased section of a department store—

(i) such section shall be treated as part of the line of business of the person operating the department store, and

(ii) employees in the leased section shall be treated as employees of the person operating the department store.

(B) Leased section of department store

For purposes of subparagraph (A), a leased section of a department store is any part of a department store where over-the-counter sales of property are made under a lease or similar arrangement where it appears to the general public that individuals making such sales are employed by the person operating the department store.

(3) Auto salesmen

(A) In general

For purposes of subsection (a)(3), qualified automobile demonstration use shall be treated as a working condition fringe.

(B) Qualified automobile demonstration use

For purposes of subparagraph (A), the term ''qualified automobile demonstration use'' means any use of an automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) such use is provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) there are substantial restrictions on the personal use of such automobile by such salesman.

(4) On-premises gyms and other athletic facilities

(A) In general

Gross income shall not include the value of any on-premises athletic facility provided by an employer to his employees.

(B) On-premises athletic facility

For purposes of this paragraph, the term ''on-premises athletic facility'' means any gym or other athletic facility—

(i) which is located on the premises of the employer,

(ii) which is operated by the employer, and

(iii) substantially all the use of which is by employees of the employer, their spouses, and their dependent children (within the meaning of subsection (h)).

(5) Special rule for affiliates of airlines

(A) In general

If—

(i) a qualified affiliate is a member of an affiliated group another member of which operates an airline, and

(ii) employees of the qualified affiliate who are directly engaged in providing airline-related services are entitled to no-additional-cost service with respect to air transportation provided by such other member,

then, for purposes of applying paragraph (1) of subsection (a) to such no-additional-cost service provided to such employees, such qualified affiliate shall be treated as engaged in the same line of business as such other member.

(B) Qualified affiliate

For purposes of this paragraph, the term ''qualified affiliate'' means any corporation which is predominantly engaged in airline-related services.

(C) Airline-related services

For purposes of this paragraph, the term ''airline-related services'' means any of the following services provided in connection with air transportation:

(i) Catering.

(ii) Baggage handling.

(iii) Ticketing and reservations.

(iv) Flight planning and weather analysis.

(v) Restaurants and gift shops located at an airport.

(vi) Such other similar services provided to the airline as the Secretary may prescribe.

(D) Affiliated group

For purposes of this paragraph, the term ''affiliated group'' has the meaning given such term by section 1504(a).

(6) Highly compensated employee

For purposes of this section, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

(7) Air cargo

For purposes of subsection (b), the transportation of cargo by air and the transportation of passengers by air shall be treated as the same service.

(8) Application of section to otherwise taxable educational or training benefits

Amounts paid or expenses incurred by the employer for education or training provided to the employee which are not excludable from gross income under section 127 shall be excluded from gross income under this section if (and only if) such amounts or expenses are a working condition fringe.

(k) Customers not to include employees

For purposes of this section (other than subsection (c)(2)), the term ''customers'' shall only include customers who are not employees.

***(l)* Section not to apply to fringe benefits expressly provided for elsewhere**

This section (other than subsections (e) and (g)) shall not apply to any fringe benefits of a type the tax treatment of which is expressly provided for in any other section of this chapter.

(m) Qualified retirement planning services

(1) In general

For purposes of this section, the term ''qualified retirement planning services'' means any retirement planning advice or information provided to an employee and his spouse by an employer maintaining a qualified employer plan.

(2) Nondiscrimination rule

Subsection (a)(7) shall apply in the case of highly compensated employees only if such services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

(3) Qualified employer plan

For purposes of this subsection, the term ''qualified employer plan'' means a plan, contract, pension, or account described in section 219(g)(5).

(n) Qualified military base realignment and closure fringe

For purposes of this section—

(1) In general

The term ''qualified military base realignment and closure fringe'' means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) (as in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009).

(2) Limitation

With respect to any property, such term shall not include any payment referred to in paragraph (1) to the extent that the sum of all of such payments related to such property exceeds the maximum amount described in subsection (c) of such section (as in effect on such date).

***(o)* Regulations**

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

(Added Pub. L. 98–369, div. A, title V, § 531(a)(1), July 18, 1984, 98 Stat. 877; amended Pub. L. 99–272, title XIII, § 13207(a)(1), (b)(1), Apr. 7, 1986, 100 Stat. 319; Pub. L. 99–514, title XI, §§ 1114(b)(5), 1151(e)(2)(A), (g)(5), title XVIII, §§ 1853(a), 1899A(5), Oct. 22, 1986, 100 Stat. 2451, 2506, 2507, 2870, 2958; Pub. L. 100–647, title I, § 1011B(a)(31)(B), title VI, § 6066(a), Nov. 10, 1988, 102 Stat. 3488, 3702; Pub. L. 101–140, title II, § 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§ 7101(b), 7841(d)(7), (19), Dec. 19, 1989, 103 Stat. 2304, 2428, 2429; Pub. L. 102–486, title XIX, § 1911(a)–(c), Oct. 24, 1992, 106 Stat. 3012–3014; Pub. L. 103–66, title XIII, §§ 13101(b), 13201(b)(3)(F), 13213(d)(1), (2), (3)(B), (C), Aug. 10, 1993, 107 Stat. 420, 459, 474; Pub. L. 105–34, title IX, § 970(a), title X, § 1072(a), Aug. 5, 1997, 111 Stat. 897, 948; Pub. L. 105–178, title IX, § 9010(a)(1), (b)(1), (2), (c)(1), (2), June 9, 1998, 112

Stat. 507, 508; Pub. L. 107–16, title VI, § 665(a), (b), June 7, 2001, 115 Stat. 143; Pub. L. 108–121, title I, § 103(a), (b), Nov. 11, 2003, 117 Stat. 1337; Pub. L. 108–311, title II, § 207(13), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110–343, div. B, title II, § 211(a)–(d), Oct. 3, 2008, 122 Stat. 3840, 3841; Pub. L. 111–5, div. B, title I, § 1151(a), Feb. 17, 2009, 123 Stat. 333; Pub. L. 111–92, § 14(a), Nov. 6, 2009, 123 Stat. 2995; Pub. L. 111–312, title VII, § 727(a), Dec. 17, 2010, 124 Stat. 3317.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of this sentence, referred to in subsec. (f)(2), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

The date of the enactment of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (n)(1), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

PRIOR PROVISIONS

A prior section 132 was renumbered section 140 of this title.

AMENDMENTS

2010—Subsec. (f)(2). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2011'' in concluding provisions.

2009—Subsec. (f)(2). Pub. L. 111–5 inserted concluding provisions.

Subsec. (n)(1). Pub. L. 111–92, § 14(a)(1), substituted ''the American Recovery and Reinvestment Tax Act of 2009)'' for ''this subsection) to offset the adverse effects on housing values as a result of a military base realignment or closure''.

Subsec. (n)(2). Pub. L. 111–92, § 14(a)(2), struck out ''clause (1) of'' before ''subsection (c)''.

2008—Subsec. (f)(1)(D). Pub. L. 110–343, § 211(a), added subpar. (D).

Subsec. (f)(2)(C). Pub. L. 110–343, § 211(b), added subpar. (C).

Subsec. (f)(4). Pub. L. 110–343, § 211(d), inserted ''(other than a qualified bicycle commuting reimbursement)'' after ''qualified transportation fringe''.

Subsec. (f)(5)(F). Pub. L. 110–343, § 211(c), added subpar. (F).

2004—Subsec. (h)(2)(B). Pub. L. 108–311 substituted ''152(f)(1)'' for ''151(c)(3)'' in introductory provisions.

2003—Subsec. (a)(8). Pub. L. 108–121, § 103(a), added par. (8).

Subsecs. (n), (*o*). Pub. L. 108–121, § 103(b), added subsec. (n) and redesignated former subsec. (n) as (*o*).

2001—Subsec. (a)(7). Pub. L. 107–16, § 665(a), added par. (7).

Subsecs. (m), (n). Pub. L. 107–16, § 665(b), added subsec. (m) and redesignated former subsec. (m) as (n).

1998—Subsec. (f)(2)(A). Pub. L. 105–178, § 9010(c)(1), substituted ''$100'' for ''$65''.

Pub. L. 105–178, § 9010(b)(2)(A), substituted ''$65'' for ''$60''.

Subsec. (f)(2)(B). Pub. L. 105–178, § 9010(b)(2)(B), substituted ''$175'' for ''$155''.

Subsec. (f)(4). Pub. L. 105–178, § 9010(a)(1), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''Subsection (a)(5) shall not apply to any qualified transportation fringe unless such benefit is provided in addition to (and not in lieu of) any compensation otherwise payable to the employee. This paragraph shall not apply to any qualified parking provided in lieu of compensation which otherwise would have been includible in gross income of the employee, and no amount shall be included in the gross income of the employee solely because the employee may choose between the qualified parking and compensation.''

Subsec. (f)(6). Pub. L. 105–178, § 9010(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any taxable year beginning in a calendar year after 1993, the dollar amounts contained in paragraph (2)(A) and (B) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins.

If any increase determined under the preceding sentence is not a multiple of $5, such increase shall be rounded to the next lowest multiple of $5.''

Subsec. (f)(6)(A). Pub. L. 105–178, § 9010(c)(2), inserted concluding provisions.

1997—Subsec. (e)(2). Pub. L. 105–34, § 970(a), inserted at end of concluding provisions ''For purposes of subparagraph (B), an employee entitled under section 119 to exclude the value of a meal provided at such facility shall be treated as having paid an amount for such meal equal to the direct operating costs of the facility attributable to such meal.''

Subsec. (f)(4). Pub. L. 105–34, § 1072(a), inserted at end ''This paragraph shall not apply to any qualified parking provided in lieu of compensation which otherwise would have been includible in gross income of the employee, and no amount shall be included in the gross income of the employee solely because the employee may choose between the qualified parking and compensation.''

1993—Subsec. (a)(6). Pub. L. 103–66, § 13213(d)(1), added par. (6).

Subsec. (f)(6)(B). Pub. L. 103–66, § 13201(b)(3)(F), struck out before period at end '', determined by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof''.

Subsecs. (g), (h). Pub. L. 103–66, § 13213(d)(2), added subsec. (g) and redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 103–66, § 13213(d)(2), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(8). Pub. L. 103–66, § 13101(b), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''Amounts which would be excludible from gross income under section 127 but for subsection (a)(2) thereof or the last sentence of subsection (c)(1) thereof shall be excluded from gross income under this section if (and only if) such amounts are a working condition fringe.''

Subsec. (j). Pub. L. 103–66, § 13213(d)(2), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(4)(B)(iii). Pub. L. 103–66, § 13213(d)(3)(B), substituted ''subsection (h)'' for ''subsection (f)''.

Subsec. (k). Pub. L. 103–66, § 13213(d)(2), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 103–66, § 13213(d)(2), (3)(C), redesignated subsec. (k) as (*l*) and substituted ''subsections (e) and (g)'' for ''subsection (e)''. Former subsec. (*l*) redesignated (m).

Subsec. (m). Pub. L. 103–66, § 13213(d)(2), redesignated subsec. (*l*) as (m).

1992—Subsec. (a)(5). Pub. L. 102–486, § 1911(a), added par. (5).

Subsecs. (f) to (h). Pub. L. 102–486, § 1911(b), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 102–486, § 1911(b), (c), redesignated subsec. (h) as (i), redesignated pars. (5) to (9) as (4) to (8), respectively, and struck out former par. (4), ''Parking'', which read as follows: ''The term 'working condition fringe' includes parking provided to an employee on or near the business premises of the employer.'' Former subsec. (i) redesignated (j).

Subsecs. (j) to (*l*). Pub. L. 102–486, § 1911(b), redesignated subsecs. (i) to (k) as (j) to (*l*), respectively.

1989—Subsec. (f)(2)(B). Pub. L. 101–239, § 7841(d)(19), substituted ''section 151(c)(3)'' for ''section 151(e)(3)'' in introductory provisions.

Subsec. (h)(1). Pub. L. 101–239, § 7841(d)(7), substituted ''to highly compensated employees'' for ''to officers, etc.,'' in heading.

Pub. L. 101–140, § 203(a)(2), amended par. (1) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended par. (1) to read as if amendments by Pub. L. 99–514, § 1151(g)(5), had not been enacted, see 1986 Amendment note below.

Subsec. (h)(9). Pub. L. 101–239, § 7101(b), added par. (9).

1988—Subsec. (h)(1). Pub. L. 100–647, § 1011B(a)(31)(B), substituted ''there shall'' for ''there may be'' and ''who are'' for ''who may be'' in last sentence.

Subsec. (h)(8). Pub. L. 100–647, § 6066(a), added par. (8).

1986—Subsec. (c)(3)(A). Pub. L. 99–514, § 1853(a)(2), substituted ''are provided by the employer to an employee for use by such employee'' for ''are provided to the employee by the employer''.

Subsec. (e)(2). Pub. L. 99–514, § 1114(b)(5)(A), struck out ''officer, owner, or'' before ''highly compensated employee'' and ''officers, owners, or'' before ''highly compensated employees'' in last sentence.

Subsec. (f)(2)(B)(ii). Pub. L. 99–514, § 1853(a)(1), substituted ''are deceased and who has not attained age 25'' for ''are deceased''.

Subsec. (f)(3). Pub. L. 99–272, § 13207(a)(1), added par. (3).

Subsec. (g). Pub. L. 99–514, § 1151(e)(2)(A), in amending subsec. (g) generally, designated par. (2) as the entire subsection, struck out former subsec. heading, ''Special rules relating to employer'', struck out ''For purposes of this section—'', and struck out par. (1) which read as follows: ''All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.''

Subsec. (h)(1). Pub. L. 99–514, § 1151(g)(5), inserted ''For purposes of this paragraph and subsection (e), there may be excluded from consideration employees who may be excluded from consideration under section 89(h).''

Pub. L. 99–514, § 1114(b)(5)(A), struck out ''officer, owner, or'' before ''highly compensated employee'' and ''officers, owners, or'' before ''highly compensated employees''.

Subsec. (h)(3)(B)(i). Pub. L. 99–514, § 1899A(5), substituted ''such use is'' for ''such use in''.

Subsec. (h)(6). Pub. L. 99–272, § 13207(b)(1), added par. (6).

Subsec. (h)(7). Pub. L. 99–514, § 1114(b)(5)(B), added par. (7).

Subsec. (i). Pub. L. 99–514, § 1853(a)(3), substituted ''subsection (c)(2)'' for ''subsection (c)(2)(B)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 727(b), Dec. 17, 2010, 124 Stat. 3317, provided that: ''The amendment made by this section [amending this section] shall apply to months after December 31, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, § 14(b), Nov. 6, 2009, 123 Stat. 2996, provided that: ''The amendments made by this act [probably should be ''this section'', amending this section] shall apply to payments made after February 17, 2009.''

Pub. L. 111–5, div. B, title I, § 1151(b), Feb. 17, 2009, 123 Stat. 333, provided that: ''The amendment made by this section [amending this section] shall apply to months beginning on or after the date of the enactment of this section [Feb. 17, 2009].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, § 211(e), Oct. 3, 2008, 122 Stat. 3841, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 103(c), Nov. 11, 2003, 117 Stat. 1338, provided that: ''The amendments made by this section [amending this section] shall apply to payments made after the date of the enactment of this Act [Nov. 11, 2003].''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, § 665(c), June 7, 2001, 115 Stat. 143, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–178, title IX, § 9010(a)(2), June 9, 1998, 112 Stat. 507, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Pub. L. 105–178, title IX, § 9010(b)(3), June 9, 1998, 112 Stat. 508, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1998.''

Pub. L. 105–178, title IX, § 9010(c)(3), June 9, 1998, 112 Stat. 508, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 970(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 1072(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13101(c)(2) of Pub. L. 103–66 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1988.''

Amendment by section 13201(b)(3)(F) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

Amendment by section 13213(d)(1), (2), (3)(B) and (C) of Pub. L. 103–66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1911(d) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this section] shall apply to benefits provided after December 31, 1992.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 7101(b) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1988, see section 7101(c) of Pub. L. 101–239, set out as a note under section 127 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6066(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transportation furnished after December 31, 1987, in taxable years ending after such date.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1114(b)(5) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(e)(2)(A), (g)(5) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1853(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 13207(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by this subsection [amending this section] shall take effect on January 1, 1985.''

Section 13207(b)(2) of Pub. L. 99–272 provided that: ''The amendment made by this subsection [amending this section] shall take effect on January 1, 1985.''

EFFECTIVE DATE

Section 531(i) of Pub. L. 98–369, formerly §531(h), as redesignated by Pub. L. 99–272, title XIII, §13207(d), Apr. 7, 1986, 100 Stat. 320, provided that: ''The amendments made by this section [enacting this section and section 4977 of this title, amending sections 61, 125, 3121, 3231, 3306, 3401, 3501, and 6652 of this title and section 409 of Title 42, The Public Health and Welfare, redesignating former section 132 of this title as 133, and enacting provisions set out as notes under this section and section 125 of this title] shall take effect on January 1, 1985.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CERTAIN RECORDKEEPING REQUIREMENTS

Section 1567 of Pub. L. 99–514 provided that:

''(a) IN GENERAL.—For purposes of sections 132 and 274 of the Internal Revenue Code of 1954 [now 1986], use of an automobile by a special agent of the Internal Revenue Service shall be treated in the same manner as use of an automobile by an officer of any other law enforcement agency.

''(b) EFFECTIVE DATE.—The provisions of this section shall take effect on January 1, 1985.''

TREATMENT OF CERTAIN LEASED OPERATIONS OF DEPARTMENT STORES

Section 1853(e) of Pub. L. 99–514 provided that: ''For purposes of section 132(h)(2)(B) [now 132(j)(2)(B)] of the Internal Revenue Code of 1954 [now 1986], a leased section of a department store which, in connection with the offering of beautician services, customarily makes sales of beauty aids in the ordinary course of business shall be treated as engaged in over-the-counter sales of property.''

TRANSITIONAL RULE FOR DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING AIRLINE

Section 13207(c) of Pub. L. 99–272, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, as of September 12, 1984—

''(1) an individual—

''(A) was an employee (within the meaning of section 132 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], including subsection (f) [now (h)] thereof) of one member of an affiliated group (as defined in section 1504 of such Code), hereinafter referred to as the 'first corporation', and

''(B) was eligible for no-additional-cost service in the form of air transportation provided by another member of such affiliated group, hereinafter referred to as the 'second corporation',

''(2) at least 50 percent of the individuals performing service for the first corporation were or had been employees of, or had previously performed services for, the second corporation, and

''(3) the primary business of the affiliated group was air transportation of passengers,

then, for purposes of applying paragraphs (1) and (2) of section 132(a) of the Internal Revenue Code of 1986, with respect to no-additional-cost services and qualified employee discounts provided after December 31, 1984, for such individual by the second corporation, the first corporation shall be treated as engaged in the same air transportation line of business as the second corporation. For purposes of the preceding sentence, an employee of the second corporation who is performing services for the first corporation shall also be treated as an employee of the first corporation.''

SPECIAL RULE FOR SERVICES RELATED TO PROVIDING AIR TRANSPORTATION

Section 531(g) of Pub. L. 98–369, as added by Pub. L. 99–272, title XIII, §13207(d), Apr. 7, 1986, 100 Stat. 320; amended Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—If—

''(A) an individual performs services for a qualified air transportation organization, and

''(B) such services are performed primarily for persons engaged in providing air transportation and are of the kind which (if performed on September 12, 1984) would qualify such individual for no-additional-cost services in the form of air transportation,

then, with respect to such individual, such qualified air transportation organization shall be treated as engaged in the line of business of providing air transportation.

''(2) QUALIFIED AIR TRANSPORTATION ORGANIZATION.—For purposes of paragraph (1), the term 'qualified air transportation organization' means any organization—

''(A) if such organization (or a predecessor) was in existence on September 12, 1984,

''(B) if—

''(i) such organization is described in section 501(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and the membership of such organization is limited to entities engaged in the transportation by air of individuals or property for compensation or hire, or

''(ii) such organization is a corporation all the stock of which is owned entirely by entities referred to in clause (i), and

''(C) if such organization is operated in furtherance of the activities of its members or owners.''

DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING RETAIL DEPARTMENT STORES

Section 531(f) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(1) as of October 5, 1983, the employees of one member of an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] without regard to subsections (b)(2) and (b)(4) thereof) were entitled to employee discounts at the retail department stores operated by another member of such affiliated group, and

''(2) the primary business of the affiliated group is the operation of retail department stores,

then, for purpose of applying section 132(a)(2) of the Internal Revenue Code of 1986, with respect to discounts provided for such employees at the retail department stores operated by such other member, the employer shall be treated as engaged in the same line of business as such other member.''

[§ 133. Repealed. Pub. L. 104–188, title I, § 1602(a), Aug. 20, 1996, 110 Stat. 1833]

Section, added Pub. L. 98–369, div. A, title V, §543(a), July 18, 1984, 98 Stat. 891; amended Pub. L. 99–514, title XI, §1173(b)(1)(A), (2), title XVIII, §1854(c)(2)(A), (C), (D), Oct. 22, 1986, 100 Stat. 2515, 2879; Pub. L. 100–647, title I, §1011B(h)(1), (2), Nov. 10, 1988, 102 Stat. 3490; Pub. L. 101–239, title VII, §7301(a)–(c), Dec. 19, 1989, 103 Stat. 2346, 2347, prior to repeal, read as follows:

§ 133. Interest on certain loans used to acquire employer securities

(a) IN GENERAL

Gross income does not include 50 percent of the interest received by—

(1) a bank (within the meaning of section 581),

(2) an insurance company to which subchapter L applies,

(3) a corporation actively engaged in the business of lending money, or

(4) a regulated investment company (as defined in section 851),

with respect to a securities acquisition loan.

(b) SECURITIES ACQUISITION LOAN

(1) IN GENERAL

For purposes of this section, the term ''securities acquisition loan'' means—

(A) any loan to a corporation or to an employee stock ownership plan to the extent that the proceeds are used to acquire employer securities for the plan, or

(B) any loan to a corporation to the extent that, within 30 days, employer securities are transferred to the plan in an amount equal to the proceeds of such loan and such securities are allocable to accounts of plan participants within 1 year of the date of such loan.

For purposes of this paragraph, the term ''employer securities'' has the meaning given such term by section 409(*l*). The term ''securities acquisition loan'' shall not include a loan with a term greater than 15 years.

(2) LOANS BETWEEN RELATED PERSONS

The term ''securities acquisition loan'' shall not include—

(A) any loan made between corporations which are members of the same controlled group of corporations, or

(B) any loan made between an employee stock ownership plan and any person that is—

(i) the employer of any employees who are covered by the plan; or

(ii) a member of a controlled group of corporations which includes such employer.

For purposes of this paragraph, subparagraphs (A) and (B) shall not apply to any loan which, but for such subparagraphs, would be a securities acquisition loan if such loan was not originated by the employer of any employees who are covered by the plan or by any member of the controlled group of corporations which includes such employer, except that this section shall not apply to any interest received on such loan during such time as such loan is held by such employer (or any member of such controlled group).

(3) TERMS APPLICABLE TO CERTAIN SECURITIES ACQUISITION LOANS

A loan to a corporation shall not fail to be treated as a securities acquisition loan merely because the proceeds of such loan are lent to an employee stock ownership plan sponsored by such corporation (or by any member of the controlled group of corporations which includes such corporation) if such loan includes—

(A) repayment terms which are substantially similar to the terms of the loan of such corporation from a lender described in subsection (a), or

(B) repayment terms providing for more rapid repayment of principal or interest on such loan, but only if allocations under the plan attributable to such repayment do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)).

(4) CONTROLLED GROUP OF CORPORATIONS

For purposes of this paragraph, the term ''controlled group of corporations'' has the meaning given such term by section 409(*l*)(4).

(5) TREATMENT OF REFINANCINGS

The term ''securities acquisition loan'' shall include any loan which—

(A) is (or is part of a series of loans) used to refinance a loan described in subparagraph (A) or (B) of paragraph (1), and

(B) meets the requirements of paragraphs (2) and (3).

(6) PLAN MUST HOLD MORE THAN 50 PERCENT OF STOCK AFTER ACQUISITION OR TRANSFER

(A) IN GENERAL

A loan shall not be treated as a securities acquisition loan for purposes of this section unless, immediately after the acquisition or transfer referred to in subparagraph (A) or (B) of paragraph (1), respectively, the employee stock ownership plan owns more than 50 percent of—

(i) each class of outstanding stock of the corporation issuing the employer securities, or

(ii) the total value of all outstanding stock of the corporation.

(B) FAILURE TO RETAIN MINIMUM STOCK INTEREST

(i) IN GENERAL

Subsection (a) shall not apply to any interest received with respect to a securities acquisition loan which is allocable to any period during which the employee stock ownership plan does not own stock meeting the requirements of subparagraph (A).

(ii) EXCEPTION

To the extent provided by the Secretary, clause (i) shall not apply to any period if, within 90 days of the first date on which the failure occurred (or such longer period not in excess of 180 days as the Secretary may prescribe), the plan acquires stock which results in its meeting the requirements of subparagraph (A).

(C) STOCK

For purposes of subparagraph (A)—

(i) IN GENERAL

The term ''stock'' means stock other than stock described in section 1504(a)(4).

(ii) TREATMENT OF CERTAIN RIGHTS

The Secretary may provide that warrants, options, contracts to acquire stock, convertible debt interests and other similar interests be treated as stock for 1 or more purposes under subparagraph (A).

(D) AGGREGATION RULE

For purposes of determining whether the requirements of subparagraph (A) are met, an employee stock ownership plan shall be treated as owning stock in the corporation issuing the employer securities which is held by any other employee stock ownership plan which is maintained by—

(i) the employer maintaining the plan, or

(ii) any member of a controlled group of corporations (within the meaning of section 409(*l*)(4)) of which the employer described in clause (i) is a member.

(7) VOTING RIGHTS OF EMPLOYER SECURITIES

A loan shall not be treated as a securities acquisition loan for purposes of this section unless—

(A) the employee stock ownership plan meets the requirements of section 409(e)(2) with respect to all employer securities acquired by, or transferred to, the plan in connection with such loan (without regard to whether or not the employer has a registration-type class of securities), and

(B) no stock described in section 409(*l*)(3) is acquired by, or transferred to, the plan in connection with such loan unless—

(i) such stock has voting rights equivalent to the stock to which it may be converted, and

(ii) the requirements of subparagraph (A) are met with respect to such voting rights.

(c) EMPLOYEE STOCK OWNERSHIP PLAN

For purposes of this section, the term ''employee stock ownership plan'' has the meaning given to such term by section 4975(e)(7).

(d) APPLICATION WITH SECTION 483 AND ORIGINAL ISSUE DISCOUNT RULES

In applying section 483 and subpart A of part V of subchapter P to any obligation to which this section applies, appropriate adjustments shall be made to the applicable Federal rate to take into account the exclusion under subsection (a).

(e) PERIOD TO WHICH INTEREST EXCLUSION APPLIES

(1) IN GENERAL

In the case of—

(A) an original securities acquisition loan, and

(B) any securities acquisition loan (or series of such loans) used to refinance the original securities acquisition loan,

subsection (a) shall apply only to interest accruing during the excludable period with respect to the original securities acquisition loan.

(2) EXCLUDABLE PERIOD

For purposes of this subsection, the term ''excludable period'' means, with respect to any original securities acquisition loan—

(A) IN GENERAL

The 7-year period beginning on the date of such loan.

(B) LOANS DESCRIBED IN SUBSECTION (b)(1)(A)

If the term of an original securities acquisition loan described in subsection (b)(1)(A) is greater than 7 years, the term of such loan. This subparagraph shall not apply to a loan described in subsection (b)(3)(B).

(3) ORIGINAL SECURITIES ACQUISITION LOAN

For the purposes of this subsection, the term ''original securities acquisition loan'' means a securities acquisition loan described in subparagraph (A) or (B) of subsection (b)(1).

PRIOR PROVISIONS

A prior section 133 was renumbered section 140 of this title.

EFFECTIVE DATE OF REPEAL

Section 1602(c) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending sections 291, 812, 852, 4978, 6047, and 7872 of this title and repealing this section and section 4978B of this title] shall apply to loans made after the date of the enactment of this Act [Aug. 20, 1996].

''(2) REFINANCINGS.—The amendments made by this section shall not apply to loans made after the date of the enactment of this Act to refinance securities acquisition loans (determined without regard to section 133(b)(1)(B) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act) [set out above] made on or before such date or to refinance loans described in this paragraph if—

''(A) the refinancing loans meet the requirements of section 133 of such Code (as so in effect),

''(B) immediately after the refinancing the principal amount of the loan resulting from the refinancing does not exceed the principal amount of the refinanced loan (immediately before the refinancing), and

''(C) the term of such refinancing loan does not extend beyond the last day of the term of the original securities acquisition loan.

For purposes of this paragraph, the term 'securities acquisition loan' includes a loan from a corporation to an employee stock ownership plan described in section 133(b)(3) of such Code (as so in effect).

''(3) EXCEPTION.—Any loan made pursuant to a binding written contract in effect before June 10, 1996, and at all times thereafter before such loan is made, shall be treated for purposes of paragraphs (1) and (2) as a loan made on or before the date of the enactment of this Act.''

§ 134. Certain military benefits

(a) General rule

Gross income shall not include any qualified military benefit.

(b) Qualified military benefit

For purposes of this section—

(1) In general

The term ''qualified military benefit'' means any allowance or in-kind benefit (other than personal use of a vehicle) which—

(A) is received by any member or former member of the uniformed services of the United States or any dependent of such member by reason of such member's status or service as a member of such uniformed services, and

(B) was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice which was in effect on such date (other than a provision of this title).

(2) No other benefit to be excludable except as provided by this title

Notwithstanding any other provision of law, no benefit shall be treated as a qualified military benefit unless such benefit—

(A) is a benefit described in paragraph (1), or

(B) is excludable from gross income under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

(3) Limitations on modifications

(A) In general

Except as provided in subparagraphs (B) and (C) and paragraphs (4) and (5), no modification or adjustment of any qualified military benefit after September 9, 1986, shall be taken into account.

(B) Exception for certain adjustments to cash benefits

Subparagraph (A) shall not apply to any adjustment to any qualified military benefit payable in cash which—

(i) is pursuant to a provision of law or regulation (as in effect on September 9, 1986), and

(ii) is determined by reference to any fluctuation in cost, price, currency, or other similar index.

(C) Exception for death gratuity adjustments made by law

Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted after September 9, 1986.

(4) Clarification of certain benefits

For purposes of paragraph (1), such term includes any dependent care assistance program (as in effect on the date of the enactment of this paragraph) for any individual described in paragraph (1)(A).

(5) Travel benefits under operation hero miles

The term ''qualified military benefit'' includes a travel benefit provided under section 2613 of title 10, United States Code (as in effect on the date of the enactment of this paragraph).

(6) Certain State payments

The term ''qualified military benefit'' includes any bonus payment by a State or political subdivision thereof to any member or former member of the uniformed services of the United States or any dependent of such member only by reason of such member's service in an[1] combat zone (as defined in section 112(c)(2), determined without regard to the parenthetical).

(Added Pub. L. 99–514, title XI, § 1168(a), Oct. 22, 1986, 100 Stat. 2512; amended Pub. L. 100–647, title I, § 1011B(f)(1), (2)(A), (3), Nov. 10, 1988, 102 Stat. 3489, 3490; Pub. L. 108–121, title I, §§ 102(b)(1), (2), 106(a), (b)(1), Nov. 11, 2003, 117 Stat. 1337–1339; Pub. L. 108–375, div. A, title V, § 585(b)(1), (2)(A), Oct. 28, 2004, 118 Stat. 1931, 1932; Pub. L. 110–245, title I, § 112(a), June 17, 2008, 122 Stat. 1635.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(4), is the date of enactment of Pub. L. 108–121, which was approved Nov. 11, 2003.

The date of the enactment of this paragraph, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 108–375, which was approved Oct. 28, 2004.

PRIOR PROVISIONS

A prior section 134 was renumbered section 140 of this title.

AMENDMENTS

2008—Subsec. (b)(6). Pub. L. 110–245 added par. (6).

2004—Subsec. (b)(3)(A). Pub. L. 108–375, § 585(b)(2)(A), substituted ''paragraphs (4) and (5)'' for ''paragraph (4)''.

Subsec. (b)(5). Pub. L. 108–375, § 585(b)(1), added par. (5).

2003—Subsec. (b)(3)(A). Pub. L. 108–121, § 106(b)(1), inserted ''and paragraph (4)'' after ''subparagraphs (B) and (C)''.

Pub. L. 108–121, § 102(b)(2), substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Subsec. (b)(3)(C). Pub. L. 108–121, § 102(b)(1), added subpar. (C).

Subsec. (b)(4). Pub. L. 108–121, § 106(a), added par. (4).

1988—Subsec. (b)(1). Pub. L. 100–647, § 1011B(f)(2)(A), inserted ''(other than personal use of a vehicle)'' after ''in-kind benefit'' in introductory text.

Subsec. (b)(1)(B). Pub. L. 100–647, § 1011B(f)(1), substituted '', regulation, or administrative practice'' for ''or regulation thereunder''.

Subsec. (b)(3)(A). Pub. L. 100–647, § 1011B(f)(3), struck out ''under any provision of law or regulation described in paragraph (1)'' after ''September 9, 1986,''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, § 112(b), June 17, 2008, 122 Stat. 1635, provided that: ''The amendment made by this section [amending this section] shall apply to payments made before, on, or after the date of the enactment of this Act [June 17, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title V, § 585(b)(3), Oct. 28, 2004, 118 Stat. 1932, provided that: ''The amendments made by this subsection [amending this section and sections 3121, 3306, and 3401 of this title] shall apply to travel benefits provided after the date of the enactment of this Act [Oct. 28, 2004].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 102(b)(3), Nov. 11, 2003, 117 Stat. 1337, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to deaths occurring after September 10, 2001.''

Pub. L. 108–121, title I, § 106(c), Nov. 11, 2003, 117 Stat. 1339, provided that: ''The amendments made by this section [amending this section and sections 3121, 3306, and 3401 of this title] shall apply to taxable years beginning after December 31, 2002.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011B(f)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1011B(f)(1), (3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 1168(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011B(f)(4), Nov. 10, 1988, 102 Stat. 3490, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1984.''

NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108–121

Pub. L. 108–121, title I, § 106(d), Nov. 11, 2003, 117 Stat. 1339, provided that: ''No inference may be drawn from the amendments made by this section [amending this section and sections 3121, 3306, and 3401 of this title] with respect to the tax treatment of any amounts under the program described in section 134(b)(4) of the Internal Revenue Code of 1986 (as added by this section) for any taxable year beginning before January 1, 2003.''

§ 135. Income from United States savings bonds used to pay higher education tuition and fees

(a) General rule

In the case of an individual who pays qualified higher education expenses during the taxable year, no amount shall be includible in gross income by reason of the redemption during such

[1] So in original. Probably should be ''a''.

year of any qualified United States savings bond.

(b) Limitations

(1) Limitation where redemption proceeds exceed higher education expenses

(A) In general

If—

(i) the aggregate proceeds of qualified United States savings bonds redeemed by the taxpayer during the taxable year exceed

(ii) the qualified higher education expenses paid by the taxpayer during such taxable year,

the amount excludable from gross income under subsection (a) shall not exceed the applicable fraction of the amount excludable from gross income under subsection (a) without regard to this subsection.

(B) Applicable fraction

For purposes of subparagraph (A), the term ''applicable fraction'' means the fraction the numerator of which is the amount described in subparagraph (A)(ii) and the denominator of which is the amount described in subparagraph (A)(i).

(2) Limitation based on modified adjusted gross income

(A) In general

If the modified adjusted gross income of the taxpayer for the taxable year exceeds $40,000 ($60,000 in the case of a joint return), the amount which would (but for this paragraph) be excludable from gross income under subsection (a) shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be so excludable as such excess bears to $15,000 ($30,000 in the case of a joint return).

(B) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 1990, the $40,000 and $60,000 amounts contained in subparagraph (A) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 1989'' for ''calendar year 1992'' in subparagraph (B) thereof.

(C) Rounding

If any amount as adjusted under subparagraph (B) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50 (or if such amount is a multiple of $25, such amount shall be rounded to the next highest multiple of $50).

(c) Definitions

For purposes of this section—

(1) Qualified United States savings bond

The term ''qualified United States savings bond'' means any United States savings bond issued—

(A) after December 31, 1989,

(B) to an individual who has attained age 24 before the date of issuance, and

(C) at discount under section 3105 of title 31, United States Code.

(2) Qualified higher education expenses

(A) In general

The term ''qualified higher education expenses'' means tuition and fees required for the enrollment or attendance of—

(i) the taxpayer,

(ii) the taxpayer's spouse, or

(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution.

(B) Exception for education involving sports, etc.

Such term shall not include expenses with respect to any course or other education involving sports, games, or hobbies other than as part of a degree program.

(C) Contributions to qualified tuition program and Coverdell education savings accounts

Such term shall include any contribution to a qualified tuition program (as defined in section 529) on behalf of a designated beneficiary (as defined in such section), or to a Coverdell education savings account (as defined in section 530) on behalf of an account beneficiary, who is an individual described in subparagraph (A); but there shall be no increase in the investment in the contract for purposes of applying section 72 by reason of any portion of such contribution which is not includible in gross income by reason of this subparagraph.

(3) Eligible educational institution

The term ''eligible educational institution'' has the meaning given such term by section 529(e)(5).

(4) Modified adjusted gross income

The term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year determined—

(A) without regard to this section and sections 137, 199, 221, 222, 911, 931, and 933, and

(B) after the application of sections 86, 469, and 219.

(d) Special rules

(1) Adjustment for certain scholarships and veterans benefits

The amount of qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the sum of the amounts received with respect to such individual for the taxable year as—

(A) a qualified scholarship which under section 117 is not includable in gross income,

(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code,

(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of

section 102(a)) for educational expenses, or attributable to attendance at an eligible educational institution, which is exempt from income taxation by any law of the United States, or

(D) a payment, waiver, or reimbursement of qualified higher education expenses under a qualified tuition program (within the meaning of section 529(b)).

(2) Coordination with other higher education benefits

The amount of the qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by—

(A) the amount of such expenses which are taken into account in determining the credit allowed to the taxpayer or any other person under section 25A with respect to such expenses; and

(B) the amount of such expenses which are taken into account in determining the exclusions under sections 529(c)(3)(B) and 530(d)(2).

(3) No exclusion for married individuals filing separate returns

If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

(4) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring record keeping and information reporting.

(Added Pub. L. 100–647, title VI, § 6009(a), Nov. 10, 1988, 102 Stat. 3688; amended Pub. L. 101–239, title VII, § 7816(c)(2), Dec. 19, 1989, 103 Stat. 2420; Pub. L. 101–508, title XI, §§ 11101(d)(1)(E), 11702(h), Nov. 5, 1990, 104 Stat. 1388–405, 1388–516; Pub. L. 104–188, title I, §§ 1703(d), 1806(b)(1), 1807(c)(2), Aug. 20, 1996, 110 Stat. 1875, 1898, 1902; Pub. L. 105–34, title II, §§ 201(d), 211(c), 213(e)(2), Aug. 5, 1997, 111 Stat. 805, 811, 817; Pub. L. 105–206, title VI, § 6004(c)(1), (d)(4), (9), July 22, 1998, 112 Stat. 793–795; Pub. L. 105–277, div. J, title IV, § 4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title IV, §§ 401(g)(2)(B), 402(a)(4)(A), (B), (b)(2)(A), 431(c)(1), June 7, 2001, 115 Stat. 59–62, 68; Pub. L. 107–22, § 1(b)(1)(B), (3)(B), July 26, 2001, 115 Stat. 197; Pub. L. 108–357, title I, § 102(d)(1), Oct. 22, 2004, 118 Stat. 1428.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

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

PRIOR PROVISIONS

A prior section 135 was renumbered section 140 of this title.

AMENDMENTS

2004—Subsec. (c)(4)(A). Pub. L. 108–357 inserted ''199,'' before ''221''.

2001—Subsec. (c)(2)(C). Pub. L. 107–22, in heading substituted ''Coverdell education savings'' for ''education individual retirement'' and in text substituted ''a Coverdell education savings'' for ''an education individual retirement''.

Pub. L. 107–16, § 402(a)(4)(A), (B), substituted ''qualified tuition'' for ''qualified State tuition'' in heading and text.

Subsec. (c)(4)(A). Pub. L. 107–16, §§ 431(c)(1), 901, temporarily inserted ''222,'' after ''221,''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(1)(D). Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (d)(2)(A). Pub. L. 107–16, §§ 401(g)(2)(B), 901, temporarily substituted ''allowed'' for ''allowable''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(2)(B). Pub. L. 107–16, § 402(b)(2)(A), substituted ''the exclusions under sections 529(c)(3)(B) and 530(d)(2)'' for ''the exclusion under section 530(d)(2)''.

1998—Subsec. (c)(2)(C). Pub. L. 105–206, § 6004(d)(9), inserted ''and education individual retirement accounts'' after ''program'' in heading and substituted ''section 72'' for ''section 529(c)(3)(A)'' in text.

Subsec. (c)(3). Pub. L. 105–206, § 6004(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'eligible educational institution' means—

''(A) an institution described in section 1201(a) or subparagraph (C) or (D) of section 481(a)(1) of the Higher Education Act of 1965 (as in effect on October 21, 1988), and

''(B) an area vocational education school (as defined in subparagraph (C) or (D) of section 521(3) of the Carl D. Perkins Vocational Education Act) which is in any State (as defined in section 521(27) of such Act), as such sections are in effect on October 21, 1988.''

Subsec. (c)(4)(A). Pub. L. 105–277 inserted ''221,'' after ''137,''.

Subsec. (d)(2). Pub. L. 105–206, § 6004(d)(4), substituted ''other higher education benefits'' for ''higher education credit'' in heading and amended text of par. (2) generally. Prior to amendment, text read as follows: ''The amount of the qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the amount of such expenses which are taken into account in determining the credit allowable to the taxpayer or any other person under section 25A with respect to such expenses.''

1997—Subsec. (c)(2)(C). Pub. L. 105–34, § 213(e)(2), inserted '', or to an education individual retirement account (as defined in section 530) on behalf of an account beneficiary,'' after ''(as defined in such section)''.

Pub. L. 105–34, § 211(c), added subpar. (C).

Subsec. (d)(2) to (4). Pub. L. 105–34, § 201(d), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1996—Subsec. (b)(2)(B)(ii). Pub. L. 104–188, § 1703(d), inserted '', determined by substituting 'calendar year 1989' for 'calendar year 1992' in subparagraph (B) thereof'' before period at end.

Subsec. (c)(4)(A). Pub. L. 104–188, § 1807(c)(2), inserted ''137,'' before ''911''.

Subsec. (d)(1)(D). Pub. L. 104–188, § 1806(b)(1), added subpar. (D).

1990—Subsec. (b)(2)(B). Pub. L. 101–508, § 11702(h)(1), substituted ''the $40,000 and $60,000 amounts'' for ''each dollar amount'' in introductory provisions.

Subsec. (b)(2)(B)(ii). Pub. L. 101–508, § 11101(d)(1)(E), struck out before period at end '', determined by substituting 'calendar year 1989' for 'calendar year 1987' in subparagraph (B) thereof''.

Subsec. (b)(2)(C). Pub. L. 101–508, § 11702(h)(2), struck out ''(A) or'' after ''subparagraph''.

1989—Subsec. (d)(1). Pub. L. 101–239 substituted ''subsection (a) with respect to'' for ''subsection (a) respect to''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENTS

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by section 401(g)(2)(B) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107–16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A), (B), (b)(2)(A) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 72 of this title.

Amendment by section 431(c)(1) of Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Amendment by sections 401(g)(2)(B) and 431(c)(1) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 201(d) of Pub. L. 105–34 applicable to expenses paid after Dec. 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date, see section 201(f) of Pub. L. 105–34, set out as an Effective Date note under section 25A of this title.

Amendment by section 211(c) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 211(f) of Pub. L. 105–34, set out as a note under section 529 of this title.

Amendment by section 213(e)(2) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(d) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

Amendment by section 1806(b)(1) of Pub. L. 104–188 applicable to taxable years ending after Aug. 20, 1996, with transition rules applicable where States or agencies or instrumentalities thereof maintain on such date programs under which persons may purchase tuition credits or certificates on behalf of, or make contributions for education expenses of, designated beneficiaries, see section 1806(c) of Pub. L. 104–188, set out as an Effective Date note under section 529 of this title.

Amendment by section 1807(c)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 36C of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(E) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11702(h) of Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1989, see section 6009(d) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 86 of this title.

PROMOTION OF PUBLIC AWARENESS OF PROGRAM

Section 6009(b) of Pub. L. 100–647 provided that: ''The Secretary of the Treasury or his delegate shall take such actions as may be necessary to make the general public aware of the program established by this section [enacting this section, amending sections 86, 219, and 469 of this title, renumbering former section 135 of this title as section 136 of this title, and enacting provisions set out as notes below and under section 86 of this title].''

PARENTAL ASSISTANCE WITH TUITION STAMP STUDY

Section 6009(e) of Pub. L. 100–647 directed Secretary of the Treasury or his delegate, after consultation with Secretary of Education or his delegate, to conduct a study of feasibility of using stamps or similar programs to encourage and facilitate savings by parents towards purchase of Series EE bonds eligible for exclusion and to submit, not later than Dec. 31, 1989, results of such study, together with any recommendations deemed appropriate, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

§ 136. Energy conservation subsidies provided by public utilities

(a) Exclusion

Gross income shall not include the value of any subsidy provided (directly or indirectly) by a public utility to a customer for the purchase or installation of any energy conservation measure.

(b) Denial of double benefit

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure to the extent of the amount excluded under subsection (a) for any subsidy which was provided with respect to such expenditure. The adjusted basis of any property shall be reduced by the amount excluded under subsection (a) which was provided with respect to such property.

(c) Energy conservation measure

(1) In general

For purposes of this section, the term ''energy conservation measure'' means any instal-

lation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit.

(2) Other definitions

For purposes of this subsection—

(A) Dwelling unit

The term ''dwelling unit'' has the meaning given such term by section 280A(f)(1).

(B) Public utility

The term ''public utility'' means a person engaged in the sale of electricity or natural gas to residential, commercial, or industrial customers for use by such customers. For purposes of the preceding sentence, the term ''person'' includes the Federal Government, a State or local government or any political subdivision thereof, or any instrumentality of any of the foregoing.

(d) Exception

This section shall not apply to any payment to or from a qualified cogeneration facility or qualifying small power production facility pursuant to section 210 of the Public Utility Regulatory Policy Act of 1978.

(Added Pub. L. 102–486, title XIX, § 1912(a), Oct. 24, 1992, 106 Stat. 3014; amended Pub. L. 104–188, title I, § 1617(a), (b), Aug. 20, 1996, 110 Stat. 1858.)

REFERENCES IN TEXT

Section 210 of the Public Utility Regulatory Policy Act of 1978, referred to in subsec. (d), probably means section 210 of the Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, which is classified to section 824a–3 of Title 16, Conservation.

PRIOR PROVISIONS

A prior section 136 was renumbered section 140 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188, § 1617(b)(1), reenacted heading without change and amended text generally, substituting present provisions for former provisions which consisted of general exclusion in par. (1) and limitation for exclusion on nonresidential property in par. (2).

Subsec. (c)(1). Pub. L. 104–188, § 1617(a), substituted ''energy demand with respect to a dwelling unit.'' for ''energy demand—

''(A) with respect to a dwelling unit, and

''(B) on or after January 1, 1995, with respect to property other than dwelling units.

The purchase and installation of specially defined energy property shall be treated as an energy conservation measure described in subparagraph (B).''

Subsec. (c)(2). Pub. L. 104–188, § 1617(b)(2), struck out ''and special rules'' after ''definitions'' in heading, redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which related to ''specially defined energy property''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1617(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to amounts received after December 31, 1996, unless received pursuant to a written binding contract in effect on September 13, 1995, and at all times thereafter.''

EFFECTIVE DATE

Section 1912(c) of Pub. L. 102–486 provided that: ''The amendments made by this section [enacting this section and renumbering former section 136 as 137] shall apply to amounts received after December 31, 1992.''

§ 137. Adoption assistance programs

(a) Exclusion

(1) In general

Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program.

(2) $13,170 exclusion for adoption of child with special needs regardless of expenses

In the case of an adoption of a child with special needs which becomes final during a taxable year, the qualified adoption expenses with respect to such adoption for such year shall be increased by an amount equal to the excess (if any) of $13,170 over the actual aggregate qualified adoption expenses with respect to such adoption during such taxable year and all prior taxable years.

(b) Limitations

(1) Dollar limitation

The aggregate of the amounts paid or expenses incurred which may be taken into account under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed $13,170.

(2) Income limitation

The amount excludable from gross income under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so excludable (determined without regard to this paragraph but with regard to paragraph (1)) as—

(A) the amount (if any) by which the taxpayer's adjusted gross income exceeds $150,000, bears to

(B) $40,000.

(3) Determination of adjusted gross income

For purposes of paragraph (2), adjusted gross income shall be determined—

(A) without regard to this section and sections 199, 221, 222, 911, 931, and 933, and

(B) after the application of sections 86, 135, 219, and 469.

(c) Adoption assistance program

For purposes of this section, an adoption assistance program is a separate written plan of an employer for the exclusive benefit of such employer's employees—

(1) under which the employer provides such employees with adoption assistance, and

(2) which meets requirements similar to the requirements of paragraphs (2), (3), (5), and (6) of section 127(b).

An adoption reimbursement program operated under section 1052 of title 10, United States Code (relating to armed forces) or section 514 of title 14, United States Code (relating to members of the Coast Guard) shall be treated as an adoption assistance program for purposes of this section.

(d) Qualified adoption expenses

For purposes of this section, the term ''qualified adoption expenses'' has the meaning given

such term by section 36C(d) (determined without regard to reimbursements under this section).

(e) Certain rules to apply

Rules similar to the rules of subsections (e), (f), and (g) of section 36C shall apply for purposes of this section.

(f) Adjustments for inflation

(1) Dollar limitations

In the case of a taxable year beginning after December 31, 2010, each of the dollar amounts in subsections (a)(2) and (b)(1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2009'' for ''calendar year 1992'' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

(2) Income limitation

In the case of a taxable year beginning after December 31, 2002, the dollar amount in subsection (b)(2)(A) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2001'' for ''calendar year 1992'' in subparagraph[1] thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

(Added Pub. L. 104–188, title I, §1807(b), Aug. 20, 1996, 110 Stat. 1901; amended Pub. L. 105–34, title XVI, §1601(h)(2)(C), Aug. 5, 1997, 111 Stat. 1092; Pub. L. 105–277, div. J, title IV, §4003(a)(2)(C), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title II, §202(a)(2), (b)(1)(B), (2)(B), (d)(2), (e)(2), title IV, §431(c)(1), June 7, 2001, 115 Stat. 47, 48, 68; Pub. L. 107–147, title IV, §§411(c)(2), 418(a)(2), Mar. 9, 2002, 116 Stat. 45, 57; Pub. L. 108–311, title IV, §403(e), Oct. 4, 2004, 118 Stat. 1188; Pub. L. 108–357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428; Pub. L. 111–148, title X, §10909(a)(2), (b)(2)(J), (c), Mar. 23, 2010, 124 Stat. 1022, 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

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

PRIOR PROVISIONS

A prior section 137 was renumbered section 140 of this title.

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111–148, §10909(a)(2)(B), (c), as amended by Pub. L. 111–312, temporarily substituted ''$13,170'' for ''$10,000'' in heading and text. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (b)(1). Pub. L. 111–148, §10909(a)(2)(A), (c), as amended by Pub. L. 111–312, temporarily substituted ''$13,170'' for ''$10,000''. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (d). Pub. L. 111–148, §10909(b)(2)(J)(i), (c), as amended by Pub. L. 111–312, temporarily substituted ''section 36C(d)'' for ''section 23(d)''. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (e). Pub. L. 111–148, §10909(b)(2)(J)(ii), (c), as amended by Pub. L. 111–312, temporarily substituted ''section 36C'' for ''section 23''. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (f). Pub. L. 111–148, §10909(a)(2)(C), (c), as amended by Pub. L. 111–312, temporarily amended subsec. (f) generally. See Effective and Termination Dates of 2010 Amendment note below. Prior to amendment subsec. (f) read as follows: ''ADJUSTMENTS FOR INFLATION.—In the case of a taxable year beginning after December 31, 2002, each of the dollar amounts in subsection (a)(2) and paragraphs (1) and (2)(A) of subsection (b) shall be increased by an amount equal to—

''(1) such dollar amount, multiplied by

''(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.''

2004—Subsec. (b)(1). Pub. L. 108–311 amended directory language of Pub. L. 107–147, §411(c)(2)(B). See 2002 Amendment note below.

Subsec. (b)(3)(A). Pub. L. 108–357 inserted ''199,'' before ''221''.

2002—Subsec. (a). Pub. L. 107–147, §411(c)(2)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Gross income of an employee does not include amounts paid or expenses incurred by the employer for adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program. The amount of the exclusion shall be—

''(1) in the case of an adoption of a child other than a child with special needs, the amount of the qualified adoption expenses paid or incurred by the taxpayer, and

''(2) in the case of an adoption of a child with special needs, $10,000.''

Subsec. (b)(1). Pub. L. 107–147, §411(c)(2)(B), as amended by Pub. L. 108–311, substituted ''subsection (a)'' for ''subsection (a)(1)''.

Subsec. (f). Pub. L. 107–147, §418(a)(2), inserted at end ''If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.''

2001—Subsec. (a). Pub. L. 107–16, §§202(a)(2), 901, temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance pro-

[1] So in original. Probably should be followed by ''(B)''.

gram.'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(1). Pub. L. 107–16, §§ 202(b)(1)(B), 901, temporarily substituted ''subsection (a)(1)'' for ''subsection (a)'' and ''$10,000'' for ''$5,000 ($6,000, in the case of a child with special needs)''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2)(A). Pub. L. 107–16, §§ 202(b)(2)(B), 901, temporarily substituted ''$150,000'' for ''$75,000''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(3)(A). Pub. L. 107–16, §§ 431(c)(1), 901, temporarily inserted ''222,'' after ''221,''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (f). Pub. L. 107–16, §§ 202(d)(2), (e)(2), 901, temporarily added subsec. (f) and struck out heading and text of former subsec. (f). Text read as follows: ''This section shall not apply to amounts paid or expenses incurred after December 31, 2001.'' See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(3)(A). Pub. L. 105–277 inserted ''221,'' after ''and sections''.

1997—Subsec. (b)(1). Pub. L. 105–34 substituted ''of the amounts paid or expenses incurred which may be taken into account'' for ''amount excludable from gross income''.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, to which such amendment relates, see section 403(f) of Pub. L. 108–311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 411(c)(2) of Pub. L. 107–147 applicable to taxable years beginning after Dec. 31, 2002, except that amendment by section 411(c)(2)(B) applicable to taxable years beginning after Dec. 31, 2001, see section 411(c)(3) of Pub. L. 107–147, set out as a note under section 36C of this title.

Amendment by section 418(a)(2) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 418(c) of Pub. L. 107–147, set out as a note under section 21 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by section 202(b)(1)(B), (2)(B), (d)(2), (e)(2) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 36C of this title.

Amendment by section 202(a)(2) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2002, see section 202(g)(2) of Pub. L. 107–16, set out as a note under section 36C of this title.

Amendment by section 431(c)(1) of Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as a note under section 36C of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 138. Medicare Advantage MSA

(a) Exclusion

Gross income shall not include any payment to the Medicare Advantage MSA of an individual by the Secretary of Health and Human Services under part C of title XVIII of the Social Security Act.

(b) Medicare Advantage MSA

For purposes of this section, the term ''Medicare Advantage MSA'' means an Archer MSA (as defined in section 220(d))—

(1) which is designated as a Medicare Advantage MSA,

(2) with respect to which no contribution may be made other than—

(A) a contribution made by the Secretary of Health and Human Services pursuant to part C of title XVIII of the Social Security Act, or

(B) a trustee-to-trustee transfer described in subsection (c)(4),

(3) the governing instrument of which provides that trustee-to-trustee transfers described in subsection (c)(4) may be made to and from such account, and

(4) which is established in connection with an MSA plan described in section 1859(b)(3) of the Social Security Act.

(c) Special rules for distributions

(1) Distributions for qualified medical expenses

In applying section 220 to a Medicare Advantage MSA—

(A) qualified medical expenses shall not include amounts paid for medical care for any individual other than the account holder, and

(B) section 220(d)(2)(C) shall not apply.

(2) Penalty for distributions from Medicare Advantage MSA not used for qualified medical expenses if minimum balance not maintained

(A) In general

The tax imposed by this chapter for any taxable year in which there is a payment or distribution from a Medicare Advantage MSA which is not used exclusively to pay the qualified medical expenses of the account holder shall be increased by 50 percent of the excess (if any) of—

(i) the amount of such payment or distribution, over

(ii) the excess (if any) of—

(I) the fair market value of the assets in such MSA as of the close of the calendar year preceding the calendar year in which the taxable year begins, over

(II) an amount equal to 60 percent of the deductible under the Medicare Advantage MSA plan covering the account holder as of January 1 of the calendar year in which the taxable year begins.

Section 220(f)(4) shall not apply to any payment or distribution from a Medicare Advantage MSA.

(B) Exceptions

Subparagraph (A) shall not apply if the payment or distribution is made on or after the date the account holder—

(i) becomes disabled within the meaning of section 72(m)(7), or

(ii) dies.

(C) Special rules

For purposes of subparagraph (A)—

(i) all Medicare Advantage MSAs of the account holder shall be treated as 1 account,

(ii) all payments and distributions not used exclusively to pay the qualified medical expenses of the account holder during any taxable year shall be treated as 1 distribution, and

(iii) any distribution of property shall be taken into account at its fair market value on the date of the distribution.

(3) Withdrawal of erroneous contributions

Section 220(f)(2) and paragraph (2) of this subsection shall not apply to any payment or distribution from a Medicare Advantage MSA to the Secretary of Health and Human Services of an erroneous contribution to such MSA and of the net income attributable to such contribution.

(4) Trustee-to-trustee transfers

Section 220(f)(2) and paragraph (2) of this subsection shall not apply to any trustee-to-trustee transfer from a Medicare Advantage MSA of an account holder to another Medicare Advantage MSA of such account holder.

(d) Special rules for treatment of account after death of account holder

In applying section 220(f)(8)(A) to an account which was a Medicare Advantage MSA of a decedent, the rules of section 220(f) shall apply in lieu of the rules of subsection (c) of this section with respect to the spouse as the account holder of such Medicare Advantage MSA.

(e) Reports

In the case of a Medicare Advantage MSA, the report under section 220(h)—

(1) shall include the fair market value of the assets in such Medicare Advantage MSA as of the close of each calendar year, and

(2) shall be furnished to the account holder—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes in such regulations.

(f) Coordination with limitation on number of taxpayers having Archer MSAs

Subsection (i) of section 220 shall not apply to an individual with respect to a Medicare Advantage MSA, and Medicare Advantage MSAs shall not be taken into account in determining whether the numerical limitations under section 220(j) are exceeded.

(Added Pub. L. 105–33, title IV, §4006(a), Aug. 5, 1997, 111 Stat. 332; amended Pub. L. 106–554, §1(a)(7) [title II, §202(a)(3), (b)(6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 108–311, title IV, §408(a)(5)(A)–(F), Oct. 4, 2004, 118 Stat. 1191.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a) and (b)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part C of title XVIII of the Act is classified generally to part C (§1395w–21 et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Section 1859 of the Act is classified to section 1395w–28 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 138 was renumbered section 140 of this title.

AMENDMENTS

2004—Pub. L. 108–311, §408(a)(5)(A)–(D), substituted ''Medicare Advantage'' for ''Medicare+Choice'' wherever appearing in section catchline, headings, and text.

Subsec. (c)(2)(C)(i). Pub. L. 108–311, §408(a)(5)(E), substituted ''Medicare Advantage MSAs'' for ''Medicare+Choice MSAs''.

Subsec. (f). Pub. L. 108–311, §408(a)(5)(F), substituted ''Medicare Advantage MSAs'' for ''Medicare+Choice MSA's''.

2000—Subsec. (b). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA'' in introductory provisions.

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(3)], substituted ''Archer MSA'' for ''medical savings account'' in introductory provisions.

Subsec. (f). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(6)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading.

EFFECTIVE DATE

Section 4006(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [enacting this section, amending sections 220 and 4973 of this title, and renumbering former section 138 of this title as section 139 of this title] shall apply to taxable years beginning after December 31, 1998.''

§ 139. Disaster relief payments

(a) General rule

Gross income shall not include any amount received by an individual as a qualified disaster relief payment.

(b) Qualified disaster relief payment defined

For purposes of this section, the term ''qualified disaster relief payment'' means any amount paid to or for the benefit of an individual—

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,

(2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster,

(3) by a person engaged in the furnishing or sale of transportation as a common carrier by reason of the death or personal physical injuries incurred as a result of a qualified disaster, or

(4) if such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare,

but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

(c) Qualified disaster defined

For purposes of this section, the term ''qualified disaster'' means—

(1) a disaster which results from a terroristic or military action (as defined in section 692(c)(2)),

(2) federally [1] declared disaster (as defined by section 165(h)(3)(C)(i)),

(3) a disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature, or

(4) with respect to amounts described in subsection (b)(4), a disaster which is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance from the Federal, State, or local government or agency or instrumentality thereof.

(d) Coordination with employment taxes

For purposes of chapter 2 and subtitle C, qualified disaster relief payments and qualified disaster mitigation payments shall not be treated as net earnings from self-employment, wages, or compensation subject to tax.

(e) No relief for certain individuals

Subsections (a), (f), and (g) shall not apply with respect to any individual identified by the Attorney General to have been a participant or conspirator in a terroristic action (as so defined), or a representative of such individual.

(f) Exclusion of certain additional payments

Gross income shall not include any amount received as payment under section 406 of the Air Transportation Safety and System Stabilization Act.

(g) Qualified disaster mitigation payments

(1) In general

Gross income shall not include any amount received as a qualified disaster mitigation payment.

(2) Qualified disaster mitigation payment defined

For purposes of this section, the term ''qualified disaster mitigation payment'' means any amount which is paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date) to or for the benefit of the owner of any property for hazard mitigation with respect to such property. Such term shall not include any amount received for the sale or disposition of any property.

(3) No increase in basis

Notwithstanding any other provision of this subtitle, no increase in the basis or adjusted basis of any property shall result from any amount excluded under this subsection with respect to such property.

(h) Denial of double benefit

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed (to the person for whose benefit a qualified disaster relief payment or qualified disaster mitigation payment is made) for, or by reason of, any expenditure to the extent of the amount excluded under this section with respect to such expenditure.

(Added Pub. L. 107–134, title I, § 111(a), Jan. 23, 2002, 115 Stat. 2432; amended Pub. L. 109–7, § 1(a), Apr. 15, 2005, 119 Stat. 21; Pub. L. 110–343, div. C, title VII, § 706(a)(2)(D)(iv), Oct. 3, 2008, 122 Stat. 3922.)

REFERENCES IN TEXT

Section 406 of the Air Transportation Safety and System Stabilization Act, referred to in subsec. (f), is section 406 of Pub. L. 107–42, which is set out as a note under section 40101 of Title 49, Transportation.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (g)(2), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The date of the enactment of this subsection, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 109–7, which was approved Apr. 15, 2005.

The National Flood Insurance Act, referred to in subsec. (g)(2), probably means the National Flood Insurance Act of 1968, title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to chapter 50 (§ 4001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 139 was renumbered section 140 of this title.

[1] So in original. Probably should be preceded by ''a''.

AMENDMENTS

2008—Subsec. (c)(2). Pub. L. 110–343 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''a Presidentially declared disaster (as defined in section 1033(h)(3)),''.

2005—Subsec. (d). Pub. L. 109–7, §1(a)(2)(A), substituted ''qualified disaster relief payments and qualified disaster mitigation payments'' for ''a qualified disaster relief payment''.

Subsec. (e). Pub. L. 109–7, §1(a)(2)(B), substituted '', (f), and (g)'' for ''and (f)''.

Subsecs. (g), (h). Pub. L. 109–7, §1(a)(1), added subsecs. (g) and (h).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–7, §1(c)(1), Apr. 15, 2005, 119 Stat. 22, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to amounts received before, on, or after the date of the enactment of this Act [Apr. 15, 2005].''

EFFECTIVE DATE

Pub. L. 107–134, title I, §111(c), Jan. 23, 2002, 115 Stat. 2433, provided that: ''The amendments made by this section [enacting this section and renumbering former section 139 as section 140 of this title] shall apply to taxable years ending on or after September 11, 2001.''

§ 139A. Federal subsidies for prescription drug plans

Gross income shall not include any special subsidy payment received under section 1860D–22 of the Social Security Act. This section shall not be taken into account for purposes of determining whether any deduction is allowable with respect to any cost taken into account in determining such payment.

(Added Pub. L. 108–173, title XII, §1202(a), Dec. 8, 2003, 117 Stat. 2480; amended Pub. L. 111–148, title IX, §9012(a), Mar. 23, 2010, 124 Stat. 868.)

AMENDMENT OF SECTION

Pub. L. 111–148, title IX, §9012, Mar. 23, 2010, 124 Stat. 868, as amended by Pub. L. 111–152, title I, §1407, Mar. 30, 2010, 124 Stat. 1067, provided that, applicable to taxable years beginning after Dec. 31, 2012, this section is amended by striking the second sentence.

REFERENCES IN TEXT

Section 1860D–22 of the Social Security Act, referred to in text, is classified to section 1395w–132 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, §9012(b), Mar. 23, 2010, 124 Stat. 868, as amended by Pub. L. 111–152, title I, §1407, Mar. 30, 2010, 124 Stat. 1067, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2012.''

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 8, 2003, see section 1202(d) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 56 of this title.

§ 139B. Benefits provided to volunteer firefighters and emergency medical responders

(a) In general

In the case of any member of a qualified volunteer emergency response organization, gross income shall not include—

(1) any qualified State and local tax benefit, and

(2) any qualified payment.

(b) Denial of double benefits

In the case of any member of a qualified volunteer emergency response organization—

(1) the deduction under 164 shall be determined with regard to any qualified State and local tax benefit, and

(2) expenses paid or incurred by the taxpayer in connection with the performance of services as such a member shall be taken into account under section 170 only to the extent such expenses exceed the amount of any qualified payment excluded from gross income under subsection (a).

(c) Definitions

For purposes of this section—

(1) Qualified State and local tax benefit

The term ''qualified state and local tax benefit'' means any reduction or rebate of a tax described in paragraph (1), (2), or (3) of section 164(a) provided by a State or political division thereof on account of services performed as a member of a qualified volunteer emergency response organization.

(2) Qualified payment

(A) In general

The term ''qualified payment'' means any payment (whether reimbursement or otherwise) provided by a State or political division thereof on account of the performance of services as a member of a qualified volunteer emergency response organization.

(B) Applicable dollar limitation

The amount determined under subparagraph (A) for any taxable year shall not exceed $30 multiplied by the number of months during such year that the taxpayer performs such services.

(3) Qualified volunteer emergency response organization

The term ''qualified volunteer emergency response organization'' means any volunteer organization—

(A) which is organized and operated to provide firefighting or emergency medical services for persons in the State or political subdivision, as the case may be, and

(B) which is required (by written agreement) by the State or political subdivision to furnish firefighting or emergency medical services in such State or political subdivision.

(d) Termination

This section shall not apply with respect to taxable years beginning after December 31, 2010.

(Added Pub. L. 110–142, §5(a), Dec. 20, 2007, 121 Stat. 1805.)

EFFECTIVE DATE

Pub. L. 110–142, § 5(c), Dec. 20, 2007, 121 Stat. 1806, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 2007.''

§ 139C. COBRA premium assistance

In the case of an assistance eligible individual (as defined in section 3001 of title III of division B of the American Recovery and Reinvestment Act of 2009), gross income does not include any premium reduction provided under subsection (a) of such section.

(Added Pub. L. 111–5, div. B, title III, § 3001(a)(15)(A), Feb. 17, 2009, 123 Stat. 465; amended Pub. L. 111–144, § 3(b)(5)(B), Mar. 2, 2010, 124 Stat. 44.)

REFERENCES IN TEXT

Section 3001 of title III of division B of the American Recovery and Reinvestment Act of 2009, referred to in text, is section 3001 of Pub. L. 111–5, div. B, title III, Feb. 17, 2009, 123 Stat. 455, which is set out as a note under section 6432 of this title.

AMENDMENTS

2010—Pub. L. 111–144 substituted ''section 3001 of title III of division B of the American Recovery and Reinvestment Act of 2009'' for ''section 3002 of the Health Insurance Assistance for the Unemployed Act of 2009''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–144 effective as if included in the provisions of section 3001 of Pub. L. 111–5 to which it relates, see section 3(c) of Pub. L. 111–144, set out as a note under section 6432 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Feb. 17, 2009, see section 3001(a)(15)(C) of Pub. L. 111–5, set out as a Premium Assistance for COBRA Benefits note under section 6432 of this title.

§ 139D.[1] Free choice vouchers

Gross income shall not include the amount of any free choice voucher provided by an employer under section 10108 of the Patient Protection and Affordable Care Act to the extent that the amount of such voucher does not exceed the amount paid for a qualified health plan (as defined in section 1301 of such Act) by the taxpayer.

(Added Pub. L. 111–148, title X, § 10108(f)(1), Mar. 23, 2010, 124 Stat. 913.)

REFERENCES IN TEXT

Section 10108 of the Patient Protection and Affordable Care Act, referred to in text, is section 10108 of Pub. L. 111–148, which enacted this section and section 18101 of Title 42, The Public Health and Welfare, amended sections 36B, 162, 4980H, 6056, and 6724 of this title and section 218b of Title 29, Labor, and enacted provisions set out as notes under this section and sections 36B, 162, 4980H, and 6056 of this title. For complete classification of section 10108 to the Code, see Tables.

Section 1301 of the Patient Protection and Affordable Care Act, referred to in text, is classified to section 18021 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Pub. L. 111–148, title X, § 10108(f)(3), Mar. 23, 2010, 124 Stat. 913, provided that: ''The amendments made by this subsection [enacting this section] shall apply to vouchers provided after December 31, 2013.''

[1] Another section 139D is set out following this section.

§ 139D.[1] Indian health care benefits

(a) General rule

Except as otherwise provided in this section, gross income does not include the value of any qualified Indian health care benefit.

(b) Qualified Indian health care benefit

For purposes of this section, the term ''qualified Indian health care benefit'' means—

(1) any health service or benefit provided or purchased, directly or indirectly, by the Indian Health Service through a grant to or a contract or compact with an Indian tribe or tribal organization, or through a third-party program funded by the Indian Health Service,

(2) medical care provided or purchased by, or amounts to reimburse for such medical care provided by, an Indian tribe or tribal organization for, or to, a member of an Indian tribe, including a spouse or dependent of such a member,

(3) coverage under accident or health insurance (or an arrangement having the effect of accident or health insurance), or an accident or health plan, provided by an Indian tribe or tribal organization for medical care to a member of an Indian tribe, include a spouse or dependent of such a member, and

(4) any other medical care provided by an Indian tribe or tribal organization that supplements, replaces, or substitutes for a program or service relating to medical care provided by the Federal government to Indian tribes or members of such a tribe.

(c) Definitions

For purposes of this section—

(1) Indian tribe

The term ''Indian tribe'' has the meaning given such term by section 45A(c)(6).

(2) Tribal organization

The term ''tribal organization'' has the meaning given such term by section 4(*l*) of the Indian Self-Determination and Education Assistance Act.

(3) Medical care

The term ''medical care'' has the same meaning as when used in section 213.

(4) Accident or health insurance; accident or health plan

The terms ''accident or health insurance'' and ''accident or health plan'' have the same meaning as when used in section 105.

(5) Dependent

The term ''dependent'' has the meaning given such term by section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof.

(d) Denial of double benefit

Subsection (a) shall not apply to the amount of any qualified Indian health care benefit which is not includible in gross income of the bene-

[1] Another section 139D is set out preceding this section.

ficiary of such benefit under any other provision of this chapter, or to the amount of any such benefit for which a deduction is allowed to such beneficiary under any other provision of this chapter.

(Pub. L. 111–148, title IX, §9021(a), Mar. 23, 2010, 124 Stat. 873.)

REFERENCES IN TEXT

Section 4(*l*) of the Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(2), is classified to section 450b(*l*) of Title 25, Indians.

EFFECTIVE DATE

Pub. L. 111–148, title IX, §9021(c), Mar. 23, 2010, 124 Stat. 874, provided that: ''The amendments made by this section [enacting this section] shall apply to benefits and coverage provided after the date of the enactment of this Act [Mar. 23, 2010].''

NO INFERENCE WITH RESPECT TO EXCLUSION FROM GROSS INCOME OF CERTAIN BENEFITS

Pub. L. 111–148, title IX, §9021(d), Mar. 23, 2010, 124 Stat. 874, provided that: ''Nothing in the amendments made by this section [enacting this section] shall be construed to create an inference with respect to the exclusion from gross income of—

''(1) benefits provided by an Indian tribe or tribal organization that are not within the scope of this section, and

''(2) benefits provided prior to the date of the enactment of this Act [Mar. 23, 2010].''

§ 140. Cross references to other Acts

(a) For exemption of—

(1) Allowances and expenditures to meet losses sustained by persons serving the United States abroad, due to appreciation of foreign currencies, see section 5943 of title 5, United States Code.

(2) Amounts credited to the Maritime Administration under section 9(b)(6) of the Merchant Ship Sales Act of 1946, see section 9(c)(1) of that Act (50 U.S.C. App. 1742).[1]

(3) Benefits under laws administered by the Veterans' Administration, see section 5301 of title 38, United States Code.

(4) Earnings of ship contractors deposited in special reserve funds, see section 53507 of title 46, United States Code.

(5) Income derived from Federal Reserve banks, including capital stock and surplus, see section 7 of the Federal Reserve Act (12 U.S.C. 531).

(6) Special pensions of persons on Army and Navy medal of honor roll, see 38 U.S.C. 1562(a)–(c).

(b) For extension of military income tax-exemption benefits to commissioned officers of Public Health Service in certain circumstances, see section 212 of the Public Health Service Act (42 U.S.C. 213).

(Aug. 16, 1954, ch. 736, 68A Stat. 39, §121; Aug. 1, 1956, ch. 837, title V, §501(t), 70 Stat. 885; Pub. L. 85–56, title XXII, §2201(25), June 17, 1957, 71 Stat. 160; Pub. L. 85–857, §13(t), Sept. 2, 1958, 72 Stat. 1266; renumbered §122, Pub. L. 88–272, title II, §206(a), Feb. 26, 1964, 78 Stat. 38; renumbered §123, Pub. L. 89–365, §1(a)(1), Mar. 8, 1966, 80 Stat. 32; renumbered §124, Pub. L. 91–172, title IX, §901(a), Dec. 30, 1969, 83 Stat. 709; amended Pub. L. 94–455, title XIX, §1901(a)(21), Oct. 4, 1976, 90 Stat. 1766; renumbered §125, Pub. L. 95–618, title II, §242(a), Nov. 9, 1978, 92 Stat. 3193; renumbered §126, renumbered §127, renumbered §128, Pub. L. 95–600, title I, §§134(a), 164(a), title V, 543(a), Nov. 6, 1978, 92 Stat. 2783, 2811, 2888; amended Pub. L. 96–222, title I, §101(a)(3), Apr. 1, 1980, 94 Stat. 195; Pub. L. 96–589, §6(i)(1), Dec. 24, 1980, 94 Stat. 3410; renumbered §129, renumbered §130, Pub. L. 97–34, title I, §124(e)(1), title III, §301(a), Aug. 13, 1981, 95 Stat. 198, 267; renumbered §131, renumbered §132, Pub. L. 97–473, title I, §§101(b)(1), 102(a), Jan. 14, 1983, 96 Stat. 2605, 2606; renumbered §133, renumbered §134 and amended Pub. L. 98–369, div. A, title V, §§531(a)(1), 543(a), div. B, title VI, §2661(*o*)(2), July 18, 1984, 98 Stat. 877, 891, 1159; renumbered §135, Pub. L. 99–514, title XI, §1168(a), Oct. 22, 1986, 100 Stat. 2512; renumbered §136, Pub. L. 100–647, title VI, §6009(a), Nov. 10, 1988, 102 Stat. 3688; Pub. L. 102–40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; renumbered §137, Pub. L. 102–486, title XIX, §1912(a), Oct. 24, 1992, 106 Stat. 3014; renumbered §138, Pub. L. 104–188, title I, §1807(b), Aug. 20, 1996, 110 Stat. 1901; renumbered §139, Pub. L. 105–33, title IV, §4006(a), Aug. 5, 1997, 111 Stat. 331; renumbered §140, Pub. L. 107–134, title I, §111(a), Jan. 23, 2002, 115 Stat. 2432; Pub. L. 109–304, §17(e)(2), Oct. 6, 2006, 120 Stat. 1708.)

REFERENCES IN TEXT

Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742), referred to in subsec. (a)(2), was repealed by Pub. L. 94–412, title V, §501(g), Sept. 14, 1976, 90 Stat. 1258.

AMENDMENTS

2006—Subsec. (a)(4). Pub. L. 109–304 substituted ''section 53507 of title 46, United States Code'' for ''section 607(d) of the Merchant Marine Act, 1936 (46 U.S.C. 1177)''.

2002—Pub. L. 107–134 renumbered section 139 of this title as this section.

1997—Pub. L. 105–33 renumbered section 138 of this title as this section.

1996—Pub. L. 104–188 renumbered section 137 of this title as this section.

1992—Pub. L. 102–486 renumbered section 136 of this title as this section.

1991—Subsec. (a)(3). Pub. L. 102–40 substituted ''5301'' for ''3101''.

Subsec. (a)(6). Pub. L. 102–83 substituted ''1562(a)–(c)'' for ''562(a)–(c)''.

1988—Pub. L. 100–647 renumbered section 135 of this title as this section.

1986—Pub. L. 99–514 renumbered section 134 of this title as this section.

1984—Pub. L. 98–369, §§531(a)(1), 543(a), successively renumbered sections 132 and 133 of this title as this section.

Subsec. (a)(6) to (8). Pub. L. 98–369, §2661(*o*)(2), struck out par. (6) relating to railroad retirement annuities and pensions, struck out par. (7) relating to railroad unemployment benefits, and redesignated par. (8) as (6).

1983—Pub. L. 97–473 successively renumbered sections 130 and 131 of this title as this section.

1981—Pub. L. 97–34 successively renumbered sections 128 and 129 of this title as this section.

1980—Subsec. (a). Pub. L. 96–589 redesignated pars. (2) to (9) as (1) to (8), respectively. Former par. (1), relating to section 1079 of title 11 for adjustments of indebtedness under wage earners' plans, was struck out.

Subsec. (a)(8). Pub. L. 96–222 substituted ''benefits which are not includible in gross income under section 85,'' for ''benefits, see''.

1978—Pub. L. 95–600 successively renumbered sections 125, 126, and 127 of this title as this section.

Pub. L. 95–618 renumbered section 124 of this title as this section.

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(21), struck out pars. (4), (5), (6), (9), (10), (11), (12), (13), and (17) re-

[1] See References in Text note below.

lating to: benefits under World War Adjustment Compensation Act; benefits under World War Veteran's Act 1924; dividends and interest derived from certain preferred stock by Reconstruction Finance Corporation; income derived from Ogdensburg bridge; income derived from Owensburg bridge and ferries; income from Saint Clair River bridge and ferries; leave compensation payments under section 6 of Armed Forces Leave Act of 1946; mustering-out payments under Mustering-Out Payment Act of 1944; and gain derived from sale or other disposition of Treasury Bills issued after June 17, 1930, under the Second Liberty Bond Act, respectively, renumbered pars. (7), (8), (14), (15), (16), and (18) as pars. (5), (6), (7), (8), (9), and (4), respectively, struck out references to Statutes at Large, and updated cross references to the United States Code.

Subsec. (b). Pub. L. 94–455, § 1901(a)(21), struck out ''58 Stat. 689;'' after ''Health Service Act''.

1969—Pub. L. 91–172 renumbered section 123 of this title as this section.

1966—Pub. L. 89–365 renumbered section 122 of this title as this section.

1964—Pub. L. 88–272 renumbered section 121 of this title as this section.

1958—Subsec. (a)(18). Pub. L. 85–857 substituted ''section 3101 of title 38, United States Code'' for ''section 1001 of the Veterans' Benefits Act of 1957''.

1957—Subsec. (a)(18). Pub. L. 85–56 substituted provisions relating to benefits under laws administered by Veterans' Administration, for provisions which related to dependency and indemnity compensation.

1956—Subsec. (a). Act Aug. 1, 1956, added par. (18) relating to dependency and indemnity compensation.

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2661(*o*)(2) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not to apply to proceedings under Title 11 commenced before Oct. 1, 1979, see section 7 of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding Part I of Title 38, Veterans' Benefits.

PART IV—TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

Subpart

A. Private activity bonds.
B. Requirements applicable to all State and local bonds.
C. Definitions and special rules.

AMENDMENTS

1986—Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2603, in amending part IV generally, substituted ''TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS'' for ''DETERMINATION OF MARITAL STATUS'' as heading for part IV and added part analysis.

1977—Pub. L. 95–30, title I, § 101(e)(2), May 23, 1977, 91 Stat. 134, substituted ''DETERMINATION OF MARITAL STATUS'' for ''STANDARD DEDUCTION FOR INDIVIDUALS'' as heading for part IV.

SUBPART A—PRIVATE ACTIVITY BONDS

Sec.

141. Private activity bond; qualified bond.
142. Exempt facility bond.
143. Mortgage revenue bonds: qualified mortgage and qualified veterans' mortgage bond.[1]
144. Qualified small issue bond; qualified student loan bond; qualified redevelopment bond.
145. Qualified 501(c)(3) bond.
146. Volume cap.
147. Other requirements applicable to certain private activity bonds.

AMENDMENTS

1986—Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2603, in amending part IV generally, added subpart heading and analysis and struck out item 143 ''Determination of marital status''.

1977—Pub. L. 95–30, title I, § 101(e)(2), May 23, 1977, 91 Stat. 134, struck out items 141 ''Standard deduction'', 142 ''Individuals not eligible for standard deduction'', 144 ''Election of standard deduction'', and 145 ''Cross reference''.

§ 141. Private activity bond; qualified bond

(a) Private activity bond

For purposes of this title, the term ''private activity bond'' means any bond issued as part of an issue—

(1) which meets—

(A) the private business use test of paragraph (1) of subsection (b), and

(B) the private security or payment test of paragraph (2) of subsection (b), or

(2) which meets the private loan financing test of subsection (c).

(b) Private business tests

(1) Private business use test

Except as otherwise provided in this subsection, an issue meets the test of this paragraph if more than 10 percent of the proceeds of the issue are to be used for any private business use.

(2) Private security or payment test

Except as otherwise provided in this subsection, an issue meets the test of this paragraph if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly—

(A) secured by any interest in—

(i) property used or to be used for a private business use, or

(ii) payments in respect of such property, or

[1] So in original. Does not conform to section catchline.

(B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

(3) 5 percent test for private business use not related or disproportionate to government use financed by the issue

(A) In general

An issue shall be treated as meeting the tests of paragraphs (1) and (2) if such tests would be met if such paragraphs were applied—

(i) by substituting ''5 percent'' for ''10 percent'' each place it appears, and

(ii) by taking into account only—

(I) the proceeds of the issue which are to be used for any private business use which is not related to any government use of such proceeds,

(II) the disproportionate related business use proceeds of the issue, and

(III) payments, property, and borrowed money with respect to any use of proceeds described in subclause (I) or (II).

(B) Disproportionate related business use proceeds

For purposes of subparagraph (A), the disproportionate related business use proceeds of an issue is an amount equal to the aggregate of the excesses (determined under the following sentence) for each private business use of the proceeds of an issue which is related to a government use of such proceeds. The excess determined under this sentence is the excess of—

(i) the proceeds of the issue which are to be used for the private business use, over

(ii) the proceeds of the issue which are to be used for the government use to which such private business use relates.

(4) Lower limitation for certain output facilities

An issue 5 percent or more of the proceeds of which are to be used with respect to any output facility (other than a facility for the furnishing of water) shall be treated as meeting the tests of paragraphs (1) and (2) if the nonqualified amount with respect to such issue exceeds the excess of—

(A) $15,000,000, over

(B) the aggregate nonqualified amounts with respect to all prior tax-exempt issues 5 percent or more of the proceeds of which are or will be used with respect to such facility (or any other facility which is part of the same project).

There shall not be taken into account under subparagraph (B) any bond which is not outstanding at the time of the later issue or which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue.

(5) Coordination with volume cap where nonqualified amount exceeds $15,000,000

If the nonqualified amount with respect to an issue—

(A) exceeds $15,000,000, but

(B) does not exceed the amount which would cause a bond which is part of such issue to be treated as a private activity bond without regard to this paragraph,

such bond shall nonetheless be treated as a private activity bond unless the issuer allocates a portion of its volume cap under section 146 to such issue in an amount equal to the excess of such nonqualified amount over $15,000,000.

(6) Private business use defined

(A) In general

For purposes of this subsection, the term ''private business use'' means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For purposes of the preceding sentence, use as a member of the general public shall not be taken into account.

(B) Clarification of trade or business

For purposes of the 1st sentence of subparagraph (A), any activity carried on by a person other than a natural person shall be treated as a trade or business.

(7) Government use

The term ''government use'' means any use other than a private business use.

(8) Nonqualified amount

For purposes of this subsection, the term ''nonqualified amount'' means, with respect to an issue, the lesser of—

(A) the proceeds of such issue which are to be used for any private business use, or

(B) the proceeds of such issue with respect to which there are payments (or property or borrowed money) described in paragraph (2).

(9) Exception for qualified 501(c)(3) bonds

There shall not be taken into account under this subsection or subsection (c) the portion of the proceeds of an issue which (if issued as a separate issue) would be treated as a qualified 501(c)(3) bond if the issuer elects to treat such portion as a qualified 501(c)(3) bond.

(c) Private loan financing test

(1) In general

An issue meets the test of this subsection if the amount of the proceeds of the issue which are to be used (directly or indirectly) to make or finance loans (other than loans described in paragraph (2)) to persons other than governmental units exceeds the lesser of—

(A) 5 percent of such proceeds, or

(B) $5,000,000.

(2) Exception for tax assessment, etc., loans

For purposes of paragraph (1), a loan is described in this paragraph if such loan—

(A) enables the borrower to finance any governmental tax or assessment of general application for a specific essential governmental function,

(B) is a nonpurpose investment (within the meaning of section 148(f)(6)(A)), or

(C) is a qualified natural gas supply contract (as defined in section 148(b)(4)).

(d) Certain issues used to acquire nongovernmental output property treated as private activity bonds

(1) In general

For purposes of this title, the term ''private activity bond'' includes any bond issued as

part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) for the acquisition by a governmental unit of nongovernmental output property exceeds the lesser of—

(A) 5 percent of such proceeds, or

(B) $5,000,000.

(2) Nongovernmental output property

Except as otherwise provided in this subsection, for purposes of paragraph (1), the term ''nongovernmental output property'' means any property (or interest therein) which before such acquisition was used (or held for use) by a person other than a governmental unit in connection with an output facility (within the meaning of subsection (b)(4)) (other than a facility for the furnishing of water). For purposes of the preceding sentence, use (or the holding for use) before October 14, 1987, shall not be taken into account.

(3) Exception for property acquired to provide output to certain areas

For purposes of paragraph (1)—

(A) In general

The term ''nongovernmental output property'' shall not include any property which is to be used in connection with an output facility 95 percent or more of the output of which will be consumed in—

(i) a qualified service area of the governmental unit acquiring the property, or

(ii) a qualified annexed area of such unit.

(B) Definitions

For purposes of subparagraph (A)—

(i) Qualified service area

The term ''qualified service area'' means, with respect to the governmental unit acquiring the property, any area throughout which such unit provided (at all times during the 10-year period ending on the date such property is acquired by such unit) output of the same type as the output to be provided by such property. For purposes of the preceding sentence, the period before October 14, 1987, shall not be taken into account.

(ii) Qualified annexed area

The term ''qualified annexed area'' means, with respect to the governmental unit acquiring the property, any area if—

(I) such area is contiguous to, and annexed for general governmental purposes into, a qualified service area of such unit,

(II) output from such property is made available to all members of the general public in the annexed area, and

(III) the annexed area is not greater than 10 percent of such qualified service area.

(C) Limitation on size of annexed area not to apply where output capacity does not increase by more than 10 percent

Subclause (III) of subparagraph (B)(ii) shall not apply to an annexation of an area by a governmental unit if the output capacity of the property acquired in connection with the annexation, when added to the output capacity of all other property which is not treated as nongovernmental output property by reason of subparagraph (A)(ii) with respect to such annexed area, does not exceed 10 percent of the output capacity of the property providing output of the same type to the qualified service area into which it is annexed.

(D) Rules for determining relative size, etc.

For purposes of subparagraphs (B)(ii) and (C)—

(i) The size of any qualified service area and the output capacity of property serving such area shall be determined as the close of the calendar year preceding the calendar year in which the acquisition of nongovernmental output property or the annexation occurs.

(ii) A qualified annexed area shall be treated as part of the qualified service area into which it is annexed for purposes of determining whether any other area annexed in a later year is a qualified annexed area.

(4) Exception for property converted to non-output use

For purposes of paragraph (1)—

(A) In general

The term ''nongovernmental output property'' shall not include any property which is to be converted to a use not in connection with an output facility.

(B) Exception

Subparagraph (A) shall not apply to any property which is part of the output function of a nuclear power facility.

(5) Special rules

In the case of a bond which is a private activity bond solely by reason of this subsection—

(A) subsections (c) and (d) of section 147 (relating to limitations on acquisition of land and existing property) shall not apply, and

(B) paragraph (8) of section 142(a) shall be applied as if it did not contain ''local''.

(6) Treatment of joint action agencies

With respect to nongovernmental output property acquired by a joint action agency the members of which are governmental units, this subsection shall be applied at the member level by treating each member as acquiring its proportionate share of such property.

(7) Exception for qualified electric and natural gas supply contracts

The term ''nongovernmental output property'' shall not include any contract for the prepayment of electricity or natural gas which is not investment property under section 148(b)(2).

(e) Qualified bond

For purposes of this part, the term ''qualified bond'' means any private activity bond if—

(1) In general

Such bond is—

(A) an exempt facility bond,
(B) a qualified mortgage bond,
(C) a qualified veterans' mortgage bond,
(D) a qualified small issue bond,
(E) a qualified student loan bond,
(F) a qualified redevelopment bond, or
(G) a qualified 501(c)(3) bond.

(2) Volume cap

Such bond is issued as part of an issue which meets the applicable requirements of section 146, and[1]

(3) Other requirements

Such bond meets the applicable requirements of each subsection of section 147.

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2603; amended Pub. L. 100–203, title X, §10631(a), Dec. 22, 1987, 101 Stat. 1330–453; Pub. L. 100–647, title I, §1013(a)(38), Nov. 10, 1988, 102 Stat. 3544; Pub. L. 109–58, title XIII, §1327(b), (c), Aug. 8, 2005, 119 Stat. 1019.)

PRIOR PROVISIONS

A prior section 141, acts Aug. 16, 1954, ch. 736, 68A Stat. 40; Feb. 26, 1964, Pub. L. 88–272, title I, §112(a), 78 Stat. 23; Dec. 30, 1969, Pub. L. 91–172, title VIII, §802(a), (c)(4), (e), 83 Stat. 676, 678; Dec. 10, 1971, Pub. L. 92–178, title II, §§202, 203(a)–(c), title III, §301(a), 85 Stat. 511, 520; Mar. 29, 1975, Pub. L. 94–12, title II, §§201(a), 202(a), 89 Stat. 28, 29; Dec. 23, 1975, Pub. L. 94–164, §2(a)(1), (b)(1), 89 Stat. 970, 971; Oct. 4, 1976, Pub. L. 94–455, title IV, §401(b)(1), (2), title XIX, §1906(b)(13)(A), 90 Stat. 1556, 1834, provided for standard deduction, prior to repeal by Pub. L. 95–30, title I, §101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2005—Subsec. (c)(2)(C). Pub. L. 109–58, §1327(b), added subpar. (C).

Subsec. (d)(7). Pub. L. 109–58, §1327(c), added par. (7).

1988—Subsec. (b)(5)(B). Pub. L. 100–647 substituted ''cause a bond'' for ''cause bond''.

1987—Subsecs. (d), (e). Pub. L. 100–203 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1327(d), Aug. 8, 2005, 119 Stat. 1019, provided that: ''The amendments made by this section [amending this section and section 148 of this title] shall apply to obligations issued after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10631(c) of Pub. L. 100–203 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 142 and 146 of this title] shall apply to bonds issued after October 13, 1987 (other than bonds issued to refund bonds issued on or before such date).

''(2) BINDING AGREEMENTS.—The amendments made by this section shall not apply to bonds (other than advance refunding bonds) with respect to a facility acquired after October 13, 1987, pursuant to a binding contract entered into on or before such date.

''(3) TRANSITIONAL RULE.—The amendments made by this section shall not apply to bonds issued—

''(A) after October 13, 1987, by an authority created by a statute—

''(i) approved by the State Governor on July 24, 1986, and

''(ii) sections 1 through 10 of which became effective on January 15, 1987, and

''(B) to provide facilities serving the area specified in such statute on the date of its enactment.''

EFFECTIVE DATE; TRANSITIONAL RULES

Subtitle B (§§1311–1318) of title XIII of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1013(b), (c)(1), (2)(A), (3)–(11)(D), (13), (14)(A), (d), (e)(1), (2)(A), (f)(1)(A), (2)–(7)(A), (8), (9), (11), (g), (h), Nov. 10, 1988, 102 Stat. 3545–3550, 3558; Pub. L. 101–239, title VII, §7831(e), Dec. 19, 1989, 103 Stat. 2427, provided that:

''SEC. 1311. GENERAL EFFECTIVE DATES.

''(a) IN GENERAL.—Except as otherwise provided in this subtitle, the amendments made by section 1301 [enacting sections 141 to 150 and 7703 of this title, amending sections 2, 22, 25, 32, 86, 103, 105, 152, 153, 163, 194, 269A, 414, 879, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing section 103A of this title, omitting former section 143 of this title, enacting provisions set out as notes under sections 141 and 148 of this title, and amending provisions set out as a note under section 103A of this title] shall apply to bonds issued after August 15, 1986.

''(b) SECTION 1301(f).—

''(1) INCREASE IN TRADE-IN RATE.—The amendments made by paragraph (1) of section 1301(f) [amending section 25 of this title] shall apply to nonissued bond amounts elected after August 15, 1986.

''(2) CERTIFICATES.—The amendments made by paragraph (2) of section 1301(f) [amending section 25 of this title] shall apply to certificates issued with respect to non-issued bond amounts elected after August 15, 1986.

''(c) CHANGES IN USE, ETC., OF FACILITIES FINANCED WITH PRIVATE ACTIVITY BONDS.—Subsection (b) of section 150 of the 1986 Code shall apply to changes in use (and ownership) after August 15, 1986, but only with respect to financing (including refinancings) provided after such date.

''(d) PUBLIC APPROVAL AND INFORMATION REPORTING.—Sections 147(f) and 149(e) of the 1986 Code shall apply to bonds issued after December 31, 1986.

''(e) REBATE REQUIREMENT FOR QUALIFIED SCHOLARSHIP FUNDING BONDS.—Section 150(d) of the 1986 Code shall apply to payments made after August 15, 1986.

''(f) SECTION 1303.—The amendments made by section 1303 [amending sections 172, 1016, and 3402 of this title and repealing sections 1391 to 1397 and 6039B of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].

''SEC. 1312. TRANSITIONAL RULES FOR CONSTRUCTION OR BINDING AGREEMENTS AND CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.

''(a) EXCEPTION FOR CONSTRUCTION OR BINDING AGREEMENTS.—

''(1) IN GENERAL.—The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to bonds (other than a refunding bond) with respect to a facility—

''(A)(i) the original use of which commences with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before September 26, 1985, and was completed on or after such date,

''(ii) the original use of which begins with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before September 26, 1985, and some of such expenditures are incurred on or after such date, or

''(iii) acquired on or after September 26, 1985, pursuant to a binding contract entered into before such date, and

[1] So in original. Probably should end with a period after ''146''.

''(B) described in an inducement resolution or other comparable preliminary approval adopted by an issuing authority (or by a voter referendum) before September 26, 1985.

''(2) SIGNIFICANT EXPENDITURES.—For purposes of paragraph (1)(A), the term 'significant expenditures' means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

''(b) CERTAIN AMENDMENTS TO APPLY TO BONDS UNDER SUBSECTION (a) TRANSITIONAL RULE.—

''(1) IN GENERAL.—In the case of a bond issued after August 15, 1986, and to which subsection (a) of this section applies, the requirements of the following provisions shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code:

''(A) The requirement that 95 percent or more of the net proceeds of an issue are to be used for a purpose described in section 103(b)(4) or (5) of such Code in order for section 103(b)(4) or (5) of such Code to apply, including the application of section 142(b)(2) of the 1986 Code (relating to limitation on office space).

''(B) The requirement that 95 percent or more of the net proceeds of an issue are to be used for a purpose described in section 103(b)(6)(A) of the 1954 Code in order for section 103(b)(6)(A) of such Code to apply.

''(C) The requirements of section 143 of the 1986 Code (relating to qualified mortgage bonds and qualified veterans' mortgage bonds) in order for section 103A(b)(2) of the 1954 Code to apply.

''(D) The requirements of section 144(a)(11) of the 1986 Code (relating to limitation on acquisition of depreciable farm property) in order for section 103(b)(6)(A) of the 1954 Code to apply.

''(E) The requirements of section 147(b) of the 1986 Code (relating to maturity may not exceed 120 percent of economic life).

''(F) The requirements of section 147(f) of the 1986 Code (relating to public approval required for private activity bonds).

''(G) The requirements of section 147(g) of the 1986 Code (relating to restriction on issuance costs financed by issue).

''(H) The requirements of section 148 of the 1986 Code (relating to arbitrage).

''(I) The requirements of section 149(e) of the 1986 Code (relating to information reporting).

''(J) The provisions of section 150(b) of the 1986 Code (relating to changes in use).

''(2) CERTAIN REQUIREMENTS APPLY ONLY TO BONDS ISSUED AFTER DECEMBER 31, 1986.—In the case of subparagraphs (F) and (I) of paragraphs (1), paragraph (1) shall be applied by substituting 'December 31, 1986' for 'August 15, 1986'.

''(3) APPLICATION OF VOLUME CAP.—Except as provided in section 1315, any bond to which this subsection applies shall be treated as a private activity bond for purposes of section 146 of the 1986 Code if such bond would have been taken into account under section 103(n) or 103A(g) of the 1954 Code (determined without regard to any carryforward election) were such bond issued before August 16, 1986.

''(4) APPLICATION OF PROVISIONS.—For purposes of applying the requirements referred to in any subparagraph of paragraph (1) or of subsection (a)(3) or (b)(3) of section 1313 to any bond, such bond shall be treated as described in the subparagraph of section 141(d)(1) of the 1986 Code to which the use of the proceeds of such bond most closely relates.

''(c) SPECIAL RULES FOR CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.—

''(1) IN GENERAL.—In the case of any bond described in paragraph (2)—

''(A) section 1311(a) and (c) and subsection (b) of this section shall be applied by substituting 'August 31, 1986' for 'August 15, 1986' each place it appears,

''(B) subsection (b)(1) shall be applied without regard to subparagraphs (F), (G), and (J), and

''(C) such bond shall not be treated as a private activity bond for purposes of applying the requirements referred to in subparagraphs (H) and (I) of subsection (b)(1).

''(2) BOND DESCRIBED.—A bond is described in this paragraph if such bond is not—

''(A) an industrial development bond, as defined in section 103(b)(2) of the 1954 Code but determined—

''(i) by inserting 'directly or indirectly' after 'is' in the material preceding clause (i) of subparagraph (B) thereof, and

''(ii) without regard to subparagraph (B) of section 103(b)(3) of such Code,

''(B) a mortgage subsidy bond (as defined in section 103A(b)(1) of such Code, without regard to any exception from such definition), or

''(C) a private loan bond (as defined in section 103(*o*)(2)(A) of such Code, without regard to any exception from such definition other than section 103(*o*)(2)(C) of such Code).

''(d) ELECTION OUT.—This section shall not apply to any issue with respect to which the issuer elects not to have this section apply.

''SEC. 1313. TRANSITIONAL RULES RELATING TO REFUNDINGS.

''(a) CERTAIN CURRENT REFUNDINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (3), the amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any bond the proceeds of which are used exclusively to refund (other than to advance refund) a qualified bond (or a bond which is part of a series of refundings of a qualified bond) if—

''(A) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(B)(i) the average maturity of the issue of which the refunding bond is a part does not exceed 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue (determined under section 147(b) of the 1986 Code), or

''(ii) the refunding bond has a maturity date not later than the date which is 17 years after the date on which the qualified bond was issued.

In the case of a qualified bond which was (when issued) a qualified mortgage bond or a qualified veterans' mortgage bond, subparagraph (B)(i) shall not apply and subparagraph (B)(ii) shall be applied by substituting '32 years' for '17 years'.

''(2) QUALIFIED BOND.—For purposes of paragraph (1), the term 'qualified bond' means any bond (other than a refunding bond)—

''(A) issued before August 16, 1986, or

''(B) issued after August 15, 1986, if section 1312(a) applies to such bond.

''(3) CERTAIN AMENDMENTS TO APPLY.—The following provisions of the 1986 Code shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code and shall apply to refunding bonds described in paragraph (1):

''(A) The requirements of section 147(f) (relating to public approval required for private activity bonds) but only if the maturity date of the refunding bond is later than the maturity date of the refunded bond.

''(B) The requirements of section 147(g) (relating to restriction on issuance costs financed by issue).

''(C) The requirements of sections 143(g) and 148 (relating to arbitrage).

''(D) The requirements of section 149(e) (relating to information reporting).

''(E) The provisions of section 150(b) (relating to changes in use).

Subparagraphs (A) and (D) shall apply only if the refunding bond is issued after December 31, 1986. In the

case of a refunding bond described in paragraph (1) with respect to a qualified bond described in paragraph (2)(B), the requirements of section 1312(b)(1) which applied to such qualified bond shall be treated as specified in this paragraph with respect to such refunding bond.

''(4) SPECIAL RULES FOR CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.—In the case of any bond described in section 1312(c)(2)—

''(A) paragraph (2) of this subsection shall be applied by substituting 'August 31, 1986' for 'August 15, 1986' and by substituting 'September 1, 1986' for 'August 16, 1986',

''(B) paragraph (3) shall be applied without regard to subparagraphs (A), (B), and (E), and

''(C) such bond shall not be treated as a private activity bond for purposes of applying the requirements referred to in subparagraphs (C) and (D) of paragraph (3).

''(b) CERTAIN ADVANCE REFUNDINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (3), the amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any bond the proceeds of which are used exclusively to advance refund a bond if—

''(A) the refunded bond is described in paragraph (2), and

''(B) the requirements of subsection (a)(1)(B) are met.

''(2) NON-IDB'S, ETC.—A bond is described in this paragraph if such bond is not described in subsection (b)(2) or (*o*)(2)(A) of section 103 of the 1954 Code and was issued (or was issued to refund a bond issued) before August 16, 1986. For purposes of the preceding sentence, the determination of whether a bond is described in such subsection (*o*)(2)(A) shall be made without regard to any exception other than section 103(*o*)(2)(C) of such Code.

''(3) CERTAIN AMENDMENTS TO APPLY.—The following provisions of the 1986 Code shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code and shall apply to refunding bonds described in paragraph (1):

''(A) The requirements of section 147(f) (relating to public approval required for private activity bonds).

''(B) The requirements of section 147(g) (relating to restriction on issuance costs financed by issue).

''(C) The requirements of section 148 (relating to arbitrage), except that section 148(d)(3) shall not apply to proceeds of such bonds to be used to discharge the refunded bonds.

''(D) The requirements of paragraphs (3) and (4) of section 149(d) (relating to advance refundings).

''(E) The requirements of section 149(e) (relating to information reporting).

''(F) The provisions of section 150(b) (relating to changes in use).

''(G) Except as provided in the last sentence of subsection (c)(2) of this section, the requirements of section 145(b) (relating to $150,000,000 limitation on bonds other than hospital bonds).

Subparagraphs (A) and (E) shall apply only if the refunding bond is issued after December 31, 1986.

''(4) SPECIAL RULE FOR CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.—In the case of any bond described in section 1312(c)(2)—

''(A) paragraph (2) of this subsection shall be applied by substituting 'September 1, 1986' for 'August 16, 1986',

''(B) paragraph (3) shall be applied without regard to subparagraphs (A), (B), and (F), and

''(C) such bond shall not be treated as a private activity bond for purposes of applying the requirements referred to in subparagraphs (C) and (E).

''(5) CERTAIN REFUNDING BONDS SUBJECT TO VOLUME CAP.—Any refunding bond described in paragraph (1) the proceeds of which are used to refund a bond issued as part of an issue 5 percent or more of the net proceeds of which are or will be used to provide an output facility (within the meaning of section 141(b)(4) of the 1986 Code) shall be treated as a private activity bond for purposes of section 146 of the 1986 Code (to the extent of the nongovernmental use of such issue, under rules similar to the rules of section 146(m)(2) of such Code). For purposes of the preceding sentence, use by a 501(c)(3) organization with respect to its activities which do not constitute unrelated trades or businesses (determined by applying section 513(a) of the 1986 Code) shall not be taken into account.

''(c) TREATMENT OF CERTAIN REFUNDINGS OF CERTAIN IDB'S AND 501(c)(3) BONDS.—

''(1) $40,000,000 LIMIT FOR CERTAIN SMALL ISSUE BONDS.—Paragraph (10) of section 144(a) of the 1986 Code shall not apply to any bond (or series of bonds) the proceeds of which are used exclusively to refund a tax-exempt bond to which such paragraph and the corresponding provision of prior law did not apply if—

''(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

''(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A) of the 1986 Code.

''(2) $150,000,000 LIMITATION FOR CERTAIN 501(c)(3) BONDS.—Subsection (b) of section 145 of the 1986 Code (relating to $150,000,000 limitation for nonhospital bonds) shall not apply to any bond (or series of bonds) the proceeds of which are used exclusively to refund a tax-exempt bond to which such subsection did not apply if—

''(A)(i) the average maturity of the issue of which the refunding bond is a part does not exceed 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue (determined under section 147(b) of the 1986 Code), or

''(ii) the refunding bond has a maturity date not later than the later of the date which is 17 years after the date on which the qualified bond (as defined in subsection (a)(2)) was issued, and

''(B) the requirements of subparagraphs (B) and (C) of paragraph (1) are met with respect to the refunding bond.

Subsection (b) of section 145 of the 1986 Code shall not apply to the 1st advance refunding after March 14, 1986, of a bond issued before January 1, 1986.

''(3) APPLICATION TO LATER ISSUES.—Any bond to which section 144(a)(10) or 145(b) of the 1986 Code does not apply by reason of this section shall be taken into account in determining whether such section applies to any later issue.

''(d) MORTGAGE AND STUDENT LOAN TARGETING RULES TO APPLY TO LOANS MADE MORE THAN 3 YEARS AFTER THE DATE OF THE ORIGINAL ISSUE.—Subsections (a)(3) and (b)(3) shall be treated as including the requirements of subsections (e) and (f) of section 143 and paragraphs (3) and (4) of section 144(b) of the 1986 Code with respect to bonds the proceeds of which are used to finance loans made more than 3 years after the date of the issuance of the original bond.

''SEC. 1314. SPECIAL RULES WHICH OVERRIDE OTHER RULES IN THIS SUBTITLE.

''(a) ARBITRAGE RESTRICTION ON INVESTMENTS IN ANNUITIES.—In the case of a bond issued after September 25, 1985, section 103(c) of the 1954 Code shall be applied by treating the reference to securities in paragraph (2) thereof as including a reference to an annuity contract. The preceding sentence shall not apply to the first advance refunding after September 25, 1985, if a bond issued before September 26, 1985.

''(b) TEMPORARY PERIOD FOR ADVANCE REFUNDINGS.—In the case of a bond issued after December 31, 1985, to advance refund a bond, the initial temporary period under section 103(c) of the 1954 Code with respect to the proceeds of the refunding bond shall end not later than 30 days after the date of issue of the refunding bond.

''(c) DETERMINATION OF YIELD.—In the case of a bond issued after December 31, 1985, for purposes of section 103(c) of the 1954 Code, the yield on an issue shall be determined on the basis of the issue price (within the meaning of sections 1273 and 1274 of the 1986 Code).

''(d) ARBITRAGE REBATE REQUIREMENT.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, in the case of a bond issued after December 31, 1985, section 103 of the 1954 Code shall be treated as including the requirements of section 148(f) of the 1986 Code in order for section 103(a) of the 1954 Code to apply.

''(2) GOVERNMENT BONDS.—In the case of a bond described in section 1312(c)(2) (and not described in paragraph (3) of this subsection), paragraph (1) shall be applied by substituting 'August 31, 1986' for 'December 31, 1985'.

''(3) CERTAIN POOLS.—

''(A) IN GENERAL.—In the case of a bond described in section 1312(c)(2) and issued as part of an issue described in subparagraph (B), (C), (D), or (E), paragraph (1) shall be applied by substituting '3 p.m. E.D.T., July 17, 1986' for 'December 31, 1985'. Such a bond shall not be treated as a private activity bond for purposes of applying section 148(f) of the 1986 Code.

''(B) LOANS TO UNRELATED GOVERNMENTAL UNITS.—An issue is described in this subparagraph if any portion of the proceeds of the issue is to be used to make or finance loans to any governmental unit other than any governmental unit which is subordinate to the issuer and the jurisdiction of which is within—

''(i) the jurisdiction of the issuer, or

''(ii) the jurisdiction of the governmental unit on behalf of which such issuer issued the issue.

''(C) LESS THAN 75 PERCENT OF PROJECTS IDENTIFIED.—An issue is described in this subparagraph if less than 75 percent of the proceeds of the issue is to be used to make or finance loans to initial borrowers to finance projects identified (with specificity) by the issuer, on or before the date of issuance of the issue, as projects to be financed with the proceeds of the issue.

''(D) LESS THAN 25 PERCENT OF FUNDS COMMITTED TO BE BORROWED.—An issue is described in this subparagraph if, on or before the date of issuance of the issue, commitments have not been entered into by initial borrowers to borrow at least 25 percent of the proceeds of the issue.

''(E) CERTAIN LONG MATURITY ISSUES.—An issue is described in this subparagraph if—

''(i) the maturity date of any bond issued as part of such issue exceeds 30 years, and

''(ii) any principal payment on any loan made or financed by the proceeds of the issue is to be used to make or finance additional loans.

''(F) SPECIAL RULES.—

''(i) EXCEPTION FROM SUBPARAGRAPHS (C) AND (D) WHERE SIMILAR POOLS ISSUED BY ISSUER.—An issue shall not be treated as described in subparagraph (C) or (D) with respect to any issue to make or finance loans to governmental units if—

''(I) the issuer, before 1986, issued 1 or more similar issues to make or finance loans to governmental units, and

''(II) the aggregate face amount of such issues issued during 1986 does not exceed 250 percent of the average of the annual aggregate face amounts of such similar issues issued during 1983, 1984, or 1985.

''(ii) DETERMINATION OF ISSUANCE.—For purposes of subparagraph (A), an issue shall not be treated as issued until—

''(I) the bonds issued as part of such issue are offered to the public (pursuant to final offering materials), and

''(II) at least 25 percent of such bonds is sold to the public.

For purposes of the preceding sentence, the sale of a bond to a securities firm, broker, or other person acting in the capacity of an underwriter or wholesaler shall not be treated as a sale to the public.

''(e) INFORMATION REPORTING.—In the case of a bond issued after December 31, 1986, nothing in section 103(a) of the 1986 Code or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond unless such bond satisfies the requirements of section 149(e) of the 1986 Code. A bond described in section 1312(c)(2) shall not be treated as a private activity bond for purposes of applying such requirements.

''(f) ABUSIVE TRANSACTION LIMITATION ON ADVANCE REFUNDINGS TO APPLY.—In the case of a bond issued after August 31, 1986, nothing in section 103(a) of the 1986 Code or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond if the issue of which such bond is a part is described in paragraph (4) of section 149(d) of the 1986 Code (relating to abusive transactions).

''(g) TERMINATION OF MORTGAGE BOND POLICY STATEMENT REQUIREMENT.—Paragraph (5) of section 103A(j) of the 1954 Code (relating to policy statement) shall not apply to any bond issued after August 15, 1986, and shall not apply to nonissued bond amounts elected under section 25 of the 1986 Code after such date.

''(h) ARBITRAGE RESTRICTION ON INVESTMENTS IN INVESTMENT-TYPE PROPERTY.—In the case of a bond issued before August 16, 1986 (September 1, 1986 in the case of a bond described in section 1312(c)(2)), section 103(c) of the 1954 Code shall be applied by treating the reference to securities in paragraph (2) thereof as including a reference to investment-type property but only for purposes of determining whether any bond issued after October 16, 1987, to advance refund such bond (or a bond which is part of a series of refundings of such bond) is an arbitrage bond (within the meaning of section 148(a) of the 1986 Code).

''(i) SECTION TO OVERRIDE OTHER RULES.—Except as otherwise expressly provided by reference to a provision to which a subsection of this section applies, nothing in any other section of this subtitle shall be construed as exempting any bond from the application of such provision.

''SEC. 1315. TRANSITIONAL RULES RELATING TO VOLUME CAP.

''(a) IN GENERAL.—Except as otherwise provided in this section, section 146(f) of the 1986 Code shall not apply with respect to an issuing authority's volume cap under section 103(n) of the 1954 Code, and no carryforward under such section 103(n) shall be recognized for bonds issued after August 15, 1986.

''(b) CERTAIN BONDS FOR CARRYFORWARD PROJECTS OUTSIDE OF VOLUME CAP.—Bonds issued pursuant to an election under section 103(n)(10) of the 1954 Code (relating to elective carryforward of unused limitation for specified project) made before November 1, 1985, shall not be taken into account under section 146 of the 1986 Code if the carryforward project is a facility to which the amendments made by section 1301 [for classification see section 1311(a) of this note] do not apply by reason of section 1312(a) of this Act.

''(c) VOLUME CAP NOT TO APPLY WITH RESPECT TO CERTAIN FACILITIES AND PURPOSES.—Section 146 of the 1986 Code shall not apply to any bond issued with respect to any facility or purpose described in a paragraph of subsection (d) if—

''(1) such bond would not have been taken into account under section 103(n) of the 1954 Code for calendar year 1986 (determined without regard to any carryforward election) were such bond issued on August 15, 1986, or

''(2) such bond would not have been taken into account under section 103(n) of the 1954 Code for calendar year 1986 (determined with regard to any carryforward election made before January 1, 1986) were such bond issued on August 15, 1986.

The preceding sentence shall not apply to the extent section 1313(b)(5) treats any bond as a private activity bond for purposes of section 146 of the 1986 Code.

''(d) FACILITIES AND PURPOSES DESCRIBED.—

''(1) A facility is described in this paragraph if the amendments made by section 201 of this Act [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] (relating to depreciation) do not apply to such facility by reason of section 204(a)(8) of this Act [set out as a note under section 168 of this title] (or, in the case of a facility which is governmentally owned, would not apply to such facility were it owned by a nongovernmental person).

''(2) A facility or purpose is described in this paragraph if the facility or purpose is described in a paragraph of section 1317.

''(3) A facility is described in this paragraph if the facility—

''(A) serves Los Osos, California, and

''(B) would be described in paragraph (1) were it a solid waste disposal facility.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $35,000,000.

''(4) A facility is described in this paragraph if it is a sewage disposal facility with respect to which—

''(A) on September 13, 1985, the State public facilities authority took official action authorizing the issuance of bonds for such facility, and

''(B) on December 30, 1985, there was an executive order of the State Governor granting allocation of the State ceiling under section 103(n) of the 1954 Code in the amount of $250,000,000 to the Industrial Development Board of the Parish of East Baton Rouge, Louisiana.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $98,500,000.

''(5) A facility is described in this paragraph if—

''(A) such facility is a solid waste disposal facility in Charleston, South Carolina, and

''(B) a State political subdivision took formal action on April 1, 1980, to commit development funds for such facility.

For purposes of determining whether a bond issued as part of an issue for a facility described in the preceding sentence is an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code, '90 percent' shall be substituted for '95 percent' in section 142(a) of the 1986 Code.

''The aggregate face amount of bonds to which this paragraph applies shall not exceed $75,000,000.

''(6) A facility is described in this paragraph if—

''(A) such facility is a wastewater treatment facility for which site preparation commenced before September 1985, and

''(B) a parish council approved a service agreement with respect to such facility on December 4, 1985.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $120,000,000.

''(e) TREATMENT OF REDEVELOPMENT BONDS.—Any bond to which section 1317(6) of this Act applies shall be treated for purposes of this section as described in subsection (c)(1). The preceding sentence shall not apply to any bond which (if issued on August 15, 1986) would have been an industrial development bond (as defined in section 103(b)(2) of the 1954 Code).

''SEC. 1316. PROVISIONS RELATING TO CERTAIN ESTABLISHED STATE PROGRAMS.

''(a) CERTAIN LOANS TO VETERANS FOR THE PURCHASE OF LAND.—

''(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code, but subsections (a), (b), (c), and (d) of section 147 of such Code shall not apply to such bond.

''(2) BOND DESCRIBED.—A bond is described in this paragraph if—

''(A) such bond is a private activity bond solely by reason of section 141(c) of such Code, and

''(B) such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to carry out a program established under State law to provide loans to veterans for the purchase of land and which has been in effect in substantially the same form during the 30-year period ending on July 18, 1984, but only if such proceeds are used to make loans or to fund similar obligations—

''(i) in the same manner in which,

''(ii) in the same (or lesser) amount or multiple of acres per participant, and

''(iii) for the same purposes for which,

such program was operated on March 15, 1984.

''(b) RENEWABLE ENERGY PROPERTY.—

''(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code.

''(2) BOND DESCRIBED.—A bond is described in this paragraph if paragraph (1) of section 103(b) of the 1954 Code would not (without regard to the amendments made by this title) have applied to such bond by reason of section 243 of the Crude Oil Windfall Profit Tax Act of 1980 [section 243 of Pub. L. 96–223, set out as a note under section 103 of this title] if—

''(A) such section 243 were applied by substituting '95 percent or more of the net proceeds' for 'substantially all of the proceeds' in subsection (a)(1) thereof, and

''(B) subparagraph (E) of subsection (a)(1) thereof referred to section 149(b) of the 1986 Code.

''(c) CERTAIN STATE PROGRAMS.—

''(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code.

''(2) BOND DESCRIBED.—A bond is described in this paragraph if such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to carry out a program established under sections 280A, 280B, and 280C of the Iowa Code, but only if—

''(A) such program has been in effect in substantially the same form since July 1, 1983, and

''(B) such proceeds are to be used to make loans or fund similar obligations for the same purposes as permitted under such program on July 1, 1986.

''(3) $100,000,000 LIMITATION.—The aggregate face amount of outstanding bonds to which this subsection applies shall not exceed $100,000,000.

''(4) APPLICATION OF SECTION 147(b).—A bond to which this subsection applies (other than a refunding bond) shall be treated as meeting the requirements of section 147(b) of the 1986 Code if the average maturity (determined in accordance with section 147(b)(2)(A) of such Code) of the issue of which such bond is a part does not exceed 20 years. A bond issued to refund (or which is part of a series of bonds issued to refund) a bond described in the preceding sentence shall be treated as meeting the requirements of such section if the refunding bond has a maturity date not later than the date which is 20 years after the date on which the original bond was issued.

''(d) USE BY CERTAIN FEDERAL INSTRUMENTALITIES TREATED AS USE BY GOVERNMENTAL UNITS.—Use by an instrumentality of the United States shall be treated as use by a State or local governmental unit for purposes of section 103, and part IV of subchapter B of chapter 1, of the 1986 Code with respect to a program approved by Congress before August 3, 1972, but only if—

''(1) a portion of such program has been financed by bonds issued before such date, to which section 103(a)

of the 1954 Code applied pursuant to a ruling issued by the Commissioner of the Internal Revenue Service, and

''(2) construction of 1 or more facilities comprising a part of such program commenced before such date.

''(e) REFUNDING PERMITTED OF CERTAIN BONDS INVESTED IN FEDERALLY INSURED DEPOSITS.—

''(1) IN GENERAL.—Section 149(b)(2)(B)(ii) of the 1986 Code (and section 103(h)(2)(B)(ii) of the 1954 Code) shall not apply to any bond issued to refund a bond—

''(A) which, when issued, would have been treated as federally guaranteed by reason of being described in clause (ii) of section 103(h)(2)(B) of the 1954 Code if such section had applied to such bond, and

''(B)(i) which was issued before April 15, 1983, or

''(ii) to which such clause did not apply by reason of the except clause in section 631(c)(2) of the Tax Reform Act of 1984 [section 631(c)(2) of Pub. L. 98–369, set out as a note under section 103 of this title].

Section 147(c) of the 1986 Code (and section 103(b)(16) of the 1954 Code) shall not apply to any refunding bond permitted under the preceding sentence if section 103(b)(16) of the 1954 Code did not apply to the refunded bond when issued.

''(2) REQUIREMENTS.—A refunding bond meets the requirements of this paragraph if—

''(A) the refunding bond has a maturity date not later than the maturity date of the refunded bond,

''(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond,

''(C) the weighted average interest rate on the refunding bond is lower than the weighted average interest rate on the refunded bond, and

''(D) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

''(f) CERTAIN HYDROELECTRIC GENERATING PROPERTY.—

''(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code.

''(2) DESCRIPTION.—A bond is described in this paragraph if such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a facility described in section 103(b)(4)(H) of the 1954 Code determined—

''(A) by substituting 'an application for a license' for 'an application' in section 103(b)(8)(E)(ii) of the 1954 Code, and

''(B) by applying the requirements of section 142(b)(2) of the 1986 Code.

''(g) TREATMENT OF BONDS SUBJECT TO TRANSITIONAL RULES UNDER TAX REFORM ACT OF 1984.—

''(1) Subsections (d)(3) and (f) of section 148 of the 1986 Code shall not apply to any bond described in section 624(c)(2) of the Tax Reform Act of 1984 [section 624(c)(2) of Pub. L. 98–369, set out as a note under section 103 of this title].

''(2)(A) There shall not be taken into account under section 146 of the 1986 Code any bond issued to provide a facility described in paragraph (3) of section 631(a) of the Tax Reform Act of 1984 [section 631(a)(3) of Pub. L. 98–369, set out as a note under section 103 of this title] relating to exception for certain bonds for a convention center and resource recovery project.

''(B) If a bond issued as part of an issue substantially all of the proceeds of which are used to provide the convention center to which such paragraph (3) applies, such bond shall be treated as an exempt facility bond as defined in section 142(a) of the 1986 Code.

''(C) If a bond which is issued as part of an issue substantially all of the proceeds of which are used to provide the resource recovery project to which such paragraph (3) applies, such bond shall be treated as an exempt facility bond as defined in section 142(a) of the 1986 Code and section 149(b) of such Code shall not apply.

''(3) The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to bonds issued to finance any property described in section 631(d)(4) of the Tax Reform Act of 1984 [section 631(d)(4) of Pub. L. 98–369, set out as a note under section 103 of this title].

''(4) The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to—

''(A) any bond issued to finance property described in section 631(d)(5) of the Tax Reform Act of 1984 [section 631(d)(5) of Pub. L. 98–369, set out as a note under section 103 of this title],

''(B) any bond described in paragraph (2), (3), (4), (5), (6), or (7) of section 632(a), or section 632(b), of such Act [Pub. L. 98–369, div. A, title VI, § 632, July 18, 1984, 98 Stat. 937], and

''(C) any bond to which section 632(g)(2) of such Act applies.

In the case of bonds to which this paragraph applies, the requirements of sections 148 and 149(d) shall be treated as included in section 103 of the 1954 Code and shall apply to such bonds.

''(5) The preceding provisions of this subsection shall not apply to any bond issued after December 31, 1988.

''(6) The amendments made by section 1301 [for classification see section 1311(a) of this note] (and the provisions of section 1314) shall not apply to any bond issued to finance property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 216(b)(3) of Pub. L. 97–248, set out as a note under section 168 of this title].

''(7) In the case of a bond described in section 632(d) of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A, title VI, § 632(d), July 18, 1984, 98 Stat. 938]—

''(A) section 141 of the 1986 Code shall be applied without regard to subsection (a)(2) and paragraphs (4) and (5) of subsection (b),

''(B) paragraphs (1) and (2) of section 141(b) of the 1986 Code shall be applied by substituting '25 percent' for '10 percent' each place it appears, and

''(C) section 149(b) of the 1986 Code shall not apply.

This paragraph shall not apply to any bond issued after December 31, 1990.

''(8)(A) The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any bond to which section 629(a)(1) of the Tax Reform Act of 1984 [section 629(a)(1) of Pub. L. 98–369, set out as a note under section 103 of this title] applies, but such bond shall be treated as a private activity bond for purposes of section 146 of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code.

''(B) Section 629 of the Tax Reform Act of 1984 [section 629 of Pub. L. 98–369, set out as a note under section 103 of this title] is amended—

''(i) in subsection (c)(2), by striking out '$625,000,000' and inserting in lieu thereof '$911,000,000',

''(ii) in subsection (c)(3), by adding at the end thereof the following new subparagraphs:

'''(D) Improvements to existing generating facilities.

'''(E) Transmission lines.

'''(F) Electric generating facilities.', and

''(iii) in subsection (a), by adding at the end thereof the following new sentence: 'The preceding sentence shall be applied by inserting ''and a rural electric cooperative utility'' after ''regulated public utility'' but only if not more than 1 percent of the load of the public power authority is sold to such rural electric cooperative utility.'

''(h) CERTAIN POLLUTION BONDS.—Any bond which is treated as described in section 103(b)(4)(F) of the 1954 Code by reason of section 13209 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272,

title XIII, §13209, Apr. 7, 1986, 100 Stat. 322] shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code, and section 147(d) of the 1986 Code shall not apply to such bond.

''(i) TRANSITION RULE FOR AGGREGATE LIMIT PER TAXPAYER.—For purposes of section 144(a)(10) of the 1986 Code, tax increment bonds described in section 1869(c)(3) of this Act [set out as a note under section 103 of this title] which are issued before August 16, 1986, shall not be taken into account under subparagraph (B)(ii) thereof.

''(j) EXTENSION OF ADVANCE REFUNDING EXCEPTION FOR QUALIFIED PUBLIC FACILITY.—Paragraph (4) of section 631(c) of the Tax Reform Act of 1984 [section 631(c)(4) of Pub. L. 98–369, set out as a note under section 103 of this title] is amended—

''(1) by striking out 'or the Dade County, Florida, airport' in the last sentence, and

''(2) by adding at the end thereof the following new sentence: 'In the case of refunding obligations not to exceed $100,000,000 issued after October 21, 1986, by Dade County, Florida, for the purpose of advance refunding its Aviation Revenue Bonds (Series J), the first sentence of this paragraph shall be applied by substituting ''the date which is 1 year after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988'' [Nov. 10, 1988] for ''December 31, 1984'' and the amendments made by section 1301 of the Tax Reform Act of 1986 shall not apply.'

''(k) EXPANSION OF EXCEPTION FOR RIVER PLACE PROJECT.—Section 1104 of the Mortgage Subsidy Bond Tax Act of 1980 [section 1104 of Pub. L. 96–499, formerly set out as a note under section 103A of this title], as added by the Tax Reform Act of 1984, is amended—

''(1) by striking out 'December 31, 1984,' in subsection (p) and inserting in lieu thereof 'December 31, 1984 (other than obligations described in subsection (r)(1)),', and

''(2) by striking out '$55,000,000,' in subsection (r)(1)(B) and inserting in lieu thereof '$110,000,000 of which no more than $55,000,000 shall be outstanding later than November 1, 1987'.

''SEC. 1317. TRANSITIONAL RULES FOR SPECIFIC FACILITIES.

''(1) DOCKS AND WHARVES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any dock or wharf (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond (for a facility described in section 142(a)(2) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such dock or wharf is described in any of the following subparagraphs:

''(A) A dock or wharf is described in this subparagraph if—

''(i) the issue to finance such dock or wharf was approved by official city action on September 3, 1985, and by voters on November 5, 1985, and

''(ii) such dock or wharf is for a slack water harbor with respect to which a Corps of Engineers grant of approximately $2,000,000 has been made under section 107 of the Rivers and Harbors Act [33 U.S.C. 577].

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $2,500,000.

''(B) A dock or wharf is described in this subparagraph if—

''(i) inducement resolutions were adopted on May 23, 1985, September 18, 1985, and September 24, 1985, for the issuance of the bonds to finance such dock or wharf,

''(ii) a harbor dredging contract with respect thereto was entered into on August 2, 1985, and

''(iii) a construction management and joint venture agreement with respect thereto was entered into on October 1, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $625,000,000.

''(C) A facility is described in this subparagraph if—

''(i) the legislature first authorized on June 29, 1981, the State agency issuing the bond to issue at least $30,000,000 of bonds,

''(ii) the developer of the facility was selected on April 26, 1985, and

''(iii) an inducement resolution for the issuance of such issue was adopted on October 9, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

''(D) A facility is described in this subparagraph if—

''(i) an inducement resolution was adopted on October 17, 1985, for such issue, and

''(ii) the city council for the city in which the facility is to be located approved on July 30, 1985, an application for an urban development action grant with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $36,500,000. A facility shall be treated as described in this subparagraph if it would be so described if '90 percent' were substituted for '95 percent' in the material preceding subparagraph (A) of this paragraph.

''(2) POLLUTION CONTROL FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide air or water pollution control facilities (within the meaning of section 103(b)(4)(F) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if—

''(i) inducement resolutions with respect to such facility were adopted on September 23, 1974, and on April 5, 1985,

''(ii) a bond resolution for such facility was adopted on September 6, 1985, and

''(iii) the issuance of the bonds to finance such facility was delayed by action of the Securities and Exchange Commission (file number 70–7127).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $120,000,000.

''(B) A facility is described in this subparagraph if—

''(i) there was an inducement resolution for such facility on November 19, 1985, and

''(ii) design and engineering studies for such facility were completed in March of 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

''(C) A facility is described in this subparagraph if—

''(i) a resolution was adopted by the county board of supervisors pertaining to an issuance of bonds with respect to such facility on April 10, 1974, and

''(ii) such facility was placed in service on June 12, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000. For purposes of this subparagraph, a pollution control facility includes a sewage or solid waste disposal facility (within the meaning of section 103(b)(4)(E) of the 1954 Code).

''(D) A facility is described in this subparagraph if—

''(i) the issuance of the bonds for such facility was approved by a State agency on August 22, 1979, and

''(ii) the authority to issue such bonds was scheduled to expire (under terms of the State approval) on August 22, 1989.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $198,000,000.

''(E) A facility is described in this subparagraph if—

''(i) such facility is 1 of 4 such facilities in 4 States with respect to which the Ball Corporation transmitted a letter of intent to purchase such facilities on February 26, 1986, and

''(ii) inducement resolutions were issued on December 30, 1985, January 15, 1986, January 22, 1986, and March 17, 1986 with respect to bond issuance in the 4 respective States.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $6,000,000.

''(F) A facility is described in this subparagraph if—

''(i) inducement resolutions for bonds with respect to such facility were adopted on September 27, 1977, May 27, 1980, and October 8, 1981, and

''(ii) such facility is located at a geothermal power complex owned and operated by a single investor-owned utility.

For purposes of this subparagraph and section 103 of the 1986 Code, all hydrogen sulfide air and water pollution control equipment, together with functionally related and subordinate equipment and structures, located or to be located at such power complex shall be treated as a single pollution control facility. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $600,000,000.

''(G) A facility is described in this subparagraph if—

''(i) such facility is an air pollution control facility approved by a State bureau of pollution control on July 10, 1986, and by a State board of economic development on July 17, 1986, and

''(ii) on August 15, 1986, the State bond attorney gave notice to the clerk to initiate validation proceedings with respect to such issue and on August 28, 1986, the validation decree was entered.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $900,000.

''(I) A facility is described in this subparagraph if—

''(i) a private company met with a State air control board on November 14, 1985, to propose construction of a sulften unit, and

''(ii) the sulften unit is being constructed under a letter of intent to construct which was signed on April 8, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $11,000,000.

''(J) A facility is described in this subparagraph if it is part of a 250 megawatt coal-fired electric plant in northeastern Nevada on which the Sierra Pacific Power Company, a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

''(K) A facility is described in this subparagraph if—

''(i) there was an inducement resolution adopted by a State industrial development authority on January 14, 1976, and

''(ii) such facility is named in a resolution of such authority relating to carryforward of the State's unused 1985 private activity bond limit passed by such industrial development authority on December 18, 1985.

This subparagraph shall apply only to obligations issued at the request of the party pursuant to whose request the January 14, 1976, inducement was given. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(L) A facility is described in this subparagraph if a city council passed an ordinance (ordinance number 4626) agreeing to issue bonds for such project, December 16, 1985. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $45,000,000.

''(3) SPORTS FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide sports facilities (within the meaning of section 103(b)(4)(B) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facilities are described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if it is a stadium—

''(i) which was the subject of a city ordinance passed on September 23, 1985,

''(ii) for which a loan of approximately $4,000,000 for land acquisition was approved on October 28, 1985, by the State Controlling Board, and

''(iii) a stadium operating corporation with respect to which was incorporated on March 20, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

''(B) A facility is described in this subparagraph if—

''(i) it is a stadium with respect to which a lease agreement for the ground on which the stadium is to be built was entered into between a county and the stadium corporation for such stadium on July 3, 1984,

''(ii) there was a resolution approved on November 14, 1984, by an industrial development authority setting forth the terms under which the bonds to be issued to finance such stadium would be issued, and

''(iii) there was an agreement for consultant and engineering services for such stadium entered into on September 28, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000.

''(C) A facility is described in this subparagraph if—

''(i) it is one or more stadiums to be used either by an American League baseball team or a National Football League team currently using a stadium in a city having a population in excess of 2,500,000 and described in section 146(d)(3) of the 1986 Code,

''(ii) the bonds to be used to provide financing for one or more such stadiums are issued by a political subdivision or a State agency pursuant to a resolution approving an inducement resolution adopted by a State agency on November 20, 1985, as it may be amended (whether or not the beneficiaries of such issue or issues are the beneficiaries (if any) specified in such inducement resolution and whether or not the number of such stadiums and the locations thereof are as specified in such inducement resolution) or pursuant to P.A. 84–1470 of the State in which such city is located (and by an agency created thereby), and

''(iii) such stadium or stadiums are located in the city described in (i).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000. In the case of any carryforward of volume cap for one or more stadiums described in the first sentence of this subparagraph, such carryforward shall be valid with respect to bonds issued for such stadiums notwithstanding any other provision of the 1986 Code or the 1954 Code, and whether or not (i) there is a change in the number of stadiums or the beneficiaries or sites of the stadium or stadiums and (ii) the bonds are issued by either of the state agencies described in the first sentence of this subparagraph.

''(D) A facility is described in this subparagraph if—

''(i) such facility is a stadium or sports arena for Memphis, Tennessee,

''(ii) there was an inducement resolution adopted on November 12, 1985, for the issuance of bonds to expand or renovate an existing stadium and sports arena and/or to construct a new arena, and

''(iii) the city council for such city adopted a resolution on April 19, 1983, to include funds in the capital budget of the city for such facility or facilities.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $35,000,000.

''(E) A facility is described in this subparagraph if such facility is a baseball stadium located in Bergen, Essex, Union, Middlesex, or Hudson County, New Jersey with respect to which governmental action occurred on November 7, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

''(F) A facility is described in this subparagraph if—

''(i) it is a facility with respect to which—

''(I) an inducement resolution dated December 24, 1985, was adopted by the county industrial development authority,

''(II) a public hearing of the county industrial development authority was held on February 6, 1986, regarding such facility, and

''(III) a contract was entered into by the county, dated February 19, 1986, for engineering serv-

ices for a highway improvement in connection with such project, or

''(ii) it is a domed football stadium adjacent to Cervantes Convention Center in St. Louis, Missouri, with respect to which a proposal to evaluate market demand, financial operations, and economic impact was dated May 9, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $175,000,000.

''(G) A project to provide a roof or dome for an existing sports facility is described in this subparagraph if—

''(i) in December 1984 the county sports complex authority filed a carryforward election under section 103(n) of the 1954 Code with respect to such project,

''(ii) in January 1985, the State authorized issuance of $30,000,000 in bonds in the next 3 years for such project, and

''(iii) an 11-member task force was appointed by the county executive in June 1985, to further study the feasibility of the project.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $30,000,000.

''(H) A sports facility renovation or expansion project is described in this subparagraph if—

''(i) an amendment to the sports team's lease agreement for such facility was entered into on May 23, 1985, and

''(ii) the lease agreement had previously been amended in January 1976, on July 6, 1984, on April 1, 1985, and on May 7, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

''(I) A facility is described in this subparagraph if—

''(i) an appraisal for such facility was completed on March 6, 1985,

''(ii) an inducement resolution was adopted with respect to such facility on June 7, 1985, and

''(iii) a State bond commission granted preliminary approval for such project on September 3, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $3,200,000.

''(J) A sports facility renovation or expansion project is described in this subparagraph if—

''(i) such facility is a domed stadium which commenced operations in 1965,

''(ii) such facility has been the subject of an ongoing construction, expansion, or renovation program of planned improvements,

''(iii) part 1 of such improvements began in 1982 with a preliminary renovation program financed by tax-exempt bonds,

''(iv) part 2 of such program was previously scheduled for a bond election on February 25, 1986, pursuant to a Commissioners Court Order of November 5, 1985, and

''(v) the bond election for improvements to such facility was subsequently postponed on December 10, 1985, in order to provide for more comprehensive construction planning.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(K) A facility is described in this subparagraph if—

''(i) the 1985 State legislature appropriated a maximum sum of $22,500,000 to the State urban development corporation to be made available for such project, and

''(ii) a development and operation agreement was entered into among such corporation, the city, the State budget director, and the county industrial development agency, as of March 1, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $28,000,000.

''(L) A facility is described in this subparagraph if—

''(i) it is to consist of 1 or 2 stadiums appropriate for football games and baseball games with related structures and facilities,

''(ii) governmental action was taken on August 7, 1985, by the county commission, and on December 19, 1985, by the city council, concerning such facility, and

''(iii) such facility is located in a city having a National League baseball team.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

''(M) A facility is described in this subparagraph if—

''(i) such facility consists of 1 or 2 stadium projects (1 of which may be a stadium renovation or expansion project) with related structures and facilities,

''(ii) a special advisory commission commissioned a study by a national accounting firm with respect to a project for such facility, which study was released in September 1985, and recommended construction of either a new multipurpose or a new baseball-only stadium,

''(iii) a nationally recognized design and architectural firm released a feasibility study with respect to such project in April 1985, and

''(iv) the metropolitan area in which the facility is located is presently the home of an American League baseball team.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

''(N) A facility is described in this subparagraph if—

''(i) it is to consist of 1 or 2 stadiums appropriate for football games and baseball games with related structures and facilities,

''(ii) the site for such facility was approved by the council of the city in which such facility is to be located on July 9, 1985, and

''(iii) the request for proposals process was authorized by the council of the city in which such facility is to be located on November 5, 1985, and such requests were distributed to potential developers on November 15, 1985, with responses due by February 14, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

''(O) A facility is described in this subparagraph if—

''(i) such facility is described in a feasibility study dated September 1985, and

''(ii) resolutions were adopted or other actions taken on February 21, 1985, July 18, 1985, August 8, 1985, October 17, 1985, and November 7, 1985, by the Board of Supervisors of the county in which such facility will be located with respect to such feasibility study, appropriations to obtain land for such facility, and approving the location of such facility in the county.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

''(P) A facility is described in this subparagraph if such facility constructed on a site acquired with the sale of revenue bonds authorized by a city council on December 2, 1985, (Ordinances No. 669 and 670, series 1985). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000.

''(Q) A facility is described in this subparagraph if—

''(i) resolutions were adopted approving a ground lease dated June 27, 1983, by a sports authority (created by a State legislature) with respect to the land on which the facility will be erected,

''(ii) such facility is described in a market study dated June 13, 1983, and

''(iii) such facility was the subject of an Act of the State legislature which was signed on July 1, 1983.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $81,000,000.

''(R) A facility is described in this subparagraph if such facility is a baseball stadium and adjacent parking facilities with respect to which a city made a carryforward election of $52,514,000 on February 25, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $50,000,000.

''(S) A facility is described in this subparagraph if—

''(i) such facility is to be used by both a National Hockey League team and a National Basketball Association team,

''(ii) such facility is to be constructed on a platform using air rights over land acquired by a State authority and identified as site B in a report dated May 30, 1984, prepared for a State urban development corporation, and

''(iii) such facility is eligible for real property tax (and power and energy) benefits pursuant to State legislation approved and effective as of July 7, 1982.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $225,000,000.

''(T) A facility is described in this subparagraph if—

''(i) a resolution authorizing the financing of the facility through an issuance of revenue bonds was adopted by the City Commission on August 5, 1986, and

''(ii) the metropolitan area in which the facility is to be located is currently the spring training home of an American league baseball team located during the regular season in a city described in subparagraph (C).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(U) A facility is described in this subparagraph if it is a football stadium located in Oakland, California, with respect to which a design was completed by a nationally recognized architectural firm for a stadium seating approximately 72,000, to be located on property adjacent to an existing coliseum complex, or is a renovation of an existing stadium located in Oakland, California, and used by an American League baseball team. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

''(V) A facility is described in this subparagraph if it is a sports arena (and related parking facility) for Grand Rapids, Michigan. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000.

''(W) A facility is described in this subparagraph if such facility is located adjacent to the Anacostia River in the District of Columbia. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

''(X) A facility is described in this subparagraph if it is a spectator sports facility for the City of San Antonio, Texas. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $125,000,000.

''(Y) A facility is described in this subparagraph if it will be part of, or adjacent to, an existing stadium which has been owned and operated by a State university and if—

''(i) the stadium was the subject of a feasibility report by a certified public accounting firm which is dated December 28, 1984, and

''(ii) a report by an independent research organization was prepared in December 1985 demonstrating support among donors and season ticket holders for the addition of a dome to the stadium.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $50,000,000.

''(Z) A facility is described in this subparagraph if—

''(i) such facility was a redevelopment project that was approved in concept by the city council sitting as the redevelopment agency in October 1984, and

''(ii) $20,000,000 in funds for such facility was identified in a 5-year budget approved by the city redevelopment agency on October 25, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000.

''(4) RESIDENTIAL RENTAL PROPERTY.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance a residential rental project within the meaning of section 103(b)(4) of the 1954 Code shall be treated as an exempt facility bond within the meaning of section 142(a)(7) of the 1986 Code if the facility with respect to the bond is issued satisfies all low-income occupancy requirements applicable to such bonds before August 15, 1986, and the bonds are issued pursuant to—

''(A) a contract to purchase such property dated August 12, 1985;

''(B) the county housing authority approved the property and the financing thereof on September 24, 1985, and

''(C) there was an inducement resolution adopted on October 10, 1985, by the county industrial development authority.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $25,400,000.

''(5) AIRPORTS.—A bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used to provide an airport (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond (for facilities described in section 142(a)(1) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if the facility is described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if such facility is a hotel at an airport facility serving a city described in section 631(a)(3) of the Tax Reform Act of 1984 [section 631(a)(3) of Pub. L. 98–369, set out as a note under section 103 of this title] (relating to certain bonds for a convention center and resource recovery project). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

''(B) A facility is described in this subparagraph if such facility is the primary airport for a city described in paragraph (3)(C). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $500,000,000. Section 148(d)(2) of the 1986 Code shall not apply to any issue to which this subparagraph applies. A facility shall be described in this subparagraph if it would be so described if '90 percent' were substituted for '95 percent' in the material preceding subparagraph (A).

''(C) A facility is described in this subparagraph if such facility is a hotel at Logan airport and such hotel is located on land leased from a State authority under a lease contemplating development of such hotel dated May 1, 1983, or under an amendment, renewal, or extension of such a lease. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

''(D) A facility is described in this subparagraph if such facility is the airport for the County of Sacramento, California. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

''(6) REDEVELOPMENT PROJECTS.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance redevelopment activities as part of a project within a specific designated area shall be treated as a qualified redevelopment bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such project is described in any of the following subparagraphs:

''(A) A project is described in this subparagraph if it was the subject of a city ordinance numbered 82–115 and adopted on December 2, 1982, or numbered 9590 and adopted on April 6, 1983. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $9,000,000.

''(B) A project is described in this subparagraph if it is a redevelopment project for an area in a city described in paragraph (3)(C) which was designated as commercially blighted on November 14, 1975, by the city council and the redevelopment plan for which will be approved by the city council before January 31, 1987. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

''(C) A project is described in this subparagraph if it is a redevelopment project for an area in a city described in paragraph (3)(C) which was designated as commercially blighted on March 28, 1979, by the city council and the redevelopment plan for which was approved by the city council on June 20, 1984. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

''(D) A project is described in this subparagraph if it is any one of three redevelopment projects in areas in a city described in paragraph (3)(C) designated as blighted by a city council before January 31, 1987 and with respect to which the redevelopment plan is approved by the city council before January 31, 1987. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

''(E) A project is described in this subparagraph if such project is for public improvements (including street reconstruction and improvement of underground utilities) for Great Falls, Montana, with respect to which engineering estimates are due on October 1, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $3,000,000.

''(F) A project is described in this subparagraph if—

''(i) such project is located in an area designated as blighted by the governing body of the city on February 15, 1983 (Resolution No. 4573), and

''(ii) such project is developed pursuant to a redevelopment plan adopted by the governing body of the city on March 1, 1983 (Ordinance No. 15073).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

''(G) A project is described in this subparagraph if—

''(i) such project is located in an area designated by the governing body of the city in 1983,

''(ii) such project is described in a letter dated August 8, 1985, from the developer's legal counsel to the development agency of the city, and

''(iii) such project consists primarily of retail facilities to be built by the developer named in a resolution of the governing body of the city on August 30, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(H) A project is described in this subparagraph if—

''(i) such project is a project for research and development facilities to be used primarily to benefit a State university and related hospital, with respect to which an urban renewal district was created by the city council effective October 11, 1985, and

''(ii) such project was announced by the university and the city in March 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

''(I) A project is described in this subparagraph if such project is a downtown redevelopment project with respect to which—

''(i) an urban development action grant was made, but only if such grant was preliminarily approved on November 3, 1983, and received final approval before June 1, 1984, and

''(ii) the issuer of bonds with respect to such facility adopted a resolution indicating the issuer's intent to adopt such redevelopment project on October 6, 1981, and the issuer adopted an ordinance adopting such redevelopment project on December 13, 1983.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(J) A project is described in this subparagraph if—

''(i) with respect to such project the city council adopted on December 16, 1985, an ordinance directing the urban renewal authority to study blight and produce an urban renewal plan,

''(ii) the blight survey was accepted and approved by the urban renewal authority on March 20, 1986, and

''(iii) the city planning board approved the urban renewal plan on May 7, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(K) A project is described in this subparagraph if—

''(i) the city redevelopment agency approved resolutions authorizing issuance of land acquisition and public improvements bonds with respect to such project on August 8, 1978,

''(ii) such resolutions were later amended in June 1979, and

''(iii) the State Supreme Court upheld a lower court decree validating the bonds on December 11, 1980.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $380,000,000.

''(L) A project is described in this subparagraph if it is a mixed use redevelopment project either—

''(i) in an area (known as the Near South Development Area) with respect to which the planning department of a city described in paragraph 3(C) promulgated a draft development plan dated March 1986, and which was the subject of public hearings held by a subcommittee of the plan commission of such city on May 28, 1986, and June 10, 1986, or

''(ii) in an area located within the boundaries of any 1 or more census tracts which are directly adjacent to a river whose course runs through such city.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(M) A project is described in this subparagraph if it is a redevelopment project for an area in a city described in paragraph 3(C) and such area—

''(i) was the subject of a report released in May 1986, prepared by the National Park Service, and

''(ii) was the subject of a report released January 1986, prepared by a task force appointed by the Mayor of such city.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(N) A project is described in this subparagraph if it is a city-university redevelopment project approved by a city ordinance No. 152–0–84 and the development plan for which was adopted on January 28, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $23,760,000.

''(O) A project is described in this subparagraph if—

''(i) an inducement resolution was passed on March 9, 1984, for issuance of bonds with respect to such project,

''(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986,

''(iii) an urban development action grant was preliminarily approved for part or all of such project on July 3, 1986, and

''(iv) the project is located in a district designated as the Peabody-Gayoso District.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $140,000,000.

''(P) A project is described in this subparagraph if the project is a 1-block area of a central business district containing a YMCA building with respect to which—

''(i) the city council adopted a resolution expressing an intent to issue bonds for the project on September 27, 1985,

''(ii) the city council approved project guidelines for the project on December 20, 1985, and

''(iii) the city council by resolution (adopted on July 30, 1986) directed completion of a development agreement.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $26,000,000.

''(Q) A project is described in this subparagraph if the project is a 2-block area of a central business district designated as blocks E and F with respect to which—

''(i) the city council adopted guidelines and criteria and authorized a request for development proposals on July 22, 1985,

''(ii) the city council adopted a resolution expressing an intent to issue bonds for the project on September 27, 1985, and

''(iii) the city issued requests for development proposals on March 28, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $47,000,000.

''(R) A project is described in this subparagraph if the project is an urban renewal project covering ap-

proximately 5.9 acres of land in the Shaw area of the northwest section of the District of Columbia and the 1st portion of such project was the subject of a District of Columbia public hearing on June 2, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(S) A project is described in this subparagraph if such project is a hotel, commercial, and residential project on the east bank of the Grand River in Grand Rapids, Michigan, with respect to which a developer was selected by the city in June 1985 and a planning agreement was executed in August 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $39,000,000.

''(T) A project is described in this subparagraph if such project is the Wurzburg Block Redevelopment Project in Grand Rapids, Michigan. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(U) A project is described in this subparagraph if such project is consistent with an urban renewal plan adopted or ordered prepared before August 28, 1986, by the city council of the most populous city in a state which entered the Union on February 14, 1859. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $83,000,000.

''(V) A project is described in this subparagraph if such project is consistent with an urban renewal plan which was adopted (or ordered prepared) before August 13, 1985, by an appropriate jurisdiction of a state which entered the Union on February 14, 1859. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $135,000,000 and the limitation on the period during which bonds under this section may be issued shall not apply to such bonds.

''(W) A project is described in this subparagraph if such project is—

''(i) a part of the Kenosha Downtown Redevelopment project, and

''(ii) located in an area bounded—

''(I) on the east by the east wall of the Army Corps of Engineers Confined Disposal Facility (extended),

''(II) on the north by 48th Street (extended),

''(III) on the west by the present Chicago & Northwestern Railroad tracks, and

''(IV) on the south by the north line of Eichelman Park (60th Street) (extended).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $105,000,000.

''(X) A project is described in this subparagraph if a redevelopment plan for such project was approved by the city council of Bell Gardens, California, on June 12, 1979. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(Y) Nothing in this paragraph shall be construed as having the effect of exempting from tax interest on any bond issued after June 10, 1987, if such interest would not have been exempt from tax were such bond issued on August 15, 1986.

''(Z) Any designated area with respect to which a project is described in any subparagraph of this paragraph shall be taken into account in applying section 144(c)(4)(C) of the 1986 Code in determining whether other areas (not so described) may be designated.

''(7) CONVENTION CENTERS.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any convention or trade show facility (within the meaning of section 103(b)(4)(C) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if—

''(i) a feasibility consultant and a design consultant were hired on April 3, 1985, with respect to such facility, and

''(ii) a draft feasibility report with respect to such facility was presented on November 3, 1985, to the Mayor of the city in which such facility is to be located.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $190,000,000. For purposes of this subparagraph, not more than $20,000,000 of bonds issued to advance refund existing convention facility bonds sold on May 12, 1978, shall be treated as bonds described in this subparagraph and section 149(d)(2) of the 1986 Code shall not apply to bonds so treated.

''(B) A facility is described in this subparagraph if—

''(i) an application for a State loan for such facility was approved by the city council on March 4, 1985, and

''(ii) the city council of the city in which such facility is to be located approved on March 25, 1985, an application for an urban development action grant.

The aggregate face amount of bonds which this subparagraph applies shall not exceed $10,000,000.

''(C) A facility is described in this subparagraph if—

''(i) on November 1, 1983, a convention development tax took effect and was dedicated to financing such facility,

''(ii) the State supreme court of the State in which the facility is to be located validated such tax on February 8, 1985, and

''(iii) an agreement was entered into on November 14, 1985, between the city and county in which such facility is to be located on the terms of the bonds to be issued with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $66,000,000.

''(D) A facility is described in this subparagraph if—

''(i) it is a convention, trade, or spectator facility,

''(ii) a regional convention, trade, and spectator facilities study committee was created before March 19, 1985, with respect to such facility, and

''(iii) feasibility and preliminary design consultants were hired on May 1, 1985, and October 31, 1985, with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed the excess of $175,000,000 over the amount of bonds to which paragraph (48)(B) applies.

''(E) A facility is described in this subparagraph if—

''(i) such facility is meeting rooms for a convention center, and

''(ii) resolutions and ordinances were adopted with respect to such meeting rooms on January 17, 1983, July 11, 1983, December 17, 1984, and September 23, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(F) A facility is described in this subparagraph if it is an international trade center which is part of the 125th Street redevelopment project in New York, New York. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $165,000,000.

''(G) A facility is described in this subparagraph if—

''(i) such facility is located in a city which was the subject of a convention center market analysis or study dated March 1983, and prepared by a nationally recognized accounting firm,

''(ii) such facility's location was approved in December 1985 by a task force created jointly by the Governor of the State within which such facility will be located and the mayor of the capital city of such State, and

''(iii) the size of such facility is not more than 200,000 square feet.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $70,000,000.

''(H) A facility is described in this subparagraph if an analysis of operations and recommendations of utilization of such facility was prepared by a certified public accounting firm pursuant to an engagement authorized on March 6, 1984, and presented on June 11, 1984, to officials of the city in which such facility is

located. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(I) A facility is described in this subparagraph if—

''(i) voters approved a bond issue to finance the acquisition of the site for such facility on May 4, 1985,

''(ii) title of the property was transferred from the Illinois Center Gulf Railroad to the city on September 30, 1985, and

''(iii) a United States judge rendered a decision regarding the fair market value of the site of such facility on December 30, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $131,000,000.

''(J) A facility is described in this subparagraph if—

''(i) such facility is to be used for an annual aqua-festival,

''(ii) a referendum was held on April 6, 1985, in which voters permitted the city council to lease 130 acres of dedicated parkland for the purpose of constructing such facility, and

''(iii) the city council passed an inducement resolution on June 19, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(K) A facility is described in this subparagraph if—

''(i) voters approved a bond issued to finance a portion of the cost of such facility on December 1, 1984, and

''(ii) such facility was the subject of a market study and financial projections dated March 21, 1986, prepared by a nationally recognized accounting firm.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

''(L) A facility is described in this subparagraph if—

''(i) on July 12, 1984, the city council passed a resolution increasing the local hotel and motel tax to 7 percent to assist in paying for such facility,

''(ii) on October 25, 1984, the city council selected a consulting firm for such facility, and

''(iii) with respect to such facility, the city council appropriated funds for additional work on February 7, 1985, October 3, 1985, and June 26, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $120,000,000.

''(M) A facility is described in this subparagraph if—

''(i) a board of county commissioners, in an action dated January 21, 1986, supported an application for official approval of the facility, and

''(ii) the State economic development commission adopted a resolution dated February 25, 1986, determining the facility to be an eligible facility pursuant to State law and the rules adopted by the commission.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,500,000.

''(8) SPORTS OR CONVENTION FACILITIES.—A bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used to provide either a sports facility (within the meaning of section 103(b)(4)(B) of the 1954 Code) or a convention facility (within the meaning of section 103(b)(4)(C) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

''(A) A combined convention and arena facility, or any part thereof (whether on the same or different sites), is described in this subparagraph if—

''(i) bonds for the expansion, acquisition, or construction of such combined facility are payable from a tax and are issued under a plan initially approved by the voters of the taxing authority on April 25, 1978, and

''(ii) such bonds were authorized for expanding a convention center, for acquiring an arena site, and for building an arena or any of the foregoing pursuant to a resolution adopted by the governing body of the bond issuer on March 17, 1986, and superseded by a resolution adopted by such governing body on May 27, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $160,000,000.

''(B) A sports or convention facility is described in this subparagraph if—

''(i) on March 4, 1986, county commissioners held public hearings on creation of a county convention facilities authority, and

''(ii) on March 7, 1986, the county commissioners voted to create a county convention facilities authority and to submit to county voters a ½ cent sales and use tax to finance such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

''(C) A sports or convention facility is described in this subparagraph if—

''(i) a feasibility consultant and a design consultant were hired prior to October 1980 with respect to such facility,

''(ii) a feasibility report dated October 1980 with respect to such facility was presented to a city or county in which such facility is to be located, and

''(iii) on September 7, 1982, a joint city/county resolution appointed a committee which was charged with the task of independently reviewing the studies and present need for the facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(D) A sports or convention facility is described in this subparagraph if—

''(i) such facility is a multipurpose coliseum facility for which, before January 1, 1985, a city, an auditorium district created by the State legislature within which such facility will be located, and a limited partnership executed an enforceable contract,

''(ii) significant governmental action regarding such facility was taken before May 23, 1983, and

''(iii) inducement resolutions were passed for issuance of bonds with respect to such facility on May 26, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

''(9) PARKING FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a parking facility (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if—

''(i) there was an inducement resolution on March 9, 1984, for the issuance of bonds with respect to such facility, and

''(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $30,000,000.

''(B) A facility is described in this subparagraph if—

''(i) such facility is for a university medical school,

''(ii) the last parcel of land necessary for such facility was purchased on February 4, 1985, and

''(iii) the amount of bonds to be issued with respect to such facility was increased by the State legislature of the State in which the facility is to be located as part of its 1983–1984 general appropriations act.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $9,000,000.

''(C) A facility is described in this subparagraph if—

''(i) the development agreement with respect to the project of which such facility is a part was entered into during May 1984, and

''(ii) an inducement resolution was passed on October 9, 1985, for the issuance of bonds with respect to the facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $35,000,000.

''(D) A facility is described in this subparagraph if the city council approved a resolution of intent to issue tax-exempt bonds (Resolution 34083) for such facility on April 30, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000. Solely for purposes of this subparagraph, a heliport constructed as part of such facility shall be deemed to be functionally related and subordinate to such facility.

''(E) A facility is described in this subparagraph if—

''(i) resolutions were adopted by a public joint powers authority relating to such facility on March 6, 1985, May 1, 1985, October 2, 1985, December 4, 1985, and February 5, 1986; and

''(ii) such facility is to be located at an exposition park which includes a coliseum and sports arena.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

''(F) A facility is described in this subparagraph if—

''(i) it is to be constructed as part of an overall development that is the subject of a development agreement dated October 1, 1983, between a developer and an organization described in section 501(c)(3) of the 1986 Code, and

''(ii) an environmental notification form with respect to the overall development was filed with a State environmental agency on February 28, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(G) A facility is described in this subparagraph if—

''(i) an inducement resolution was passed by the city redevelopment agency on December 3, 1984, and a resolution to carryforward the private activity bond limit was passed by such agency on December 21, 1984, with respect to such facility, and

''(ii) the owner participation agreement with respect to such facility was entered into on July 30, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $18,000,000.

''(H) A facility is described in this subparagraph if—

''(i) an application (dated August 28, 1986) for financial assistance was submitted to the county industrial development agency with respect to such facility, and

''(ii) the inducement resolution for such facility was passed by the industrial development agency on September 10, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000.

''(I) A facility is described in this subparagraph if—

''(i) it is located in a city the parking needs of which were comprehensively described in a 'Downtown Parking Plan' dated January 1983, and approved by the city's City Plan Commission on June 1, 1983, and

''(ii) obligations with respect to the construction of which are issued on behalf of a State or local governmental unit by a corporation empowered to issue the same which was created by the legislative body of a State by an Act introduced on May 21, 1985, and thereafter passed, which Act became effective without the governor's signature on June 26, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $50,000,000.

''(J) A facility is described in this subparagraph if—

''(i) such facility is located in a city which was the subject of a convention center market analysis or study dated March 1983 and prepared by a nationally recognized accounting firm,

''(ii) such facility is intended for use by, among others, persons attending a convention center located within the same town or city, and

''(iii) such facility's location was approved in December 1985 by a task force created jointly by the governor of the State within which such facility will be located and the mayor of the capital city of such State.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $30,000,000.

''(K) A facility is described in this subparagraph if—

''(i) scale and components for the facility were determined by a city downtown plan adopted October 31, 1984 (resolution number 3882), and

''(ii) the site area for the facility is approximately 51,200 square feet.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

''(L) A facility is described in this subparagraph if—

''(i) the property for such facility was offered for development by a city renewal agency on March 19, 1986 (resolution number 920), and

''(ii) the site area for the facility is approximately 25,600 square feet.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

''(M) A facility is described in this subparagraph if such facility was approved by official action of the city council on July 26, 1984 (resolution number 33718), and is for the Moyer Theatre. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000.

''(N) A facility is described in this subparagraph if it is part of a renovation project involving the Outlet Company building in Providence, Rhode Island. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $6,000,000.

''(10) CERTAIN ADVANCE REFUNDINGS.—

''(A) Section 149(d)(3) of the 1986 Code shall not apply to a bond issued by a State admitted to the Union on November 16, 1907, for the advance refunding of not more than $186,000,000 State turnpike obligations.

''(B) A refunding of the Charleston, West Virginia Town Center Garage Bonds shall not be treated for purposes of part IV of subchapter A of chapter 1 of the 1986 Code as an advance refunding if it would not be so treated if '100' were substituted for '90' in section 149(d)(5) of such Code.

''(11) PRINCIPAL USER PROVISIONS.—

''(A) In the case of a bond issued as part of an issue the proceeds of which are to be used to provide a facility described in subparagraph (B) or (C), the determination of whether such bond is an exempt facility bond shall be made by substituting '90 percent' for '95 percent' in section 142(a) of the 1986 Code.

''(B) A facility is described in this subparagraph if—

''(i) it is a waste-to-energy project for which a contract for the sale of electricity was executed in September 1984, and

''(ii) the design, construction, and operation contract for such project was signed in March 1985 and the order to begin construction was issued on March 31, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $29,100,000.

''(C) A facility is described in this subparagraph if it is described in section 1865(c)(2)(C) of this Act [set out as a note under section 103 of this title].

''(12) QUALIFIED SCHOLARSHIP FUNDING BONDS.—Subsections (d)(3) and (f) of section 148 of the 1986 Code shall not apply to any bond or series of bonds the proceeds of which are used exclusively to refund qualified scholarship funding bonds (as defined in section 150 of the 1986 Code) issued before January 1, 1986, if—

''(A) the amount of the refunding bonds does not exceed the aggregate face amount of the refunded bonds,

''(B) the maturity date of such refunding bond is not later than later of—

''(i) the maturity date of the bond to be refunded, or

''(ii) the date which is 15 years after the date on which the refunded bond was issued (or, in the case of a series of refundings, the date on which the original bond was issued),

''(C) the bonds to be refunded were issued by the California Student Loan Finance Corporation, and

''(D) the face amount of the refunding bonds does not exceed $175,000,000.

''(13) RESIDENTIAL RENTAL PROPERTY PROJECTS.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a project for residential rental property which satisfies the requirements of section 103(b)(4)(A) of the 1954 Code shall be treated as an exempt facility bond (for projects described in section 142(a)(7) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if the project is described in any of the following subparagraphs:

''(A) A residential rental property project is described in this subparagraph if—

''(i) a public building development corporation was formed on June 6, 1984, with respect to such project,

''(ii) a partnership of which the corporation is a general partner was formed on June 8, 1984, and

''(iii) the partnership entered into a preliminary agreement with the State public facilities authority effective as of May 4, 1984, with respect to the issuance of the bonds for such project.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $6,200,000.

''(B) A residential rental property project is described in this subparagraph if—

''(i) the Board of Commissioners of the city housing authority officially selected such project's developer on December 19, 1985,

''(ii) the Board of the City Redevelopment Commission agreed on February 13, 1986, to conduct a public hearing with respect to the project on March 6, 1986,

''(iii) an official action resolution for such project was adopted on March 6, 1986, and

''(iv) an allocation of a portion of the State ceiling was made with respect to such project on July 29, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(C) A residential rental property project is described in this subparagraph if—

''(i) the issuance of $1,289,882 of bonds for such project was approved by a State agency on September 11, 1985, and

''(ii) the authority to issue such bonds was scheduled to expire (under the terms of the State approval) on September 9, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,300,000.

''(D) A residential rental property project is described in this subparagraph if—

''(i) the issuance of $7,020,000 of bonds for such project was approved by a State agency on October 10, 1985, and

''(ii) the authority to issue such bonds was scheduled to expire (under the terms of the State approval) on October 9, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,020,000.

''(E) A residential rental property project is described in this subparagraph if—

''(i) it is to be located in a city urban renewal project area which was established pursuant to an urban renewal plan adopted by the city council on May 17, 1960,

''(ii) the urban renewal plan was revised in 1972 to permit multifamily dwellings in areas of the urban renewal project designated as a central business district,

''(iii) an inducement resolution was adopted for such project on December 14, 1984, and

''(iv) the city council approved on November 6, 1985, an agreement which provides for conveyance to the city of fee title to such project site.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(F) A residential rental property project is described in this subparagraph if—

''(i) such project is to be located in a city urban renewal project area which was established pursuant to an urban renewal plan adopted by the city council on May 17, 1960,

''(ii) the urban renewal plan was revised in 1972 to permit multifamily dwellings in areas of the urban renewal project designated as a central business district,

''(iii) the amended urban renewal plan adopted by the city council on May 19, 1972, also provides for the conversion of any public area site in Block J of the urban renewal project area for the development of residential facilities, and

''(iv) acquisition of all of the parcels comprising the Block J project site was completed by the city on December 28, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(G) A residential rental property project is described in this subparagraph if—

''(i) such project is to be located on a city-owned site which is to become available for residential development upon the relocation of a bus maintenance facility,

''(ii) preliminary design studies for such project site were completed in December 1985, and

''(iii) such project is located in the same State as the projects described in subparagraphs (E) and (F).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

''(H) A residential rental property project is described in this subparagraph if—

''(i) at least 20 percent of the residential units in such project are to be utilized to fulfill the requirements of a unilateral agreement date July 21, 1983, relating to the provision of low- and moderate-income housing,

''(ii) the unilateral agreement was incorporated into ordinance numbers 83–49 and 83–50, adopted by the city council and approved by the mayor on August 24, 1983, and

''(iii) an inducement resolution was adopted for such project on September 25, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000.

''(I) A residential rental property project is described in this subparagraph if—

''(i) a letter of understanding was entered into on December 11, 1985, between the city and county housing and community development office and the project developer regarding the conveyance of land for such project, and

''(ii) such project is located in the same State as the projects described in subparagraphs (E), (F), (G), and (H).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed an amount which, together with the amounts allowed under subparagraphs (E), (F), (G), and (H), does not exceed $250,000,000.

''(J) A residential rental property project is described in this subparagraph if it is a multifamily residential development located in Arrowhead Springs, within the county of San Bernardino, California, and a portion of the site of which currently is owned by the Campus Crusade for Christ. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $350,000,000.

''(K) A residential rental property project is described in this subparagraph if—

''(i) it is a new residential development with approximately 309 dwelling units located in census tract No. 3202, and

''(ii) there was an inducement ordinance for such project adopted by a city council on November 20, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $32,000,000.

''(L) A residential rental property project is described in this subparagraph if—

''(i) it is a new residential development with approximately 70 dwelling units located in census tract No. 3901, and

''(ii) there was an inducement ordinance for such project adopted by a city council on August 14, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $4,000,000.

''(M) A residential rental property project is described in this subparagraph if—

''(i) it is a new residential development with approximately 98 dwelling units located in census tract No. 4701, and

''(ii) there was an inducement ordinance for such project adopted by a city council on August 14, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,000,000.

''(N) A project or projects are described in this subparagraph if they are part of the Willow Road residential improvement plan in Menlo Park, California. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $9,000,000.

''(O) A residential rental property project is described in this subparagraph if—

''(i) an inducement resolution for such project was approved on July 18, 1985, by the city council,

''(ii) such project was approved by such council on August 11, 1986, and

''(iii) such project consists of approximately 22 duplexes to be used for housing qualified low and moderate income tenants.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,500,000.

''(P) A residential rental property project is described in this subparagraph if—

''(i) an inducement resolution for such project was approved on April 22, 1986, by the city council,

''(ii) such project was approved by such council on August 11, 1986, and

''(iii) such project consists of a unit apartment complex (having approximately 60 units) to be used for housing qualified low and moderate income tenants.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,625,000.

''(Q) A residential rental property project is described in this subparagraph if—

''(i) a State housing authority granted a notice of official action for the project on May 24, 1985, and

''(ii) a binding agreement was executed for such project with the State housing finance authority on May 14, 1986, and such agreement was accepted by the State housing authority on June 5, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,800,000.

''(R) A residential rental property project is described in this subparagraph if such project is either of 2 projects (located in St. Louis, Missouri) which received commitments to provide construction and permanent financing through the issuance of bonds in principal amounts of up to $242,130 and $654,045, on July 16, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,000,000.

''(S) A residential rental property project is described in this subparagraph if—

''(i) a local housing authority approved an inducement resolution for such project on January 28, 1985, and

''(ii) a suit relating to such project was dismissed without right of further appeal on April 4, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $13,200,000.

''(T) A residential rental property project is described in this subparagraph if—

''(i) such project is the renovation of a hotel for residents for senior citizens,

''(ii) an inducement resolution for such project was adopted on November 20, 1985, by the State Development Finance Authority, and

''(iii) such project is to be located in the metropolitan area of the city described in paragraph (3)(C).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $9,500,000.

''(U) A residential rental property project is described in this subparagraph if—

''(i) such project is the renovation of apartment housing,

''(ii) an inducement resolution for such project was adopted on December 20, 1985, by the State Housing Development Authority, and

''(iii) such project is to be located in the metropolitan area of the city described in paragraph (3)(C).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $12,000,000.

''(V) A residential rental project is described in this subparagraph if it is a renovation and construction project for low-income housing in central Louisville, Kentucky, and local board approval for such project was granted April 22, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $500,000.

''(W) A residential rental project is described in this subparagraph if—

''(i) such project is 1 of 6 residential rental projects having in the aggregate approximately 1,010 units,

''(ii) inducement resolutions for such projects were adopted by the county residential finance authority on November 21, 1985, and

''(iii) a public hearing of the county residential finance authority was held by such authority on December 19, 1985, regarding such projects to be constructed by an in-commonwealth developer.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $62,000,000.

''(X) A residential rental project is described in this subparagraph if—

''(i) an inducement resolution with respect to such project was adopted by the State housing development authority on January 25, 1985, and

''(ii) the issuance of bonds for such project was the subject of a law suit filed on October 25, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $64,000,000.

''(Y) A project or projects are described in this subparagraph if they are financed with bonds issued by the Tulare, California, County Housing Authority. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $8,000,000.

''(Z) A residential rental project is described in this subparagraph if such project is a multifamily mixed-use housing project located in a city described in paragraph (3)(C), the zoning for which was changed to residential-business planned development on November 26, 1985, and with respect to which both the city on December 4, 1985, and the state housing finance agency on December 20, 1985, adopted inducement resolutions. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $90,000,000.

''(AA) A residential rental property project is described in this subparagraph if it is the Carriage Trace residential rental project in Clinton, Tennessee. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(BB) A residential rental property project is described in this subparagraph if—

''(i) a contract to purchase such property was dated as of August 9, 1985,

''(ii) there was an inducement resolution adopted on September 27, 1985, for the issuance of obligations to finance such property,

''(iii) there was a State court final validation of such financing on November 15, 1985, and

''(iv) the certificate of nonappeal from such validation was available on December 15, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $27,750,000.

''(14) QUALIFIED STUDENT LOANS.—The amendments made by section 1301 [for classification see section

1311(a) of this note] shall not apply to any qualified student loan bonds (as defined in section 144 of the 1986 Code) issued by the Volunteer State Student Assistance Corporation incorporated on February 20, 1985. The aggregate face amount of bonds to which this paragraph applies shall not exceed $130,000,000. In the case of bonds to which this paragraph applies, the requirements of sections 148 and 149(d) of the 1986 Code shall be treated as included in section 103 of the 1954 Code and shall apply to such bonds.

''(15) ANNUITY CONTRACTS.—The treatment of annuity contracts as investment property under section 148(b)(2) of the 1986 Code shall not apply to any bond described in any of the following subparagraphs:

''(A) A bond is described in this subparagraph if such bond is issued by a city located in a noncontiguous State if—

''(i) the authority to acquire such a contract was approved on September 24, 1985, by city ordinance A085–176, and

''(ii) formal bid requests for such contracts were mailed to insurance companies on September 6, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $57,000,000.

''(B) A bond is described in this subparagraph if—

''(i) on or before May 12, 1985, the governing board of the city pension fund authorized an agreement with an underwriter to provide planning and financial guidance for a possible bond issue, and

''(ii) the proceeds of the sale of such bond issue are to be used to purchase an annuity to fund the unfunded liability of the City of Berkeley, California's Safety Members Pension Fund.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

''(C) A bond is described in this subparagraph if such bond is issued by the South Dakota Building Authority if on September 18, 1985, representatives of such authority and its underwriters met with bond counsel and approved financing the purchase of an annuity contract through the sale and leaseback of State properties. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $175,000,000.

''(D) A bond is described in this subparagraph if—

''(i) such bond is issued by Los Angeles County, and

''(ii) such county, before September 25, 1985, paid or incurred at least $50,000 of costs related to the issuance of such bonds.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $500,000,000.

''(16) SOLID WASTE DISPOSAL FACILITY.—The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any solid waste disposal facility if—

''(A) construction of such facility was approved by State law I.C. 36–9–31,

''(B) there was an inducement resolution on November 19, 1984, for the bonds with respect to such facility, and

''(C) a carryforward election of unused 1984 volume cap was made for such project on February 25, 1985.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $120,000,000.

''(17) REFUNDING OF BOND ANTICIPATION NOTES.—There shall not be taken into account under section 146 of the 1986 Code any refunding of bond anticipation notes—

''(A) issued in December of 1984 by the Rhode Island Housing and Mortgage Finance Corporation,

''(B) which mature in December of 1986,

''(C) which is not an advance refunding within the meaning of section 149(d)(5) of the 1986 Code (determined by substituting '180 days' for '90 days' therein), and

''(D) the aggregate face amount of the refunding bonds does not exceed $25,500,000.

''(18) CERTAIN AIRPORTS.—The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to a bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any airport (within the meaning of section 103(b)(4)(D) of the 1954 Code) if such airport is a mid-field airport terminal and accompanying facilities at a major air carrier airport which during April 1980 opened a new precision instrument approach runway 10R28L. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $425,000,000.

''(19) MASS COMMUTING FACILITIES.—A bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used to provide a mass commuting facility (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond (for facilities described in section 142(a)(3) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in 1 of the following subparagraphs:

''(A) A facility is described in this subparagraph if—

''(i) such facility provides access to an international airport,

''(ii) a corporation was formed in connection with such project in September 1984,

''(iii) the Board of Directors of such corporation authorized the hiring of various firms to conduct a feasibility study with respect to such project in April 1985, and

''(iv) such feasibility study was completed in November 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

''(B) A facility is described in this subparagraph if—

''(i) enabling legislation with respect to such project was approved by the State legislature in 1979,

''(ii) a 1-percent local sales tax assessment to be dedicated to the financing of such project was approved by the voters on August 13, 1983, and

''(iii) a capital fund with respect to such project was established upon the issuance of $90,000,000 of notes on October 22, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000 and such bonds must be issued before January 1, 1996.

''(C) A facility is described in this subparagraph if—

''(i) bonds issued therefor are issued by or on behalf of an authority organized in 1979 pursuant to enabling legislation originally enacted by the State legislature in 1973, and

''(ii) such facility is part of a system connector described in a resolution adopted by the board of directors of the authority on March 27, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $400,000,000. Notwithstanding the last paragraph of this subsection, this subparagraph shall apply to bonds issued before January 1, 1996.

''(D) A facility is described in this subparagraph if—

''(i) the facility is a fixed guideway project,

''(ii) enabling legislation with respect to the issuing authority was approved by the State legislature in May 1973,

''(iii) on October 28, 1985, a board issued a request for consultants to conduct a feasibility study on mass transit corridor analysis in connection with the facility, and

''(iv) on May 12, 1986, a board approved a further binding contract for expenditures of approximately $1,494,963, to be expended on a facility study.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000. Notwithstanding the last paragraph of this subsection, this subparagraph shall apply to bonds issued before January 1, 1996.

''(20) PRIVATE COLLEGES.—Subsections (c)(2) and (f) of section 148 of the 1986 Code shall not apply to any bond which is issued as part of an issue if such bond—

''(A) is issued by a political subdivision pursuant to home rule and interlocal cooperation powers con-

ferred by the constitution and laws of a State to provide funds to finance the costs of the purchase and construction of educational facilities for private colleges and universities, and

''(B) was the subject of a resolution of official action by such political subdivision (Resolution No. 86–1039) adopted by the governing body of such political subdivision on March 18, 1986.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $100,000,000.

''(21) POOLED FINANCING PROGRAMS.—

''(A) Section 147(b) of the 1986 Code shall not apply to any hospital pooled financing program with respect to which—

''(i) a formal presentation was made to a city hospital facilities authority on January 14, 1986, and

''(ii) such authority passed a resolution approving the bond issue in principle on February 5, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $95,000,000.

''(B) Subsections (c)(2) and (f) of section 148 of the 1986 Code shall not apply to bonds for which closing occurred on July 16, 1986, and for which a State municipal league served as administrator for use in a State described in section 103A(g)(5)(C) of the Internal Revenue Code of 1954. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $585,000,000.

''(22) DOWNTOWN REDEVELOPMENT PROJECT.—Subsection (b) of section 626 of the Tax Reform Act of 1984 [section 626(b) of Pub. L. 98–369, set out as a note under section 103 of this title] is amended by adding at the end thereof the following new paragraph:

'' '(7) EXCEPTION FOR CERTAIN DOWNTOWN REDEVELOPMENT PROJECT.—The amendments made by this section shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if—

'' '(A) on August 15, 1985, a downtown redevelopment authority adopted a resolution to issue obligations for such project,

'' '(B) before September 26, 1985, the city expended, or entered into binding contracts to expend, more than $10,000,000 in connection with such project, and

'' '(C) the State supreme court issued a ruling regarding the proposed financing structure for such project on December 11, 1985.

The aggregate face amount of obligations to which this paragraph applies shall not exceed $85,000,000 and such obligations must be issued before January 1, 1992.'

''(23) MASS COMMUTING AND PARKING FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any mass commuting facility or parking facility (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is provided in connection with the rehabilitation, renovation, or other improvement to an existing railroad station owned on the date of the enactment of this Act [Oct. 22, 1986] by the National Railroad Passenger Corporation in the Northeast Corridor and which was placed in partial service in 1934 and was placed in the National Register of Historic Places in 1978. The aggregate face amount of bonds to which this paragraph applies shall not exceed $30,000,000.

''(24) TAX-EXEMPT STATUS OF BONDS OF CERTAIN EDUCATIONAL ORGANIZATIONS.—

''(A) IN GENERAL.—For purposes of section 103 and part IV of subchapter B of chapter 1 of the 1986 Code, a qualified educational organization shall be treated as a governmental unit, but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business (determined by applying section 513(a) of such Code to such organization). The last paragraph of this section shall not apply to the treatment under the preceding sentence.

''(B) QUALIFIED EDUCATIONAL ORGANIZATION.—For purposes of subparagraph (A), the term 'qualified educational organization' means a college or university—

''(i) which was reincorporated and renewed with perpetual existence as a corporation by specific act of the legislature of the State within which such college or university is located on March 19, 1913, or

''(ii) which—

''(I) was initially incorporated or created on February 28, 1787, on April 29, 1854, or on May 14, 1888, and

''(II) as an instrumentality of the State, serves as a 'State-related' university by a specific act of the legislature of the State within which such college or university is located.

''(25) TAX-EXEMPT STATUS OF BONDS OF CERTAIN PUBLIC UTILITIES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a bond shall be treated as a qualified bond for purposes of section 103 of the 1986 Code if such bond is issued after the date of the enactment of this Act [Oct. 22, 1986] with respect to a public utility facility if such facility is—

''(i) located at any non-federally owned dam (or on project waters or adjacent lands) located wholly or partially in 1 or more of 3 counties, 2 of which are contiguous to the third, where the rated capacity of the hydroelectric generating facilities at 5 of such dams on October 18, 1979, was more than 650 megawatts each,

''(ii) located at a dam (or on the project waters or adjacent lands) at which hydroelectric generating facilities were financed with the proceeds of tax-exempt obligations before December 31, 1968,

''(iii) owned and operated by a State, political subdivision of a State, or any agency or instrumentality of any of the foregoing, and

''(iv) located at a dam (or on project waters or adjacent lands) where the general public has access for recreational purposes to such dam or to such project waters or adjacent lands.

''(B) SPECIAL RULES FOR SUBPARAGRAPH (A).—

''(i) BONDS SUBJECT TO CAP.—Section 146 of the 1986 Code shall apply to any bond described in subparagraph (A) which (without regard to subparagraph (A)) is a private activity bond. For purposes of applying section 146(k) of the 1986 Code, the public utility facility described in subparagraph (A) shall be treated as described in paragraph (2) of such section and such paragraph shall be applied without regard to the requirement that the issuer establish that a State's share of the use of a facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility.

''(ii) LIMITATION ON AMOUNT OF BONDS TO WHICH SUBPARAGRAPH (A) APPLIES.—The aggregate face amount of bonds to which subparagraph (A) applies shall not exceed $750,000,000, not more than $350,000,000 of which may be issued before January 1, 1992.

''(iii) LIMITATION ON PURPOSES.—Subparagraph (A) shall only apply to bonds issued as part of an issue 95 percent or more of the net proceeds of which are used to provide 1 or more of the following:

''(I) A fish by-pass facility or fisheries enhancement facility.

''(II) A recreational facility or other improvement which is required by Federal licensing terms and conditions or other Federal, State, or local law requirements.

''(III) A project of repair, maintenance, renewal, or replacement, and safety improvement.

''(IV) Any reconstruction, replacement, or improvement, including any safety improvement, which increases, or allows an increase in, the capacity, efficiency, or productivity of the existing generating equipment.

''(26) CONVENTION AND PARKING FACILITIES.—A bond shall not be treated as a private activity bond for purposes of section 103 and part IV of subchapter B of chapter 1 of the 1986 Code if—

''(A) such bond is issued to provide a sports or convention facility described in section 103(b)(4)(B) or (C) of the 1954 Code,

''(B) such bond is not described in section 103(b)(2) or (*o*)(2)(A) of such Code,

''(C) legislation by a State legislature in connection with such facility was enacted on July 19, 1985, and was designated Chapter 375 of the Laws of 1985, and

''(D) legislation by a State legislature in connection with the appropriation of funds to a State public benefit corporation for loans in connection with the construction of such facility was enacted on April 17, 1985, and was designated Chapter 41 of the Laws of 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $35,000,000.

''(27) SMALL ISSUE TERMINATION.—Section 144(a)(12) of the 1986 Code shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a facility described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if—

''(i) the facility is a hotel and office facility located in a State capital,

''(ii) the economic development corporation of the city in which the facility is located adopted an initial inducement resolution on October 30, 1985, and

''(iii) a feasibility consultant was retained on February 21, 1986, with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(B) A facility is described in this subparagraph if such facility is financed by bonds issued by a State finance authority which was created in April 1985 by Act 1062 of the State General Assembly, and the Bond Guarantee Act (Act 505 of 1985) allowed such authority to pledge the interest from investment of the State's general fund as a guarantee for bonds issued by such authority. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(C) A facility is described in this subparagraph if such facility is a downtown mall and parking project for Holland, Michigan, with respect to which an initial agreement was formulated with the city in May 1985 and a formal memorandum of understanding was executed on July 2, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $18,200,000.

''(D) A facility is described in this subparagraph if such facility is a downtown mall and parking ramp project for Traverse City, Michigan, with respect to which a final development agreement was signed in June 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $21,500,000.

''(E) A facility is described in this subparagraph if such facility is the rehabilitation of the Heritage Hotel in Marquette, Michigan. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

''(F) A facility is described in this subparagraph if it is the Lakeland Center Hotel in Lakeland, Florida. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $10,000,000.

''(G) A facility is described in this subparagraph if it is the Marble Arcade office building renovation project in Lakeland, Florida. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $5,900,000.

''(H) A facility is described in this subparagraph if it is a medical office building in Bradenton, Florida, with respect to which—

''(i) a memorandum of agreement was entered into on October 17, 1985, and

''(ii) the city council held a public hearing and approved issuance of the bonds on November 13, 1985.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $8,500,000.

''(I) A facility is described in this subparagraph if it consists of the rehabilitation of the Andover Town Hall in Andover, Massachusetts. The provisions of section 149(b) of the 1986 Code (relating to federally guaranteed obligations) shall not apply to obligations to finance such project solely as a result of the occupation of a portion of such building by a United States Post Office. For purposes of determining whether any bond to which this subparagraph applies is a qualified small issue bond, there shall not be taken into account under section 144(a) of the 1986 Code capital expenditures with respect to any facility of the United States Government and there shall not be taken into account any bond allocable to the United States Government.

''(J) A facility is described in this subparagraph if it is the Central Bank Building renovation project in Grand Rapids, Michigan. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $1,000,000.

''(28) CERTAIN PRIVATE LOANS NOT TAKEN INTO ACCOUNT.—For purposes of determining whether any bond is a private activity bond, an amount of loans (but not in excess of $75,000,000) provided from the proceeds of 1 or more issues shall not be taken into account if such loans are provided in furtherance of—

''(A) a city Emergency Conservation Plan as set forth in an ordinance adopted by the city council of such city on February 17, 1983, or

''(B) a resolution adopted by the city council of such city on March 10, 1983, committing such city to a goal of reducing the peak load of such city's electric generation and distribution system by 553 megawatts in 15 years.

''(29) CERTAIN PRIVATE BUSINESS USE NOT TAKEN INTO ACCOUNT.—

''(A) The nonqualified amount of the proceeds of an issue shall not be taken into account under section 141(b)(5) of the 1986 Code or in determining whether a bond described in subparagraph (B) (which is part of such issue) is a private activity bond for purposes of section 103 and part IV of subchapter B of chapter 1 of the 1986 Code.

''(B) A bond is described in this subparagraph if—

''(i) such bond is issued before January 1, 1993, by the State of Connecticut, and

''(ii) such bond is issued pursuant to a resolution of the State Bond Commission adopted before September 26, 1985.

''(C) The nonqualified amount to which this paragraph applies shall not exceed $150,000,000.

''(D) For purposes of this paragraph, the term 'nonqualified amount' has the meaning given such term by section 141(b)(8) of the 1986 Code, except that such term shall include the amount of the proceeds of an issue which is to be used (directly or indirectly) to make or finance loans (other than loans described in section 141(c)(2) of the 1986 Code) to persons other than governmental units.

''(30) VOLUME CAP NOT TO APPLY TO CERTAIN FACILITIES.—For purposes of section 146 of the 1986 Code, any exempt facility bond for the following facility shall not be taken into account: The facility is a facility for the furnishing of water which was authorized under Public Law 90–537 [43 U.S.C. 1501 et seq.] of the United States if—

''(A) construction of such facility began on May 6, 1973, and

''(B) forward funding will be provided for the remainder of the project pursuant to a negotiated agreement between State and local water users and the Secretary of the Interior signed April 15, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $391,000,000.

''(31) CERTAIN HYDROELECTRIC GENERATING PROPERTY.—A bond shall be treated as described in paragraph (2) of section 1316(f) of this Act if—

''(A) such bond would be so described but for the substitution specified in such paragraph,

''(B) on January 7, 1983, an application for a preliminary permit was filed for the project for which such bond is issued and received docket no. 6986, and

''(C) on September 20, 1983, the Federal Energy Regulatory Commission issued an order granting the preliminary permit for the project.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $12,000,000.

''(32) VOLUME CAP.—The State ceiling applicable under section 146 of the 1986 Code for calendar year 1987 for the State which ratified the United States Constitution on May 29, 1790, shall be $150,000,000 higher than the State ceiling otherwise applicable under such section for such year.

''(33) APPLICATION OF $150,000,000 LIMITATION FOR CERTAIN QUALIFIED 501(c)(3) BONDS.—Proceeds of an issue described in any of the following subparagraphs shall not be taken into account under section 145(b) of the 1986 Code.

''(A) Proceeds of an issue are described in this subparagraph if—

''(i) such proceeds are used to provide medical school facilities or medical research and clinical facilities for a university medical center,

''(ii) such proceeds are of—

''(I) a $21,550,000 issue dated August 1, 1980,

''(II) a $84,400,000 issue dated September 1, 1984, and

''(III) a $48,500,000 issue (Series 1985 A and 1985 B) dated on December 1, 1985, and

''(iii) the issuer of all such issues is the same.

''(B) Proceeds of an issue are described in this subparagraph if such proceeds are for use by Yale University and—

''(i) the bonds are issued after August 8, 1986, by the State of Connecticut Health and Educational Facilities Authority, or

''(ii) the bonds are the 1st or 2nd refundings (including advance refundings) of the bonds described in clause (i) or of original bonds issued before August 7, 1986, by such Authority.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000.

''(C) Proceeds of an issue are described in this subparagraph if—

''(i) such issue is issued on behalf of a university established by Charter granted by King George II of England on October 31, 1754, to accomplish a refunding (including an advance refunding) of bonds issued to finance 1 or more projects, and

''(ii) the application or other request for the issuance of the issue to the appropriate State issuer was made by or on behalf of such university before February 26, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000.

''(D) Proceeds of an issue are described in this subparagraph if—

''(i) such proceeds are to be used for finance construction of a new student recreation center,

''(ii) a contract for the development phase of the project was signed by the university on May 21, 1986, with a private company for 5 percent of the costs of the project, and

''(iii) a committee of the university board of administrators approved the major program elements for the center on August 11, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

''(E) Proceeds of an issue are described in this subparagraph if—

''(i) such proceeds are to be used in the construction of new life sciences facilities for a university for medical research and education,

''(ii) the president of the university authorized a faculty/administration planning committee for such facilities on September 17, 1982,

''(iii) the trustees of such university authorized site and architect selection on October 30, 1984, and

''(iv) the university negotiated a $2,600,000 contract with the architect on August 9, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $47,500,000.

''(F) Proceeds of an issue are described in this subparagraph if such proceeds are to be used to renovate undergraduate chemistry and engineering laboratories, and to rehabilitate other basic science facilities, for an institution of higher education in Philadelphia, Pennsylvania, chartered by legislative Acts of the Commonwealth of Pennsylvania, including an Act dated September 30, 1791. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $6,500,000.

''(G) Proceeds of an issue are described in this subparagraph if such proceeds are of bonds which are the first advance refunding of bonds issued during 1985 for the development of a computer network, and construction and renovation or rehabilitation of other facilities, for an institution of higher education described in subparagraph (F). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000.

''(H) Proceeds of an issue are described in this subparagraph if—

''(i) the issue is issued on behalf of a university founded in 1789, and

''(ii) the proceeds of the issue are to be used to finance projects (to be determined by such university and the issuer) which are similar to those projects intended to be financed by bonds that were the subject of a request transmitted to Congress on November 7, 1985[.]

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000. Bonds to which this subparagraph applies shall be treated as qualified 501(c)(3) bonds if such bonds would not (if issued on August 15, 1986) be industrial development bonds (as defined in section 103(b)(2) of the 1954 Code), and section 147(f) of the 1986 Code shall not apply to the issue of which such bonds are a part. Bonds issued to finance facilities described in this subparagraph shall be treated as issued to finance such facilities notwithstanding the fact that a period in excess of 1 year has expired since the facilities were placed in service.

''(I) Proceeds of an issue are described in this subparagraph if the issue is issued on behalf of a university established on August 6, 1872, for a project approved by the trustees thereof on November 1, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

''(J) Proceeds of an issue are described in this subparagraph if—

''(i) the issue is issued on behalf of a university for which the founding grant was signed on November 11, 1885, and

''(ii) such bond is issued for the purpose of providing a Near West Campus Redevelopment Project and a Student Housing Project.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $105,000,000.

''(J) Proceeds of an issue are described in this subparagraph if—

''(i) they are the proceeds of advance refunding obligations issued on behalf of a university established on April 21, 1831, and

''(ii) the application or other request for the issuance of such obligations was made to the appropriate State issuer before July 12, 1986.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $175,000,000.

''(K) Proceeds of an issue are described in this subparagraph if—

''(i) the issue or issues are for the purpose of financing or refinancing costs associated with university facilities including at least 900 units of housing for students, faculty, and staff in up to two buildings and an office building containing up to 245,000 square feet of space, and

''(ii) a bond act authorizing the issuance of such bonds for such project was adopted on July 8, 1986, and such act under Federal law was required to be transmitted to Congress.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $112,000,000.

''(L) Proceeds of an issue are described in this subparagraph if such issue is for Cornell University in an aggregate face amount of not more than $150,000,000.

''(M) Proceeds of an issue are described in this subparagraph if such issue is issued on behalf of the Society of the New York Hospital to finance completion of a project commenced by such hospital in 1981 for construction of a diagnostic and treatment center or to refund bonds issued on behalf of such hospital in connection with the construction of such diagnostic and treatment center or to finance construction and renovation projects associated with an inpatient psychiatric care facility. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

''(N) Any bond to which section 145(b) of the 1986 Code does not apply by reason of this paragraph (other than subparagraph (A) thereof) shall be taken into account in determining whether such section applies to any later issue.

''(O) In the case of any refunding bond—

''(i) to which any subparagraph of this paragraph applies, and

''(ii) to which the last sentence of section 1313(c)(2) applies,

such bond shall be treated as having such subparagraph apply (and the refunding bond shall be treated for purposes of such section as issued before January 1, 1986, and as not being an advance refunding) unless the issuer elects the opposite result.

''(34) ARBITRAGE REBATE.—Section 148(f) of the 1986 Code shall not apply to any period before October 1, 1990, with respect to any bond the proceeds of which are to be used to provide a high-speed rail system for the State of Ohio. The aggregate face amount of bonds to which this paragraph applies shall not exceed $2,000,000,000.

''(35) EXTENSION OF CARRYFORWARD PERIOD.—

''(A) In the case of a carryforward under section 103(n)(10) of the 1954 Code of $170,000,000 of bond limit for calendar year 1984 for a project described in subparagraph (B), clause (i) of section 103(n)(10)(C) of the 1954 Code shall be applied by substituting '6 calendar years' for '3 calendar years', and such carryforward may be used by any authority designated by the State in which the facility is located.

''(B) A project is described in this subparagraph if—

''(i) such project is a facility for local furnishing of electricity described in section 645 of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A, title VI, § 645, July 18, 1984, 98 Stat. 940], and

''(ii) construction of such facility commenced within the 3-year period following the calendar year in which the carryforward arose.

''(36) POWER PURCHASE BONDS.—A bond issued to finance purchase of power from a power facility at a dam being renovated pursuant to P.L. 98–381 [43 U.S.C. 619 et seq.] shall not be treated as a private activity bond if it would not be such under section 141(b)(1) and (2) of the 1986 Code if 25 percent were substituted for 10 percent and the provisions of section 141(b)(3), (4), and (5) of the 1986 Code did not apply. The aggregate face amount of bonds to which this paragraph applies shall not exceed $400,000,000.

''(37) QUALIFIED MORTGAGE BONDS.—A bond issued as part of either of 2 issues no later than September 8, 1986, shall be treated as a qualified mortgage bond within the meaning of section 141(d)(1)(B) of the 1986 Code if it satisfies the requirements of section 103A of the 1954 Code and if the issues are issued by the two most populous cities in the Tar Heel State. The aggregate face amount of bonds to which this paragraph applies shall not exceed $4,000,000.

''(38) EXEMPT FACILITY BONDS.—A bond shall be treated as an exempt facility bond within the meaning of section 142(a) of the 1986 Code if it is issued to fund residential, office, retail, light industrial, recreational and parking development known as Tobacco Row. Such bond shall be subject to section 146 of the 1986 Code. The aggregate face amount of bonds to which this paragraph applies shall not exceed $100,000,000.

''(39) CERTAIN BONDS TREATED AS QUALIFIED 501(c)(3) BONDS.—A bond issued as part of an issue shall be treated for purposes of part IV of subchapter B of chapter 1 of the 1986 Code as a qualified 501(c)(3) bond if—

''(A) such bond would not (if issued on August 15, 1986) be an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), and

''(B) such issue was approved by city voters on January 19, 1985, for construction or renovation of facilities for the cultural and performing arts.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $5,000,000.

''(40) CERTAIN LIBRARY BONDS.—In the case of a bond issued before January 1, 1986, by the City of Los Angeles Community Redevelopment Agency to provide the library and related structures associated with the City of Los Angeles Central Library Project, the ownership and use of the land and facilities associated with such project by persons which are not governmental units (or payments from such persons) shall not adversely affect the exclusion from gross income under section 103 of the 1954 Code of interest on such bonds.

''(41) CERTAIN REFUNDING OBLIGATIONS FOR CERTAIN POWER FACILITIES.—With respect to 2 net billed nuclear power facilities located in the State of Washington on which construction has been suspended, the requirements of section 147(b) of the 1986 Code shall be treated as satisfied with respect to refunding bonds issued before 1992 if—

''(A) each refunding bond has a maturity date not later than the maturity date of the refunded bond, and

''(B) the facilities have not been placed in service as of the date of issuance of the refunding bond.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $2,000,000,000. Section 146 of the 1986 Code and the last paragraph of this section shall not apply to bonds to which this paragraph applies.

''(42) RESIDENTIAL RENTAL PROPERTY.—A bond issued to finance a residential rental project within the meaning of 103(b)(4) of the 1954 Code shall be treated as an exempt facility bond within the meaning of section 142(a)(7) of the 1986 Code if the county housing finance authority adopted an inducement resolution with respect to the project on May 8, 1985, and the project is located in Polk County, Florida. The aggregate face amount of bonds to which this paragraph applies shall not exceed $4,100,000.

''(43) EXTENSION OF ADVANCE REFUNDING FOR CERTAIN FACILITIES.—Paragraph (4) of section 631(c) of the Tax Reform Act of 1984 [section 631(c)(4) of Pub. L. 98–369, set out as a note under section 103 of this title] is amended—

''(A) by striking out the second sentence thereof,

''(B) by adding at the end thereof the following new sentence: 'In the case of refunding obligations not exceeding $100,000,000 issued by the Alabama State Docks Department, the first sentence of this paragraph shall be applied by substituting ''December 31, 1987'' for ''December 31, 1984''.'

''(44) POOL BONDS.—The following amounts of pool bonds are exempt from the arbitrage rebate requirement of section 148(f) of the 1986 Code and the temporary period limitation of section 148(c)(2) of the 1986 Code:

Pool	Maximum Bond Amount
Tennessee Utility Districts Pool	$80,000,000
New Mexico Hospital Equipment Loan Council	$35,000,000
Pennsylvania Local Government Investment Trust Pool	$375,000,000
Indiana Bond Bank Pool	$240,000,000

Pool	Maximum Bond Amount
Hernando County, Florida Bond Pool	$300,000,000
Utah Municipal Finance Cooperative Pool	$262,000,000
North Carolina League of Municipalities Pool	$200,000,000
Kentucky Municipal League Bond Pool	$170,000,000
Kentucky Association of Counties Bond Pool	$200,000,000
Homewood Municipal Bond Pool	$50,000,000
Colorado Association of School Boards Pool	$300,000,000
Tennessee Municipal League Pooled Bonds	$75,000,000
Georgia Municipal Association Pool	$130,000,000

''(45) CERTAIN CARRYFORWARD ELECTIONS.—Notwithstanding any other provision of this title [enacting this section and sections 142 to 150 and 7703 of this title, amending sections 2, 22, 25, 32, 86, 103, 105, 152, 153, 163, 172, 194, 269A, 414, 879, 1016, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing sections 103A, 1391 to 1397, and 6039B of this title, omitting former section 143 of this title, enacting provisions set out as notes under this section and sections 148 and 501 of this title, and amending provisions set out as a note under section 103A of this title]—

''(A) In the case of a metropolitan service district created pursuant to State revised statutes, chapter 268, up to $100,000,000 unused 1985 bond authority may be carried forward to any year until 1989 (regardless of the date on which such carryforward election is made).

''(B) If—

''(i) official action was taken by an industrial development board on September 16, 1985, with respect to the issuance of not more than $98,500,000, of waste water treatment revenue bonds, and

''(ii) an executive order of the governor granted a carryforward of State bond authority for such project on December 30, 1985,

such carryforward election shall be valid for any year through 1988. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $98,500,000.

''(46) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE HYDROELECTRIC GENERATING FACILITY.—If—

''(A) obligations are issued in an amount not exceeding $5,000,000 to finance the construction of a hydroelectric generating facility located on the North Fork of Cache Creek in Lake County, California, which was the subject of a preliminary resolution of the issuer of the obligations on June 29, 1982, or are issued to refund any of such obligations,

''(B) substantially all of the electrical power generated by such facility is to be sold to a nongovernmental person pursuant to a long-term power sales agreement in accordance with the Public Utility Regulatory Policies Act of 1978 [Pub. L. 95–617, see Short Title note set out under 16 U.S.C. 2601], and

''(C) the initially issued obligations are issued on or before December 31, 1986, and any of such refunding obligations are issued on or before December 31, 1996,

then the person referred to in subparagraph (B) shall not be treated as a principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the 1954 Code.

''(47) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE STEAM AND ELECTRIC COGENERATION FACILITY.—If—

''(A) obligations are issued on or before December 31, 1986, in an amount not exceeding $4,400,000 to finance a facility for the generation and transmission of steam and electricity having a maximum electrical capacity of approximately 5.3 megawatts and located within the City of San Jose, California, or are issued to refund any of such obligations,

''(B) substantially all of the electrical power generated by such facility that is not sold to an institution of higher education created by statute of the State of California is to be sold to a nongovernmental person pursuant to a long-term power sales agreement in accordance with the Public Utility Regulatory Policies Act of 1978 [Pub. L. 95–617, see Short Title note set out under 16 U.S.C. 2601], and

''(C) the initially issued obligations are issued on or before December 31, 1986, and any of such refunding obligations are issued on or before December 31, 1996,

then the nongovernmental person referred to in subparagraph (B) shall not be treated as a principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the Internal Revenue Code of 1954.

''(48) TREATMENT OF CERTAIN OBLIGATIONS.—A bond which is not an industrial development bond under section 103(b)(2) of the Internal Revenue Code of 1954 shall not be treated as a private activity bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if 95 percent or more of the net proceeds of the issue of which such bond is a part are used to provide facilities described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if it is a governmentally-owned and operated State fair and exposition center with respect to which—

''(i) the 1985 session of the State legislature authorized revenue bonds to be issued in a maximum amount of $10,000,000, and

''(ii) a market feasibility study dated June 30, 1986, relating to a major capital improvemental program at the facility was prepared for the advisory board of the State fair and exposition center by a certified public accounting firm.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $10,000,000.

''(B) A facility is described in this subparagraph if it is a convention, trade, or spectator facility which is to be located in the State with respect to which paragraph (6)(U) applies and with respect to which feasibility and preliminary design consultants were hired on May 1, 1985 and October 31, 1985. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $175,000,000.

''(C) A facility which is part of a project described in paragraph (6)(O). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

''(49) TRANSITION RULE FOR REFUNDING CERTAIN HOUSING BONDS.—Sections 146 and 149(d)(2) of the 1986 Code shall not apply to the refunding of any bond issued under section 11(b) of the United States Housing Act of 1937 [42 U.S.C. 1437i(b)] before December 31, 1983, if—

''(A) the bond has an original term to maturity of at least 40 years,

''(B) the maturity date of the refunding bonds does not exceed the maturity date of the refunded bonds,

''(C) the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds,

''(D) the interest rate on the refunding bonds is lower than the interest rate of the refunded bonds, and

''(E) the refunded bond is required to be redeemed not later than the earliest date on which such bond could be redeemed at par.

''(50) TRANSITIONED BONDS SUBJECT TO CERTAIN RULES.—In the case of any bond to which any provision of this section applies, except as otherwise expressly provided, sections 103 and 103A of the 1954 Code shall be applied as if the requirements of sections 147(g), 148, and 149(d) of the 1986 Code were included in each such section.

''(51) CERTAIN ADDITIONAL PROJECTS.—Section 141(b) of the 1986 Code shall be applied by substituting '25' for '10' each place it appears and by not applying sections 141(b)(3) and 141(c)(1)(B) to bonds substantially all of the proceeds are used for—

''(A) A project is described in this subparagraph if it consists of a capital improvements program for a metropolitan sewer district, with respect to which a proposition was submitted to voters on August 7,

1984. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $60,000,000.

''(B) Facilities described in this subparagraph if it consists of additions, extensions, and improvements to the wastewater system for Lakeland, Florida. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $20,000,000.

''(C) A project is described in this subparagraph if it is the Central Valley Water Reclamation Project in Utah. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $100,000,000.

''(D) A project is described in this subparagraph if it is a project to construct approximately 26 miles of toll expressways, with respect to which any appeal to validation was filed July 11, 1986. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $450,000,000.

''(52) TERMINATION.—Except as otherwise provided in this section, this section shall not apply to any bond issued after December 31, 1990.

''SEC. 1318. DEFINITIONS, ETC., RELATING TO EFFECTIVE DATES AND TRANSITIONAL RULES.

''(a) DEFINITIONS.—For purposes of this subtitle—

''(1) 1954 CODE.—The term '1954 Code' means the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986].

''(2) 1986 CODE.—The term '1986 Code' means the Internal Revenue Code of 1986 as amended by this Act [see Tables for classification].

''(3) BOND.—The term 'bond' includes any obligation.

''(4) ADVANCE REFUND.—A bond shall be treated as issued to advance refund another bond if it is issued more than 90 days before the redemption of the refunded bond.

''(5) NET PROCEEDS.—The term 'net proceeds' has the meaning given such term by section 150(a) of the 1986 Code.

''(6) CONTINUED APPLICATION OF THE 1954 CODE.—Nothing in this subtitle shall be construed to exempt any bond from any provision of the 1954 Code by reason of a delay in (or exemption from) the application of any amendment made by subtitle A [sections 1301 to 1303 of Pub. L. 99–514, enacting this section and sections 142 to 150 and 7703 of this title, amending sections 2, 22, 25, 32, 86, 103, 105, 152, 153, 163, 172, 194, 269A, 414, 879, 1016, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing sections 103A, 1391 to 1397, and 6039B of this title, omitting former section 143 of this title, enacting provisions set out as notes under this section and sections 148 and 501 of this title, and amending provisions set out as a note under section 103A of this title].

''(7) TREATMENT AS EXEMPT FACILITY.—Any bond which is treated as an exempt facility bond by section 1316 or 1317 shall not fail to be so treated by reason of subsection (b) of section 142 of the 1986 Code.

''(8) APPLICATION OF FUTURE LEGISLATION TO TRANSITIONED BONDS.—In the case of any bond to which the amendments made by section 1301 [for classification see section 1311(a) of this note] do not apply by reason of a provision of this Act [see Tables for classification], any amendment of the 1986 Code (and any other provision applicable to such Code) included in any law enacted after October 22, 1986, shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code with respect to such bond unless—

''(A) such law expressly provides that such amendment (or other provision) shall not apply to such bond, or

''(B) such amendment (or other provision) applies to a provision of the 1986 Code—

''(i) for which there is no corresponding provision in section 103 and section 103A (as appropriate) of the 1954 Code, and

''(ii) which is not otherwise treated as included in such sections 103 and 103A with respect to such bond.

''(b) MINIMUM TAX TREATMENT.—

''(1) IN GENERAL.—Any bond described in paragraph (2) shall not be treated as a private activity bond for purposes of section 57 of the 1986 Code unless such bond would (if issued on August 7, 1986) be—

''(A) an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), or

''(B) a private loan bond (as defined in section 103(*o*)(2)(A) of the 1954 Code, without regard to any exception from such definition other than section 103(*o*)(2)(C) of such Code).

''(2) BONDS DESCRIBED.—For purposes of paragraph (1), a bond is described in this paragraph if—

''(A) the amendments made by section 1301 [for classification see section 1311(a) of this note] do not apply to such bond by reason of section 1312 or 1316(g),

''(B) any provision of section 1317 applies to such bond, or

''(C) the proceeds of such bond are used to refund any bond referred to in subparagraph (A) or (B) (or any bond which is part of a series of refundings of such a bond) if the requirements of paragraphs (1), (2), and (3) of subsection (c) are met with respect to the refunding bond.

''(c) CURRENT REFUNDINGS NOT TAKEN INTO ACCOUNT IN APPLYING AGGREGATE LIMIT ON BONDS TO WHICH TRANSITIONAL RULES APPLY.—The limitation on the aggregate face amount of bonds to which any provision of section 1316(g) or 1317 applies shall not be reduced by the face amount of any bond the proceeds of which are to be used exclusively to refund any bond to which such provision applies (or any bond which is part of a series of refundings of such bond) if—

''(1) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

''(2) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(3) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of paragraph (1), average maturity shall be determined in accordance with section 147(b)(2)(A) of the 1986 Code. No limitation in section 1316(g) or 1317 on the period during which bonds may be issued under such section shall apply to any refunding bond which meets the requirements of this subsection.

''(d) SPECIAL RULE PERMITTING CARRYFORWARD OF VOLUME CAP FOR CERTAIN TRANSITIONED PROJECTS.—A bond to which section 1312 or 1317 applies shall be treated as having a carryforward purpose described in section 146(f)(5) of the 1986 Code, and the requirement of section 146(f)(2)(A) of the 1986 Code shall be treated as met if such project is identified with reasonable specificity. The preceding sentence shall not apply so as to permit a carryforward with respect to any qualified small issue bond.''

[Section 1013(c)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending section 1313(a)(3)(C) of Pub. L. 99–514, set out above] shall apply to bonds issued after June 30, 1987''.]

[Section 1013(c)(11)(E) of Pub. L. 100–647 provided that: ''A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subparagraph (A) of section 1313(c)(1) of the Reform Act [Pub. L. 99–514, set out above] if such bond met the requirement of such subparagraph as in effect before the amendments made by this paragraph [amending section 1313(c) of Pub. L. 99–514, set out above].''']

[Section 1013(c)(14)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending section 1313 of Pub. L. 99–514, set out above] shall apply with respect to refunding bonds issued after October 16, 1987.''']

[Section 1013(e)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending section 1315(e) of Pub. L. 99–514, set out above] shall apply to bonds issued after June 10, 1987.'']

[Section 1013(f)(1)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending section 1316 of Pub. L. 99–514, set out above] shall apply only with respect to carryforwards of volume cap for years after 1986.'']

[Section 1013(f)(7)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending section 1316(g)(8) of Pub. L. 99–514, set out above] shall apply only with respect to carryforwards of volume cap for years after 1986.'']

REGULATIONS

Section 1301(i) of Pub. L. 99–514 provided that: ''The Secretary of the Treasury or his delegate shall amend the provision in the Federal income tax regulations relating to when use pursuant to certain output contracts is considered to satisfy the private business tests of paragraphs (1) and (2) of section 141(b) of the Internal Revenue Code of 1986 to eliminate the requirement of a 3 percent guaranteed minimum payment.''

APPLICATION OF SECURITY INTEREST TEST TO BOND FINANCING OF HAZARDOUS WASTE CLEAN-UP ACTIVITIES

Section 6179 of Pub. L. 100–647 provided that: ''Before January 1, 1989, the Secretary of the Treasury or his delegate shall issue guidance concerning the application of the private security or payment test under section 141(b)(2) of the Internal Revenue Code of 1986 to tax-exempt bond financing by State and local governments of hazardous waste clean-up activities conducted by such governments where some of the activities occur on privately owned land.''

STATE AND LOCAL GOVERNMENT SERIES MODIFICATIONS

Section 1301(d) of Pub. L. 99–514 provided that: ''Notwithstanding any other provision of law or any regulations promulgated thereunder (including the provisions of 31 CFR part 344) the Secretary of the Treasury shall extend by January 1, 1987, the State and Local Government Series program to provide—

''(1) instruments allowing flexible investment of bond proceeds in a manner eliminating the earning of rebatable arbitrage,

''(2) demand deposits under such program by eliminating advance notice and minimum maturity requirements related to the purchase of bonds,

''(3) operation of such program at no net cost to the Federal Government, and

''(4) deposits for a stated maturity under reasonable advance notice requirements.''

MANAGEMENT CONTRACTS

Section 1301(e) of Pub. L. 99–514 provided that: ''The Secretary of the Treasury or his delegate shall modify the Secretary's advance ruling guidelines relating to when use of property pursuant to a management contract is not considered a trade or business use by a private person for purposes of section 141(a) of the Internal Revenue Code of 1986 to provide that use pursuant to a management contract generally shall not be treated as trade or business use as long as—

''(1) the term of such contract (including renewal options) does not exceed 5 years,

''(2) the exempt owner has the option to cancel such contract at the end of any 3-year period,

''(3) the manager under the contract is not compensated (in whole or in part) on the basis of a share of net profits, and

''(4) at least 50 percent of the annual compensation of the manager under such contract is based on a periodic fixed fee.''

§ 142. Exempt facility bond

(a) General rule

For purposes of this part, the term ''exempt facility bond'' means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

(1) airports,

(2) docks and wharves,

(3) mass commuting facilities,

(4) facilities for the furnishing of water,

(5) sewage facilities,

(6) solid waste disposal facilities,

(7) qualified residential rental projects,

(8) facilities for the local furnishing of electric energy or gas,

(9) local district heating or cooling facilities,

(10) qualified hazardous waste facilities,

(11) high-speed intercity rail facilities,

(12) environmental enhancements of hydroelectric generating facilities,

(13) qualified public educational facilities,

(14) qualified green building and sustainable design projects, or

(15) qualified highway or surface freight transfer facilities.

(b) Special exempt facility bond rules

For purposes of subsection (a)—

(1) Certain facilities must be governmentally owned

(A) In general

A facility shall be treated as described in paragraph (1), (2), (3), or (12) of subsection (a) only if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit.

(B) Safe harbor for leases and management contracts

For purposes of subparagraph (A), property leased by a governmental unit shall be treated as owned by such governmental unit if—

(i) the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such property,

(ii) the lease term (as defined in section 168(i)(3)) is not more than 80 percent of the reasonably expected economic life of the property (as determined under section 147(b)), and

(iii) the lessee has no option to purchase the property other than at fair market value (as of the time such option is exercised).

Rules similar to the rules of the preceding sentence shall apply to management contracts and similar types of operating agreements.

(2) Limitation on office space

An office shall not be treated as described in a paragraph of subsection (a) unless—

(A) the office is located on the premises of a facility described in such a paragraph, and

(B) not more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations at such facility.

(c) Airports, docks and wharves, mass commuting facilities and high-speed intercity rail facilities

For purposes of subsection (a)—

(1) Storage and training facilities

Storage or training facilities directly related to a facility described in paragraph (1), (2), (3) or (11) of subsection (a) shall be treated as described in the paragraph in which such facility is described.

(2) Exception for certain private facilities

Property shall not be treated as described in paragraph (1), (2), (3) or (11) of subsection (a) if such property is described in any of the following subparagraphs and is to be used for any private business use (as defined in section 141(b)(6)).

(A) Any lodging facility.

(B) Any retail facility (including food and beverage facilities) in excess of a size necessary to serve passengers and employees at the exempt facility.

(C) Any retail facility (other than parking) for passengers or the general public located outside the exempt facility terminal.

(D) Any office building for individuals who are not employees of a governmental unit or of the operating authority for the exempt facility.

(E) Any industrial park or manufacturing facility.

(d) Qualified residential rental project

For purposes of this section—

(1) In general

The term ''qualified residential rental project'' means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of subparagraph (A) or (B), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project:

(A) 20–50 test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40–60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income.

For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Definitions and special rules

For purposes of this subsection—

(A) Qualified project period

The term ''qualified project period'' means the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ending on the latest of—

(i) the date which is 15 years after the date on which 50 percent of the residential units in the project are occupied,

(ii) the 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or

(iii) the date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

(B) Income of individuals; area median gross income

(i) In general

The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size. Subsections (g) and (h) of section 7872 shall not apply in determining the income of individuals under this subparagraph.

(ii) Special rule relating to basic housing allowances

For purposes of determining income under this subparagraph, payments under section 403 of title 37, United States Code, as a basic pay allowance for housing shall be disregarded with respect to any qualified building.

(iii) Qualified building

For purposes of clause (ii), the term ''qualified building'' means any building located—

(I) in any county in which is located a qualified military installation to which the number of members of the Armed Forces of the United States assigned to units based out of such qualified military installation, as of June 1, 2008, has increased by not less than 20 percent, as compared to such number on December 31, 2005, or

(II) in any county adjacent to a county described in subclause (I).

(iv) Qualified military installation

For purposes of clause (iii), the term ''qualified military installation'' means any military installation or facility the number of members of the Armed Forces of the United States assigned to which, as of June 1, 2008, is not less than 1,000.

(C) Students

Rules similar to the rules of 42(i)(3)(D)[1] shall apply for purposes of this subsection.

(D) Single-room occupancy units

A unit shall not fail to be treated as a residential unit merely because such unit is a single-room occupancy unit (within the meaning of section 42).

[1] So in original. Probably should be ''section 42(i)(3)(D)''.

(E) Hold harmless for reductions in area median gross income

(i) In general

Any determination of area median gross income under subparagraph (B) with respect to any project for any calendar year after 2008 shall not be less than the area median gross income determined under such subparagraph with respect to such project for the calendar year preceding the calendar year for which such determination is made.

(ii) Special rule for certain census changes

In the case of a HUD hold harmless impacted project, the area median gross income with respect to such project for any calendar year after 2008 (hereafter in this clause referred to as the current calendar year) shall be the greater of the amount determined without regard to this clause or the sum of—

(I) the area median gross income determined under the HUD hold harmless policy with respect to such project for calendar year 2008, plus

(II) any increase in the area median gross income determined under subparagraph (B) (determined without regard to the HUD hold harmless policy and this subparagraph) with respect to such project for the current calendar year over the area median gross income (as so determined) with respect to such project for calendar year 2008.

(iii) HUD hold harmless policy

The term ''HUD hold harmless policy'' means the regulations under which a policy similar to the rules of clause (i) applied to prevent a change in the method of determining area median gross income from resulting in a reduction in the area median gross income determined with respect to certain projects in calendar years 2007 and 2008.

(iv) HUD hold harmless impacted project

The term ''HUD hold harmless impacted project'' means any project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy.

(3) Current income determinations

For purposes of this subsection—

(A) In general

The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident. The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.

(B) Continuing resident's income may increase above the applicable limit

If the income of a resident of a unit in a project did not exceed the applicable income limit upon commencement of such resident's occupancy of such unit (or as of any prior determination under subparagraph (A)), the income of such resident shall be treated as continuing to not exceed the applicable income limit. The preceding sentence shall cease to apply to any resident whose income as of the most recent determination under subparagraph (A) exceeds 140 percent of the applicable income limit if after such determination, but before the next determination, any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit.

(C) Exception for projects with respect to which affordable housing credit is allowed

In the case of a project with respect to which credit is allowed under section 42, the second sentence of subparagraph (B) shall be applied by substituting ''building (within the meaning of section 42)'' for ''project''.

(4) Special rule in case of deep rent skewing

(A) In general

In the case of any project described in subparagraph (B), the 2d sentence of subparagraph (B) of paragraph (3) shall be applied by substituting—

(i) ''170 percent'' for ''140 percent'', and

(ii) ''any low-income unit in the same project is occupied by a new resident whose income exceeds 40 percent of area median gross income'' for ''any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit''.

(B) Deep rent skewed project

A project is described in this subparagraph if the owner of the project elects to have this paragraph apply and, at all times during the qualified project period, such project meets the requirements of clauses (i), (ii), and (iii):

(i) The project meets the requirements of this clause if 15 percent or more of the low-income units in the project are occupied by individuals whose income is 40 percent or less of area median gross income.

(ii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 30 percent of the applicable income limit which applies to individuals occupying the unit.

(iii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed ½ of the average gross rent with respect to units of comparable size which are not occupied by individuals who meet the applicable income limit.

(C) Definitions applicable to subparagraph (B)

For purposes of subparagraph (B)—

(i) Low-income unit

The term ''low-income unit'' means any unit which is required to be occupied by

individuals who meet the applicable income limit.

(ii) Gross rent

The term ''gross rent'' includes—

(I) any payment under section 8 of the United States Housing Act of 1937, and

(II) any utility allowance determined by the Secretary after taking into account such determinations under such section 8.

(5) Applicable income limit

For purposes of paragraphs (3) and (4), the term ''applicable income limit'' means—

(A) the limitation under subparagraph (A) or (B) of paragraph (1) which applies to the project, or

(B) in the case of a unit to which paragraph (4)(B)(i) applies, the limitation which applies to such unit.

(6) Special rule for certain high cost housing area

In the case of a project located in a city having 5 boroughs and a population in excess of 5,000,000, subparagraph (B) of paragraph (1) shall be applied by substituting ''25 percent'' for ''40 percent''.

(7) Certification to Secretary

The operator of any project with respect to which an election was made under this subsection shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether such project continues to meet the requirements of this subsection. Any failure to comply with the provisions of the preceding sentence shall not affect the tax-exempt status of any bond but shall subject the operator to penalty, as provided in section 6652(j).

(e) Facilities for the furnishing of water

For purposes of subsection (a)(4), the term ''facilities for the furnishing of water'' means any facility for the furnishing of water if—

(1) the water is or will be made available to members of the general public (including electric utility, industrial, agricultural, or commercial users), and

(2) either the facility is operated by a governmental unit or the rates for the furnishing or sale of the water have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(f) Local furnishing of electric energy or gas

For purposes of subsection (a)(8)—

(1) In general

The local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of—

(A) a city and 1 contiguous county, or

(B) 2 contiguous counties.

(2) Treatment of certain electric energy transmitted outside local area

(A) In general

A facility shall not be treated as failing to meet the local furnishing requirement of subsection (a)(8) by reason of electricity transmitted pursuant to an order of the Federal Energy Regulatory Commission under section 211 or 213 of the Federal Power Act (as in effect on the date of the enactment of this paragraph) if the portion of the cost of the facility financed with tax-exempt bonds is not greater than the portion of the cost of the facility which is allocable to the local furnishing of electric energy (determined without regard to this paragraph).

(B) Special rule for existing facilities

In the case of a facility financed with bonds issued before the date of an order referred to in subparagraph (A) which would (but for this subparagraph) cease to be tax-exempt by reason of subparagraph (A), such bonds shall not cease to be tax-exempt bonds (and section 150(b)(4) shall not apply) if, to the extent necessary to comply with subparagraph (A)—

(i) an escrow to pay principal of, premium (if any), and interest on the bonds is established within a reasonable period after the date such order becomes final, and

(ii) bonds are redeemed not later than the earliest date on which such bonds may be redeemed.

(3) Termination of future financing

For purposes of this section, no bond may be issued as part of an issue described in subsection (a)(8) with respect to a facility for the local furnishing of electric energy or gas on or after the date of the enactment of this paragraph unless—

(A) the facility will—

(i) be used by a person who is engaged in the local furnishing of that energy source on January 1, 1997, and

(ii) be used to provide service within the area served by such person on January 1, 1997 (or within a county or city any portion of which is within such area), or

(B) the facility will be used by a successor in interest to such person for the same use and within the same service area as described in subparagraph (A).

(4) Election to terminate tax-exempt bond financing by certain furnishers

(A) In general

In the case of a facility financed with bonds issued before the date of the enactment of this paragraph which would cease to be tax-exempt by reason of the failure to meet the local furnishing requirement of subsection (a)(8) as a result of a service area expansion, such bonds shall not cease to be tax-exempt bonds (and section 150(b)(4) shall not apply) if the person engaged in such local furnishing by such facility makes an election described in subparagraph (B).

(B) Election

An election is described in this subparagraph if it is an election made in such manner as the Secretary prescribes, and such person (or its predecessor in interest) agrees that—

(i) such election is made with respect to all facilities for the local furnishing of electric energy or gas, or both, by such person,

(ii) no bond exempt from tax under section 103 and described in subsection (a)(8) may be issued on or after the date of the enactment of this paragraph with respect to all such facilities of such person,

(iii) any expansion of the service area—

(I) is not financed with the proceeds of any exempt facility bond described in subsection (a)(8), and

(II) is not treated as a nonqualifying use under the rules of paragraph (2), and

(iv) all outstanding bonds used to finance the facilities for such person are redeemed not later than 6 months after the later of—

(I) the earliest date on which such bonds may be redeemed, or

(II) the date of the election.

(C) Related persons

For purposes of this paragraph, the term ''person'' includes a group of related persons (within the meaning of section 144(a)(3)) which includes such person.

(g) Local district heating or cooling facility

(1) In general

For purposes of subsection (a)(9), the term ''local district heating or cooling facility'' means property used as an integral part of a local district heating or cooling system.

(2) Local district heating or cooling system

(A) In general

For purposes of paragraph (1), the term ''local district heating or cooling system'' means any local system consisting of a pipeline or network (which may be connected to a heating or cooling source) providing hot water, chilled water, or steam to 2 or more users for—

(i) residential, commercial, or industrial heating or cooling, or

(ii) process steam.

(B) Local system

For purposes of this paragraph, a local system includes facilities furnishing heating and cooling to an area consisting of a city and 1 contiguous county.

(h) Qualified hazardous waste facilities

For purposes of subsection (a)(10), the term ''qualified hazardous waste facility'' means any facility for the disposal of hazardous waste by incineration or entombment but only if—

(1) the facility is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Tax Reform Act of 1986), and

(2) the portion of such facility which is to be provided by the issue does not exceed the portion of the facility which is to be used by persons other than—

(A) the owner or operator of such facility, and

(B) any related person (within the meaning of section 144(a)(3)) to such owner or operator.

(i) High-speed intercity rail facilities

(1) In general

For purposes of subsection (a)(11), the term ''high-speed intercity rail facilities'' means any facility (not including rolling stock) for the fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas (within the meaning of section 143(k)(2)(B)) using vehicles that are reasonably expected to be capable of attaining a maximum speed in excess of 150 miles per hour between scheduled stops, but only if such facility will be made available to members of the general public as passengers.

(2) Election by nongovernmental owners

A facility shall be treated as described in subsection (a)(11) only if any owner of such facility which is not a governmental unit irrevocably elects not to claim—

(A) any deduction under section 167 or 168, and

(B) any credit under this subtitle,

with respect to the property to be financed by the net proceeds of the issue.

(3) Use of proceeds

A bond issued as part of an issue described in subsection (a)(11) shall not be considered an exempt facility bond unless any proceeds not used within a 3-year period of the date of the issuance of such bond are used (not later than 6 months after the close of such period) to redeem bonds which are part of such issue.

(j) Environmental enhancements of hydroelectric generating facilities

(1) In general

For purposes of subsection (a)(12), the term ''environmental enhancements of hydroelectric generating facilities'' means property—

(A) the use of which is related to a federally licensed hydroelectric generating facility owned and operated by a governmental unit, and

(B) which—

(i) protects or promotes fisheries or other wildlife resources, including any fish by-pass facility, fish hatchery, or fisheries enhancement facility, or

(ii) is a recreational facility or other improvement required by the terms and conditions of any Federal licensing permit for the operation of such generating facility.

(2) Use of proceeds

A bond issued as part of an issue described in subsection (a)(12) shall not be considered an exempt facility bond unless at least 80 percent of the net proceeds of the issue of which it is a part are used to finance property described in paragraph (1)(B)(i).

(k) Qualified public educational facilities

(1) In general

For purposes of subsection (a)(13), the term ''qualified public educational facility'' means any school facility which is—

(A) part of a public elementary school or a public secondary school, and

(B) owned by a private, for-profit corporation pursuant to a public-private partnership agreement with a State or local educational agency described in paragraph (2).

(2) Public-private partnership agreement described

A public-private partnership agreement is described in this paragraph if it is an agreement—

(A) under which the corporation agrees—

(i) to do 1 or more of the following: construct, rehabilitate, refurbish, or equip a school facility, and

(ii) at the end of the term of the agreement, to transfer the school facility to such agency for no additional consideration, and

(B) the term of which does not exceed the term of the issue to be used to provide the school facility.

(3) School facility

For purposes of this subsection, the term ''school facility'' means—

(A) any school building,

(B) any functionally related and subordinate facility and land with respect to such building, including any stadium or other facility primarily used for school events, and

(C) any property, to which section 168 applies (or would apply but for section 179), for use in a facility described in subparagraph (A) or (B).

(4) Public schools

For purposes of this subsection, the terms ''elementary school'' and ''secondary school'' have the meanings given such terms by section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), as in effect on the date of the enactment of this subsection.

(5) Annual aggregate face amount of tax-exempt financing

(A) In general

An issue shall not be treated as an issue described in subsection (a)(13) if the aggregate face amount of bonds issued by the State pursuant thereto (when added to the aggregate face amount of bonds previously so issued during the calendar year) exceeds an amount equal to the greater of—

(i) $10 multiplied by the State population, or

(ii) $5,000,000.

(B) Allocation rules

(i) In general

Except as otherwise provided in this subparagraph, the State may allocate the amount described in subparagraph (A) for any calendar year in such manner as the State determines appropriate.

(ii) Rules for carryforward of unused limitation

A State may elect to carry forward an unused limitation for any calendar year for 3 calendar years following the calendar year in which the unused limitation arose under rules similar to the rules of section 146(f), except that the only purpose for which the carryforward may be elected is the issuance of exempt facility bonds described in subsection (a)(13).

***(l)* Qualified green building and sustainable design projects**

(1) In general

For purposes of subsection (a)(14), the term ''qualified green building and sustainable design project'' means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

(2) Designations

(A) In general

Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

(B) Minimum conservation and technology innovation objectives

The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall—

(i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,

(ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,

(iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and

(iv) use at least 25 megawatts of fuel cell energy generation.

(3) Limited designations

A project may not be designated under this subsection unless—

(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and

(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

(4) Application

(A) In general

A project may not be designated under this subsection unless the application for such

designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

(i) Green building and sustainable design

At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council's LEED certification and is reasonably expected (at the time of the designation) to receive such certification. For purposes of determining LEED certification as required under this clause, points shall be credited by using the following:

(I) For wood products, certification under the Sustainable Forestry Initiative Program and the American Tree Farm System.

(II) For renewable wood products, as credited for recycled content otherwise provided under LEED certification.

(III) For composite wood products, certification under standards established by the American National Standards Institute, or such other voluntary standards as published in the Federal Register by the Administrator of the Environmental Protection Agency.

(ii) Brownfield redevelopment

The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

(iii) State and local support

The project receives specific State or local government resources which will support the project in an amount equal to at least $5,000,000. For purposes of the preceding sentence, the term ''resources'' includes tax abatement benefits and contributions in kind.

(iv) Size

The project includes at least one of the following:

(I) At least 1,000,000 square feet of building.

(II) At least 20 acres.

(v) Use of tax benefit

The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

(II) Compliance with certification standards cited under clause (i).

(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

(vi) Prohibited facilities

An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

(vii) Employment

The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project's economic impact, including the amount of projected employment.

(B) Project description

Each application described in subparagraph (A) shall contain for each project a description of—

(i) the amount of electric consumption reduced as compared to conventional construction,

(ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,

(iii) the amount of the gross installed capacity of the project's solar photovoltaic capacity measured in megawatts, and

(iv) the amount, in megawatts, of the project's fuel cell energy generation.

(5) Certification of use of tax benefit

No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

(6) Definitions

For purposes of this subsection—

(A) Rural State

The term ''rural State'' means any State which has—

(i) a population of less than 4,500,000 according to the 2000 census,

(ii) a population density of less than 150 people per square mile according to the 2000 census, and

(iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

(B) Local government

The term ''local government'' has the meaning given such term by section 1393(a)(5).

(C) Net benefit of tax-exempt financing

The term ''net benefit of tax-exempt financing'' means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

(7) Aggregate face amount of tax-exempt financing

(A) In general

An issue shall not be treated as an issue described in subsection (a)(14) if the aggre-

gate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

(B) Limitation on amount of bonds

The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding $2,000,000,000.

(8) Termination

Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2012.

(9) Treatment of current refunding bonds

Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2012, if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).

(m) Qualified highway or surface freight transfer facilities

(1) In general

For purposes of subsection (a)(15), the term ''qualified highway or surface freight transfer facilities'' means—

(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection),

(B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under title 23, United States Code (as so in effect), or

(C) any facility for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as so in effect).

(2) National limitation on amount of tax-exempt financing for facilities

(A) National limitation

The aggregate amount allocated by the Secretary of Transportation under subparagraph (C) shall not exceed $15,000,000,000.

(B) Enforcement of national limitation

An issue shall not be treated as an issue described in subsection (a)(15) if the aggregate face amount of bonds issued pursuant to such issue for any qualified highway or surface freight transfer facility (when added to the aggregate face amount of bonds previously so issued for such facility) exceeds the amount allocated to such facility under subparagraph (C).

(C) Allocation by Secretary of Transportation

The Secretary of Transportation shall allocate the amount described in subparagraph (A) among qualified highway or surface freight transfer facilities in such manner as the Secretary determines appropriate.

(3) Expenditure of proceeds

An issue shall not be treated as an issue described in subsection (a)(15) unless at least 95 percent of the net proceeds of the issue is expended for qualified highway or surface freight transfer facilities within the 5-year period beginning on the date of issuance. If at least 95 percent of such net proceeds is not expended within such 5-year period, an issue shall be treated as continuing to meet the requirements of this paragraph if the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 5-year period. The Secretary, at the request of the issuer, may extend such 5-year period if the issuer establishes that any failure to meet such period is due to circumstances beyond the control of the issuer.

(4) Exception for current refunding bonds

Paragraph (2) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(15) if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the refunded bond is redeemed not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2606; amended Pub. L. 100–647, title I, §1013(a)(1), (39), title VI, §6180(a)–(b)(2), Nov. 10, 1988, 102 Stat. 3537, 3544, 3727, 3728; Pub. L. 101–239, title VII, §§7108(e)(3), (n)(1), 7816(s)(1), Dec. 19, 1989, 103 Stat. 2313, 2318, 2423; Pub. L. 102–486, title XIX, §§1919(a), 1921(a), (b)(1), (2), Oct. 24, 1992, 106 Stat. 3025, 3027, 3028; Pub. L. 104–188, title I, §§1608(a), 1704(j)(7), Aug. 20, 1996, 110 Stat. 1840, 1882; Pub. L. 105–206, title VI, §6023(5), July 22, 1998, 112 Stat. 825; Pub. L. 107–16, title IV, §422(a), (b), June 7, 2001, 115 Stat. 65; Pub. L. 108–357, title VII, §701(a), (b), Oct. 22, 2004, 118 Stat. 1536; Pub. L. 109–59, title XI, §11143(a), (b), Aug. 10, 2005, 119 Stat. 1963; Pub. L. 109–222, title II, §209(b)(2), May 17, 2006, 120 Stat. 352; Pub. L. 110–289, div. C, title I, §§3005(a), 3008(a)–(c), 3009(a), 3010(a), July 30, 2008, 122 Stat. 2885–2888; Pub. L. 110–343, div. B, title III, §307(a), (b), Oct. 3, 2008, 122 Stat. 3849; Pub. L. 111–5, div. B, title I, §1504(a), Feb. 17, 2009, 123 Stat. 355.)

AMENDMENT OF SECTION

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

REFERENCES IN TEXT

Section 8 of the United States Housing Act of 1937, referred to in subsec. (d)(2)(A)(iii), (B)(i), (4)(C)(ii), is classified to section 1437f of Title 42, The Public Health and Welfare.

Sections 211 and 213 of the Federal Power Act, referred to in subsec. (f)(2)(A), are classified to sections 824j and 824*l*, respectively, of Title 16, Conservation.

The date of the enactment of this paragraph, referred to in subsec. (f)(2)(A), is the date of enactment of Pub. L. 102–486, which was approved Oct. 24, 1992.

The date of the enactment of this paragraph, referred to in subsec. (f)(3), (4)(A), (B)(ii), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

The Solid Waste Disposal Act, referred to in subsec. (h)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (h)(1), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 14101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (k)(4), is section 14101 of Pub. L. 89–10, which was classified to section 8801 of Title 20, Education, prior to repeal by Pub. L. 107–110, title X, § 1011(5)(C), Jan. 8, 2002, 115 Stat. 1986.

The date of the enactment of this subsection, referred to in subsec. (k)(4), means the date of enactment of Pub. L. 107–16, which was approved June 7, 2001.

The enactment of this subsection, referred to in subsec. (*l*)(3)(A), probably means the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The date of the enactment of this subsection, referred to in subsec. (m)(1)(A), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

PRIOR PROVISIONS

A prior section 142, act Aug. 16, 1954, ch. 736, 68A Stat. 40, enumerated individuals not eligible for standard deduction, prior to repeal by Pub. L. 95–30, title I, § 101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2009—Subsec. (i)(1). Pub. L. 111–5 substituted ''be capable of attaining a maximum speed in excess of'' for ''operate at speeds in excess of''.

2008—Subsec. (d)(2)(B). Pub. L. 110–289, § 3005(a), designated existing provisions as cl. (i), inserted heading, and added cls. (ii) to (iv).

Subsec. (d)(2)(C). Pub. L. 110–289, § 3008(b), added subpar. (C).

Subsec. (d)(2)(D). Pub. L. 110–289, § 3008(c), added subpar. (D).

Subsec. (d)(2)(E). Pub. L. 110–289, § 3009(a), added subpar. (E).

Subsec. (d)(3)(A). Pub. L. 110–289, § 3010(a), inserted at end ''The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.''

Subsec. (d)(3)(C). Pub. L. 110–289, § 3008(a), added subpar. (C).

Subsec. (*l*)(8). Pub. L. 110–343, § 307(a), substituted ''September 30, 2012'' for ''September 30, 2009''.

Subsec. (*l*)(9). Pub. L. 110–343, § 307(b), substituted ''October 1, 2012'' for ''October 1, 2009''.

2006—Subsec. (d)(2)(B). Pub. L. 109–222 substituted ''Subsections (g) and (h) of section 7872'' for ''Section 7872(g)''.

2005—Subsec. (a)(15). Pub. L. 109–59, § 11143(a), added par. (15).

Subsec. (m). Pub. L. 109–59, § 11143(b), added subsec. (m).

2004—Subsec. (a)(14). Pub. L. 108–357, § 701(a), added par. (14).

Subsec. (*l*). Pub. L. 108–357, § 701(b), added subsec. (*l*).

2001—Subsec. (a)(13). Pub. L. 107–16, §§ 422(a), 901, temporarily added par. (13). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (k). Pub. L. 107–16, §§ 422(b), 901, temporarily added subsec. (k). See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (f)(3)(A)(ii). Pub. L. 105–206 struck out comma after ''1997''.

1996—Subsec. (b)(1)(A). Pub. L. 104–188, § 1704(j)(7), provided that section 1921(b)(2) of Pub. L. 102–486 shall be applied as if a comma appeared after ''(2)'' in the material proposed to be stricken. See 1992 Amendment note below.

Subsec. (f)(3), (4). Pub. L. 104–188, § 1608(a), added pars. (3) and (4).

1992—Subsec. (a)(12). Pub. L. 102–486, § 1921(a), added par. (12).

Subsec. (b)(1)(A). Pub. L. 102–486, § 1921(b)(2), which directed the substitution of ''(2), (3), or (12)'' for ''(2) or (3)'', was executed by making the substitution for ''(2), or (3)''. See 1996 Amendment note above.

Subsec. (f). Pub. L. 102–486, § 1919(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''For purposes of subsection (a)(8), the local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of—

''(1) a city and 1 contiguous county, or

''(2) 2 contiguous counties.''

Subsec. (j). Pub. L. 102–486, § 1921(b)(1), added subsec. (j).

1989—Subsec. (d)(2)(B). Pub. L. 101–239, § 7108(e)(3), inserted at end ''Section 7872(g) shall not apply in determining the income of individuals under this subparagraph.''

Subsec. (d)(4)(B)(iii). Pub. L. 101–239, § 7108(n)(1), substituted ''exceed ½'' for ''exceed ⅓''.

Subsec. (i)(1). Pub. L. 101–239, § 7816(s)(1), inserted heading ''In general''.

1988—Subsec. (a)(11). Pub. L. 100–647, § 6180(a), added par. (11).

Subsec. (b)(1)(B)(ii). Pub. L. 100–647, § 1013(a)(39), inserted ''section'' before ''168(i)(3)''.

Subsec. (c). Pub. L. 100–647, § 6180(b)(2), substituted ''mass commuting facilities and high-speed intercity rail facilities'' for ''and mass commuting facilities'' in heading and substituted ''paragraph (1), (2), (3) or (11) of subsection (a)'' for ''paragraph (1), (2), or (3) of subsection (a)'' in par. (1) and in introductory text of par. (2).

Subsec. (d)(4)(B)(iii). Pub. L. 100–647, § 1013(a)(1), substituted ''average gross rent'' for ''average rent''.

Subsec. (i). Pub. L. 100–647, § 6180(b)(1), added subsec. (i).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1504(b), Feb. 17, 2009, 123 Stat. 355, provided that: ''The amendment made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, § 3005(b), July 30, 2008, 122 Stat. 2885, provided that: ''The amendments made by this section [amending this section] shall apply to—

''(1) determinations made after the date of the enactment of this Act [July 30, 2008] and before January 1, 2012, in the case of any qualified building (as de-

fined in section 142(d)(2)(B)(iii) of the Internal Revenue Code of 1986)—

''(A) with respect to which housing credit dollar amounts have been allocated on or before the date of the enactment of this Act [July 30, 2008], or

''(B) with respect to buildings placed in service before such date of enactment, to the extent paragraph (1) of section 42(h) of such Code does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued before such date of enactment, and

''(2) determinations made after the date of enactment of this Act [July 30, 2008], in the case of qualified buildings (as so defined)—

''(A) with respect to which housing credit dollar amounts are allocated after the date of the enactment of this Act [July 30, 2008] and before January 1, 2012, or

''(B) with respect to which buildings placed in service after the date of enactment of this Act [July 30, 2008] and before January 1, 2012, to the extent paragraph (1) of section 42(h) of such Code does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date of enactment and before January 1, 2012.''

Pub. L. 110–289, div. C, title I, §3008(d), July 30, 2008, 122 Stat. 2887, provided that: ''The amendments made by this section [amending this section] shall apply to determinations of the status of qualified residential rental projects for periods beginning after the date of the enactment of this Act [July 30, 2008], with respect to bonds issued before, on, or after such date.''

Pub. L. 110–289, div. C, title I, §3009(b), July 30, 2008, 122 Stat. 2888, provided that: ''The amendment made by this section [amending this section] shall apply to determinations of area median gross income for calendar years after 2008.''

Pub. L. 110–289, div. C, title I, §3010(b), July 30, 2008, 122 Stat. 2888, provided that: ''The amendment made by this section [amending this section] shall apply to years ending after the date of the enactment of this Act [July 30, 2008].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title II, §209(c), May 17, 2006, 120 Stat. 352, provided that: ''The amendment made by this section [amending this section and section 7872 of this title] shall apply to calendar years beginning after December 31, 2005, with respect to loans made before, on, or after such date.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11143(d), Aug. 10, 2005, 119 Stat. 1965, provided that: ''The amendments made by this section [amending this section and section 146 of this title] apply to bonds issued after the date of the enactment of this Act [Aug. 10, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, §701(e), Oct. 22, 2004, 118 Stat. 1540, provided that: ''The amendments made by this section [amending this section and section 146 of this title] shall apply to bonds issued after December 31, 2004.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §422(f), June 7, 2001, 115 Stat. 66, provided that: ''The amendments made by this section [amending this section and sections 146 and 147 of this title] shall apply to bonds issued after December 31, 2001.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1919(b) of Pub. L. 102–486 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued before, on, or after the date of the enactment of this Act [Oct. 24, 1992].''

Section 1921(c) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this section and section 146 of this title] shall apply to bonds issued after the date of the enactment of this Act [Oct. 24, 1992].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7108(e)(3), (n)(1) of Pub. L. 101–239 applicable, except as otherwise provided, to determinations under section 42 of this title with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989, see section 7108(r) of Pub. L. 101–239, set out as a note under section 42 of this title.

Amendment by section 7816(s) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(1), (39) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6180(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending sections 142, 146, and 147 of this title] shall apply to bonds issued after the date of enactment of this Act [Nov. 10, 1988].''

ACCOUNTABILITY

Pub. L. 108–357, title VII, §701(d), Oct. 22, 2004, 118 Stat. 1539, as amended by Pub. L. 110–343, div. B, title III, §307(c), Oct. 3, 2008, 122 Stat. 3849, provided that: ''Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued under this section for such project. Not later than 5 years after the date of issuance of the last issue with respect to such project, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(*l*)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(*l*)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.''

NO INFERENCE WITH RESPECT TO OUTSTANDING BONDS FROM USE OF TERM ''PERSON''

Section 1608(b) of Pub. L. 104–188 provided that: ''The use of the term 'person' in section 142(f)(3) of the Internal Revenue Code of 1986, as added by subsection (a), shall not be construed to affect the tax-exempt status of interest on any bonds issued before the date of the enactment of this Act [Aug. 20, 1996].''

TAX-EXEMPT BONDS FOR SALE OF ALASKA POWER ADMINISTRATION FACILITY

Section 1804 of Pub. L. 104–188 provided that: ''Sections 142(f)(3) (as added by section 1608) and 147(d) of the

Internal Revenue Code of 1986 shall not apply in determining whether any private activity bond issued after the date of the enactment of this Act [Aug. 20, 1996] and used to finance the acquisition of the Snettisham hydroelectric project from the Alaska Power Administration is a qualified bond for purposes of such Code.''

§ 143. Mortgage revenue bonds: qualified mortgage bond and qualified veterans' mortgage bond

(a) Qualified mortgage bond

(1) Qualified mortgage bond defined

For purposes of this title, the term ''qualified mortgage bond'' means a bond which is issued as part of a qualified mortgage issue.

(2) Qualified mortgage issue defined

(A) Definition

For purposes of this title, the term ''qualified mortgage issue'' means an issue by a State or political subdivision thereof of 1 or more bonds, but only if—

(i) all proceeds of such issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences,

(ii) such issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), (i), and (m)(7),

(iii) such issue does not meet the private business tests of paragraphs (1) and (2) of section 141(b), and

(iv) except as provided in subparagraph (D)(ii), repayments of principal on financing provided by the issue are used not later than the close of the 1st semiannual period beginning after the date the prepayment (or complete repayment) is received to redeem bonds which are part of such issue.

Clause (iv) shall not apply to amounts received within 10 years after the date of issuance of the issue (or, in the case of refunding bond, the date of issuance of the original bond).

(B) Good faith effort to comply with mortgage eligibility requirements

An issue which fails to meet 1 or more of the requirements of subsections (c), (d), (e), (f), and (i) shall be treated as meeting such requirements if—

(i) the issuer in good faith attempted to meet all such requirements before the mortgages were executed,

(ii) 95 percent or more of the proceeds devoted to owner-financing was devoted to residences with respect to which (at the time the mortgages were executed) all such requirements were met, and

(iii) any failure to meet the requirements of such subsections is corrected within a reasonable period after such failure is first discovered.

(C) Good faith effort to comply with other requirements

An issue which fails to meet 1 or more of the requirements of subsections (g), (h), and (m)(7) shall be treated as meeting such requirements if—

(i) the issuer in good faith attempted to meet all such requirements, and

(ii) any failure to meet such requirements is due to inadvertent error after taking reasonable steps to comply with such requirements.

(D) Proceeds must be used within 42 months of date of issuance

(i) In general

Except as otherwise provided in this subparagraph, an issue shall not meet the requirement of subparagraph (A)(i) unless—

(I) all proceeds of the issue required to be used to finance owner-occupied residences are so used within the 42-month period beginning on the date of issuance of the issue (or, in the case of a refunding bond, within the 42-month period beginning on the date of issuance of the original bond) or, to the extent not so used within such period, are used within such period to redeem bonds which are part of such issue, and

(II) no portion of the proceeds of the issue are used to make or finance any loan (other than a loan which is a nonpurpose investment within the meaning of section 148(f)(6)(A)) after the close of such period.

(ii) Exception

Clause (i) (and clause (iv) of subparagraph (A)) shall not be construed to require amounts of less than $250,000 to be used to redeem bonds. The Secretary may by regulation treat related issues as 1 issue for purposes of the preceding sentence.

(b) Qualified veterans' mortgage bond defined

For purposes of this part, the term ''qualified veterans' mortgage bond'' means any bond—

(1) which is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide residences for veterans,

(2) the payment of the principal and interest on which is secured by the general obligation of a State,

(3) which is part of an issue which meets the requirements of subsections (c), (g), (i)(1), and (*l*), and

(4) which is part of an issue which does not meet the private business tests of paragraphs (1) and (2) of section 141(b).

Rules similar to the rules of subparagraphs (B) and (C) of subsection (a)(2) shall apply to the requirements specified in paragraph (3) of this subsection.

(c) Residence requirements

(1) For a residence

A residence meets the requirements of this subsection only if—

(A) it is a single-family residence which can reasonably be expected to become the principal residence of the mortgagor within a reasonable time after the financing is provided, and

(B) it is located within the jurisdiction of the authority issuing the bond.

(2) For an issue

An issue meets the requirements of this subsection only if all of the residences for which

owner-financing is provided under the issue meet the requirements of paragraph (1).

(d) 3-year requirement

(1) In general

An issue meets the requirements of this subsection only if 95 percent or more of the net proceeds of such issue are used to finance the residences of mortgagors who had no present ownership interest in their principal residences at any time during the 3-year period ending on the date their mortgage is executed.

(2) Exceptions

For purposes of paragraph (1), the proceeds of an issue which are used to provide—

(A) financing with respect to targeted area residences,

(B) qualified home improvement loans and qualified rehabilitation loans,

(C) financing with respect to land described in subsection (i)(1)(C) and the construction of any residence thereon, and

(D) in the case of bonds issued after the date of the enactment of this subparagraph, financing of any residence for a veteran (as defined in section 101 of title 38, United States Code), if such veteran has not previously qualified for and received such financing by reason of this subparagraph,

shall be treated as used as described in paragraph (1).

(3) Mortgagor's interest in residence being financed

For purposes of paragraph (1), a mortgagor's interest in the residence with respect to which the financing is being provided shall not be taken into account.

(e) Purchase price requirement

(1) In general

An issue meets the requirements of this subsection only if the acquisition cost of each residence the owner-financing of which is provided under the issue does not exceed 90 percent of the average area purchase price applicable to such residence.

(2) Average area purchase price

For purposes of paragraph (1), the term ''average area purchase price'' means, with respect to any residence, the average purchase price of single family residences (in the statistical area in which the residence is located) which were purchased during the most recent 12-month period for which sufficient statistical information is available. The determination under the preceding sentence shall be made as of the date on which the commitment to provide the financing is made (or, if earlier, the date of the purchase of the residence).

(3) Separate application to new residences and old residences

For purposes of this subsection, the determination of average area purchase price shall be made separately with respect to—

(A) residences which have not been previously occupied, and

(B) residences which have been previously occupied.

(4) Special rule for 2 to 4 family residences

For purposes of this subsection, to the extent provided in regulations, the determination of average area purchase price shall be made separately with respect to 1 family, 2 family, 3 family, and 4 family residences.

(5) Special rule for targeted area residences

In the case of a targeted area residence, paragraph (1) shall be applied by substituting ''110 percent'' for ''90 percent''.

(6) Exception for qualified home improvement loans

Paragraph (1) shall not apply with respect to any qualified home improvement loan.

(f) Income requirements

(1) In general

An issue meets the requirements of this subsection only if all owner-financing provided under the issue is provided for mortgagors whose family income is 115 percent or less of the applicable median family income.

(2) Determination of family income

For purposes of this subsection, the family income of mortgagors, and area median gross income, shall be determined by the Secretary after taking into account the regulations prescribed under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination).

(3) Special rule for applying paragraph (1) in the case of targeted area residences

In the case of any financing provided under any issue for targeted area residences—

(A) ⅓ of the amount of such financing may be provided without regard to paragraph (1), and

(B) paragraph (1) shall be treated as satisfied with respect to the remainder of the owner financing if the family income of the mortgagor is 140 percent or less of the applicable median family income.

(4) Applicable median family income

For purposes of this subsection, the term ''applicable median family income'' means, with respect to a residence, whichever of the following is the greater:

(A) the area median gross income for the area in which such residence is located, or

(B) the statewide median gross income for the State in which such residence is located.

(5) Adjustment of income requirement based on relation of high housing costs to income

(A) In general

If the residence (for which financing is provided under the issue) is located in a high housing cost area and the limitation determined under this paragraph is greater than the limitation otherwise applicable under paragraph (1), there shall be substituted for the income limitation in paragraph (1), a limitation equal to the percentage determined under subparagraph (B) of the area median gross income for such area.

(B) Income requirements for residences in high housing cost area

The percentage determined under this subparagraph for a residence located in a high

housing cost area is the percentage (not greater than 140 percent) equal to the product of—

(I) 115 percent, and

(II) the amount by which the housing cost/income ratio for such area exceeds 0.2.

(C) High housing cost areas

For purposes of this paragraph, the term ''high housing cost area'' means any statistical area for which the housing cost/income ratio is greater than 1.2.

(D) Housing cost/income ratio

For purposes of this paragraph—

(i) In general

The term ''housing cost/income ratio'' means, with respect to any statistical area, the number determined by dividing—

(I) the applicable housing price ratio for such area, by

(II) the ratio which the area median gross income for such area bears to the median gross income for the United States.

(ii) Applicable housing price ratio

For purposes of clause (i), the applicable housing price ratio for any area is the new housing price ratio or the existing housing price ratio, whichever results in the housing cost/income ratio being closer to 1.

(iii) New housing price ratio

The new housing price ratio for any area is the ratio which—

(I) the average area purchase price (as defined in subsection (e)(2)) for residences described in subsection (e)(3)(A) which are located in such area bears to

(II) the average purchase price (determined in accordance with the principles of subsection (e)(2)) for residences so described which are located in the United States.

(iv) Existing housing price ratio

The existing housing price ratio for any area is the ratio determined in accordance with clause (iii) but with respect to residences described in subsection (e)(3)(B).

(6) Adjustment to income requirements based on family size

In the case of a mortgagor having a family of fewer than 3 individuals, the preceding provisions of this subsection shall be applied by substituting—

(A) ''100 percent'' for ''115 percent'' each place it appears, and

(B) ''120 percent'' for ''140 percent'' each place it appears.

(g) Requirements related to arbitrage

(1) In general

An issue meets the requirements of this subsection only if such issue meets the requirements of paragraph (2) of this subsection and, in the case of an issue described in subsection (b)(1), such issue also meets the requirements of paragraph (3) of this subsection. Such requirements shall be in addition to the requirements of section 148.

(2) Effective rate of mortgage interest cannot exceed bond yield by more than 1.125 percentage points

(A) In general

An issue shall be treated as meeting the requirements of this paragraph only if the excess of—

(i) the effective rate of interest on the mortgages provided under the issue, over

(ii) the yield on the issue,

is not greater than 1.125 percentage points.

(B) Effective rate of mortgage interest

(i) In general

In determining the effective rate of interest on any mortgage for purposes of this paragraph, there shall be taken into account all fees, charges, and other amounts borne by the mortgagor which are attributable to the mortgage or to the bond issue.

(ii) Specification of some of the amounts to be treated as borne by the mortgagor

For purposes of clause (i), the following items (among others) shall be treated as borne by the mortgagor:

(I) all points or similar charges paid by the seller of the property, and

(II) the excess of the amounts received from any person other than the mortgagor by any person in connection with the acquisition of the mortgagor's interest in the property over the usual and reasonable acquisition costs of a person acquiring like property where owner-financing is not provided through the use of qualified mortgage bonds or qualified veterans' mortgage bonds.

(iii) Specification of some of the amounts to be treated as not borne by the mortgagor

For purposes of clause (i), the following items shall not be taken into account:

(I) any expected rebate of arbitrage profits, and

(II) any application fee, survey fee, credit report fee, insurance charge, or similar amount to the extent such amount does not exceed amounts charged in such area in cases where owner-financing is not provided through the use of qualified mortgage bonds or qualified veterans' mortgage bonds.

Subclause (II) shall not apply to origination fees, points, or similar amounts.

(iv) Prepayment assumptions

In determining the effective rate of interest—

(I) it shall be assumed that the mortgage prepayment rate will be the rate set forth in the most recent applicable mortgage maturity experience table published by the Federal Housing Administration, and

(II) prepayments of principal shall be treated as received on the last day of the month in which the issuer reasonably expects to receive such prepayments.

The Secretary may by regulation adjust the mortgage prepayment rate otherwise used in determining the effective rate of interest to the extent the Secretary determines that such an adjustment is appropriate by reason of the impact of subsection (m).

(C) Yield on the issue

For purposes of this subsection, the yield on an issue shall be determined on the basis of—

(i) the issue price (within the meaning of sections 1273 and 1274), and

(ii) an expected maturity for the bonds which is consistent with the assumptions required under subparagraph (B)(iv).

(3) Arbitrage and investment gains to be used to reduce costs of owner-financing

(A) In general

An issue shall be treated as meeting the requirements of this paragraph only if an amount equal to the sum of—

(i) the excess of—

(I) the amount earned on all nonpurpose investments (other than investments attributable to an excess described in this clause), over

(II) the amount which would have been earned if such investments were invested at a rate equal to the yield on the issue, plus

(ii) any income attributable to the excess described in clause (i),

is paid or credited to the mortgagors as rapidly as may be practicable.

(B) Investment gains and losses

For purposes of subparagraph (A), in determining the amount earned on all nonpurpose investments, any gain or loss on the disposition of such investments shall be taken into account.

(C) Reduction where issuer does not use full 1.125 percentage points under paragraph (2)

(i) In general

The amount required to be paid or credited to mortgagors under subparagraph (A) (determined under this paragraph without regard to this subparagraph) shall be reduced by the unused paragraph (2) amount.

(ii) Unused paragraph (2) amount

For purposes of clause (i), the unused paragraph (2) amount is the amount which (if it were treated as an interest payment made by mortgagors) would result in the excess referred to in paragraph (2)(A) being equal to 1.125 percentage points. Such amount shall be fixed and determined as of the yield determination date.

(D) Election to pay United States

Subparagraph (A) shall be satisfied with respect to any issue if the issuer elects before issuing the bonds to pay over to the United States—

(i) not less frequently than once each 5 years after the date of issue, an amount equal to 90 percent of the aggregate amount which would be required to be paid or credited to mortgagors under subparagraph (A) (and not theretofore paid to the United States), and

(ii) not later than 60 days after the redemption of the last bond, 100 percent of such aggregate amount not theretofore paid to the United States.

(E) Simplified accounting

The Secretary shall permit any simplified system of accounting for purposes of this paragraph which the issuer establishes to the satisfaction of the Secretary will assure that the purposes of this paragraph are carried out.

(F) Nonpurpose investment

For purposes of this paragraph, the term ''nonpurpose investment'' has the meaning given such term by section 148(f)(6)(A).

(h) Portion of loans required to be placed in targeted areas

(1) In general

An issue meets the requirements of this subsection only if at least 20 percent of the proceeds of the issue which are devoted to providing owner-financing is made available (with reasonable diligence) for owner-financing of targeted area residences for at least 1 year after the date on which owner-financing is first made available with respect to targeted area residences.

(2) Limitation

Nothing in paragraph (1) shall be treated as requiring the making available of an amount which exceeds 40 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family, owner-occupied residences located in targeted areas within the jurisdiction of the issuing authority.

(i) Other requirements

(1) Mortgages must be new mortgages

(A) In general

An issue meets the requirements of this subsection only if no part of the proceeds of such issue is used to acquire or replace existing mortgages.

(B) Exceptions

Under regulations prescribed by the Secretary, the replacement of—

(i) construction period loans,

(ii) bridge loans or similar temporary initial financing, and

(iii) in the case of a qualified rehabilitation, an existing mortgage,

shall not be treated as the acquisition or replacement of an existing mortgage for purposes of subparagraph (A).

(C) Exception for certain contract for deed agreements

(i) In general

In the case of land possessed under a contract for deed by a mortgagor—

(I) whose principal residence (within the meaning of section 121) is located on such land, and

(II) whose family income (as defined in subsection (f)(2)) is not more than 50 percent of applicable median family income (as defined in subsection (f)(4)),

the contract for deed shall not be treated as an existing mortgage for purposes of subparagraph (A).

(ii) Contract for deed defined

For purposes of this subparagraph, the term ''contract for deed'' means a seller-financed contract for the conveyance of land under which—

(I) legal title does not pass to the purchaser until the consideration under the contract is fully paid to the seller, and

(II) the seller's remedy for nonpayment is forfeiture rather than judicial or nonjudicial foreclosure.

(2) Certain requirements must be met where mortgage is assumed

An issue meets the requirements of this subsection only if each mortgage with respect to which owner-financing has been provided under such issue may be assumed only if the requirements of subsections (c), (d), and (e), and the requirements of paragraph (1) or (3)(B) of subsection (f) (whichever applies), are met with respect to such assumption.

(j) Targeted area residences

(1) In general

For purposes of this section, the term ''targeted area residence'' means a residence in an area which is either—

(A) a qualified census tract, or

(B) an area of chronic economic distress.

(2) Qualified census tract

(A) In general

For purposes of paragraph (1), the term ''qualified census tract'' means a census tract in which 70 percent or more of the families have income which is 80 percent or less of the statewide median family income.

(B) Data used

The determination under subparagraph (A) shall be made on the basis of the most recent decennial census for which data are available.

(3) Area of chronic economic distress

(A) In general

For purposes of paragraph (1), the term ''area of chronic economic distress'' means an area of chronic economic distress—

(i) designated by the State as meeting the standards established by the State for purposes of this subsection, and

(ii) the designation of which has been approved by the Secretary and the Secretary of Housing and Urban Development.

(B) Criteria to be used in approving State designations

The criteria used by the Secretary and the Secretary of Housing and Urban Development in evaluating any proposed designation of an area for purposes of this subsection shall be—

(i) the condition of the housing stock, including the age of the housing and the number of abandoned and substandard residential units,

(ii) the need of area residents for owner-financing under this section, as indicated by low per capita income, a high percentage of families in poverty, a high number of welfare recipients, and high unemployment rates,

(iii) the potential for use of owner-financing under this section to improve housing conditions in the area, and

(iv) the existence of a housing assistance plan which provides a displacement program and a public improvements and services program.

(k) Other definitions and special rules

For purposes of this section—

(1) Mortgage

The term ''mortgage'' means any owner-financing.

(2) Statistical area

(A) In general

The term ''statistical area'' means—

(i) a metropolitan statistical area, and

(ii) any county (or the portion thereof) which is not within a metropolitan statistical area.

(B) Metropolitan statistical area

The term ''metropolitan statistical area'' includes the area defined as such by the Secretary of Commerce.

(C) Designation where adequate statistical information not available

For purposes of this paragraph, if there is insufficient recent statistical information with respect to a county (or portion thereof) described in subparagraph (A)(ii), the Secretary may substitute for such county (or portion thereof) another area for which there is sufficient recent statistical information.

(D) Designation where no county

In the case of any portion of a State which is not within a county, subparagraphs (A)(ii) and (C) shall be applied by substituting for ''county'' an area designated by the Secretary which is the equivalent of a county.

(3) Acquisition cost

(A) In general

The term ''acquisition cost'' means the cost of acquiring the residence as a completed residential unit.

(B) Exceptions

The term ''acquisition cost'' does not include—

(i) usual and reasonable settlement or financing costs,

(ii) the value of services performed by the mortgagor or members of his family in completing the residence, and

(iii) the cost of land (other than land described in subsection (i)(1)(C)(i)) which has been owned by the mortgagor for at least

2 years before the date on which construction of the residence begins.

(C) Special rule for qualified rehabilitation loans

In the case of a qualified rehabilitation loan, for purposes of subsection (e), the term ''acquisition cost'' includes the cost of the rehabilitation.

(4) Qualified home improvement loan

The term ''qualified home improvement loan'' means the financing (in an amount which does not exceed $15,000)—

(A) of alterations, repairs, and improvements on or in connection with an existing residence by the owner thereof, but

(B) only of such items as substantially protect or improve the basic livability or energy efficiency of the property.

(5) Qualified rehabilitation loan

(A) In general

The term ''qualified rehabilitation loan'' means any owner-financing provided in connection with—

(i) a qualified rehabilitation, or

(ii) the acquisition of a residence with respect to which there has been a qualified rehabilitation,

but only if the mortgagor to whom such financing is provided is the first resident of the residence after the completion of the rehabilitation.

(B) Qualified rehabilitation

For purposes of subparagraph (A), the term ''qualified rehabilitation'' means any rehabilitation of a building if—

(i) there is a period of at least 20 years between the date on which the building was first used and the date on which the physical work on such rehabilitation begins,

(ii) in the rehabilitation process—

(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

(III) 75 percent or more of the existing internal structural framework of such building is retained in place, and

(iii) the expenditures for such rehabilitation are 25 percent or more of the mortgagor's adjusted basis in the residence.

For purposes of clause (iii), the mortgagor's adjusted basis shall be determined as of the completion of the rehabilitation or, if later, the date on which the mortgagor acquires the residence.

(6) Determinations on actuarial basis

All determinations of yield, effective interest rates, and amounts required to be paid or credited to mortgagors or paid to the United States under subsection (g) shall be made on an actuarial basis taking into account the present value of money.

(7) Single-family and owner-occupied residences include certain residences with 2 to 4 units

Except for purposes of subsection (h)(2), the terms ''single-family'' and ''owner-occupied'', when used with respect to residences, include 2, 3, or 4 family residences—

(A) one unit of which is occupied by the owner of the units, and

(B) which were first occupied at least 5 years before the mortgage is executed.

Subparagraph (B) shall not apply to any 2-family residence if the residence is a targeted area residence and the family income of the mortgagor meets the requirement of subsection (f)(3)(B).

(8) Cooperative housing corporations

(A) In general

In the case of any cooperative housing corporation—

(i) each dwelling unit shall be treated as if it were actually owned by the person entitled to occupy such dwelling unit by reason of his ownership of stock in the corporation, and

(ii) any indebtedness of the corporation allocable to the dwelling unit shall be treated as if it were indebtedness of the shareholder entitled to occupy the dwelling unit.

(B) Adjustment to targeted area requirement

In the case of any issue to provide financing to a cooperative housing corporation with respect to cooperative housing not located in a targeted area, to the extent provided in regulations, such issue may be combined with 1 or more other issues for purposes of determining whether the requirements of subsection (h) are met.

(C) Cooperative housing corporation

The term ''cooperative housing corporation'' has the meaning given to such term by section 216(b)(1).

(9) Treatment of limited equity cooperative housing

(A) Treatment as residential rental property

Except as provided in subparagraph (B), for purposes of this part—

(i) any limited equity cooperative housing shall be treated as residential rental property and not as owner-occupied housing, and

(ii) bonds issued to provide such housing shall be subject to the same requirements and limitations as bonds the proceeds of which are to be used to provide qualified residential rental projects (as defined in section 142(d)).

(B) Bonds subject to qualified mortgage bond termination date

Subparagraph (A) shall not apply to any bond issued after the date specified in subsection (a)(1)(B).

(C) Limited equity cooperative housing

For purposes of this paragraph, the term ''limited equity cooperative housing'' means

any dwelling unit which a person is entitled to occupy by reason of his ownership of stock in a qualified cooperative housing corporation.

(D) Qualified cooperative housing corporation

For purposes of this paragraph, the term ''qualified cooperative housing corporation'' means any cooperative housing corporation (as defined in section 216(b)(1)) if—

(i) the consideration paid for stock held by any stockholder entitled to occupy any house or apartment in a building owned or leased by the corporation may not exceed the sum of—

(I) the consideration paid for such stock by the first such stockholder, as adjusted by a cost-of-living adjustment determined by the Secretary,

(II) payments made by any stockholder for improvements to such house or apartment, and

(III) payments (other than amounts taken into account under subclause (I) or (II)) attributable to any stockholder to amortize the principal of the corporation's indebtedness arising from the acquisition or development of real property, including improvements thereof,

(ii) the value of the corporation's assets (reduced by any corporate liabilities), to the extent such value exceeds the combined transfer values of the outstanding corporate stock, shall be used only for public benefit or charitable purposes, or directly to benefit the corporation itself, and shall not be used directly to benefit any stockholder, and

(iii) at the time of issuance of the issue, such corporation makes an election under this paragraph.

(E) Effect of election

If a cooperative housing corporation makes an election under this paragraph, section 216 shall not apply with respect to such corporation (or any successor thereof) during the qualified project period (as defined in section 142(d)(2)).

(F) Corporation must continue to be qualified cooperative

Subparagraph (A)(i) shall not apply to limited equity cooperative housing unless the cooperative housing corporation continues to be a qualified cooperative housing corporation at all times during the qualified project period (as defined in section 142(d)(2)).

(G) Election irrevocable

Any election under this paragraph, once made, shall be irrevocable.

(10) Treatment of resale price control and subsidy lien programs

(A) In general

In the case of a residence which is located in a high housing cost area (as defined in section 143(f)(5)), the interest of a governmental unit in such residence by reason of financing provided under any qualified program shall not be taken into account under this section (other than subsection (m)), and the acquisition cost of the residence which is taken into account under subsection (e) shall be such cost reduced by the amount of such financing.

(B) Qualified program

For purposes of subparagraph (A), the term ''qualified program'' means any governmental program providing mortgage loans (other than 1st mortgage loans) or grants—

(i) which restricts (throughout the 9-year period beginning on the date the financing is provided) the resale of the residence to a purchaser qualifying under this section and to a price determined by an index that reflects less than the full amount of any appreciation in the residence's value, or

(ii) which provides for deferred or reduced interest payments on such financing and grants the governmental unit a share in the appreciation of the residence,

but only if such financing is not provided directly or indirectly through the use of any tax-exempt private activity bond.

(11) Special rules for residences located in disaster areas

In the case of a residence located in an area determined by the President to warrant assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of the Taxpayer Relief Act of 1997), this section shall be applied with the following modifications to financing provided with respect to such residence within 2 years after the date of the disaster declaration:

(A) Subsection (d) (relating to 3-year requirement) shall not apply.

(B) Subsections (e) and (f) (relating to purchase price requirement and income requirement) shall be applied as if such residence were a targeted area residence.

The preceding sentence shall apply only with respect to bonds issued after May 1, 2008, and before January 1, 2010.

(12)[1] Special rules for subprime refinancings

(A) In general

Notwithstanding the requirements of subsection (i)(1), the proceeds of a qualified mortgage issue may be used to refinance a mortgage on a residence which was originally financed by the mortgagor through a qualified subprime loan.

(B) Special rules

In applying subparagraph (A) to any refinancing—

(i) subsection (a)(2)(D)(i) shall be applied by substituting ''12-month period'' for ''42-month period'' each place it appears,

(ii) subsection (d) (relating to 3-year requirement) shall not apply, and

(iii) subsection (e) (relating to purchase price requirement) shall be applied by

[1] So in original. Two pars. (12) have been enacted.

using the market value of the residence at the time of refinancing in lieu of the acquisition cost.

(C) Qualified subprime loan

The term ''qualified subprime loan'' means an adjustable rate single-family residential mortgage loan made after December 31, 2001, and before January 1, 2008, that the bond issuer determines would be reasonably likely to cause financial hardship to the borrower if not refinanced.

(D) Termination

This paragraph shall not apply to any bonds issued after December 31, 2010.

(12)[1] Special rules for residences destroyed in federally declared disasters

(A) Principal residence destroyed

At the election of the taxpayer, if the principal residence (within the meaning of section 121) of such taxpayer is—

(i) rendered unsafe for use as a residence by reason of a federally declared disaster occurring before January 1, 2010, or

(ii) demolished or relocated by reason of an order of the government of a State or political subdivision thereof on account of a federally declared disaster occurring before such date,

then, for the 2-year period beginning on the date of the disaster declaration, subsection (d)(1) shall not apply with respect to such taxpayer and subsection (e) shall be applied by substituting ''110'' for ''90'' in paragraph (1) thereof.

(B) Principal residence damaged

(i) In general

At the election of the taxpayer, if the principal residence (within the meaning of section 121) of such taxpayer was damaged as the result of a federally declared disaster occurring before January 1, 2010, any owner-financing provided in connection with the repair or reconstruction of such residence shall be treated as a qualified rehabilitation loan.

(ii) Limitation

The aggregate owner-financing to which clause (i) applies shall not exceed the lesser of—

(I) the cost of such repair or reconstruction, or

(II) $150,000.

(C) Federally declared disaster

For purposes of this paragraph, the term ''federally declared disaster'' has the meaning given such term by section 165(h)(3)(C)(i).

(D) Election; denial of double benefit

(i) Election

An election under this paragraph may not be revoked except with the consent of the Secretary.

(ii) Denial of double benefit

If a taxpayer elects the application of this paragraph, paragraph (11) shall not apply with respect to the purchase or financing of any residence by such taxpayer.

***(l)* Additional requirements for qualified veterans' mortgage bonds**

An issue meets the requirements of this subsection only if it meets the requirements of paragraphs (1), (2), and (3).

(1) Veterans to whom financing may be provided

An issue meets the requirements of this paragraph only if each mortgagor to whom financing is provided under the issue is a qualified veteran.

(2) Requirement that State program be in effect before June 22, 1984

An issue meets the requirements of this paragraph only if it is a general obligation of a State which issued qualified veterans' mortgage bonds before June 22, 1984.

(3) Volume limitation

(A) In general

An issue meets the requirements of this paragraph only if the aggregate amount of bonds issued pursuant thereto (when added to the aggregate amount of qualified veterans' mortgage bonds previously issued by the State during the calendar year) does not exceed the State veterans limit for such calendar year.

(B) State veterans limit

(i) In general

In the case of any State to which clause (ii) does not apply, the State veterans limit for any calendar year is the amount equal to—

(I) the aggregate amount of qualified veterans bonds issued by such State during the period beginning on January 1, 1979, and ending on June 22, 1984 (not including the amount of any qualified veterans bond issued by such State during the calendar year (or portion thereof) in such period for which the amount of such bonds so issued was the lowest), divided by

(II) the number (not to exceed 5) of calendar years after 1979 and before 1985 during which the State issued qualified veterans bonds (determined by only taking into account bonds issued on or before June 22, 1984).

(ii) Alaska, Oregon, and Wisconsin

In the case of the following States, the State veterans limit for any calendar year is the amount equal to—

(I) $100,000,000 for the State of Alaska,

(II) $100,000,000 for the State of Oregon, and

(III) $100,000,000 for the State of Wisconsin.

(iii) Phasein

In the case of calendar years beginning before 2010, clause (ii) shall be applied by substituting for each of the dollar amounts therein an amount equal to the applicable percentage of such dollar amount. For pur-

poses of the preceding sentence, the applicable percentage shall be determined in accordance with the following table:

For Calendar Year:	Applicable percentage is:
2006	20 percent
2007	40 percent
2008	60 percent
2009	80 percent.

(C) Treatment of refunding issues

(i) In general

For purposes of subparagraph (A), the term ''qualified veterans' mortgage bond'' shall not include any bond issued to refund another bond but only if the maturity date of the refunding bond is not later than the later of—

(I) the maturity date of the bond to be refunded, or

(II) the date 32 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

The preceding sentence shall apply only to the extent that the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

(ii) Exception for advance refunding

Clause (i) shall not apply to any bond issued to advance refund another bond.

(4) Qualified veteran

For purposes of this subsection, the term ''qualified veteran'' means any veteran who—

(A) served on active duty, and

(B) applied for the financing before the date 25 years after the last date on which such veteran left active service.

(5) Special rule for certain short-term bonds

In the case of any bond—

(A) which has a term of 1 year or less,

(B) which is authorized to be issued under O.R.S. 407.435 (as in effect on the date of the enactment of this subsection), to provide financing for property taxes, and

(C) which is redeemed at the end of such term,

the amount taken into account under this subsection with respect to such bond shall be 1/15 of its principal amount.

(m) Recapture of portion of Federal subsidy from use of qualified mortgage bonds and mortgage credit certificates

(1) In general

If, during the taxable year, any taxpayer disposes of an interest in a residence with respect to which there is or was any federally-subsidized indebtedness for the payment of which the taxpayer was liable in whole or part, then the taxpayer's tax imposed by this chapter for such taxable year shall be increased by the lesser of—

(A) the recapture amount with respect to such indebtedness, or

(B) 50 percent of the gain (if any) on the disposition of such interest.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) any disposition by reason of death, and

(B) any disposition which is more than 9 years after the testing date.

(3) Federally-subsidized indebtedness

For purposes of this subsection—

(A) In general

The term ''federally-subsidized indebtedness'' means any indebtedness if—

(i) financing for the indebtedness was provided in whole or part from the proceeds of any tax-exempt qualified mortgage bond, or

(ii) any credit was allowed under section 25 (relating to interest on certain home mortgages) to the taxpayer for interest paid or incurred on such indebtedness.

(B) Exception for home improvement loans

Such term shall not include any indebtedness to the extent such indebtedness is federally-subsidized indebtedness solely by reason of being a qualified home improvement loan (as defined in subsection (k)(4)).

(4) Recapture amount

For purposes of this subsection—

(A) In general

The recapture amount with respect to any indebtedness is the amount equal to the product of—

(i) the federally-subsidized amount with respect to the indebtedness,

(ii) the holding period percentage, and

(iii) the income percentage.

(B) Federally-subsidized amount

The federally-subsidized amount with respect to any indebtedness is the amount equal to 6.25 percent of the highest principal amount of the indebtedness for which the taxpayer was liable.

(C) Holding period percentage

(i) In general

The term ''holding period percentage'' means the percentage determined in accordance with the following table:

If the disposition occurs during a year after the testing date which is:	The holding period percentage is:
The 1st such year	20
The 2d such year	40
The 3d such year	60
The 4th such year	80
The 5th such year	100
The 6th such year	80
The 7th such year	60
The 8th such year	40
The 9th such year	20.

(ii) Retirements of indebtedness

If the federally-subsidized indebtedness is completely repaid during any year of the 4-year period beginning on the testing date, the holding period percentage for succeeding years shall be determined by reducing ratably to zero over the succeeding 5 years the holding period percentage

which would have been determined under this subparagraph had the taxpayer disposed of his interest in the residence on the date of the repayment.

(D) Testing date

The term ''testing date'' means the earliest date on which all of the following requirements are met:

(i) The indebtedness is federally-subsidized indebtedness.

(ii) The taxpayer is liable in whole or part for payment of the indebtedness.

(E) Income percentage

The term ''income percentage'' means the percentage (but not greater than 100 percent) which—

(i) the excess of—

(I) the modified adjusted gross income of the taxpayer for the taxable year in which the disposition occurs, over

(II) the adjusted qualifying income for such taxable year, bears to

(ii) $5,000.

The percentage determined under the preceding sentence shall be rounded to the nearest whole percentage point (or, if it includes a half of a percentage point, shall be increased to the nearest whole percentage point).

(5) Adjusted qualifying income; modified adjusted gross income

(A) Adjusted qualifying income

For purposes of paragraph (4), the term ''adjusted qualifying income'' means the product of—

(i) the highest family income which (as of the date the financing was provided) would have met the requirements of subsection (f) with respect to the residents, and

(ii) 1.05 to the nth power where ''n'' equals the number of full years during the period beginning on the date the financing was provided and ending on the date of the disposition.

For purposes of clause (i), highest family income shall be determined without regard to subsection (f)(3)(A) and on the basis of the number of members of the taxpayer's family as of the date of the disposition.

(B) Modified adjusted gross income

For purposes of paragraph (4), the term ''modified adjusted gross income'' means adjusted gross income—

(i) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is excluded from gross income under section 103, and

(ii) decreased by the amount of gain (if any) included in gross income of the taxpayer by reason of the disposition to which this subsection applies.

(6) Special rules relating to limitation on recapture amount based on gain realized

(A) In general

For purposes of paragraph (1), gain shall be taken into account whether or not recognized, and the adjusted basis of the taxpayer's interest in the residence shall be determined without regard to sections 1033(b) and 1034(e) (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) for purposes of determining gain.

(B) Dispositions other than sales, exchanges, and involuntary conversions

In the case of a disposition other than a sale, exchange, or involuntary conversion, gain shall be determined as if the interest had been sold for its fair market value.

(C) Involuntary conversions resulting from casualties

In the case of property which (as a result of its destruction in whole or in part by fire, storm, or other casualty) is compulsorily or involuntarily converted, paragraph (1) shall not apply to such conversion if the taxpayer purchases (during the period specified in section 1033(a)(2)(B)) property for use as his principal residence on the site of the converted property. For purposes of subparagraph (A), the adjusted basis of the taxpayer in the residence shall not be adjusted for any gain or loss on a conversion to which this subparagraph applies.

(7) Issuer to inform mortgagor of federally-subsidized amount and family income limits

The issuer of the issue which provided the federally-subsidized indebtedness to the mortgagor shall—

(A) at the time of settlement, provide a written statement informing the mortgagor of the potential recapture under this subsection, and

(B) not later than 90 days after the date such indebtedness is provided, provide a written statement to the mortgagor specifying—

(i) the federally-subsidized amount with respect to such indebtedness, and

(ii) the adjusted qualifying income (as defined in paragraph (5)) for each category of family size for each year of the 9-year period beginning on the date the financing was provided.

(8) Special rules

(A) No basis adjustment

No adjustment shall be made to the basis of any property for the increase in tax under this subsection.

(B) Special rule where 2 or more persons hold interests in residence

Except as provided in subparagraph (C) and in regulations prescribed by the Secretary, if 2 or more persons hold interests in any residence and are jointly liable for the federally-subsidized indebtedness, the recapture amount shall be determined separately with respect to their respective interests in the residence.

(C) Transfers to spouses and former spouses

Paragraph (1) shall not apply to any transfer on which no gain or loss is recognized under section 1041. In any such case, the transferee shall be treated under this sub-

section in the same manner as the transferor would have been treated had such transfer not occurred.

(D) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection, including regulations dealing with dispositions of partial interests in a residence.

(Added Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2610; amended Pub. L. 100–647, title I, § 1013(a)(2), (3), title IV, § 4005(a)(1), (b)–(d)(1), (e)–(g)(2), (6), Nov. 10, 1988, 102 Stat. 3537, 3645–3651; Pub. L. 101–239, title VII, § 7104(a), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, § 11408(a), (c), Nov. 5, 1990, 104 Stat. 1388–477; Pub. L. 102–227, title I, § 108(a), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 103–66, title XIII, § 13141(a), (c)–(e), Aug. 10, 1993, 107 Stat. 436, 437; Pub. L. 104–188, title I, §§ 1702(d)(2), 1703(n)(3), Aug. 20, 1996, 110 Stat. 1870, 1877; Pub. L. 105–34, title III, § 312(d)(1), (3), title IX, § 914, Aug. 5, 1997, 111 Stat. 839, 840, 878; Pub. L. 109–222, title II, § 203(a)(1), (b)(1), May 17, 2006, 120 Stat. 348, 349; Pub. L. 109–432, div. A, title IV, §§ 411(a), 416(a), Dec. 20, 2006, 120 Stat. 2963, 2965; Pub. L. 110–245, title I, § 103(a)–(c), June 17, 2008, 122 Stat. 1625; Pub. L. 110–289, div. C, title I, §§ 3021(b)(1), 3026(a), July 30, 2008, 122 Stat. 2893, 2897; Pub. L. 110–343, div. C, title VII, § 709(a), Oct. 3, 2008, 122 Stat. 3925.)

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsec. (d)(2)(D), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

Section 8 of the United States Housing Act of 1937, referred to in subsec. (f)(2), is classified to section 1437f of Title 42, The Public Health and Welfare.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (k)(11), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as in effect on the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997. The Act is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The date of the enactment of this subsection, referred to in subsec. (*l*)(5)(B), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 1034(e) (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997), referred to in subsec. (m)(6)(A), means section 1034(e) of this title as in effect on the day before the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105–34, title III, § 312(b), Aug. 5, 1997, 111 Stat. 839.

PRIOR PROVISIONS

A prior section 143, acts Aug. 16, 1954, ch. 736, 68A Stat. 41; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 802(b), 83 Stat. 677; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1901(a)(22), 90 Stat. 1767; May 23, 1977, Pub. L. 95–30, title I, § 101(d)(4), 91 Stat. 133; July 18, 1984, Pub. L. 98–369, div. A, title IV, § 423(c)(1), 98 Stat. 800, related to determination of marital status, prior to the general revision of this part by Pub. L. 99–514. See section 7703 of this title.

Provisions similar to this section were contained in section 103A of this title prior to repeal by Pub. L. 99–514.

AMENDMENTS

2008—Subsec. (d)(2)(D). Pub. L. 110–245, § 103(a), struck out ''and before January 1, 2008'' after ''enactment of this subparagraph''.

Subsec. (k)(11). Pub. L. 110–289, § 3026(a), substituted ''May 1, 2008'' for ''December 31, 1996'' and ''January 1, 2010'' for ''January 1, 1999'' in concluding provisions.

Subsec. (k)(12). Pub. L. 110–343 added par. (12) relating to special rules for residences destroyed in federally declared disasters.

Pub. L. 110–289, § 3021(b)(1), added par. (12) relating to special rules for subprime refinancings.

Subsec. (*l*)(3)(B)(ii). Pub. L. 110–245, § 103(b), substituted ''$100,000,000'' for ''$25,000,000'' wherever appearing.

Subsec. (*l*)(4). Pub. L. 110–245, § 103(c), reenacted heading without change and amended text generally. Prior to amendment, par. (4) defined ''qualified veteran'' differently with respect to different States.

2006—Subsec. (d)(2)(D). Pub. L. 109–432, § 416(a), added subpar. (D).

Subsec. (*l*)(3)(B). Pub. L. 109–222, § 203(b)(1), reenacted heading without change, substituted introductory provisions of cl. (i) for ''A State veterans limit for any calendar year is the amount equal to—'' and inserted heading, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and adjusted margins, and added cls. (ii) to (iv).

Subsec. (*l*)(3)(B)(iv). Pub. L. 109–432, § 411(a), struck out heading and text of cl. (iv). Text read as follows: ''The State veterans limit for the States specified in clause (ii) for any calendar year after 2010 is zero.''

Subsec. (*l*)(4). Pub. L. 109–222, § 203(a)(1), amended par. (4) generally. Prior to amendment, par. (4) defined the term ''qualified veteran''.

1997—Subsec. (i)(1)(C)(i)(I). Pub. L. 105–34, § 312(d)(1), substituted ''section 121'' for ''section 1034''.

Subsec. (k)(11). Pub. L. 105–34, § 914, added par. (11).

Subsec. (m)(6)(A). Pub. L. 105–34, § 312(d)(3), inserted ''(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)'' after ''1034(e)''.

1996—Subsec. (d)(2)(C). Pub. L. 104–188, § 1703(n)(3), substituted ''thereon,'' for ''thereon.''.

Subsec. (m)(4)(C)(ii). Pub. L. 104–188, § 1702(d)(2), substituted ''any year of the 4-year period'' for ''any month of the 10-year period'', ''succeeding years'' for ''succeeding months'', and ''to zero over the succeeding 5 years'' for ''over the remainder of such period (or, if lesser, over 5 years)''.

1993—Subsec. (a)(1). Pub. L. 103–66, § 13141(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—For purposes of this title, the term 'qualified mortgage bond' means a bond which is issued as part of a qualified mortgage issue.

''(B) TERMINATION ON JUNE 30, 1992.—No bond issued after June 30, 1992, may be treated as a qualified mortgage bond.''

Subsec. (d)(2)(C). Pub. L. 103–66, § 13141(d)(1), added subpar. (C).

Subsec. (i)(1)(C). Pub. L. 103–66, § 13141(d)(2), added subpar. (C).

Subsec. (k)(3)(B)(iii). Pub. L. 103–66, § 13141(d)(3), inserted ''(other than land described in subsection (i)(1)(C)(i))'' after ''cost of land''.

Subsec. (k)(7). Pub. L. 103–66, § 13141(e), inserted at end ''Subparagraph (B) shall not apply to any 2-family residence if the residence is a targeted area residence and the family income of the mortgagor meets the requirement of subsection (f)(3)(B).''

Subsec. (k)(10). Pub. L. 103–66, § 13141(c), added par. (10).

1991—Subsec. (a)(1)(B). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991'' in heading and text.

1990—Subsec. (a)(1)(B). Pub. L. 101–508, § 11408(a), substituted ''December 31, 1991'' for ''September 30, 1990'' in heading and text.

Subsec. (m)(1). Pub. L. 101–508, §11408(c)(3)(A), substituted ''increased by the lesser of—'' and subpars. (A) and (B) for ''increased by the recapture amount with respect to such indebtedness.''

Subsec. (m)(2)(B). Pub. L. 101–508, §11408(c)(1)(C), substituted ''9 years'' for ''10 years''.

Subsec. (m)(4)(A)(iii). Pub. L. 101–508, §11408(c)(2)(A), added cl. (iii).

Subsec. (m)(4)(C)(i). Pub. L. 101–508, §11408(c)(1)(A), substituted heading for one which read: ''Dispositions during 1st 5 years'' and amended text generally. Prior to amendment, text read as follows: ''If the disposition of the taxpayer's interest in the residence occurs during the 5-year period beginning on the testing date, the holding period percentage is the percentage determined by dividing the number of full months during which the requirements of subparagraph (D) were met by 60.''

Subsec. (m)(4)(C)(ii), (iii). Pub. L. 101–508, §11408(c)(1)(B), redesignated cl. (iii) as (ii) and struck out former cl. (ii) ''Dispositions during 2d 5 years'' which read as follows: ''If the disposition of the taxpayer's interest in the residence occurs during the 5-year period following the 5-year period described in clause (i), the holding period percentage is the percentage determined by dividing—

''(I) the excess of 120 over the number of full months during which such requirements were met by

''(II) 60.''

Subsec. (m)(4)(E). Pub. L. 101–508, §11408(c)(2)(B), added subpar. (E).

Subsec. (m)(5). Pub. L. 101–508, §11408(c)(2)(C)(i), added heading and struck out former heading which read: ''Reduction of recapture amount if taxpayer meets certain income limitations''.

Subsec. (m)(5)(A). Pub. L. 101–508, §11408(c)(2)(C)(i), added subpar. (A) and struck out former subpar. (A) ''In general'' which read as follows: ''The recapture amount which would (but for this paragraph) apply with respect to any disposition during a taxable year shall be reduced (but not below zero) by 2 percent of such amount for each $100 by which adjusted qualifying income exceeds the modified adjusted gross income of the taxpayer for such year.''

Subsec. (m)(5)(B), (C). Pub. L. 101–508, §11408(c)(2)(C), redesignated subpar. (C) as (B), substituted ''paragraph (4)'' for ''this paragraph'' in introductory provisions, and struck out former subpar. (B) ''Adjusted qualifying income'' which read as follows: ''For purposes of this paragraph, the term 'adjusted qualifying income' means the amount equal to the sum of—

''(i) $5,000, plus

''(ii) the product of—

''(I) the highest family income which (as of the date the financing was provided) would have met the requirement of subsection (f) with respect to the residence, and

''(II) the percentage equal to the sum of 100 percent plus 5 percent for each full year during the period beginning on such date and ending on the date of the disposition.

For purposes of clause (ii)(I), highest family income shall be determined without regard to subsection (f)(3)(A) and on the basis of the number of members of the taxpayer's family as of the date of the disposition.''

Subsec. (m)(6). Pub. L. 101–508, §11408(c)(3)(B)(i), substituted ''Special rules relating to limitation'' for ''Limitation'' in heading.

Subsec. (m)(6)(A). Pub. L. 101–508, §11408(c)(3)(B)(ii), (iii), struck out at beginning ''In no event shall the recapture amount of the taxpayer with respect to any indebtedness exceed 50 percent of the gain (if any) on the disposition of the taxpayer's interest in the residence.'' and substituted ''paragraph (1)'' for ''the preceding sentence''.

Subsec. (m)(7)(B)(ii). Pub. L. 101–508, §11408(c)(3)(C), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the amounts described in paragraph (5)(B)(ii) for each category of family size for each year of the 10-year period beginning on the date the financing was provided.''

1989—Subsec. (a)(1)(B). Pub. L. 101–239 substituted ''September 30, 1990'' for ''December 31, 1989'' in heading and in text.

1988—Subsec. (a)(1)(B). Pub. L. 100–647, §4005(a)(1), substituted ''1989'' for ''1988'' in heading and in text.

Subsec. (a)(2)(A). Pub. L. 100–647, §4005(f), inserted sentence at end relating to application of cl. (iv).

Subsec. (a)(2)(A)(ii). Pub. L. 100–647, §4005(g)(1), substituted ''(i), and (m)(7)'' for ''and (i)''.

Subsec. (a)(2)(A)(iii). Pub. L. 100–647, §1013(a)(2), substituted ''such issue does not meet'' for ''no bond which is part of such issue meets''.

Subsec. (a)(2)(A)(iv). Pub. L. 100–647, §4005(f), added cl. (iv).

Subsec. (a)(2)(C). Pub. L. 100–647, §4005(g)(2)(B), substituted '', (h), and (m)(7)'' for ''and (h)'' in introductory text.

Subsec. (a)(2)(D). Pub. L. 100–647, §4005(e), added subpar. (D).

Subsec. (b)(4). Pub. L. 100–647, §1013(a)(3), inserted ''is part of an issue which'' after ''which''.

Subsec. (f)(5). Pub. L. 100–647, §4005(b), added par. (5).

Subsec. (f)(6). Pub. L. 100–647, §4005(c), added par. (6).

Subsec. (g)(1). Pub. L. 100–647, §4005(d)(1), substituted ''paragraph (2) of this subsection and, in the case of an issue described in subsection (b)(1), such issue also meets the requirements of paragraph (3) of this subsection'' for ''paragraphs (2) and (3) of this subsection'' and struck out ''(other than subsection (f) thereof)'' before period at end.

Subsec. (g)(2)(B)(iv). Pub. L. 100–647, §4005(g)(6), inserted at end ''The Secretary may by regulation adjust the mortgage prepayment rate otherwise used in determining the effective rate of interest to the extent the Secretary determines that such an adjustment is appropriate by reason of the impact of subsection (m).''

Subsec. (m). Pub. L. 100–647, §4005(g)(1), added subsec. (m).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title VII, §709(b), Oct. 3, 2008, 122 Stat. 3926, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to disasters occurring after December 31, 2007.''

Pub. L. 110–289, div. C, title I, §3021(c), July 30, 2008, 122 Stat. 2893, provided that: ''The amendments made by this section [amending this section and section 146 of this title] shall apply to bonds issued after the date of the enactment of this Act [July 30, 2008].''

Pub. L. 110–289, div. C, title I, §3026(b), July 30, 2008, 122 Stat. 2897, provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after May 1, 2008.''

Pub. L. 110–245, title I, §103(d), June 17, 2008, 122 Stat. 1626, provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §411(b), Dec. 20, 2006, 120 Stat. 2963, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 203 [probably means 203(b)] of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Pub. L. 109–432, div. A, title IV, §416(b), Dec. 20, 2006, 120 Stat. 2965, provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Dec. 20, 2006].''

Pub. L. 109–222, title II, §203(a)(2), May 17, 2006, 120 Stat. 349, provided that: ''The amendments made by this subsection [amending this section] shall apply to bonds issued on or after the date of the enactment of this Act [May 17, 2006].''

Pub. L. 109–222, title II, §203(b)(2), May 17, 2006, 120 Stat. 350, provided that: ''The amendments made by this subsection [amending this section] shall apply to allocations of State volume limit after April 5, 2006.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1), (3) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(d)(2) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

Amendment by section 1703(n)(3) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13141(f)(1) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to bonds issued after June 30, 1992.''

Section 13141(f)(3) of Pub. L. 103–66 provided that: ''The amendments made by subsections (c) and (e) [amending this section] shall apply to qualified mortgage bonds issued and mortgage credit certificates provided on or after the date of enactment of this Act [Aug. 10, 1993].''

Section 13141(f)(4) of Pub. L. 103–66 provided that: ''The amendments made by subsection (d) [amending this section] shall apply to loans originated and credit certificates provided after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 108(c)(1) of Pub. L. 102–227 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to bonds issued after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11408(d) of Pub. L. 101–508 provided that:

''(1) BONDS.—The amendment made by subsection (a) [amending this section] shall apply to bonds issued after September 30, 1990.

''(2) CERTIFICATES.—The amendment made by subsection (b) [amending section 25 of this title] shall apply to elections for periods after September 30, 1990.

''(3) SIMPLIFICATION.—The amendment made by subsection (c) [amending this section] shall take effect as if included in the amendments made by section 4005 of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(2), (3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4005(h) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 25, 26, 148, 6045, and 6654 of this title] shall apply to bonds issued, and nonissued bond amounts elected, after December 31, 1988.

''(2) SPECIAL RULES RELATING TO CERTAIN REQUIREMENTS AND REFUNDING BONDS.—In the case of a bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued before January 1, 1989—

''(A) the amendments made by subsections (b) and (c) [amending this section] shall apply to financing provided after the date of issuance of the refunding issue, and

''(B) the amendment made by subsection (f) [amending this section] shall apply to payments (including on loans made before such date of issuance) received on or after such date of issuance.

''(3) SUBSECTION (g).—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (g) [amending this section and sections 25, 26, 6045, and 6654 of this title] shall apply to financing provided, and mortgage credit certificates issued, after December 31, 1990.

''(B) EXCEPTION.—The amendments made by subsection (g) shall not apply to financing provided pursuant to a binding contract (entered into before June 23, 1988) with a homebuilder, lender, or mortgagor if the bonds (the proceeds of which are used to provide such financing) are issued—

''(i) before June 23, 1988, or

''(ii) before August 1, 1988, pursuant to a written application (made before July 1, 1988) for State bond volume authority.''

TRANSITION RULE

Pub. L. 110–245, title I, § 103(e), June 17, 2008, 122 Stat. 1626, provided that: ''In the case of any bond issued after December 31, 2007, and before the date of the enactment of this Act [June 17, 2008], subparagraph (B) of section 143(*l*)(4) of the Internal Revenue Code of 1986, as amended by this section, shall be applied by substituting '30 years' for '25 years'.''

TERMINATION DATE FOR OBLIGATIONS TREATED AS QUALIFIED MORTGAGE BONDS UNDER FORMER SECTION 103A

Section 1013(a)(27) of Pub. L. 100–647 provided that: ''The date contained in [former] section 143(a)(1)(B) of the 1986 Code shall be treated as contained in section 103A(c)(1)(B) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act [Oct. 22, 1986], for purposes of any bond issued to refund a bond to which such [section] 103A(c)(1) applies.''

STUDY OF RECAPTURE PROVISIONS

Section 4005(i) of Pub. L. 100–647 provided that: ''The Comptroller General of the United States shall conduct a study of section 143(m) of the 1986 Code (as added by this section) and of alternatives to accomplish the purposes of such section. A report of such study shall be submitted not later than July 1, 1990, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

§ 144. Qualified small issue bond; qualified student loan bond; qualified redevelopment bond

(a) Qualified small issue bond

(1) In general

For purposes of this part, the term ''qualified small issue bond'' means any bond issued as part of an issue the aggregate authorized face amount of which is $1,000,000 or less and 95 percent or more of the net proceeds of which are to be used—

(A) for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, or

(B) to redeem part or all of a prior issue which was issued for purposes described in subparagraph (A) or this subparagraph.

(2) Certain prior issues taken into account

If—

(A) the proceeds of 2 or more issues of bonds (whether or not the issuer of each

such issue is the same) are or will be used primarily with respect to facilities located in the same incorporated municipality or located in the same county (but not in any incorporated municipality),

(B) the principal user of such facilities is or will be the same person or 2 or more related persons, and

(C) but for this paragraph, paragraph (1) (or the corresponding provision of prior law) would apply to each such issue,

then, for purposes of paragraph (1), in determining the aggregate face amount of any later issue there shall be taken into account the aggregate face amount of tax-exempt bonds issued under all prior such issues and outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

(3) Related persons

For purposes of this subsection, a person is a related person to another person if—

(A) the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), or

(B) such persons are members of the same controlled group of corporations (as defined in section 1563(a), except that ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears therein).

(4) $10,000,000 limit in certain cases

(A) In general

At the election of the issuer with respect to any issue, this subsection shall be applied—

(i) by substituting ''$10,000,000'' for ''$1,000,000'' in paragraph (1), and

(ii) in determining the aggregate face amount of such issue, by taking into account not only the amount described in paragraph (2), but also the aggregate amount of capital expenditures with respect to facilities described in subparagraph (B) paid or incurred during the 6-year period beginning 3 years before the date of such issue and ending 3 years after such date (and financed otherwise than out of the proceeds of outstanding tax-exempt issues to which paragraph (1) (or the corresponding provision of prior law) applied), as if the aggregate amount of such capital expenditures constituted the face amount of a prior outstanding issue described in paragraph (2).

(B) Facilities taken into account

For purposes of subparagraph (A)(ii), the facilities described in this subparagraph are facilities—

(i) located in the same incorporated municipality or located in the same county (but not in any incorporated municipality), and

(ii) the principal user of which is or will be the same person or 2 or more related persons.

For purposes of clause (i), the determination of whether or not facilities are located in the same governmental unit shall be made as of the date of issue of the issue in question.

(C) Certain capital expenditures not taken into account

For purposes of subparagraph (A)(ii), any capital expenditure—

(i) to replace property destroyed or damaged by fire, storm, or other casualty, to the extent of the fair market value of the property replaced,

(ii) required by a change made after the date of issue of the issue in question in a Federal or State law or local ordinance of general application or required by a change made after such date in rules and regulations of general application issued under such a law or ordinance,

(iii) required by circumstances which could not be reasonably foreseen on such date of issue or arising out of a mistake of law or fact (but the aggregate amount of expenditures not taken into account under this clause with respect to any issue shall not exceed $1,000,000), or

(iv) described in clause (i) or (ii) of section 41(b)(2)(A) for which a deduction was allowed under section 174(a),

shall not be taken into account.

(D) Limitation on loss of tax exemption

In applying subparagraph (A)(ii) with respect to capital expenditures made after the date of any issue, no bond issued as a part of such issue shall cease to be treated as a qualified small issue bond by reason of any such expenditure for any period before the date on which such expenditure is paid or incurred.

(E) Certain refinancing issues

In the case of any issue described in paragraph (1)(B), an election may be made under subparagraph (A) of this paragraph only if all of the prior issues being redeemed are issues to which paragraph (1) (or the corresponding provision of prior law) applied. In applying subparagraph (A)(ii) with respect to such a refinancing issue, capital expenditures shall be taken into account only for purposes of determining whether the prior issues being redeemed qualified (and would have continued to qualify) under paragraph (1) (or the corresponding provision of prior law).

(F) Aggregate amount of capital expenditures where there is urban development action grant

In the case of any issue 95 percent or more of the net proceeds of which are to be used to provide facilities with respect to which an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974, capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii). This subparagraph shall not apply to bonds issued after December 31, 2006.

(G) Additional capital expenditures not taken into account

With respect to bonds issued after December 31, 2006, in addition to any capital expenditure described in subparagraph (C), capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).

(5) Issues for residential purposes

This subsection shall not apply to any bond issued as part of an issue 5 percent or more of the net proceeds of which are to be used directly or indirectly to provide residential real property for family units.

(6) Limitations on treatment of bonds as part of the same issue

(A) In general

For purposes of this subsection, separate lots of bonds which (but for this subparagraph) would be treated as part of the same issue shall be treated as separate issues unless the proceeds of such lots are to be used with respect to 2 or more facilities—

(i) which are located in more than 1 State, or

(ii) which have, or will have, as the same principal user the same person or related persons.

(B) Franchises

For purposes of subparagraph (A), a person (other than a governmental unit) shall be considered a principal user of a facility if such person (or a group of related persons which includes such person)—

(i) guarantees, arranges, participates in, or assists with the issuance (or pays any portion of the cost of issuance) of any bond the proceeds of which are to be used to finance or refinance such facility, and

(ii) provides any property, or any franchise, trademark, or trade name (within the meaning of section 1253), which is to be used in connection with such facility.

(7) Subsection not to apply if bonds issued with certain other tax-exempt bonds

This subsection shall not apply to any bond issued as part of an issue (other than an issue to which paragraph (4) applies) if the interest on any other bond which is part of such issue is excluded from gross income under any provision of law other than this subsection.

(8) Restrictions on financing certain facilities

This subsection shall not apply to an issue if—

(A) more than 25 percent of the net proceeds of the issue are to be used to provide a facility the primary purpose of which is one of the following: retail food and beverage services, automobile sales or service, or the provision of recreation or entertainment; or

(B) any portion of the proceeds of the issue is to be used to provide the following: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, or racetrack.

(9) Aggregation of issues with respect to single project

For purposes of this subsection, 2 or more issues part or all of the net proceeds of which are to be used with respect to a single building, an enclosed shopping mall, or a strip of offices, stores, or warehouses using substantial common facilities shall be treated as 1 issue (and any person who is a principal user with respect to any of such issues shall be treated as a principal user with respect to the aggregated issue).

(10) Aggregate limit per taxpayer

(A) In general

This subsection shall not apply to any issue if the aggregate authorized face amount of such issue allocated to any test-period beneficiary (when increased by the outstanding tax-exempt facility-related bonds of such beneficiary) exceeds $40,000,000.

(B) Outstanding tax-exempt facility-related bonds

(i) In general

For purposes of applying subparagraph (A) with respect to any issue, the outstanding tax-exempt facility-related bonds of any person who is a test-period beneficiary with respect to such issue is the aggregate amount of tax-exempt bonds referred to in clause (ii)—

(I) which are allocated to such beneficiary, and

(II) which are outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

(ii) Bonds taken into account

For purposes of clause (i), the bonds referred to in this clause are—

(I) exempt facility bonds, qualified small issue bonds, and qualified redevelopment bonds, and

(II) industrial development bonds (as defined in section 103(b)(2), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) to which section 141(a) does not apply.

(C) Allocation of face amount of issue

(i) In general

Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary of a facility financed by the proceeds of such issue (other than an owner of such facility) is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility used by such beneficiary bears to the entire facility.

(ii) Owners

Except as otherwise provided in regulations, the portion of the face amount of an

issue allocated to any test-period beneficiary who is an owner of a facility financed by the proceeds of such issue is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility owned by such beneficiary bears to the entire facility.

(D) Test-period beneficiary

For purposes of this paragraph, except as provided in regulations, the term ''test-period beneficiary'' means any person who is an owner or a principal user of facilities being financed by the issue at any time during the 3-year period beginning on the later of—

(i) the date such facilities were placed in service, or

(ii) the date of issue.

(E) Treatment of related persons

For purposes of this paragraph, all persons who are related (within the meaning of paragraph (3)) to each other shall be treated as 1 person.

(11) Limitation on acquisition of depreciable farm property

(A) In general

This subsection shall not apply to any issue if more than $250,000 of the net proceeds of such issue are to be used to provide depreciable farm property with respect to which the principal user is or will be the same person or 2 or more related persons.

(B) Depreciable farm property

For purposes of this paragraph, the term ''depreciable farm property'' means property of a character subject to the allowance for depreciation which is to be used in a trade or business of farming.

(C) Prior issues taken into account

In determining the amount of proceeds of an issue to be used as described in subparagraph (A), there shall be taken into account the aggregate amount of each prior issue to which paragraph (1) (or the corresponding provisions of prior law) applied which were or will be so used.

(12) Termination dates

(A) In general

This subsection shall not apply to—

(i) any bond (other than a bond described in clause (ii)) issued after December 31, 1986, or

(ii) any bond (or series of bonds) issued to refund a bond issued on or before such date unless—

(I) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(II) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(III) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of clause (ii)(I), average maturity shall be determined in accordance with section 147(b)(2)(A).

(B) Bonds issued to finance manufacturing facilities and farm property

Subparagraph (A) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

(i) any manufacturing facility, or

(ii) any land or property in accordance with section 147(c)(2).

(C) Manufacturing facility

For purposes of this paragraph—

(i) In general

The term ''manufacturing facility'' means any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property). A rule similar to the rule of section 142(b)(2) shall apply for purposes of the preceding sentence.

(ii) Certain facilities included

Such term includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this clause) if—

(I) such facilities are located on the same site as the manufacturing facility, and

(II) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.

(iii) Special rules for bonds issued in 2009 and 2010

In the case of any issue made after the date of enactment of this clause and before January 1, 2011, clause (ii) shall not apply and the net proceeds from a bond shall be considered to be used to provide a manufacturing facility if such proceeds are used to provide—

(I) a facility which is used in the creation or production of intangible property which is described in section 197(d)(1)(C)(iii), or

(II) a facility which is functionally related and subordinate to a manufacturing facility (determined without regard to this subclause) if such facility is located on the same site as the manufacturing facility.

(b) Qualified student loan bond

For purposes of this part—

(1) In general

The term ''qualified student loan bond'' means any bond issued as part of an issue the applicable percentage or more of the net proceeds of which are to be used directly or indirectly to make or finance student loans under—

(A) a program of general application to which the Higher Education Act of 1965 applies if—

(i) limitations are imposed under the program on—

(I) the maximum amount of loans outstanding to any student, and

(II) the maximum rate of interest payable on any loan,

(ii) the loans are directly or indirectly guaranteed by the Federal Government,

(iii) the financing of loans under the program is not limited by Federal law to the proceeds of tax-exempt bonds, and

(iv) special allowance payments under section 438 of the Higher Education Act of 1965—

(I) are authorized to be paid with respect to loans made under the program, or

(II) would be authorized to be made with respect to loans under the program if such loans were not financed with the proceeds of tax-exempt bonds, or

(B) a program of general application approved by the State if no loan under such program exceeds the difference between the total cost of attendance and other forms of student assistance (not including loans pursuant to section 428B(a)(1) of the Higher Education Act of 1965 (relating to parent loans) or subpart I[1] of part C of title VII of the Public Health Service Act (relating to student assistance)) for which the student borrower may be eligible. A program shall not be treated as described in this subparagraph if such program is described in subparagraph (A).

A bond shall not be treated as a qualified student loan bond if the issue of which such bond is a part meets the private business tests of paragraphs (1) and (2) of section 141(b) (determined by treating 501(c)(3) organizations as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a)).

(2) Applicable percentage

For purposes of paragraph (1), the term ''applicable percentage'' means—

(A) 90 percent in the case of the program described in paragraph (1)(A), and

(B) 95 percent in the case of the program described in paragraph (1)(B).

(3) Student borrowers must be residents of issuing State, etc.

A student loan shall be treated as being made or financed under a program described in paragraph (1) with respect to an issue only if the student is—

(A) a resident of the State from which the volume cap under section 146 for such loan was derived, or

(B) enrolled at an educational institution located in such State.

(4) Discrimination on basis of school location not permitted

A program shall not be treated as described in paragraph (1)(A) if such program discriminates on the basis of the location (in the United States) of the educational institution in which the student is enrolled.

(c) Qualified redevelopment bond

For purposes of this part—

(1) In general

The term ''qualified redevelopment bond'' means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used for 1 or more redevelopment purposes in any designated blighted area.

(2) Additional requirements

A bond shall not be treated as a qualified redevelopment bond unless—

(A) the issue described in paragraph (1) is issued pursuant to—

(i) a State law which authorizes the issuance of such bonds for redevelopment purposes in blighted areas, and

(ii) a redevelopment plan which is adopted before such issuance by the governing body described in paragraph (4)(A) with respect to the designated blighted area,

(B)(i) the payment of the principal and interest on such issue is primarily secured by taxes of general applicability imposed by a general purpose governmental unit, or

(ii) any increase in real property tax revenues (attributable to increases in assessed value) by reason of the carrying out of such purposes in such area is reserved exclusively for debt service on such issue (and similar issues) to the extent such increase does not exceed such debt service,

(C) each interest in real property located in such area—

(i) which is acquired by a governmental unit with the proceeds of the issue, and

(ii) which is transferred to a person other than a governmental unit,

is transferred for fair market value,

(D) the financed area with respect to such issue meets the no additional charge requirements of paragraph (5), and

(E) the use of the proceeds of the issue meets the requirements of paragraph (6).

(3) Redevelopment purposes

For purposes of paragraph (1)—

(A) In general

The term ''redevelopment purposes'' means, with respect to any designated blighted area—

(i) the acquisition (by a governmental unit having the power to exercise eminent domain) of real property located in such area,

(ii) the clearing and preparation for redevelopment of land in such area which was acquired by such governmental unit,

(iii) the rehabilitation of real property located in such area which was acquired by such governmental unit, and

(iv) the relocation of occupants of such real property.

(B) New construction not permitted

The term ''redevelopment purposes'' does not include the construction (other than the

[1] See References in Text note below.

rehabilitation) of any property or the enlargement of an existing building.

(4) Designated blighted area

For purposes of this subsection—

(A) In general

The term ''designated blighted area'' means any blighted area designated by the governing body of a local general purpose governmental unit in the jurisdiction of which such area is located.

(B) Blighted area

The term ''blighted area'' means any area which the governing body described in subparagraph (A) determines to be a blighted area on the basis of the substantial presence of factors such as excessive vacant land on which structures were previously located, abandoned or vacant buildings, substandard structures, vacancies, and delinquencies in payment of real property taxes.

(C) Designated areas may not exceed 20 percent of total assessed value of real property in government's jurisdiction

(i) In general

An area may be designated by a governmental unit as a blighted area only if the designation percentage with respect to such area, when added to the designation percentages of all other designated blighted areas within the jurisdiction of such governmental unit, does not exceed 20 percent.

(ii) Designation percentage

For purposes of this subparagraph, the term ''designation percentage'' means, with respect to any area, the percentage (determined at the time such area is designated) which the assessed value of real property located in such area is of the total assessed value of all real property located within the jurisdiction of the governmental unit which designated such area.

(iii) Exception where bonds not outstanding

The designation percentage of a previously designated blighted area shall not be taken into account under clause (i) if no qualified redevelopment bond (or similar bond) is or will be outstanding with respect to such area.

(D) Minimum designated area

(i) In general

Except as provided in clause (ii), an area shall not be treated as a designated blighted area for purposes of this subsection unless such area is contiguous and compact and its area equals or exceeds 100 acres.

(ii) 10-acre minimum in certain cases

Clause (i) shall be applied by substituting ''10 acres'' for ''100 acres'' if not more than 25 percent of the financed area is to be provided (pursuant to the issue and all other such issues) to 1 person. For purposes of the preceding sentence, all related persons (as defined in subsection (a)(3)) shall be treated as 1 person. For purposes of this clause, an area provided to a developer on a short-term interim basis shall not be treated as provided to such developer.

(5) No additional charge requirements

The financed area with respect to any issue meets the requirements of this paragraph if, while any bond which is part of such issue is outstanding—

(A) no owner or user of property located in the financed area is subject to a charge or fee which similarly situated owners or users of comparable property located outside such area are not subject, and

(B) the assessment method or rate of real property taxes with respect to property located in the financed area does not differ from the assessment method or rate of real property taxes with respect to comparable property located outside such area.

For purposes of the preceding sentence, the term ''comparable property'' means property which is of the same type as the property to which it is being compared and which is located within the jurisdiction of the designating governmental unit.

(6) Use of proceeds requirements

The use of the proceeds of an issue meets the requirements of this paragraph if—

(A) not more than 25 percent of the net proceeds of such issue are to be used to provide (including the provision of land for) facilities described in subsection (a)(8) or section 147(e), and

(B) no portion of the proceeds of such issue is to be used to provide (including the provision of land for) any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(7) Financed area

For purposes of this subsection, the term ''financed area'' means, with respect to any issue, the portion of the designated blighted area with respect to which the proceeds of such issue are to be used.

(8) Restriction on acquisition of land not to apply

Section 147(c) (other than paragraphs (1)(B) and (2) thereof) shall not apply to any qualified redevelopment bond.

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2621; amended Pub. L. 100–647, title I, §1013(a)(4)(A), (B)(i), (ii), (C), (5), title VI, §6176(a), Nov. 10, 1988, 102 Stat. 3537, 3538, 3726; Pub. L. 101–239, title VII, §7105, Dec. 19, 1989, 103 Stat. 2306; Pub. L. 101–508, title XI, §11409(a), Nov. 5, 1990, 104 Stat. 1388–478; Pub. L. 102–227, title I, §109(a), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 103–66, title XIII, §13122(a), Aug. 10, 1993, 107 Stat. 432; Pub. L. 108–357, title III, §340, Oct. 22, 2004, 118 Stat. 1485; Pub. L. 109–222, title II, §208,

May 17, 2006, 120 Stat. 351; Pub. L. 111–5, div. B, title I, § 1301(a), Feb. 17, 2009, 123 Stat. 344.)

REFERENCES IN TEXT

Section 119 of the Housing and Community Development Act of 1974, referred to in subsec. (a)(4)(F), is classified to section 5318 of Title 42, The Public Health and Welfare.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(10)(B)(ii)(II), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The date of enactment of this clause, referred to in subsec. (a)(12)(C)(iii), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

The Higher Education Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, which is classified generally to chapter 28 (§ 1001 et seq.) of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. Section 428B(a) of that Act as enacted in the general amendment of part B of title IV of that Act by Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1386, which is classified to section 1078–2 of Title 20, does not contain a par. (1). Section 438 of that Act is classified to section 1087–1 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (b)(1)(B), is act July 1, 1944, ch. 373, 58 Stat. 682. Subpart I of part C of title VII of the Act was classified generally to subpart I (§ 294 et seq.) of part C of subchapter V of chapter 6A of Title 42, The Public Health and Welfare, prior to the general revision of subchapter V of chapter 6A by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. See subpart I (§ 292 et seq.) of part A of revised subchapter V of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 144, acts Aug. 16, 1954, ch. 736, 68A Stat. 41; Feb. 26, 1964, Pub. L. 88–272, title I, § 112(c), title II, § 232(c), 78 Stat. 24, 110; Dec. 10, 1971, Pub. L. 92–178, title II, § 206, title III, § 301(c), 85 Stat. 511, 520; Oct. 4, 1976, Pub. L. 94–455, title V, § 501(b)(3)–(5), title XIX, § 1906(b)(13)(A), 90 Stat. 1558, 1559, 1834, related to method for electing to take standard deduction, prior to repeal by Pub. L. 95–30, title I, § 101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2009—Subsec. (a)(12)(C). Pub. L. 111–5 substituted dash for comma after ''For purposes of this paragraph'', designated remainder of first sentence and second sentence of existing provisions as cl. (i) and inserted heading, substituted ''The term'' for ''the term'', added cls. (ii) and (iii), and struck out former last sentence which read as follows: ''For purposes of the 1st sentence of this subparagraph, the term 'manufacturing facility' includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this sentence) if—

''(i) such facilities are located on the same site as the manufacturing facility, and

''(ii) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.''

2006—Subsec. (a)(4)(F), (G). Pub. L. 109–222 substituted ''December 31, 2006'' for ''September 30, 2009''.

2004—Subsec. (a)(4)(F). Pub. L. 108–357, § 340(b), inserted at end ''This subparagraph shall not apply to bonds issued after September 30, 2009.''

Subsec. (a)(4)(G). Pub. L. 108–357, § 340(a), added subpar. (G).

1993—Subsec. (a)(12)(B). Pub. L. 103–66 amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''In the case of any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

''(i) any manufacturing facility, or

''(ii) any land or property in accordance with section 147(c)(2),

subparagraph (A) shall be applied by substituting 'June 30, 1992' for 'December 31, 1986'.''

1991—Subsec. (a)(12)(B). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Subsec. (a)(12)(B). Pub. L. 101–508 substituted ''December 31, 1991'' for ''September 30, 1990''.

1989—Subsec. (a)(12)(B). Pub. L. 101–239 substituted ''by substituting 'September 30, 1990' for 'December 31, 1986' '' for ''by substituting '1989' for '1986' ''.

1988—Subsec. (a)(12)(A). Pub. L. 100–647, § 1013(a)(4)(B)(ii), inserted sentence at end that for purposes of cl. (ii)(I), average maturity be determined in accordance with section 147(b)(2)(A).

Subsec. (a)(12)(A)(ii). Pub. L. 100–647, § 1013(a)(4)(A), inserted ''(or series of bonds)'' before ''issued to refund'' in introductory text.

Subsec. (a)(12)(A)(ii)(I). Pub. L. 100–647, § 1013(a)(4)(B)(i), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the refunding bond has a maturity date not later than the maturity date of the refunded bond,''.

Subsec. (a)(12)(A)(ii)(III), (IV). Pub. L. 100–647, § 1013(a)(4)(C), redesignated subcl. (IV) as (III) and struck out former subcl. (III) which provided that this subsection apply when the interest rate on the refunding bond is lower than the interest rate on the refunded bond.

Subsec. (a)(12)(C). Pub. L. 100–647, § 6176(a), inserted sentence at end defining ''manufacturing facility''.

Subsec. (b)(1). Pub. L. 100–647, § 1013(a)(5), in subpar. (B) struck out ''to which part B of title IV of the Higher Education Act of 1965 (relating to guaranteed student loans) does not apply'' after ''by the State'', substituted ''of the Higher Education Act of 1965'' for ''of such Act'', amended last sentence generally, and inserted a new flush sentence at end of par. (1). Prior to amendment, last sentence of subpar. (B) read as follows: ''A bond issued as part of an issue shall be treated as a qualified student loan bond only if no bond which is part of such issue meets the private business tests of paragraphs (1) and (2) of section 141(b).''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1301(b), Feb. 17, 2009, 123 Stat. 345, provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13122(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to bonds issued after June 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 109(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to bonds issued after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11409(b) of Pub. L. 101–508 provided that: ''The amendment made by this section [amending this section] shall apply to bonds issued after September 30, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(4)(A), (B)(i), (ii), (C), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6176(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].

''(2) REFUNDINGS.—The amendment made by subsection (a) shall not apply to any bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued on or before the date of the enactment of this Act if—

''(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and

''(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b) of the 1986 Code.''

APPLICATION OF SUBSECTION (a)(12)(A)(ii)(I) TO REFUNDING BONDS ISSUED BEFORE JULY 1, 1987

Section 1013(a)(4)(B)(iii) of Pub. L. 100–647 provided that: ''A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subclause (I) of section 144(a)(12)(A)(ii) of the 1986 Code if such bond met the requirement of such subclause as in effect before the amendments made by this subparagraph [amending this section].''

TERMINATION DATE FOR EXEMPTION FOR CERTAIN SMALL ISSUES UNDER SECTION 103(b)(6)

Section 1013(c)(12)(B) of Pub. L. 100–647 provided that: ''The date applicable under section 144(a)(12)(B) of the 1986 Code shall be treated as contained in section 103(b)(6)(N)(iii) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act [Oct. 22, 1986], for purposes of any bond issued to refund a bond to which such section 103(b)(6)(N)(iii) applies.''

§ 145. Qualified 501(c)(3) bond

(a) In general

For purposes of this part, except as otherwise provided in this section, the term ''qualified 501(c)(3) bond'' means any private activity bond issued as part of an issue if—

(1) all property which is to be provided by the net proceeds of the issue is to be owned by a 501(c)(3) organization or a governmental unit, and

(2) such bond would not be a private activity bond if—

(A) 501(c)(3) organizations were treated as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a), and

(B) paragraphs (1) and (2) of section 141(b) were applied by substituting ''5 percent'' for ''10 percent'' each place it appears and by substituting ''net proceeds'' for ''proceeds'' each place it appears.

(b) $150,000,000 limitation on bonds other than hospital bonds

(1) In general

A bond (other than a qualified hospital bond) shall not be treated as a qualified 501(c)(3) bond if the aggregate authorized face amount of the issue (of which such bond is a part) allocated to any 501(c)(3) organization which is a test-period beneficiary (when increased by the outstanding tax-exempt nonhospital bonds of such organization) exceeds $150,000,000.

(2) Outstanding tax-exempt nonhospital bonds

(A) In general

For purposes of applying paragraph (1) with respect to any issue, the outstanding tax-exempt nonhospital bonds of any organization which is a test-period beneficiary with respect to such issue is the aggregate amount of tax-exempt bonds referred to in subparagraph (B)—

(i) which are allocated to such organization, and

(ii) which are outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

(B) Bonds taken into account

For purposes of subparagraph (A), the bonds referred to in this subparagraph are—

(i) any qualified 501(c)(3) bond other than a qualified hospital bond, and

(ii) any bond to which section 141(a) does not apply if—

(I) such bond would have been an industrial development bond (as defined in section 103(b)(2), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) if 501(c)(3) organizations were not exempt persons, and

(II) such bond was not described in paragraph (4), (5), or (6) of such section 103(b) (as in effect on the date such bond was issued).

(C) Only nonhospital portion of bonds taken into account

(i) In general

A bond shall be taken into account under subparagraph (B) only to the extent that the proceeds of the issue of which such bond is a part are not used with respect to a hospital.

(ii) Special rule

If 90 percent or more of the net proceeds of an issue are used with respect to a hospital, no bond which is part of such issue shall be taken into account under subparagraph (B)(ii).

(3) Aggregation rule

For purposes of this subsection, 2 or more organizations under common management or control shall be treated as 1 organization.

(4) Allocation of face amount of issue; test-period beneficiary

Rules similar to the rules of subparagraphs (C), (D), and (E) of section 144(a)(10) shall apply for purposes of this subsection.

(5) Termination of limitation

This subsection shall not apply with respect to bonds issued after the date of the enactment of this paragraph as part of an issue 95 percent or more of the net proceeds of which are to be used to finance capital expenditures incurred after such date.

(c) Qualified hospital bond

For purposes of this section, the term ''qualified hospital bond'' means any bond issued as

part of an issue 95 percent or more of the net proceeds of which are to be used with respect to a hospital.

(d) Restrictions on bonds used to provide residential rental housing for family units

(1) In general

Except as otherwise provided in this subsection, a bond which is part of an issue shall not be a qualified 501(c)(3) bond if any portion of the net proceeds of the issue are to be used directly or indirectly to provide residential rental property for family units.

(2) Exception for bonds used to provide qualified residential rental projects

Paragraph (1) shall not apply to any bond issued as part of an issue if the portion of such issue which is to be used as described in paragraph (1) is to be used to provide—

(A) a residential rental property for family units if the first use of such property is pursuant to such issue,

(B) qualified residential rental projects (as defined in section 142(d)), or

(C) property which is to be substantially rehabilitated in a rehabilitation beginning within the 2-year period ending 1 year after the date of the acquisition of such property.

(3) Certain property treated as new property

Solely for purposes of determining under paragraph (2)(A) whether the 1st use of property is pursuant to tax-exempt financing—

(A) In general

If—

(i) the 1st use of property is pursuant to taxable financing,

(ii) there was a reasonable expectation (at the time such taxable financing was provided) that such financing would be replaced by tax-exempt financing, and

(iii) the taxable financing is in fact so replaced within a reasonable period after the taxable financing was provided,

then the 1st use of such property shall be treated as being pursuant to the tax-exempt financing.

(B) Special rule where no operating State or local program for tax-exempt financing

If, at the time of the 1st use of property, there was no operating State or local program for tax-exempt financing of the property, the 1st use of the property shall be treated as pursuant to the 1st tax-exempt financing of the property.

(C) Definitions

For purposes of this paragraph—

(i) Tax-exempt financing

The term ''tax-exempt financing'' means financing provided by tax-exempt bonds.

(ii) Taxable financing

The term ''taxable financing'' means financing which is not tax-exempt financing.

(4) Substantial rehabilitation

(A) In general

Except as provided in subparagraph (B), rules similar to the rules of section 47(c)(1)(C) shall apply in determining for purposes of paragraph (2)(C) whether property is substantially rehabilitated.

(B) Exception

For purposes of subparagraph (A), clause (ii) of section 47(c)(1)(C) shall not apply, but the Secretary may extend the 24-month period in section 47(c)(1)(C)(i) where appropriate due to circumstances not within the control of the owner.

(e) Election out

This section shall not apply to an issue if—

(1) the issuer elects not to have this section apply to such issue, and

(2) such issue is an issue of exempt facility bonds, or qualified redevelopment bonds, to which section 146 applies.

(Added Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2629; amended Pub. L. 100–647, title I, § 1013(a)(6)–(8), title V, § 5053(a), Nov. 10, 1988, 102 Stat. 3538, 3677; Pub. L. 101–239, title VII, § 7815(f), Dec. 19, 1989, 103 Stat. 2419; Pub. L. 101–508, title XI, § 11813(b)(7), Nov. 5, 1990, 104 Stat. 1388–551; Pub. L. 105–34, title II, § 222, Aug. 5, 1997, 111 Stat. 818.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(2)(B)(ii)(I), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The date of the enactment of this paragraph, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

PRIOR PROVISIONS

A prior section 145, act Aug. 16, 1954, ch. 736, 68A Stat. 42, made a cross reference to section 36 of this title, prior to repeal by Pub. L. 95–30, title I, § 101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

1997—Subsec. (b)(5). Pub. L. 105–34 added par. (5).

1990—Subsec. (d)(4). Pub. L. 101–508 substituted ''section 47(c)(1)(C)'' for ''section 48(g)(1)(C)'' wherever appearing and ''section 47(c)(1)(C)(i)'' for ''section 48(g)(1)(C)(i)''.

1989—Subsec. (d)(3), (4). Pub. L. 101–239 added par. (3) and redesignated former par. (3) as (4).

1988—Subsec. (b)(2)(B)(ii)(I). Pub. L. 100–647, § 1013(a)(6), substituted ''section 103(b)(2)'' for ''section 103(b)''.

Subsec. (b)(2)(C)(i). Pub. L. 100–647, § 1013(a)(7), substituted ''subparagraph (B)'' for ''subparagraph (B)(ii)''.

Subsec. (b)(4). Pub. L. 100–647, § 1013(a)(8), substituted ''subparagraphs (C), (D), and (E)'' for ''subparagraphs (C) and (D)''.

Subsecs. (d), (e). Pub. L. 100–647, § 5053(a), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of

the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(6)–(8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 5053(c) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 148 of this title] shall apply to obligations issued after October 21, 1988.

''(2) EXCEPTION FOR CONSTRUCTION OR BINDING AGREEMENT.—

''(A) The amendments made by this section shall not apply to bonds (other than refunding bonds) with respect to a facility—

''(i)(I) the original use of which begins with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before July 14, 1988, and was completed on or after such date, or

''(II) the original use of which begins with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before July 14, 1988, and some of such expenditures are incurred on or after such date, and

''(ii) described in an inducement resolution or other comparable preliminary approval adopted by an issuing authority (or by a voter referendum) before July 14, 1988.

For purposes of the preceding sentence, the term 'significant expenditures' means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

''(B) Subparagraph (A) shall not apply to any bond issued after December 31, 1989, and shall not apply unless it is reasonably expected (at the time of issuance of the bond) that the facility will be placed in service before January 1, 1990.

''(3) REFUNDINGS.—The amendments made by this section shall not apply to any bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued before July 15, 1988, if—

''(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

''(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(C) the proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b) of the 1986 Code.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 146. Volume cap

(a) General rule

A private activity bond issued as part of an issue meets the requirements of this section if the aggregate face amount of the private activity bonds issued pursuant to such issue, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority during the calendar year, does not exceed such authority's volume cap for such calendar year.

(b) Volume cap for State agencies

For purposes of this section—

(1) In general

The volume cap for any agency of the State authorized to issue tax-exempt private activity bonds for any calendar year shall be 50 percent of the State ceiling for such calendar year.

(2) Special rule where State has more than 1 agency

If more than 1 agency of the State is authorized to issue tax-exempt private activity bonds, all such agencies shall be treated as a single agency.

(c) Volume cap for other issuers

For purposes of this section—

(1) In general

The volume cap for any issuing authority (other than a State agency) for any calendar year shall be an amount which bears the same ratio to 50 percent of the State ceiling for such calendar year as—

(A) the population of the jurisdiction of such issuing authority, bears to

(B) the population of the entire State.

(2) Overlapping jurisdictions

For purposes of paragraph (1)(A), if an area is within the jurisdiction of 2 or more governmental units, such area shall be treated as only within the jurisdiction of the unit having jurisdiction over the smallest geographical area unless such unit agrees to surrender all or part of such jurisdiction for such calendar year to the unit with overlapping jurisdiction which has the next smallest geographical area.

(d) State ceiling

For purposes of this section—

(1) In general

The State ceiling applicable to any State for any calendar year shall be the greater of—

(A) an amount equal to $75 ($62.50 in the case of calendar year 2001) multiplied by the State population, or

(B) $225,000,000 ($187,500,000 in the case of calendar year 2001).

(2) Cost-of-living adjustment

In the case of a calendar year after 2002, each of the dollar amounts contained in paragraph (1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''calendar year 2001'' for ''calendar year 1992'' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $5 ($5,000 in the case of the dollar amount in paragraph (1)(B)), such increase shall be rounded to the nearest multiple thereof.

(3) Special rule for States with constitutional home rule cities

For purposes of this section—

(A) In general

The volume cap for any constitutional home rule city for any calendar year shall be determined under paragraph (1) of subsection (c) by substituting ''100 percent'' for ''50 percent''.

(B) Coordination with other allocations

In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying subsections (b) and (c) with respect to issuing authorities in such State other than constitutional home rule cities, the State ceiling for any calendar year shall be reduced by the aggregate volume caps determined for such year for all constitutional home rule cities in such State.

(C) Constitutional home rule city

For purposes of this section, the term ''constitutional home rule city'' means, with respect to any calendar year, any political subdivision of a State which, under a State constitution which was adopted in 1970 and effective on July 1, 1971, had home rule powers on the 1st day of the calendar year.

(4) Special rule for possessions with populations of less than the population of the least populous State

(A) In general

If the population of any possession of the United States for any calendar year is less than the population of the least populous State (other than a possession) for such calendar year, the limitation under paragraph (1)(A) shall not be less than the amount determined under subparagraph (B) for such calendar year.

(B) Limitation

The limitation determined under this subparagraph, with respect to a possession, for any calendar year is an amount equal to the product of—

(i) the fraction—

(I) the numerator of which is the amount applicable under paragraph (1)(B) for such calendar year, and

(II) the denominator of which is the State population of the least populous State (other than a possession) for such calendar year, and

(ii) the population of such possession for such calendar year.

(5) Increase and set aside for housing bonds for 2008

(A) Increase for 2008

In the case of calendar year 2008, the State ceiling for each State shall be increased by an amount equal to $11,000,000,000 multiplied by a fraction—

(i) the numerator of which is the State ceiling applicable to the State for calendar year 2008, determined without regard to this paragraph, and

(ii) the denominator of which is the sum of the State ceilings determined under clause (i) for all States.

(B) Set aside

(i) In general

Any amount of the State ceiling for any State which is attributable to an increase under this paragraph shall be allocated solely for one or more qualified housing issues.

(ii) Qualified housing issue

For purposes of this paragraph, the term ''qualified housing issue'' means—

(I) an issue described in section 142(a)(7) (relating to qualified residential rental projects), or

(II) a qualified mortgage issue (determined by substituting ''12-month period'' for ''42-month period'' each place it appears in section 143(a)(2)(D)(i)).

(e) State may provide for different allocation

For purposes of this section—

(1) In general

Except as provided in paragraph (3), a State may, by law provide a different formula for allocating the State ceiling among the governmental units (or other authorities) in such State having authority to issue tax-exempt private activity bonds.

(2) Interim authority for Governor

(A) In general

Except as otherwise provided in paragraph (3), the Governor of any State may proclaim a different formula for allocating the State ceiling among the governmental units (or other authorities) in such State having authority to issue private activity bonds.

(B) Termination of authority

The authority provided in subparagraph (A) shall not apply to bonds issued after the earlier of—

(i) the last day of the 1st calendar year after 1986 during which the legislature of the State met in regular session, or

(ii) the effective date of any State legislation with respect to the allocation of the State ceiling.

(3) State may not alter allocation to constitutional home rule cities

Except as otherwise provided in a State constitutional amendment (or law changing the home rule provision adopted in the manner provided by the State constitution), the authority provided in this subsection shall not apply to that portion of the State ceiling which is allocated to any constitutional home rule city in the State unless such city agrees to such different allocation.

(f) Elective carryforward of unused limitation for specified purpose

(1) In general

If—

(A) an issuing authority's volume cap for any calendar year after 1985, exceeds

(B) the aggregate amount of tax-exempt private activity bonds issued during such calendar year by such authority,

such authority may elect to treat all (or any portion) of such excess as a carryforward for 1 or more carryforward purposes.

(2) Election must identify purpose

In any election under paragraph (1), the issuing authority shall—

(A) identify the purpose for which the carryforward is elected, and

(B) specify the portion of the excess described in paragraph (1) which is to be a carryforward for each such purpose.

(3) Use of carryforward

(A) In general

If any issuing authority elects a carryforward under paragraph (1) with respect to any carryforward purpose, any private activity bonds issued by such authority with respect to such purpose during the 3 calendar years following the calendar year in which the carryforward arose shall not be taken into account under subsection (a) to the extent the amount of such bonds does not exceed the amount of the carryforward elected for such purpose.

(B) Order in which carryforward used

Carryforwards elected with respect to any purpose shall be used in the order of the calendar years in which they arose.

(4) Election

Any election under this paragraph (and any identification or specification contained therein), once made, shall be irrevocable.

(5) Carryforward purpose

The term ''carryforward purpose'' means—

(A) the purpose of issuing exempt facility bonds described in 1 of the paragraphs of section 142(a),

(B) the purpose of issuing qualified mortgage bonds or mortgage credit certificates,

(C) the purpose of issuing qualified student loan bonds, and

(D) the purpose of issuing qualified redevelopment bonds.

(6) Special rules for increased volume cap under subsection (d)(5)

No amount which is attributable to the increase under subsection (d)(5) may be used—

(A) for any issue other than a qualified housing issue (as defined in subsection (d)(5)), or

(B) to issue any bond after calendar year 2010.

(g) Exception for certain bonds

Only for purposes of this section, the term ''private activity bond'' shall not include—

(1) any qualified veterans' mortgage bond,

(2) any qualified 501(c)(3) bond,

(3) any exempt facility bond issued as part of an issue described in paragraph (1), (2), (12), (13), (14), or (15) of section 142(a), and

(4) 75 percent of any exempt facility bond issued as part of an issue described in paragraph (11) of section 142(a) (relating to high-speed intercity rail facilities).

Paragraph (4) shall be applied without regard to ''75 percent of'' if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit (within the meaning of section 142(b)(1)).

(h) Exception for government-owned solid waste disposal facilities

(1) In general

Only for purposes of this section, the term ''private activity bond'' shall not include any exempt facility bond described in section 142(a)(6) which is issued as part of an issue if all of the property to be financed by the net proceeds of such issue is to be owned by a governmental unit.

(2) Safe harbor for determination of government ownership

In determining ownership for purposes of paragraph (1), section 142(b)(1)(B) shall apply, except that a lease term shall be treated as satisfying clause (ii) thereof if it is not more than 20 years.

(i) Treatment of refunding issues

For purposes of the volume cap imposed by this section—

(1) In general

The term ''private activity bond'' shall not include any bond which is issued to refund another bond to the extent that the amount of such bond does not exceed the outstanding amount of the refunded bond.

(2) Special rules for student loan bonds

In the case of any qualified student loan bond, paragraph (1) shall apply only if the maturity date of the refunding bond is not later than the later of—

(A) the average maturity date of the qualified student loan bonds to be refunded by the issue of which the refunding bond is a part, or

(B) the date 17 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

(3) Special rules for qualified mortgage bonds

In the case of any qualified mortgage bond, paragraph (1) shall apply only if the maturity date of the refunding bond is not later than the later of—

(A) the average maturity date of the qualified mortgage bonds to be refunded by the issue of which the refunding bond is a part, or

(B) the date 32 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

(4) Average maturity

For purposes of paragraphs (2) and (3), average maturity shall be determined in accordance with section 147(b)(2)(A).

(5) Exception for advance refunding

This subsection shall not apply to any bond issued to advance refund another bond.

(6) Treatment of certain residential rental project bonds as refunding bonds irrespective of obligor

(A) In general

If, during the 6-month period beginning on the date of a repayment of a loan financed by an issue 95 percent or more of the net proceeds of which are used to provide projects described in section 142(d), such repayment is used to provide a new loan for any project so described, any bond which is issued to refinance such issue shall be treated as a refunding issue to the extent the principal amount of such refunding issue does not exceed the principal amount of the bonds refunded.

(B) Limitations

Subparagraph (A) shall apply to only one refunding of the original issue and only if—

(i) the refunding issue is issued not later than 4 years after the date on which the original issue was issued,

(ii) the latest maturity date of any bond of the refunding issue is not later than 34 years after the date on which the refunded bond was issued, and

(iii) the refunding issue is approved in accordance with section 147(f) before the issuance of the refunding issue.

(j) Population

For purposes of this section, determinations of the population of any State (or issuing authority) shall be made with respect to any calendar year on the basis of the most recent census estimate of the resident population of such State (or issuing authority) released by the Bureau of Census before the beginning of such calendar year.

(k) Facility must be located within State

(1) In general

Except as provided in paragraphs (2) and (3), no portion of the State ceiling applicable to any State for any calendar year may be used with respect to financing for a facility located outside such State.

(2) Exception for certain facilities where State will get proportionate share of benefits

Paragraph (1) shall not apply to any exempt facility bond described in paragraph (4), (5), (6), or (10) of section 142(a) if the issuer establishes that the State's share of the use of the facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility.

(3) Treatment of governmental bonds to which volume cap allocated

Paragraph (1) shall not apply to any bond to which volume cap is allocated under section 141(b)(5)—

(A) for an output facility, or

(B) for a facility of a type described in paragraph (4), (5), (6), or (10) of section 142(a),

if the issuer establishes that the State's share of the private business use (as defined by section 141(b)(6)) of the facility will equal or exceed the State's share of the volume cap allocated with respect to bonds issued to finance the facility.

(*l*) Issuer of qualified scholarship funding bonds

In the case of a qualified scholarship funding bond, such bond shall be treated for purposes of this section as issued by a State or local issuing authority (whichever is appropriate).

(m) Treatment of amounts allocated to private activity portion of government use bonds

(1) In general

The volume cap of an issuer shall be reduced by the amount allocated by the issuer to an issue under section 141(b)(5).

(2) Advance refundings

Except as otherwise provided by the Secretary, any advance refunding of any part of an issue to which an amount was allocated under section 141(b)(5) (or would have been allocated if such section applied to such issue) shall be taken into account under this section to the extent of the amount of the volume cap which was (or would have been) so allocated.

(n) Reduction for mortgage credit certificates, etc.

The volume cap of any issuing authority for any calendar year shall be reduced by the sum of—

(1) the amount of qualified mortgage bonds which such authority elects not to issue under section 25(c)(2)(A)(ii) during such year, plus

(2) the amount of any reduction in such ceiling under section 25(f) applicable to such authority for such year.

(Added Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2630; amended Pub. L. 100–203, title X, § 10631(b), Dec. 22, 1987, 101 Stat. 1330–455; Pub. L. 100–647, title I, § 1013(a)(9), (10), (28), (40), title VI, § 6180(b)(3), Nov. 10, 1988, 102 Stat. 3538, 3543, 3544, 3728; Pub. L. 101–239, title VII, § 7816(s)(2), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 102–486, title XIX, § 1921(b)(3), Oct. 24, 1992, 106 Stat. 3028; Pub. L. 103–66, title XIII, § 13121(a), Aug. 10, 1993, 107 Stat. 432; Pub. L. 105–277, div. J, title II, § 2021(a), Oct. 21, 1998, 112 Stat. 2681–903; Pub. L. 106–554, § 1(a)(7) [title I, § 161(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–624; Pub. L. 107–16, title IV, § 422(c), June 7, 2001, 115 Stat. 66; Pub. L. 108–357, title VII, § 701(c), Oct. 22, 2004, 118 Stat. 1539; Pub. L. 109–59, title XI, § 11143(c), Aug. 10, 2005, 119 Stat. 1965; Pub. L. 110–289, div. C, title I, §§ 3007(a), 3021(a), July 30, 2008, 122 Stat. 2886, 2892.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

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

AMENDMENTS

2008—Subsec. (d)(5). Pub. L. 110–289, § 3021(a)(1), added par. (5).

Subsec. (f)(6). Pub. L. 110–289, § 3021(a)(2), added par. (6).

Subsec. (i)(6). Pub. L. 110–289, § 3007(a), added par. (6).

2005—Subsec. (g)(3). Pub. L. 109–59 substituted ''(14), or (15) of section 142(a), and'' for ''or (14) of section 142(a) (relating to airports, docks and wharves, environmental enhancements of hydroelectric generating facilities, qualified public educational facilities, and qualified green building and sustainable design projects), and''.

2004—Subsec. (g)(3). Pub. L. 108–357 substituted ''(13), or (14)'' for ''or (13)'' and ''qualified public educational facilities, and qualified green building and sustainable design projects'' for ''and qualified public educational facilities''.

2001—Subsec. (g)(3). Pub. L. 107–16, §§ 422(c), 901, temporarily substituted ''(12), or (13)'' for ''or (12)'' and ''environmental enhancements of hydroelectric generating facilities, and qualified public educational facilities'' for ''and environmental enhancements of hydroelectric generating facilities''. See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (d)(1), (2). Pub. L. 106–554 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) provided for State ceilings based on the per capita limits and aggregate limits set out in an included table.

1998—Subsec. (d)(1). Pub. L. 105–277 added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''The State ceiling applicable to any State for any calendar year shall be the greater of—

''(A) an amount equal to $75 multiplied by the State population, or

''(B) $250,000,000.

Subparagraph (B) shall not apply to any possession of the United States.''

Subsec. (d)(2). Pub. L. 105–277 added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''In the case of calendar years after 1987, paragraph (1) shall be applied by substituting—

''(A) '$50' for '$75', and

''(B) '$150,000,000' for '$250,000,000'.''

1993—Subsec. (g). Pub. L. 103–66, which directed the amendment of par. (4) by adding at the end thereof the following flush sentence: ''Paragraph (4) shall be applied without regard to '75 percent of' if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit (within the meaning of section 142(b)(1)).'', was executed by inserting the sentence at the end of subsec. (g), to reflect the probable intent of Congress.

1992—Subsec. (g)(3). Pub. L. 102–486 substituted '', (2), or (12)'' for ''or (2)'' and '', docks and wharves, and environmental enhancements of hydroelectric generating facilities'' for ''and docks and wharves''.

1989—Subsec. (g)(3), (4). Pub. L. 101–239 redesignated par. (3), relating to exempt facility bonds issued as part of an issue described in par. (11) of section 142(a), as (4).

1988—Subsec. (d)(4)(B). Pub. L. 100–647, §1013(a)(40), substituted ''respect to a'' for ''respect a''.

Subsec. (f)(5)(A). Pub. L. 100–647, §1013(a)(9), amended subpar. (A) generally, as in effect before amendment by Pub. L. 100–203. Before amendment by Pub. L. 100–203, subpar. (A) read as follows: ''the purpose of issuing bonds referred to in one of the clauses of section 141(d)(1)(A),''.

Subsec. (g)(3). Pub. L. 100–647, §6180(b)(3), added par. (3) relating to exempt facility bonds issued as part of an issue described in par. (11) of section 142(a).

Subsec. (i)(2)(A). Pub. L. 100–647, §1013(a)(28)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the maturity date of the bond to be refunded, or''.

Subsec. (i)(3)(A). Pub. L. 100–647, §1013(a)(28)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the maturity date of the bond to be refunded, or''.

Subsec. (i)(4), (5). Pub. L. 100–647, §1013(a)(28)(C), added par. (4) and redesignated former par. (4) as (5).

Subsec. (k)(1). Pub. L. 100–647, §1013(a)(10)(A), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (k)(3). Pub. L. 100–647, §1013(a)(10)(B), added par. (3).

1987—Subsec. (f)(5)(A). Pub. L. 100–203 amended subpar. (A) generally, as amended by Pub. L. 100–647, §1013(a)(9), restating it without change. See 1988 Amendment note above.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 3007(a) of Pub. L. 110–289 applicable to repayments of loans received after July 30, 2008, see section 3007(c) of Pub. L. 110–289, set out as a note under section 42 of this title.

Amendment by section 3021(a) of Pub. L. 110–289 applicable to bonds issued after July 30, 2008, see section 3021(c) of Pub. L. 110–289, set out as a note under section 143 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 applicable to bonds issued after Aug. 10, 2005, see section 11143(d) of Pub. L. 109–59, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to bonds issued after Dec. 31, 2004, see section 701(e) of Pub. L. 108–357, set out as a note under section 142 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to bonds issued after Dec. 31, 2001, see section 422(f) of Pub. L. 107–16, set out as a note under section 142 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §161(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–624, provided that: ''The amendment made by this section [amending this section] shall apply to calendar years after 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title II, §2021(b), Oct. 21, 1998, 112 Stat. 2681–903, provided that: ''The amendment made by this section [amending this section] shall apply to calendar years after 1998.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13121(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to bonds issued after December 31, 1993.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to bonds issued after Oct. 24, 1992, see section 1921(c) of Pub. L. 102–486, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(9), (10), (28), (40) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6180(b)(3) of Pub. L. 100–647 applicable to bonds issued after Nov. 10, 1988, see section

6180(c) of Pub. L. 100–647, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable, with certain exceptions, to bonds issued after Oct. 13, 1987 (other than bonds issued to refund bonds issued on or before such date), see section 10631(c) of Pub. L. 100–203, set out as a note under section 141 of this title.

§ 147. Other requirements applicable to certain private activity bonds

(a) Substantial user requirement

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond for any period during which it is held by a person who is a substantial user of the facilities or by a related person of such a substantial user.

(2) Related person

For purposes of paragraph (1), the following shall be treated as related persons—

(A) 2 or more persons if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b),

(B) 2 or more persons which are members of the same controlled group of corporations (as defined in section 1563(a), except that ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears therein),

(C) a partnership and each of its partners (and their spouses and minor children), and

(D) an S corporation and each of its shareholders (and their spouses and minor children).

(b) Maturity may not exceed 120 percent of economic life

(1) General rule

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if it is issued as part of an issue and—

(A) the average maturity of the bonds issued as part of such issue, exceeds

(B) 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue.

(2) Determination of averages

For purposes of paragraph (1)—

(A) the average maturity of any issue shall be determined by taking into account the respective issue prices of the bonds issued as part of such issue, and

(B) the average reasonably expected economic life of the facilities being financed with any issue shall be determined by taking into account the respective cost of such facilities.

(3) Special rules

(A) Determination of economic life

For purposes of this subsection, the reasonably expected economic life of any facility shall be determined as of the later of—

(i) the date on which the bonds are issued, or

(ii) the date on which the facility is placed in service (or expected to be placed in service).

(B) Treatment of land

(i) Land not taken into account

Except as provided in clause (ii), land shall not be taken into account under paragraph (1)(B).

(ii) Issues where 25 percent or more of proceeds used to finance land

If 25 percent or more of the net proceeds of any issue is to be used to finance land, such land shall be taken into account under paragraph (1)(B) and shall be treated as having an economic life of 30 years.

(4) Special rule for pooled financing of 501(c)(3) organization

(A) In general

At the election of the issuer, a qualified 501(c)(3) bond shall be treated as meeting the requirements of paragraph (1) if such bond meets the requirements of subparagraph (B).

(B) Requirements

A qualified 501(c)(3) bond meets the requirements of this subparagraph if—

(i) 95 percent or more of the net proceeds of the issue of which such bond is a part are to be used to make or finance loans to 2 or more 501(c)(3) organizations or governmental units for acquisition of property to be used by such organizations,

(ii) each loan described in clause (i) satisfies the requirements of paragraph (1) (determined by treating each loan as a separate issue),

(iii) before such bond is issued, a demand survey was conducted which shows a demand for financing greater than an amount equal to 120 percent of the lendable proceeds of such issue, and

(iv) 95 percent or more of the net proceeds of such issue are to be loaned to 501(c)(3) organizations or governmental units within 1 year of issuance and, to the extent there are any unspent proceeds after such 1-year period, bonds issued as part of such issue are to be redeemed as soon as possible thereafter (and in no event later than 18 months after issuance).

A bond shall not meet the requirements of this subparagraph if the maturity date of any bond issued as part of such issue is more than 30 years after the date on which the bond was issued (or, in the case of a refunding or series of refundings, the date on which the original bond was issued).

(5) Special rule for certain FHA insured loans

Paragraph (1) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance mortgage loans insured under FHA 242 or under a similar Federal Housing Administration program (as in effect on the date of the enactment of the Tax Reform Act of 1986) where the loan term approved by such Administration plus the maximum maturity of debentures which could be issued by such Admin-

istration in satisfaction of its obligations exceeds the term permitted under paragraph (1).

(c) Limitation on use for land acquisition

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if—

(A) it is issued as part of an issue and 25 percent or more of the net proceeds of such issue are to be used (directly or indirectly) for the acquisition of land (or an interest therein), or

(B) any portion of the proceeds of such issue is to be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes.

(2) Exception for first-time farmers

(A) In general

If the requirements of subparagraph (B) are met with respect to any land, paragraph (1) shall not apply to such land, and subsection (d) shall not apply to property to be used thereon for farming purposes, but only to the extent of expenditures (financed with the proceeds of the issue) not in excess of $450,000.

(B) Acquisition by first-time farmers

The requirements of this subparagraph are met with respect to any land if—

(i) such land is to be used for farming purposes, and

(ii) such land is to be acquired by an individual who is a first-time farmer, who will be the principal user of such land, and who will materially and substantially participate on the farm of which such land is a part in the operation of such farm.

(C) First-time farmer

For purposes of this paragraph—

(i) In general

The term ''first-time farmer'' means any individual if such individual—

(I) has not at any time had any direct or indirect ownership interest in substantial farmland in the operation of which such individual materially participated, and

(II) has not received financing under this paragraph in an amount which, when added to the financing to be provided under this paragraph, exceeds the amount in effect under subparagraph (A).

(ii) Aggregation rules

Any ownership or material participation, or financing received, by an individual's spouse or minor child shall be treated as ownership and material participation, or financing received, by the individual.

(iii) Insolvent farmer

For purposes of clause (i), farmland which was previously owned by the individual and was disposed of while such individual was insolvent shall be disregarded if section 108 applied to indebtedness with respect to such farmland.

(D) Farm

For purposes of this paragraph, the term ''farm'' has the meaning given such term by section 6420(c)(2).

(E) Substantial farmland

For purposes of this paragraph, the term ''substantial farmland'' means any parcel of land unless such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located.

(F) Used equipment limitation

For purposes of this paragraph, in no event may the amount of financing provided by reason of this paragraph to a first-time farmer for personal property—

(i) of a character subject to the allowance for depreciation,

(ii) the original use of which does not begin with such farmer, and

(iii) which is to be used for farming purposes,

exceed $62,500. A rule similar to the rule of subparagraph (C)(ii) shall apply for purposes of the preceding sentence.

(G) Acquisition from related person

For purposes of this paragraph and section 144(a), the acquisition by a first-time farmer of land or personal property from a related person (within the meaning of section 144(a)(3)) shall not be treated as an acquisition from a related person, if—

(i) the acquisition price is for the fair market value of such land or property, and

(ii) subsequent to such acquisition, the related person does not have a financial interest in the farming operation with respect to which the bond proceeds are to be used.

(H) Adjustments for inflation

In the case of any calendar year after 2008, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ''calendar year 2007'' for ''calendar year 1992'' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(3) Exception for certain land acquired for environmental purposes, etc.

Any land acquired by a governmental unit (or issuing authority) in connection with an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf shall not be taken into account under paragraph (1) if—

(A) such land is acquired for noise abatement or wetland preservation, or for future use as an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf, and

(B) there is not other significant use of such land.

(d) Acquisition of existing property not permitted

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the net proceeds of such issue is to be used for the acquisition of any property (or an interest therein) unless the 1st use of such property is pursuant to such acquisition.

(2) Exception for certain rehabilitations

Paragraph (1) shall not apply with respect to any building (and the equipment therefor) if—

(A) the rehabilitation expenditures with respect to such building, equal or exceed

(B) 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the issue.

A rule similar to the rule of the preceding sentence shall apply in the case of structures other than a building except that subparagraph (B) shall be applied by substituting ''100 percent'' for ''15 percent''.

(3) Rehabilitation expenditures

For purposes of this subsection—

(A) In general

Except as provided in this paragraph, the term ''rehabilitation expenditures'' means any amount properly chargeable to capital account which is incurred by the person acquiring the building for property (or additions or improvements to property) in connection with the rehabilitation of a building. In the case of an integrated operation contained in a building before its acquisition, such term includes rehabilitating existing equipment in such building or replacing it with equipment having substantially the same function. For purposes of this subparagraph, any amount incurred by a successor to the person acquiring the building or by the seller under a sales contract with such person shall be treated as incurred by such person.

(B) Certain expenditures not included

The term ''rehabilitation expenditures'' does not include any expenditure described in section 47(c)(2)(B).

(C) Period during which expenditures must be incurred

The term ''rehabilitation expenditures'' shall not include any amount which is incurred after the date 2 years after the later of—

(i) the date on which the building was acquired, or

(ii) the date on which the bond was issued.

(4) Special rule for certain projects

In the case of a project involving 2 or more buildings, this subsection shall be applied on a project basis.

(e) No portion of bonds may be issued for skyboxes, airplanes, gambling establishments, etc.

A private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the proceeds of such issue is to be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(f) Public approval required for private activity bonds

(1) In general

A private activity bond shall not be a qualified bond unless such bond satisfies the requirements of paragraph (2).

(2) Public approval requirement

(A) In general

A bond shall satisfy the requirements of this paragraph if such bond is issued as a part of an issue which has been approved by—

(i) the governmental unit—

(I) which issued such bond, or

(II) on behalf of which such bond was issued, and

(ii) each governmental unit having jurisdiction over the area in which any facility, with respect to which financing is to be provided from the net proceeds of such issue, is located (except that if more than 1 governmental unit within a State has jurisdiction over the entire area within such State in which such facility is located, only 1 such unit need approve such issue).

(B) Approval by a governmental unit

For purposes of subparagraph (A), an issue shall be treated as having been approved by any governmental unit if such issue is approved—

(i) by the applicable elected representative of such governmental unit after a public hearing following reasonable public notice, or

(ii) by voter referendum of such governmental unit.

(C) Special rules for approval of facility

If there has been public approval under subparagraph (A) of the plan for financing a facility, such approval shall constitute approval under subparagraph (A) for any issue—

(i) which is issued pursuant to such plan within 3 years after the date of the 1st issue pursuant to the approval, and

(ii) all or substantially all of the proceeds of which are to be used to finance such facility or to refund previous financing under such plan.

(D) Refunding bonds

No approval under subparagraph (A) shall be necessary with respect to any bond which is issued to refund (other than to advance refund) a bond approved under subparagraph (A) (or treated as approved under subparagraph (C)) unless the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A).

(E) Applicable elected representative

For purposes of this paragraph—

(i) In general

The term ''applicable elected representative'' means with respect to any governmental unit—

(I) an elected legislative body of such unit, or

(II) the chief elected executive officer, the chief elected State legal officer of the executive branch, or any other elected official of such unit designated for purposes of this paragraph by such chief elected executive officer or by State law.

If the office of any elected official described in subclause (II) is vacated and an individual is appointed by the chief elected executive officer of the governmental unit and confirmed by the elected legislative body of such unit (if any) to serve the remaining term of the elected official, the individual so appointed shall be treated as the elected official for such remaining term.

(ii) No applicable elected representative

If (but for this clause) a governmental unit has no applicable elected representative, the applicable elected representative for purposes of clause (i) shall be the applicable elected representative of the governmental unit—

(I) which is the next higher governmental unit with such a representative, and

(II) from which the authority of the governmental unit with no such representative is derived.

(3) Special rule for approval of airports or high-speed intercity rail facilities

If—

(A) the proceeds of an issue are to be used to finance a facility or facilities located at an airport or high-speed intercity rail facilities, and

(B) the governmental unit issuing such bonds is the owner or operator of such airport or high-speed intercity rail facilities,

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport or high-speed intercity rail facilities for purposes of this subsection.

(4) Special rules for scholarship funding bond issues and volunteer fire department bond issues

(A) Scholarship funding bonds

In the case of a qualified scholarship funding bond, any governmental unit which made a request described in section 150(d)(2)(B) with respect to the issuer of such bond shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued. Where more than one governmental unit within a State has made a request described in section 150(d)(2)(B), the State may also be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

(B) Volunteer fire department bonds

In the case of a bond of a volunteer fire department which meets the requirements of section 150(e), the political subdivision described in section 150(e)(2)(B) with respect to such department shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

(g) Restriction on issuance costs financed by issue

(1) In general

A private activity bond shall not be a qualified bond if the issuance costs financed by the issue (of which such bond is a part) exceed 2 percent of the proceeds of the issue.

(2) Special rule for small mortgage revenue bond issues

In the case of an issue of qualified mortgage bonds or qualified veterans' mortgage bonds, paragraph (1) shall be applied by substituting ''3.5 percent'' for ''2 percent'' if the proceeds of the issue do not exceed $20,000,000.

(h) Certain rules not to apply to certain bonds

(1) Mortgage revenue bonds and qualified student loan bonds

Subsections (a), (b), (c), and (d) shall not apply to any qualified mortgage bond, qualified veterans' mortgage bond, or qualified student loan bond.

(2) Qualified 501(c)(3) bonds

Subsections (a), (c), and (d) shall not apply to any qualified 501(c)(3) bond and subsection (e) shall be applied as if it did not contain ''health club facility'' with respect to such a bond.

(3) Exempt facility bonds for qualified public-private schools

Subsection (c) shall not apply to any exempt facility bond issued as part of an issue described in section 142(a)(13) (relating to qualified public educational facilities).

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2635; amended Pub. L. 100–647, title I, §1013(a)(11)–(13)(B), (29), (36), title VI, §6180(b)(4), (5), Nov. 10, 1988, 102 Stat. 3539, 3543, 3544, 3728; Pub. L. 101–239, title VII, §7816(s)(3), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 101–508, title XI, §11813(b)(8), Nov. 5, 1990, 104 Stat. 1388–552; Pub. L. 104–188, title I, §1117(a), (b), Aug. 20, 1996, 110 Stat. 1764; Pub. L. 107–16, title IV, §422(d), (e), June 7, 2001, 115 Stat. 66; Pub. L. 110–234, title XV, §15341(a)–(d), May 22, 2008, 122 Stat. 1517; Pub. L. 110–246, §4(a), title XV, §15341(a)–(d), June 18, 2008, 122 Stat. 1664, 2279.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

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

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (c)(2)(A). Pub. L. 110–246, § 15341(a), substituted ''$450,000'' for ''$250,000''.

Subsec. (c)(2)(C)(i)(II). Pub. L. 110–246, § 15341(d), substituted ''the amount in effect under subparagraph (A)'' for ''$250,000''.

Subsec. (c)(2)(E). Pub. L. 110–246, § 15341(c), substituted ''unless such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located.'' for ''unless—

''(i) such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located, and

''(ii) the fair market value of the land does not at any time while held by the individual exceed $125,000.''

Subsec. (c)(2)(H). Pub. L. 110–246, § 15341(b), added subpar. (H).

2001—Subsec. (h). Pub. L. 107–16, §§ 422(e), 901, temporarily substituted ''certain bonds'' for ''mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds'' in heading. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (h)(3). Pub. L. 107–16, §§ 422(d), 901, temporarily added par. (3). See Effective and Termination Dates of 2001 Amendment note below.

1996—Subsec. (c)(2)(E)(i). Pub. L. 104–188, § 1117(b), substituted ''30 percent'' for ''15 percent''.

Subsec. (c)(2)(G). Pub. L. 104–188, § 1117(a), added subpar. (G).

1990—Subsec. (d)(3)(B). Pub. L. 101–508 substituted ''section 47(c)(2)(B)'' for ''section 48(g)(2)(B)''.

1989—Subsec. (c)(3). Pub. L. 101–239 inserted a comma after ''mass commuting facility'' in introductory provisions and in subpar. (A).

1988—Subsec. (c)(3). Pub. L. 100–647, § 6180(b)(4), inserted ''high-speed intercity rail facility'' after ''mass commuting facility'' in introductory text and in subpar. (A).

Subsec. (e). Pub. L. 100–647, § 1013(a)(11), struck out ''treated as'' after ''shall not be''.

Subsec. (f)(2)(D). Pub. L. 100–647, § 1013(a)(29), substituted ''the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A)'' for ''the maturity date of such bond is later than the maturity date of the bond to be refunded''.

Subsec. (f)(2)(E)(i). Pub. L. 100–647, § 1013(a)(36), inserted sentence at end relating to treatment of an individual appointed to fill a vacancy in the office of an elected official.

Subsec. (f)(3). Pub. L. 100–647, § 6180(b)(5), inserted ''or high-speed intercity rail facilities'' after ''airports'' in heading and after ''airport'' in subpars. (A) and (B) and in last sentence.

Subsec. (f)(4). Pub. L. 100–647, § 1013(a)(12), added par. (4).

Subsec. (g)(1). Pub. L. 100–647, § 1013(a)(13)(A), substituted ''proceeds'' for ''aggregate face amount''.

Subsec. (g)(2). Pub. L. 100–647, § 1013(a)(13)(B), substituted ''proceeds'' for ''aggregate authorized face amount'' and ''do'' for ''does''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15341(e), May 22, 2008, 122 Stat. 1517, and Pub. L. 110–246, § 4(a), title XV, § 15341(e), June 18, 2008, 122 Stat. 1664, 2279, provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [June 18, 2008].''

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

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to bonds issued after Dec. 31, 2001, see section 422(f) of Pub. L. 107–16, set out as a note under section 142 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1117(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(a)(13)(C) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section] shall apply to bonds issued after June 30, 1987.''

Amendment by section 1013(a)(11), (12), (29), (36) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6180(b)(4), (5) of Pub. L. 100–647 applicable to bonds issued after Nov. 10, 1988, see section 6180(c) of Pub. L. 100–647, set out as a note under section 142 of this title.

EFFECTIVE DATE

Subsec. (f) applicable to bonds issued after Dec. 31, 1986, see section 1311(d) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain

transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

SUBPART B—REQUIREMENTS APPLICABLE TO ALL STATE AND LOCAL BONDS

Sec.
148. Arbitrage.
149. Bonds must be registered to be tax exempt; other requirements.

§ 148. Arbitrage

(a) Arbitrage bond defined

For purposes of section 103, the term ''arbitrage bond'' means any bond issued as part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bond) to be used directly or indirectly—

(1) to acquire higher yielding investments, or

(2) to replace funds which were used directly or indirectly to acquire higher yielding investments.

For purposes of this subsection, a bond shall be treated as an arbitrage bond if the issuer intentionally uses any portion of the proceeds of the issue of which such bond is a part in a manner described in paragraph (1) or (2).

(b) Higher yielding investments

For purposes of this section—

(1) In general

The term ''higher yielding investments'' means any investment property which produces a yield over the term of the issue which is materially higher than the yield on the issue.

(2) Investment property

The term ''investment property'' means—

(A) any security (within the meaning of section 165(g)(2)(A) or (B)),

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

(3) Alternative minimum tax bonds treated as investment property in certain cases

(A) In general

Except as provided in subparagraph (B), the term ''investment property'' does not include any tax-exempt bond.

(B) Exception

With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C)), the term ''investment property'' includes a specified private activity bond (as so defined).

(4) Safe harbor for prepaid natural gas

(A) In general

The term ''investment-type property'' does not include a prepayment under a qualified natural gas supply contract.

(B) Qualified natural gas supply contract

For purposes of this paragraph, the term ''qualified natural gas supply contract'' means any contract to acquire natural gas for resale by a utility owned by a governmental unit if the amount of gas permitted to be acquired under the contract by the utility during any year does not exceed the sum of—

(i) the annual average amount during the testing period of natural gas purchased (other than for resale) by customers of such utility who are located within the service area of such utility, and

(ii) the amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

(C) Natural gas used to generate electricity

Natural gas used to generate electricity shall be taken into account in determining the average under subparagraph (B)(i)—

(i) only if the electricity is generated by a utility owned by a governmental unit, and

(ii) only to the extent that the electricity is sold (other than for resale) to customers of such utility who are located within the service area of such utility.

(D) Adjustments for changes in customer base

(i) New business customers

If—

(I) after the close of the testing period and before the date of issuance of the issue, the utility owned by a governmental unit enters into a contract to supply natural gas (other than for resale) for a business use at a property within the service area of such utility, and

(II) the utility did not supply natural gas to such property during the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period,

then a contract shall not fail to be treated as a qualified natural gas supply contract by reason of supplying the additional natural gas under the contract referred to in subclause (I).

(ii) Lost customers

The average under subparagraph (B)(i) shall not exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

(E) Ruling requests

The Secretary may increase the average under subparagraph (B)(i) for any period if

the utility owned by the governmental unit establishes to the satisfaction of the Secretary that, based on objective evidence of growth in natural gas consumption or population, such average would otherwise be insufficient for such period.

(F) Adjustment for natural gas otherwise on hand

(i) In general

The amount otherwise permitted to be acquired under the contract for any period shall be reduced by—

(I) the applicable share of natural gas held by the utility on the date of issuance of the issue, and

(II) the natural gas (not taken into account under subclause (I)) which the utility has a right to acquire during such period (determined as of the date of issuance of the issue).

(ii) Applicable share

For purposes of the clause (i), the term ''applicable share'' means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

(G) Intentional acts

Subparagraph (A) shall cease to apply to any issue if the utility owned by the governmental unit engages in any intentional act to render the volume of natural gas acquired by such prepayment to be in excess of the sum of—

(i) the amount of natural gas needed (other than for resale) by customers of such utility who are located within the service area of such utility, and

(ii) the amount of natural gas used to transport such natural gas to the utility.

(H) Testing period

For purposes of this paragraph, the term ''testing period'' means, with respect to an issue, the most recent 5 calendar years ending before the date of issuance of the issue.

(I) Service area

For purposes of this paragraph, the service area of a utility owned by a governmental unit shall be comprised of—

(i) any area throughout which such utility provided at all times during the testing period—

(I) in the case of a natural gas utility, natural gas transmission or distribution services, and

(II) in the case of an electric utility, electricity distribution services,

(ii) any area within a county contiguous to the area described in clause (i) in which retail customers of such utility are located if such area is not also served by another utility providing natural gas or electricity services, as the case may be, and

(iii) any area recognized as the service area of such utility under State or Federal law.

(c) Temporary period exception

(1) In general

For purposes of subsection (a), a bond shall not be treated as an arbitrage bond solely by reason of the fact that the proceeds of the issue of which such bond is a part may be invested in higher yielding investments for a reasonable temporary period until such proceeds are needed for the purpose for which such issue was issued.

(2) Limitation on temporary period for pooled financings

(A) In general

The temporary period referred to in paragraph (1) shall not exceed 6 months with respect to the proceeds of an issue which are to be used to make or finance loans (other than nonpurpose investments) to 2 or more persons.

(B) Shorter temporary period for loan repayments, etc.

Subparagraph (A) shall be applied by substituting ''3 months'' for ''6 months'' with respect to the proceeds from the sale or repayment of any loan which are to be used to make or finance any loan. For purposes of the preceding sentence, a nonpurpose investment shall not be treated as a loan.

(C) Bonds used to provide construction financing

In the case of an issue described in subparagraph (A) any portion of which is used to make or finance loans for construction expenditures (within the meaning of subsection (f)(4)(C)(iv))—

(i) rules similar to the rules of subsection (f)(4)(C)(v) shall apply, and

(ii) subparagraph (A) shall be applied with respect to such portion by substituting ''2 years'' for ''6 months''.

(D) Exception for mortgage revenue bonds

This paragraph shall not apply to any qualified mortgage bond or qualified veterans' mortgage bond.

(d) Special rules for reasonably required reserve or replacement fund

(1) In general

For purposes of subsection (a), a bond shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of the issue of which such bond is a part may be invested in higher yielding investments which are part of a reasonably required reserve or replacement fund. The amount referred to in the preceding sentence shall not exceed 10 percent of the proceeds of such issue unless the issuer establishes to the satisfaction of the Secretary that a higher amount is necessary.

(2) Limitation on amount in reserve or replacement fund which may be financed by issue

A bond issued as part of an issue shall be treated as an arbitrage bond if the amount of the proceeds from the sale of such issue which is part of any reserve or replacement fund exceeds 10 percent of the proceeds of the issue

(or such higher amount which the issuer establishes is necessary to the satisfaction of the Secretary).

(e) Minor portion may be invested in higher yielding investments

Notwithstanding subsections (a), (c), and (d), a bond issued as part of an issue shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of such issue (in addition to the amounts under subsections (c) and (d)) is invested in higher yielding investments if such amount does not exceed the lesser of—

(1) 5 percent of the proceeds of the issue, or

(2) $100,000.

(f) Required rebate to the United States

(1) In general

A bond which is part of an issue shall be treated as an arbitrage bond if the requirements of paragraphs (2) and (3) are not met with respect to such issue. The preceding sentence shall not apply to any qualified veterans' mortgage bond.

(2) Rebate to United States

An issue shall be treated as meeting the requirements of this paragraph only if an amount equal to the sum of—

(A) the excess of—

(i) the amount earned on all nonpurpose investments (other than investments attributable to an excess described in this subparagraph), over

(ii) the amount which would have been earned if such nonpurpose investments were invested at a rate equal to the yield on the issue, plus

(B) any income attributable to the excess described in subparagraph (A),

is paid to the United States by the issuer in accordance with the requirements of paragraph (3).

(3) Due date of payments under paragraph (2)

Except to the extent provided by the Secretary, the amount which is required to be paid to the United States by the issuer shall be paid in installments which are made at least once every 5 years. Each installment shall be in an amount which ensures that 90 percent of the amount described in paragraph (2) with respect to the issue at the time payment of such installment is required will have been paid to the United States. The last installment shall be made no later than 60 days after the day on which the last bond of the issue is redeemed and shall be in an amount sufficient to pay the remaining balance of the amount described in paragraph (2) with respect to such issue. A series of issues which are redeemed during a 6-month period (or such longer period as the Secretary may prescribe) shall be treated (at the election of the issuer) as 1 issue for purposes of the preceding sentence if no bond which is part of any issue in such series has a maturity of more than 270 days or is a private activity bond. In the case of a tax and revenue anticipation bond, the last installment shall not be required to be made before the date 8 months after the date of issuance of the issue of which the bond is a part.

(4) Special rules for applying paragraph (2)

(A) In general

In determining the aggregate amount earned on nonpurpose investments for purposes of paragraph (2)—

(i) any gain or loss on the disposition of a nonpurpose investment shall be taken into account, and

(ii) any amount earned on a bona fide debt service fund shall not be taken into account if the gross earnings on such fund for the bond year is less than $100,000.

In the case of an issue no bond of which is a private activity bond, clause (ii) shall be applied without regard to the dollar limitation therein if the average maturity of the issue (determined in accordance with section 147(b)(2)(A)) is at least 5 years and the rates of interest on bonds which are part of the issue do not vary during the term of the issue.

(B) Temporary investments

Under regulations prescribed by the Secretary—

(i) In general

An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraph (2) if—

(I) the gross proceeds of such issue are expended for the governmental purposes for which the issue was issued no later than the day which is 6 months after the date of issuance of the issue, and

(II) the requirements of paragraph (2) are met with respect to amounts not required to be spent as provided in subclause (I) (other than earnings on amounts in any bona fide debt service fund).

Gross proceeds which are held in a bona fide debt service fund or a reasonably required reserve or replacement fund, and gross proceeds which arise after such 6 months and which were not reasonably anticipated as of the date of issuance, shall not be considered gross proceeds for purposes of subclause (I) only.

(ii) Additional period for certain bonds

(I) In general

In the case of an issue described in subclause (II), clause (i) shall be applied by substituting ''1 year'' for ''6 months'' each place it appears with respect to the portion of the proceeds of the issue which are not expended in accordance with clause (i) if such portion does not exceed 5 percent of the proceeds of the issue.

(II) Issues to which subclause (I) applies

An issue is described in this subclause if no bond which is part of such issue is a private activity bond (other than a qualified 501(c)(3) bond) or a tax or revenue anticipation bond.

(iii) Safe harbor for determining when proceeds of tax and revenue anticipation bonds are expended

(I) In general

For purposes of clause (i), in the case of an issue of tax or revenue anticipation bonds, the net proceeds of such issue (including earnings thereon) shall be treated as expended for the governmental purpose of the issue on the 1st day after the date of issuance that the cumulative cash flow deficit to be financed by such issue exceeds 90 percent of the proceeds of such issue.

(II) Cumulative cash flow deficit

For purposes of subclause (I), the term ''cumulative cash flow deficit'' means, as of the date of computation, the excess of the expenses paid during the period described in subclause (III) which would ordinarily be paid out of or financed by anticipated tax or other revenues over the aggregate amount available (other than from the proceeds of the issue) during such period for the payment of such expenses.

(III) Period involved

For purposes of subclause (II), the period described in this subclause is the period beginning on the date of issuance of the issue and ending on the earlier of the date 6 months after such date of issuance or the date of the computation of cumulative cash flow deficit.

(iv) Payments of principal not to affect requirements

For purposes of this subparagraph, payments of principal on the bonds which are part of an issue shall not be treated as expended for the governmental purposes of the issue.

(C) Exception from rebate for certain proceeds to be used to finance construction expenditures

(i) In general

In the case of a construction issue, paragraph (2) shall not apply to the available construction proceeds of such issue if the spending requirements of clause (ii) are met.

(ii) Spending requirements

The spending requirements of this clause are met if at least—

(I) 10 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 6-month period beginning on the date the bonds are issued,

(II) 45 percent of such proceeds are spent for such purposes within the 1-year period beginning on such date,

(III) 75 percent of such proceeds are spent for such purposes within the 18-month period beginning on such date, and

(IV) 100 percent of such proceeds are spent for such purposes within the 2-year period beginning on such date.

(iii) Exception for reasonable retainage

The spending requirement of clause (ii)(IV) shall be treated as met if—

(I) such requirement would be met at the close of such 2-year period but for a reasonable retainage (not exceeding 5 percent of the available construction proceeds of the construction issue), and

(II) 100 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued.

(iv) Construction issue

For purposes of this subparagraph, the term ''construction issue'' means any issue if—

(I) at least 75 percent of the available construction proceeds of such issue are to be used for construction expenditures with respect to property which is to be owned by a governmental unit or a 501(c)(3) organization, and

(II) all of the bonds which are part of such issue are qualified 501(c)(3) bonds, bonds which are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

For purposes of this subparagraph, the term ''construction'' includes reconstruction and rehabilitation, and rules similar to the rules of section 142(b)(1)(B) shall apply.

(v) Portions of issues used for construction

If—

(I) all of the construction expenditures to be financed by an issue are to be financed from a portion thereof, and

(II) the issuer elects to treat such portion as a construction issue for purposes of this subparagraph,

then, for purposes of this subparagraph and subparagraph (B), such portion shall be treated as a separate issue.

(vi) Available construction proceeds

For purposes of this subparagraph—

(I) In general

The term ''available construction proceeds'' means the amount equal to the issue price (within the meaning of sections 1273 and 1274) of the construction issue, increased by earnings on the issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the issue, and earnings on all of the foregoing earnings, and reduced by the amount of the issue price in any reasonably required reserve or replacement fund and the issuance costs financed by the issue.

(II) Earnings on reserve included only for certain periods

The term ''available construction proceeds'' shall not include amounts earned

on any reasonably required reserve or replacement fund after the earlier of the close of the 2-year period described in clause (ii) or the date the construction is substantially completed.

(III) Payments on acquired purpose obligations excluded

The term ''available construction proceeds'' shall not include payments on any obligation acquired to carry out the governmental purposes of the issue and shall not include earnings on such payments.

(IV) Election to rebate on earnings on reserve

At the election of the issuer, the term ''available construction proceeds'' shall not include earnings on any reasonably required reserve or replacement fund.

(vii) Election to pay penalty in lieu of rebate

(I) In general

At the election of the issuer, paragraph (2) shall not apply to available construction proceeds which do not meet the spending requirements of clause (ii) if the issuer pays a penalty, with respect to each 6-month period after the date the bonds were issued, equal to 1½ percent of the amount of the available construction proceeds of the issue which, as of the close of such 6-month period, is not spent as required by clause (ii).

(II) Termination

The penalty imposed by this clause shall cease to apply only as provided in clause (viii) or after the latest maturity date of any bond in the issue (including any refunding bond with respect thereto).

(viii) Election to terminate 1½ percent penalty

At the election of the issuer (made not later than 90 days after the earlier of the end of the initial temporary period or the date the construction is substantially completed), the penalty under clause (vii) shall not apply to any 6-month period after the initial temporary period under subsection (c) if the requirements of subclauses (I), (II), and (III) are met.

(I) 3 percent penalty

The requirement of this subclause is met if the issuer pays a penalty equal to 3 percent of the amount of available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period multiplied by the number of years (including fractions thereof) in the initial temporary period.

(II) Yield restriction at close of temporary period

The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period is invested at a yield not exceeding the yield on the issue or which is invested in any tax-exempt bond which is not investment property.

(III) Redemption of bonds at earliest call date

The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the earliest date on which bonds may be redeemed is used to redeem bonds on such date.

(ix) Election to terminate 1½ percent penalty before end of temporary period

If—

(I) the construction to be financed by a construction issue is substantially completed before the end of the initial temporary period,

(II) the issuer identifies an amount of available construction proceeds which will not be spent for the governmental purposes of the issue,

(III) the issuer has made the election under clause (viii), and

(IV) the issuer makes an election under this clause before the close of the initial temporary period and not later than 90 days after the date the construction is substantially completed,

then clauses (vii) and (viii) shall be applied to the available construction proceeds so identified as if the initial temporary period ended as of the date the election is made.

(x) Failure to pay penalties

In the case of a failure (which is not due to willful neglect) to pay any penalty required to be paid under clause (vii) or (viii) in the amount or at the time prescribed therefor, the Secretary may treat such failure as not occurring if, in addition to paying such penalty, the issuer pays a penalty equal to the sum of—

(I) 50 percent of the amount which was not paid in accordance with clauses (vii) and (viii), plus

(II) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on the date required for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this clause. Bonds which are part of an issue with respect to which there is a failure to pay the amount required under this clause (and any refunding bond with respect thereto) shall be treated as not being, and as never having been, tax-exempt bonds.

(xi) Election for pooled financing bonds

At the election of the issuer of an issue the proceeds of which are to be used to make or finance loans (other than nonpur-

pose investments) to 2 or more persons, the periods described in clauses (ii) and (iii) shall begin on—

(I) the date the loan is made, in the case of loans made within the 1-year period after the date the bonds are issued, and

(II) the date following such 1-year period, in the case of loans made after such 1-year period.

If such an election applies to an issue, the requirements of paragraph (2) shall apply to amounts earned before the beginning of the periods determined under the preceding sentence.

(xii) Payments of principal not to affect requirements

For purposes of this subparagraph, payments of principal on the bonds which are part of the construction issue shall not be treated as an expenditure of the available construction proceeds of the issue.

(xiii) Refunding bonds

(I) In general

Except as provided in this clause, clause (vii)(II), and the last sentence of clause (x), this subparagraph shall not apply to any refunding bond and no proceeds of a refunded bond shall be treated for purposes of this subparagraph as proceeds of a refunding bond.

(II) Determination of construction portion of issue

For purposes of clause (v), any portion of an issue which is used to refund any issue (or portion thereof) shall be treated as a separate issue.

(III) Coordination with rebate requirement on refunding bonds

The requirements of paragraph (2) shall be treated as met with respect to earnings for any period if a penalty is paid under clause (vii) or (viii) with respect to such earnings for such period.

(xiv) Determination of initial temporary period

For purposes of this subpargraph,[1] the end of the initial temporary period shall be determined without regard to section 149(d)(3)(A)(iv).

(xv) Elections

Any election under this subparagraph (other than clauses (viii) and (ix)) shall be made on or before the date the bonds are issued; and, once made, shall be irrevocable.

(xvi) Time for payment of penalties

Any penalty under this subparagraph shall be paid to the United States not later than 90 days after the period to which the penalty relates.

(xvii) Treatment of bona fide debt service funds

If the spending requirements of clause (ii) are met with respect to the available construction proceeds of a construction issue, then paragraph (2) shall not apply to earnings on a bona fide debt service fund for such issue.

(D) Exception for governmental units issuing $5,000,000 or less of bonds

(i) In general

An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraphs (2) and (3) if—

(I) the issue is issued by a governmental unit with general taxing powers,

(II) no bond which is part of such issue is a private activity bond,

(III) 95 percent or more of the net proceeds of such issue are to be used for local governmental activities of the issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the issuer), and

(IV) the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by such unit during the calendar year in which such issue is issued is not reasonably expected to exceed $5,000,000.

(ii) Aggregation of issuers

For purposes of subclause (IV) of clause (i)—

(I) an issuer and all entities which issue bonds on behalf of such issuer shall be treated as 1 issuer,

(II) all bonds issued by a subordinate entity shall, for purposes of applying such subclause to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

(III) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of such subclause (IV) and all other entities benefiting thereby shall be treated as 1 issuer.

(iii) Certain refunding bonds not taken into account in determining small issuer status

There shall not be taken into account under subclause (IV) of clause (i) any bond issued to refund (other than to advance refund) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

(iv) Certain issues issued by subordinate governmental units, etc., exempt from rebate requirement

An issue issued by a subordinate entity of a governmental unit with general taxing powers shall be treated as described in clause (i)(I) if the aggregate face amount of such issue does not exceed the lesser of—

(I) $5,000,000, or

(II) the amount which, when added to the aggregate face amount of other issues issued by such entity, does not exceed the portion of the $5,000,000 limitation under clause (i)(IV) which such governmental unit allocates to such entity.

[1] So in original. Probably should be ''subparagraph,''.

For purposes of the preceding sentence, an entity which issues bonds on behalf of a governmental unit with general taxing powers shall be treated as a subordinate entity of such unit. An allocation shall be taken into account under subclause (II) only if it is irrevocable and made before the issuance date of such issue and only to the extent that the limitation so allocated bears a reasonable relationship to the benefits received by such governmental unit from issues issued by such entity.

(v) Determination of whether refunding bonds eligible for exception from rebate requirement

If any portion of an issue is issued to refund other bonds, such portion shall be treated as a separate issue which does not meet the requirements of paragraphs (2) and (3) by reason of this subparagraph unless—

(I) the aggregate face amount of such issue does not exceed $5,000,000,

(II) each refunded bond was issued as part of an issue which was treated as meeting the requirements of paragraphs (2) and (3) by reason of this subparagraph,

(III) the average maturity date of the refunding bonds issued as part of such issue is not later than the average maturity date of the bonds to be refunded by such issue, and

(IV) no refunding bond has a maturity date which is later than the date which is 30 years after the date the original bond was issued.

Subclause (III) shall not apply if the average maturity of the issue of which the original bond was a part (and of the issue of which the bonds to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147(b)(2)(A).

(vi) Refundings of bonds issued under law prior to Tax Reform Act of 1986

If section 141(a) did not apply to any refunded bond, the issue of which such refunded bond was a part shall be treated as meeting the requirements of subclause (II) of clause (v) if—

(I) such issue was issued by a governmental unit with general taxing powers,

(II) no bond issued as part of such issue was an industrial development bond (as defined in section 103(b)(2), but without regard to subparagraph (B) of section 103(b)(3)) or a private loan bond (as defined in section 103(*o*)(2)(A), but without regard to any exception from such definition other than section 103(*o*)(2)(C)), and

(III) the aggregate face amount of all tax-exempt bonds (other than bonds described in subclause (II)) issued by such unit during the calendar year in which such issue was issued did not exceed $5,000,000.

References in subclause (II) to section 103 shall be to such section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986. Rules similar to the rules of clauses (ii) and (iii) shall apply for purposes of subclause (III). For purposes of subclause (II) of clause (i), bonds described in subclause (II) of this clause to which section 141(a) does not apply shall not be treated as private activity bonds.

(vii) Increase in exception for bonds financing public school capital expenditures

Each of the $5,000,000 amounts in the preceding provisions of this subparagraph shall be increased by the lesser of $10,000,000 or so much of the aggregate face amount of the bonds as are attributable to financing the construction (within the meaning of subparagraph (C)(iv)) of public school facilities.

(5) Exemption from gross income of sum rebated

Gross income shall not include the sum described in paragraph (2). Notwithstanding any other provision of this title, no deduction shall be allowed for any amount paid to the United States under paragraph (2).

(6) Definitions

For purposes of this subsection and subsections (c) and (d)—

(A) Nonpurpose investment

The term ''nonpurpose investment'' means any investment property which—

(i) is acquired with the gross proceeds of an issue, and

(ii) is not acquired in order to carry out the governmental purpose of the issue.

(B) Gross proceeds

Except as otherwise provided by the Secretary, the gross proceeds of an issue include—

(i) amounts received (including repayments of principal) as a result of investing the original proceeds of the issue, and

(ii) amounts to be used to pay debt service on the issue.

(7) Penalty in lieu of loss of tax exemption

In the case of an issue which would (but for this paragraph) fail to meet the requirements of paragraph (2) or (3), the Secretary may treat such issue as not failing to meet such requirements if—

(A) no bond which is part of such issue is a private activity bond (other than a qualified 501(c)(3) bond),

(B) the failure to meet such requirements is not due to willful neglect, and

(C) the issuer pays to the United States a penalty in an amount equal to the sum of—

(i) 50 percent of the amount which was not paid in accordance with paragraphs (2) and (3), plus

(ii) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on

the date required under paragraph (3) for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this paragraph.

(g) Student loan incentive payments

Except to the extent otherwise provided in regulations, payments made by the Secretary of Education pursuant to section 438 of the Higher Education Act of 1965 are not to be taken into account, for purposes of subsection (a)(1), in determining yields on student loan notes.

(h) Determinations of yield

For purposes of this section, the yield on an issue shall be determined on the basis of the issue price (within the meaning of sections 1273 and 1274).

(i) Regulations

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

(Added Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2641; amended Pub. L. 100–647, title I, § 1013(a)(14)–(16)(A), (17)(A), (B), (18), (19), (43)(A), (B), title IV, § 4005(d)(2), title V, § 5053(b), title VI, §§ 6177(a), (b), 6181(a), (b), 6183(a), Nov. 10, 1988, 102 Stat. 3539, 3540, 3542, 3545, 3646, 3678, 3726, 3727, 3729; Pub. L. 101–239, title VII, §§ 7652(a)–(d), 7814(c)(2), 7816(r), (t), Dec. 19, 1989, 103 Stat. 2385–2387, 2413, 2423; Pub. L. 101–508, title XI, § 11701(j)(1)–(6), Nov. 5, 1990, 104 Stat. 1388–508 to 1388–513; Pub. L. 105–34, title II, § 223(a), title XIV, §§ 1441–1444, Aug. 5, 1997, 111 Stat. 818, 1053, 1054; Pub. L. 107–16, title IV, § 421(a), June 7, 2001, 115 Stat. 64; Pub. L. 109–58, title XIII, § 1327(a), Aug. 8, 2005, 119 Stat. 1017; Pub. L. 109–222, title V, § 508(c), May 17, 2006, 120 Stat. 362.)

AMENDMENT OF SECTION

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

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (f)(4)(C)(vi), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 438 of the Higher Education Act of 1965, referred to in subsec. (g), is classified to section 1087–1 of Title 20, Education.

AMENDMENTS

2006—Subsec. (f)(4)(D)(ii)(II) to (IV). Pub. L. 109–222 redesignated subcls. (III) and (IV) as (II) and (III), respectively, and struck out former subcl. (II) which read as follows: ''all bonds issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying such subclause to such unit, be treated as not issued by such unit.''

2005—Subsec. (b)(4). Pub. L. 109–58 added par. (4).

2001—Subsec. (f)(4)(D)(vii). Pub. L. 107–16, §§ 421(a), 901, temporarily substituted ''the lesser of $10,000,000'' for ''the lesser of $5,000,000''. See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (c)(2)(B) to (E). Pub. L. 105–34, § 1444(a), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out heading and text of former subpar. (B). Text read as follows: ''In the case of the proceeds of an issue to be used to make or finance loans under a program described in section 144(b)(1)(A), subparagraph (A) shall be applied by substituting '18 months' for '6 months'. The preceding sentence shall not apply to any bond issued after December 31, 1988.''

Subsec. (d)(3). Pub. L. 105–34, § 1443, struck out par. (3) which related to limitations on investment in nonpurpose investments.

Subsec. (f)(4)(B)(ii)(I). Pub. L. 105–34, § 1441, substituted ''5 percent of the proceeds of the issue'' for ''the lesser of 5 percent of the proceeds of the issue or $100,000''.

Subsec. (f)(4)(C)(xvii). Pub. L. 105–34, § 1442, added cl. (xvii).

Subsec. (f)(4)(D)(vii). Pub. L. 105–34, § 223(a), added cl. (vii).

Subsec. (f)(4)(E). Pub. L. 105–34, § 1444(b), struck out subpar. (E) which related to exception for certain qualified student loan bonds.

1990—Subsec. (c)(2)(D). Pub. L. 101–508, § 11701(j)(5), substituted ''subsection (f)(4)(C)(iv)'' for ''subsection (f)(4)(B)(iv)(IV)'' in introductory provisions and ''subsection (f)(4)(C)(v)'' for ''subsection (f)(4)(B)(iv)(VIII)'' in cl. (i).

Subsec. (c)(2)(D), (E). Pub. L. 101–508, § 11701(j)(6), made technical amendment to Pub. L. 101–239, § 7652(c). See 1989 Amendment note below.

Subsec. (f)(4)(B)(i). Pub. L. 101–508, § 11701(j)(2), substituted in last sentence ''replacement fund, and gross proceeds which arise after such 6 months and which were not reasonably anticipated as of the date of issuance, shall not be considered gross proceeds for purposes of subclause (I) only'' for ''replacement fund shall not be considered gross proceeds for purposes of this subparagraph only'' in concluding provisions.

Subsec. (f)(4)(B)(i)(II). Pub. L. 101–508, § 11701(j)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''the requirements of paragraph (2) are met after such 6 months with respect to earnings on amounts in any reasonably required reserve or replacement fund.''

Subsec. (f)(4)(B)(iv). Pub. L. 101–508, § 11701(j)(4), amended cl. (iv) generally, substituting present provisions for provisions which provided for a special rule to be applied during a 2-year period for certain construction bonds from issues in which at least 75 percent of the net proceeds of the issue were to be used for construction expenditures with respect to property which was owned by a governmental unit or a 501(c)(3) organization.

Subsec. (f)(4)(C) to (E). Pub. L. 101–508, § 11701(j)(3)(A), (B), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

1989—Subsec. (c)(2)(D), (E). Pub. L. 101–239, § 7652(c), as amended by Pub. L. 101–508, § 11701(j)(6), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (d)(3)(E)(ii). Pub. L. 101–239, § 7814(c)(2), struck out ''a qualified mortgage bond or'' after ''in the case of''.

Subsec. (f)(4)(B)(i). Pub. L. 101–239, § 7652(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraph (2) if the gross proceeds of such issue are expended for the governmental purpose for which the issue was issued by no later than the day which is 6 months after the date of issuance of such issue. Gross proceeds which are held in a bona fide debt service fund shall not be considered gross proceeds for purposes of this subparagraph only.''

Subsec. (f)(4)(B)(ii)(I). Pub. L. 101–239, § 7652(d), inserted ''each place it appears'' after '' '6 months' ''.

Subsec. (f)(4)(B)(iii)(III). Pub. L. 101–239, § 7816(r), substituted ''such date of issuance or the date'' for ''such date of issuance. or the date''.

Subsec. (f)(4)(B)(iv). Pub. L. 101–239, § 7652(b), added cl. (iv).

Subsec. (f)(4)(C)(ii)(II). Pub. L. 101–239, § 7816(t), substituted ''to make loans to'' for ''on behalf of''.

1988—Subsec. (b)(2). Pub. L. 100–647, § 1013(a)(43)(B), struck out at end ''Such term shall not include any tax-exempt bond.''

Subsec. (b)(2)(E). Pub. L. 100–647, § 5053(b), added subpar. (E).

Subsec. (b)(3). Pub. L. 100–647, § 1013(a)(43)(A), added par. (3).

Subsec. (d)(2). Pub. L. 100–647, § 1013(a)(14), substituted ''any reserve or replacement fund'' for ''any fund described in paragraph (1)''.

Subsec. (f)(1). Pub. L. 100–647, § 4005(d)(2), struck out ''qualified mortgage bond or'' after ''apply to any''.

Subsec. (f)(3). Pub. L. 100–647, § 6177(b), inserted at end ''In the case of a tax and revenue anticipation bond, the last installment shall not be required to be made before the date 8 months after the date of issuance of the issue of which the bond is a part.''

Pub. L. 100–647, § 1013(a)(15), inserted ''A series of issues which are redeemed during a 6-month period (or such longer period as the Secretary may prescribe) shall be treated (at the election of the issuer) as 1 issue for purposes of the preceding sentence if no bond which is part of any issue in such series has a maturity of more than 270 days or is a private activity bond.''

Subsec. (f)(4)(A). Pub. L. 100–647, § 6181(a), (b), struck out ''unless the issuer otherwise elects,'' before ''any amount earned'' in cl. (ii) and inserted at end of subpar. (A) ''In the case of an issue no bond of which is a private activity bond, clause (ii) shall be applied without regard to the dollar limitation therein if the average maturity of the issue (determined in accordance with section 147(b)(2)(A)) is at least 5 years and the rates of interest on bonds which are part of the issue do not vary during the term of the issue.''

Subsec. (f)(4)(B)(iii)(I). Pub. L. 100–647, § 1013(a)(16)(A), substituted ''proceeds'' for ''aggregate face amount''.

Subsec. (f)(4)(B)(iii)(III). Pub. L. 100–647, § 6177(a), substituted ''the earlier of the date 6 months after such date of issuance.'' for ''the earliest of the maturity date of the issue, the date 6 months after such date of issuance,''.

Subsec. (f)(4)(C). Pub. L. 100–647, § 1013(a)(17)(A), in heading substituted ''governmental units issuing $5,000,000 or less of bonds'' for ''small governmental units'', designated existing provision as cl. (i), inserted heading ''In general'', redesignated existing cls. (i) to (iv) as subcls. (I) to (IV) and realigned their margins, struck out last sentence providing that cl. (iv) not take into account any bond which is not outstanding at the time of a later issue or which is redeemed, other than in an advance refunding, from the net proceeds of the later issue, and added cls. (ii) to (vi).

Subsec. (f)(4)(C)(i)(IV). Pub. L. 100–647, § 1013(a)(17)(B), struck out ''(and all subordinate entities thereof)'' after ''such unit''.

Subsec. (f)(4)(C)(ii). Pub. L. 100–647, § 6183(a), added subcl. (II) and redesignated former subcls. (II) and (III) as (III) and (IV), respectively.

Subsec. (f)(4)(D)(i). Pub. L. 100–647, § 1013(a)(18), inserted ''for a program'' before ''described in section 144(b)(1)(A)'' in introductory text, substituted ''such program'' for ''such a program'' in subcl. (I), and inserted at end ''Amounts designated as interest on student loans shall not be taken into account in determining whether the issuer is reimbursed for such costs. Except as otherwise hereafter provided in regulations prescribed by the Secretary, costs described in subclause (I) paid from amounts earned as described in the first sentence of this clause may also be taken into account in determining the yield on the student loans under a program described in section 144(b)(1)(A).''

Subsec. (f)(7)(B). Pub. L. 100–647, § 1013(a)(19), substituted ''not due'' for ''due to reasonable cause and not''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–222 applicable to bonds issued after May 17, 2006, see section 508(e) of Pub. L. 109–222, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to obligations issued after Aug. 8, 2005, see section 1327(d) of Pub. L. 109–58, set out as a note under section 141 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, § 421(b), June 7, 2001, 115 Stat. 65, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued in calendar years beginning after December 31, 2001.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 223(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after December 31, 1997.''

Section 1445 of title XIV of Pub. L. 105–34 provided that: ''The amendments made by this subtitle [subtitle B (§§ 1441–1445) of title XIV of Pub. L. 105–34, amending this section] shall apply to bonds issued after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

Section 11701(j)(8) of Pub. L. 101–508 provided that: ''Section 148(f)(4)(C)(xiii)(II) of such Code (as added by this subsection) shall apply only to refunding bonds issued after August 3, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7652(e) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by sections 7814(c)(2) and 7816(r), (t) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(a)(16)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to bonds issued after June 30, 1987.''

Section 1013(a)(17)(C) of Pub. L. 100–647 provided that: ''(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section] shall apply to bonds issued after June 30, 1987.

''(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the amendments made by this paragraph shall apply to such issuer as if included in the amendments made by section 1301(a) of the Tax Reform Act of 1986 [amending section 103 of this title].''

Section 1013(a)(43)(C) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section] shall apply to obligations issued after March 31, 1988.''

Amendment by section 1013(a)(14), (15), (18), (19) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4005(d)(2) of Pub. L. 100–647 applicable to bonds issued, and nonissued bond amounts

elected, after Dec. 31, 1988, see section 4005(h)(1) of Pub. L. 100–647, set out as a note under section 143 of this title.

Amendment by section 5053(b) of Pub. L. 100–647 applicable, with certain exceptions, to obligations issued after Oct. 21, 1988, see section 5053(c) of Pub. L. 100–647, set out as a note under section 145 of this title.

Section 6177(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].''

Section 6181(c) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].

''(2) ELECTION FOR OUTSTANDING BONDS.—Any issue of bonds other than private activity bonds outstanding as of the date of the enactment of this Act shall be allowed a 1-time election to apply the amendments made by subsection (b) [amending this section] to amounts deposited after such date in bona fide debt service funds of such bonds.

''(3) DEFINITION OF PRIVATE ACTIVITY BOND.—For purposes of this section and the last sentence of section 148(f)(4)(A) of the 1986 Code (as added by subsection (b)), the term 'private activity bond' shall include any qualified 501(c)(3) bond (as defined under section 145 of the 1986 Code).''

Section 6183(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to bonds issued after December 31, 1988.''

EFFECTIVE DATE

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

EXTENSION OF PERIOD TO ELECT TO TERMINATE PERCENT PENALTY FOR BONDS ISSUED BEFORE NOVEMBER 5, 1990

Section 11701(j)(7) of Pub. L. 101–508 provided that: ''In the case of a bond issued before the date of the enactment of this Act [Nov. 5, 1990], the period for making the election under section 148(f)(4)(C)(viii) of the Internal Revenue Code of 1986 (as added by this subsection) shall not expire before the date which is 180 days after such date of enactment.''

AMENDMENT TO ARBITRAGE REGULATIONS

Section 1301(c) of Pub. L. 99–514 provided that: ''The provision in the Federal income tax regulations relating to the arbitrage requirements which permits a higher yield on acquired obligations if the issuer elects to waive the benefits of the temporary period provisions shall not apply to bonds issued after August 31, 1986.''

§ 149. Bonds must be registered to be tax exempt; other requirements

(a) Bonds must be registered to be tax exempt

(1) General rule

Nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any registration-required bond unless such bond is in registered form.

(2) Registration-required bond

For purposes of paragraph (1), the term ''registration-required bond'' means any bond other than a bond which—

(A) is not of a type offered to the public,

(B) has a maturity (at issue) of not more than 1 year, or

(C) is described in section 163(f)(2)(B).

(3) Special rules

(A) Book entries permitted

For purposes of paragraph (1), a book entry bond shall be treated as in registered form if the right to the principal of, and stated interest on, such bond may be transferred only through a book entry consistent with regulations prescribed by the Secretary.

(B) Nominees

The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of paragraph (1) where there is a nominee or chain of nominees.

(b) Federally guaranteed bond is not tax exempt

(1) In general

Section 103(a) shall not apply to any State or local bond if such bond is federally guaranteed.

(2) Federally guaranteed defined

For purposes of paragraph (1), a bond is federally guaranteed if—

(A) the payment of principal or interest with respect to such bond is guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof),

(B) such bond is issued as part of an issue and 5 percent or more of the proceeds of such issue is to be—

(i) used in making loans the payment of principal or interest with respect to which are to be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof), or

(ii) invested (directly or indirectly) in federally insured deposits or accounts, or

(C) the payment of principal or interest on such bond is otherwise indirectly guaranteed (in whole or in part) by the United States (or an agency or instrumentality thereof).

(3) Exceptions

(A) Certain insurance programs

A bond shall not be treated as federally guaranteed by reason of—

(i) any guarantee by the Federal Housing Administration, the Veterans' Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association,

(ii) any guarantee of student loans and any guarantee by the Student Loan Marketing Association to finance student loans,

(iii) any guarantee by the Bonneville Power Authority pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of the enactment of the Tax Reform Act of 1984, or

(iv) subject to subparagraph (E), any guarantee by a Federal home loan bank made in connection with the original issuance of a bond during the period beginning on the date of the enactment of this clause and ending on December 31, 2010 (or a renewal or extension of a guarantee so made).

(B) Debt service, etc.

Paragraph (1) shall not apply to—

(i) proceeds of the issue invested for an initial temporary period until such proceeds are needed for the purpose for which such issue was issued,

(ii) investments of a bona fide debt service fund,

(iii) investments of a reserve which meet the requirements of section 148(d),

(iv) investments in bonds issued by the United States Treasury, or

(v) other investments permitted under regulations.

(C) Exception for housing programs

(i) In general

Except as provided in clause (ii), paragraph (1) shall not apply to—

(I) a private activity bond for a qualified residential rental project or a housing program obligation under section 11(b) of the United States Housing Act of 1937,

(II) a qualified mortgage bond, or

(III) a qualified veterans' mortgage bond.

(ii) Exception not to apply where bond invested in federally insured deposits or accounts

Clause (i) shall not apply to any bond which is federally guaranteed within the meaning of paragraph (2)(B)(ii).

(D) Loans to, or guarantees by, financial institutions

Except as provided in paragraph (2)(B)(ii), a bond which is issued as part of an issue shall not be treated as federally guaranteed merely by reason of the fact that the proceeds of such issue are used in making loans to a financial institution or there is a guarantee by a financial institution unless such guarantee constitutes a federally insured deposit or account.

(E) Safety and soundness requirements for Federal home loan banks

Clause (iv) of subparagraph (A) shall not apply to any guarantee by a Federal home loan bank unless such bank meets safety and soundness collateral requirements for such guarantees which are at least as stringent as such requirements which apply under regulations applicable to such guarantees by Federal home loan banks as in effect on April 9, 2008.

(4) Definitions

For purposes of this subsection—

(A) Treatment of certain entities with authority to borrow from United States

To the extent provided in regulations prescribed by the Secretary, any entity with statutory authority to borrow from the United States shall be treated as an instrumentality of the United States. Except in the case of an exempt facility bond, a qualified small issue bond, and a qualified student loan bond, nothing in the preceding sentence shall be construed as treating the District of Columbia or any possession of the United States as an instrumentality of the United States.

(B) Federally insured deposit or account

The term ''federally insured deposit or account'' means any deposit or account in a financial institution to the extent such deposit or account is insured under Federal law by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any similar federally chartered corporation.

(c) Tax exemption must be derived from this title

(1) General rule

Except as provided in paragraph (2), no interest on any bond shall be exempt from taxation under this title unless such interest is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

(2) Certain prior exemptions

(A) Prior exemptions continued

For purposes of this title, notwithstanding any provision of this part, any bond the interest on which is exempt from taxation under this title by reason of any provision of law (other than a provision of this title) which is in effect on January 6, 1983, shall be treated as a bond described in section 103(a).

(B) Additional requirements for bonds issued after 1983

Subparagraph (A) shall not apply to a bond (not described in subparagraph (C)) issued after 1983 if the appropriate requirements of this part (or the corresponding provisions of prior law) are not met with respect to such bond.

(C) Description of bond

A bond is described in this subparagraph (and treated as described in subparagraph (A)) if—

(i) such bond is issued pursuant to the Northwest Power Act (16 U.S.C. 839d), as in effect on July 18, 1984;

(ii) such bond is issued pursuant to section 608(a)(6)(A) of Public Law 97–468, as in effect on the date of the enactment of the Tax Reform Act of 1986; or

(iii) such bond is issued before June 19, 1984 under section 11(b) of the United States Housing Act of 1937.

(d) Advance refundings

(1) In general

Nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond issued as part of an issue described in paragraph (2), (3), or (4).

(2) Certain private activity bonds

An issue is described in this paragraph if any bond (issued as part of such issue) is issued to advance refund a private activity bond (other than a qualified 501(c)(3) bond).

(3) Other bonds

(A) In general

An issue is described in this paragraph if any bond (issued as part of such issue), hereinafter in this paragraph referred to as the ''refunding bond'', is issued to advance refund a bond unless—

(i) the refunding bond is only—

(I) the 1st advance refunding of the original bond if the original bond is issued after 1985, or

(II) the 1st or 2nd advance refunding of the original bond if the original bond was issued before 1986,

(ii) in the case of refunded bonds issued before 1986, the refunded bond is redeemed not later than the earliest date on which such bond may be redeemed at par or at a premium of 3 percent or less,

(iii) in the case of refunded bonds issued after 1985, the refunded bond is redeemed not later than the earliest date on which such bond may be redeemed,

(iv) the initial temporary period under section 148(c) ends—

(I) with respect to the proceeds of the refunding bond not later than 30 days after the date of issue of such bond, and

(II) with respect to the proceeds of the refunded bond on the date of issue of the refunding bond, and

(v) in the case of refunded bonds to which section 148(e) did not apply, on and after the date of issue of the refunding bond, the amount of proceeds of the refunded bond invested in higher yielding investments (as defined in section 148(b)) which are nonpurpose investments (as defined in section 148(f)(6)(A)) does not exceed—

(I) the amount so invested as part of a reasonably required reserve or replacement fund or during an allowable temporary period, and

(II) the amount which is equal to the lesser of 5 percent of the proceeds of the issue of which the refunded bond is a part or $100,000 (to the extent such amount is allocable to the refunded bond).

(B) Special rules for redemptions

(i) Issuer must redeem only if debt service savings

Clause (ii) and (iii) of subparagraph (A) shall apply only if the issuer may realize present value debt service savings (determined without regard to administrative expenses) in connection with the issue of which the refunding bond is a part.

(ii) Redemptions not required before 90th day

For purposes of clauses (ii) and (iii) of subparagraph (A), the earliest date referred to in such clauses shall not be earlier than the 90th day after the date of issuance of the refunding bond.

(4) Abusive transactions prohibited

An issue is described in this paragraph if any bond (issued as part of such issue) is issued to advance refund another bond and a device is employed in connection with the issuance of such issue to obtain a material financial advantage (based on arbitrage) apart from savings attributable to lower interest rates.

(5) Advance refunding

For purposes of this part, a bond shall be treated as issued to advance refund another bond if it is issued more than 90 days before the redemption of the refunded bond.

(6) Special rules for purposes of paragraph (3)

For purposes of paragraph (3), bonds issued before the date of the enactment of this subsection shall be taken into account under subparagraph (A)(i) thereof except—

(A) a refunding which occurred before 1986 shall be treated as an advance refunding only if the refunding bond was issued more than 180 days before the redemption of the refunded bond, and

(B) a bond issued before 1986, shall be treated as advance refunded no more than once before March 15, 1986.

(7) Regulations

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

(e) Information reporting

(1) In general

Nothing in section 103(a) or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond unless such bond satisfies the requirements of paragraph (2).

(2) Information reporting requirements

A bond satisfies the requirements of this paragraph if the issuer submits to the Secretary, not later than the 15th day of the 2d calendar month after the close of the calendar quarter in which the bond is issued (or such later time as the Secretary may prescribe with respect to any portion of the statement), a statement concerning the issue of which the bond is a part which contains—

(A) the name and address of the issuer,

(B) the date of issue, the amount of net proceeds of the issue, the stated interest rate, term, and face amount of each bond which is part of the issue, the amount of issuance costs of the issue, and the amount of reserves of the issue,

(C) where required, the name of the applicable elected representative who approved the issue, or a description of the voter referendum by which the issue was approved,

(D) the name, address, and employer identification number of—

(i) each initial principal user of any facility provided with the proceeds of the issue,

(ii) the common parent of any affiliated group of corporations (within the meaning of section 1504(a)) of which such initial principal user is a member, and

(iii) if the issue is treated as a separate issue under section 144(a)(6)(A), any person treated as a principal user under section 144(a)(6)(B),

(E) a description of any property to be financed from the proceeds of the issue,

(F) a certification by a State official designated by State law (or, where there is no such official, the Governor) that the bond meets the requirements of section 146 (relating to cap on private activity bonds), if applicable, and

(G) such other information as the Secretary may require.

Subparagraphs (C) and (D) shall not apply to any bond which is not a private activity bond. The Secretary may provide that certain information specified in the 1st sentence need not be included in the statement with respect to an issue where the inclusion of such information is not necessary to carry out the purposes of this subsection.

(3) Extension of time

The Secretary may grant an extension of time for the filing of any statement required under paragraph (2) if the failure to file in a timely fashion is not due to willful neglect.

(f) Treatment of certain pooled financing bonds

(1) In general

Section 103(a) shall not apply to any pooled financing bond unless, with respect to the issue of which such bond is a part, the requirements of paragraphs (2), (3), (4), and (5) are met.

(2) Reasonable expectation requirement

(A) In general

The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that—

(i) as of the close of the 1-year period beginning on the date of issuance of the issue, at least 30 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers, and

(ii) as of the close of the 3-year period beginning on such date of issuance, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.

(B) Certain factors may not be taken into account in determining expectations

Expectations as to changes in interest rates or in the provisions of this title (or in the regulations or rulings thereunder) may not be taken into account in determining whether expectations are reasonable for purposes of this paragraph.

(C) Net proceeds

For purposes of subparagraph (A), the term ''net proceeds'' has the meaning given such term by section 150 but shall not include proceeds used to finance issuance costs and shall not include proceeds necessary to pay interest (during such period) on the bonds which are part of the issue.

(D) Refunding bonds

For purposes of subparagraph (A), in the case of a refunding bond, the date of issuance taken into account is the date of issuance of the original bond.

(3) Cost of issuance payment requirements

The requirements of this paragraph are met with respect to an issue if—

(A) the payment of legal and underwriting costs associated with the issuance of the issue is not contingent, and

(B) at least 95 percent of the reasonably expected legal and underwriting costs associated with the issuance of the issue are paid not later than the 180th day after the date of the issuance of the issue.

(4) Written loan commitment requirement

(A) In general

The requirement of this paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 30 percent of the net proceeds of such issue.

(B) Exception

Subparagraph (A) shall not apply with respect to any issuer which—

(i) is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State, or

(ii) is a State-created entity providing financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

(5) Redemption requirement

The requirement of this paragraph is met if to the extent that less than the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—

(A) the amount required to be used under such clause, over

(B) the amount actually used by the close of such period,

to redeem outstanding bonds within 90 days after the end of such period.

(6) Pooled financing bond

For purposes of this subsection—

(A) In general

The term ''pooled financing bond'' means any bond issued as part of an issue more than $5,000,000 of the proceeds of which are reasonably expected (at the time of the issuance of the bonds) to be used (or are intentionally used) directly or indirectly to make or finance loans to 2 or more ultimate borrowers.

(B) Exceptions

Such term shall not include any bond if—

(i) section 146 applies to the issue of which such bond is a part (other than by reason of section 141(b)(5)) or would apply but for section 146(i), or

(ii) section 143(*l*)(3) applies to such issue.

(7) Definition of loan; treatment of mixed use issues

(A) Loan

For purposes of this subsection, the term ''loan'' does not include—

(i) any loan which is a nonpurpose investment (within the meaning of section 148(f)(6)(A), determined without regard to section 148(b)(3)), and

(ii) any use of proceeds by an agency of the issuer unless such agency is a political subdivision or instrumentality of the issuer.

(B) Portion of issue to be used for loans treated as separate issue

If only a portion of the proceeds of an issue is reasonably expected (at the time of issuance of the bond) to be used (or is intentionally used) as described in paragraph (6)(A), such portion and the other portion of such issue shall be treated as separate issues for purposes of determining whether such portion meets the requirements of this subsection.

(g) Treatment of hedge bonds

(1) In general

Section 103(a) shall not apply to any hedge bond unless, with respect to the issue of which such bond is a part—

(A) the requirement of paragraph (2) is met, and

(B) the requirement of subsection (f)(3) is met.

(2) Reasonable expectations as to when proceeds will be spent

An issue meets the requirement of this paragraph if the issuer reasonably expects that—

(A) 10 percent of the spendable proceeds of the issue will be spent for the governmental purposes of the issue within the 1-year period beginning on the date the bonds are issued,

(B) 30 percent of the spendable proceeds of the issue will be spent for such purposes within the 2-year period beginning on such date,

(C) 60 percent of the spendable proceeds of the issue will be spent for such purposes within the 3-year period beginning on such date, and

(D) 85 percent of the spendable proceeds of the issue will be spent for such purposes within the 5-year period beginning on such date.

(3) Hedge bond

(A) In general

For purposes of this subsection, the term ''hedge bond'' means any bond issued as part of an issue unless—

(i) the issuer reasonably expects that 85 percent of the spendable proceeds of the issue will be used to carry out the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued, and

(ii) not more than 50 percent of the proceeds of the issue are invested in nonpurpose investments (as defined in section 148(f)(6)(A)) having a substantially guaranteed yield for 4 years or more.

(B) Exception for investment in tax-exempt bonds not subject to minimum tax

(i) In general

Such term shall not include any bond issued as part of an issue 95 percent of the net proceeds of which are invested in bonds—

(I) the interest on which is not includible in gross income under section 103, and

(II) which are not specified private activity bonds (as defined in section 57(a)(5)(C)).

(ii) Amounts in bona fide debt service fund

Amounts in a bona fide debt service fund shall be treated as invested in bonds described in clause (i).

(iii) Amounts held pending reinvestment or redemption

Amounts held for not more than 30 days pending reinvestment or bond redemption shall be treated as invested in bonds described in clause (i).

(C) Exception for refunding bonds

(i) In general

A refunding bond shall be treated as meeting the requirements of this subsection only if the original bond met such requirements.

(ii) General rule for refunding of pre-effective date bonds

A refunding bond shall be treated as meeting the requirements of this subsection if—

(I) this subsection does not apply to the original bond,

(II) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and

(III) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

(iii) Refunding of pre-effective date bonds entitled to 5-year temporary period

A refunding bond shall be treated as meeting the requirements of this subsection if—

(I) this subsection does not apply to the original bond,

(II) the issuer reasonably expected that 85 percent of the spendable proceeds of the issue of which the original bond is a part would be used to carry out the governmental purposes of the issue within the 5-year period beginning on the date the original bonds were issued but did not reasonably expect that 85 percent of such proceeds would be so spent within the 3-year period beginning on such date, and

(III) at least 85 percent of the spendable proceeds of the original issue (and

all other prior original issues issued to finance the governmental purposes of such issue) were spent before the date the refunding bonds are issued.

(4) Special rules

For purposes of this subsection—

(A) Construction period in excess of 5 years

The Secretary may, at the request of any issuer, provide that the requirement of paragraph (2) shall be treated as met with respect to the portion of the spendable proceeds of an issue which is to be used for any construction project having a construction period in excess of 5 years if it is reasonably expected that such proceeds will be spent over a reasonable construction schedule specified in such request.

(B) Rules for determining expectations

The rules of subsection (f)(2)(B) shall apply.

(5) Regulations

The Secretary may prescribe regulations to prevent the avoidance of the rules of this subsection, including through the aggregation of projects within a single issue.

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2646; amended Pub. L. 100–647, title I, §1013(a)(20)–(22), title V, §5051(a), Nov. 10, 1988, 102 Stat. 3542, 3676; Pub. L. 101–239, title VII, §7651(a), Dec. 19, 1989, 103 Stat. 2383; Pub. L. 104–188, title I, §1704(b)(1), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 109–222, title V, §508(a), (b), (d)(1), (2), May 17, 2006, 120 Stat. 361, 362; Pub. L. 110–289, div. C, title I, §3023(a), (b), July 30, 2008, 122 Stat. 2894, 2895; Pub. L. 111–147, title V, §502(a)(2)(A), Mar. 18, 2010, 124 Stat. 107.)

AMENDMENT OF SUBSECTION (a)(2)

Pub. L. 111–147, title V, §502(a)(2)(A), (f), Mar. 18, 2010, 124 Stat. 107, 108, provided that, applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, subsection (a)(2) of this section is amended by inserting ''or'' at the end of subparagraph (A), by substituting a period for '', or'' at the end of subparagraph (B), and by striking subparagraph (C).

REFERENCES IN TEXT

The Northwest Power Act, referred to in subsecs. (b)(3)(A)(iii) and (c)(2)(C)(i), probably means the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501, Dec. 5, 1980, 94 Stat 2697, which is classified principally to chapter 12H (§839 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 839 of Title 16 and Tables.

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (b)(3)(A)(iii), is the date of enactment of Pub. L. 98–369, div. A, which was approved July 18, 1984.

The date of the enactment of this clause, referred to in subsec. (b)(3)(A)(iv), is the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

Section 11(b) of the United States Housing Act of 1937, referred to in subsecs. (b)(3)(C)(i)(I) and (c)(2)(C)(iii), is classified to section 1473i(b) of Title 42, The Public Health and Welfare.

Section 608(a)(6)(A) of Pub. L. 97–468, referred to in subsec. (c)(2)(C)(ii), is classified to section 1207(a)(6)(A) of Title 45, Railroads.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (c)(2)(C)(ii), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The date of the enactment of this subsection, referred to in subsec. (d)(6), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

2008—Subsec. (b)(3)(A)(iv). Pub. L. 110–289, §3023(a), added cl. (iv).

Subsec. (b)(3)(E). Pub. L. 110–289, §3023(b), added subpar. (E).

2006—Subsec. (f)(1). Pub. L. 109–222, §508(d)(1), substituted ''paragraphs (2), (3), (4), and (5)'' for ''paragraphs (2) and (3)''.

Subsec. (f)(2)(A). Pub. L. 109–222, §508(a), amended subpar. (A) generally. Prior to amendment, text read as follows: ''The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that as of the close of the 3-year period beginning on the date of issuance of the issue, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers.''

Subsec. (f)(4) to (6). Pub. L. 109–222, §508(b), added pars. (4) and (5) and redesignated former par. (4) as (6). Former par. (5) redesignated (7).

Subsec. (f)(7). Pub. L. 109–222, §508(b), redesignated par. (5) as (7).

Subsec. (f)(7)(B). Pub. L. 109–222, §508(d)(2), substituted ''paragraph (6)(A)'' for ''paragraph (4)(A)''.

1996—Subsec. (g)(3)(B)(iii). Pub. L. 104–188 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''INVESTMENT EARNINGS HELD PENDING REINVESTMENT.—Investment earnings held for not more than 30 days pending reinvestment shall be treated as invested in bonds described in clause (i).''

1989—Subsec. (g). Pub. L. 101–239 added subsec. (g).

1988—Subsec. (b)(3)(A)(iii). Pub. L. 100–647, §1013(a)(20), struck out ''with respect to any bond issued before July 1, 1989'' after ''1984''.

Subsec. (b)(4)(A). Pub. L. 100–647, §1013(a)(21), substituted ''and a qualified student loan bond'' for ''a qualified student loan bond, and a qualified redevelopment bond''.

Subsec. (e)(3). Pub. L. 100–647, §1013(a)(22), substituted ''the failure to file in a timely fashion is not due to willful neglect'' for ''there is reasonable cause for the failure to file such statement in a timely fashion''.

Subsec. (f). Pub. L. 100–647, §5051(a), added subsec. (f).

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §502(f), Mar. 18, 2010, 124 Stat. 108, provided that: ''The amendments made by this section [amending this section, sections 163, 165, 871, 881, 1287, and 4701 of this title, and section 3121 of Title 31, Money and Finance] shall apply to obligations issued after the date which is 2 years after the date of the enactment of this Act [Mar. 18, 2010].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, §3023(c), July 30, 2008, 122 Stat. 2895, provided that: ''The amendments made by this section [amending this section] shall apply to guarantees made after the date of the enactment of this Act [July 30, 2008].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–222 applicable to bonds issued after May 17, 2006, see section 508(e) of Pub. L. 109–222, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(b)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 7651 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7651(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to bonds issued after September 14, 1989.

''(2) BONDS SOLD BEFORE SEPTEMBER 15, 1989.—The amendment made by subsection (a) shall not apply to any bond sold before September 15, 1989, and issued before October 15, 1989.

''(3) BONDS WITH RESPECT TO WHICH PRELIMINARY OFFERING MATERIALS MAILED.—The amendment made by subsection (a) shall not apply to any issue issued after the date of the enactment of this Act [Dec. 19, 1989] if the preliminary offering materials with respect to such issue were mailed (or otherwise delivered) to members of the underwriting syndicate before September 15, 1989.

''(4) CERTAIN OTHER BONDS.—In the case of a bond issued before January 1, 1991, with respect to which official action was taken (or a series of official actions were taken), or other comparable preliminary approval was given, before November 18, 1989, demonstrating an intent to issue such bonds in a maximum specified amount for such issue or with a maximum specified amount of net proceeds of such issue, the issuer may elect to apply section 149(g)(2) of the Internal Revenue Code of 1986 (as added by this section) by substituting '15 percent' for '10 percent' in subparagraph (A) and '50 percent' for '60 percent' in subparagraph (C).

''(5) BONDS ISSUED TO FINANCE SELF-INSURANCE FUNDS.—The amendment made by subsection (a) shall not apply to any bonds issued before July 1, 1990, to finance a self-insurance fund if official action was taken (or a series of official actions were taken), or other comparable preliminary approval was given, before September 15, 1989, demonstrating an intent to issue such bonds in a maximum specified amount for such issue or with a maximum specified amount of net proceeds of such issue.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(20)–(22) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 5051(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to bonds issued after October 21, 1988.

''(2) SPECIAL RULE FOR REFUNDING BONDS.—In the case of a bond issued to refund a bond issued before October 22, 1988—

''(A) if the 3-year period described in section 149(f)(2)(A) of the 1986 Code would (but for this paragraph) expire on or before October 22, 1989, such period shall expire on October 21, 1990, and

''(B) if such period expires after October 22, 1989, the portion of the proceeds of the issue of which the refunded bond is a part which is available (on the date of issuance of the refunding issue) to provide loans shall be treated as proceeds of a separate issue (issued after October 21, 1988) for purposes of applying section 149(f) of the 1986 Code.''

EFFECTIVE DATE

Subsec. (e) applicable to bonds issued after Dec. 31, 1986, see section 1311(d) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101–73 set out as a note under section 1437 of Title 12, Banks and Banking.

SUBPART C—DEFINITIONS AND SPECIAL RULES

Sec.
150. Definitions and special rules.

§ 150. Definitions and special rules

(a) General rule

For purposes of this part—

(1) Bond

The term ''bond'' includes any obligation.

(2) Governmental unit not to include Federal Government

The term ''governmental unit'' does not include the United States or any agency or instrumentality thereof.

(3) Net proceeds

The term ''net proceeds'' means, with respect to any issue, the proceeds of such issue reduced by amounts in a reasonably required reserve or replacement fund.

(4) 501(c)(3) organization

The term ''501(c)(3) organization'' means any organization described in section 501(c)(3) and exempt from tax under section 501(a).

(5) Ownership of property

Property shall be treated as owned by a governmental unit if it is owned on behalf of such unit.

(6) Tax-exempt bond

The term ''tax-exempt'' means, with respect to any bond (or issue), that the interest on such bond (or on the bonds issued as part of such issue) is excluded from gross income.

(b) Change in use of facilities financed with tax-exempt private activity bonds

(1) Mortgage revenue bonds

(A) In general

In the case of any residence with respect to which financing is provided from the proceeds of a tax-exempt qualified mortgage bond or qualified veterans' mortgage bond, if there is a continuous period of at least 1 year during which such residence is not the principal residence of at least 1 of the mortgagors who received such financing, then no deduction shall be allowed under this chapter for interest on such financing which accrues on or after the date such period began and before the date such residence is again the principal residence of at least 1 of the mortgagors who received such financing.

(B) Exception

Subparagraph (A) shall not apply to the extent the Secretary determines that its application would result in undue hardship and that the failure to meet the requirements of subparagraph (A) resulted from circumstances beyond the mortgagor's control.

(2) Qualified residential rental projects

In the case of any project for residential rental property—

(A) with respect to which financing is provided from the proceeds of any private activity bond which, when issued, purported to be a tax-exempt bond described in paragraph (7) of section 142(a), and

(B) which does not meet the requirements of section 142(d),

no deduction shall be allowed under this chapter for interest on such financing which accrues during the period beginning on the 1st day of the taxable year in which such project fails to meet such requirements and ending on the date such project meets such requirements. If the provisions of prior law corresponding to section 142(d) apply to a refunded bond, such provisions shall apply (in lieu of section 142(d)) to the refunding bond.

(3) Qualified 501(c)(3) bonds

(A) In general

In the case of any facility with respect to which financing is provided from the proceeds of any private activity bond which, when issued, purported to be a tax-exempt qualified 501(c)(3) bond, if any portion of such facility—

(i) is used in a trade or business of any person other than a 501(c)(3) organization or a governmental unit, but

(ii) continues to be owned by a 501(c)(3) organization,

then the owner of such portion shall be treated for purposes of this title as engaged in an unrelated trade or business (as defined in section 513) with respect to such portion. The amount of gross income attributable to such portion for any period shall not be less than the fair rental value of such portion for such period.

(B) Denial of deduction for interest

No deduction shall be allowed under this chapter for interest on financing described in subparagraph (A) which accrues during the period beginning on the date such facility is used as described in subparagraph (A)(i) and ending on the date such facility is not so used.

(4) Certain exempt facility bonds and small issue bonds

(A) In general

In the case of any facility with respect to which financing is provided from the proceeds of any private activity bond to which this paragraph applies, if such facility is not used for a purpose for which a tax-exempt bond could be issued on the date of such issue, no deduction shall be allowed under this chapter for interest on such financing which accrues during the period beginning on the date such facility is not so used and ending on the date such facility is so used.

(B) Bonds to which paragraph applies

This paragraph applies to any private activity bond which, when issued, purported to be a tax-exempt exempt facility bond described in a paragraph (other than paragraph (7)) of section 142(a) or a qualified small issue bond.

(5) Facilities required to be owned by governmental units or 501(c)(3) organizations

If—

(A) financing is provided with respect to any facility from the proceeds of any private activity bond which, when issued, purported to be a tax-exempt bond,

(B) such facility is required to be owned by a governmental unit or a 501(c)(3) organization as a condition of such tax exemption, and

(C) such facility is not so owned,

then no deduction shall be allowed under this chapter for interest on such financing which accrues during the period beginning on the date such facility is not so owned and ending on the date such facility is so owned.

(6) Small issue bonds which exceed capital expenditure limitation

In the case of any financing provided from the proceeds of any bond which, when issued, purported to be a qualified small issue bond, no deduction shall be allowed under this chapter for interest on such financing which accrues during the period such bond is not a qualified small issue bond.

(c) Exception and special rules for purposes of subsection (b)

For purposes of subsection (b)—

(1) Exception

Any use with respect to facilities financed with proceeds of an issue which are not required to be used for the exempt purpose of such issue shall not be taken into account.

(2) Treatment of amounts other than interest

If the amounts payable for the use of a facility are not interest, subsection (b) shall apply to such amounts as if they were interest but only to the extent such amounts for any period do not exceed the amount of interest accrued on the bond financing for such period.

(3) Use of portion of facility

In the case of any person which uses only a portion of the facility, only the interest accruing on the financing allocable to such portion shall be taken into account by such person.

(4) Cessation with respect to portion of facility

In the case of any facility where part but not all of the facility is not used for an exempt purpose, only the interest accruing on the financing allocable to such part shall be taken into account.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and subsection (b).

(d) Qualified scholarship funding bond

For purposes of this part and section 103—

(1) Treatment as State or local bond

A qualified scholarship funding bond shall be treated as a State or local bond.

(2) Qualified scholarship funding bond defined

The term ''qualified scholarship funding bond'' means a bond issued by a corporation which—

(A) is a corporation not for profit established and operated exclusively for the purpose of acquiring student loan notes incurred under the Higher Education Act of 1965, and

(B) is organized at the request of the State or 1 or more political subdivisions thereof or is requested to exercise such power by 1 or more political subdivisions and required by its corporate charter and bylaws, or required by State law, to devote any income (after payment of expenses, debt service, and the creation of reserves for the same) to the purchase of additional student loan notes or to pay over any income to the United States.

(3) Election to cease status as qualified scholarship funding corporation

(A) In general

Any qualified scholarship funding bond, and qualified student loan bond, outstanding on the date of the issuer's election under this paragraph (and any bond (or series of bonds) issued to refund such a bond) shall not fail to be a tax-exempt bond solely because the issuer ceases to be described in subparagraphs (A) and (B) of paragraph (2) if the issuer meets the requirements of subparagraphs (B) and (C) of this paragraph.

(B) Assets and liabilities of issuer transferred to taxable subsidiary

The requirements of this subparagraph are met by an issuer if—

(i) all of the student loan notes of the issuer and other assets pledged to secure the repayment of qualified scholarship funding bond indebtedness of the issuer are transferred to another corporation within a reasonable period after the election is made under this paragraph;

(ii) such transferee corporation assumes or otherwise provides for the payment of all of the qualified scholarship funding bond indebtedness of the issuer within a reasonable period after the election is made under this paragraph;

(iii) to the extent permitted by law, such transferee corporation assumes all of the responsibilities, and succeeds to all of the rights, of the issuer under the issuer's agreements with the Secretary of Education in respect of student loans;

(iv) immediately after such transfer, the issuer, together with any other issuer which has made an election under this paragraph in respect of such transferee, hold all of the senior stock in such transferee corporation; and

(v) such transferee corporation is not exempt from tax under this chapter.

(C) Issuer to operate as independent organization described in section 501(c)(3)

The requirements of this subparagraph are met by an issuer if, within a reasonable period after the transfer referred to in subparagraph (B)—

(i) the issuer is described in section 501(c)(3) and exempt from tax under section 501(a);

(ii) the issuer no longer is described in subparagraphs (A) and (B) of paragraph (2); and

(iii) at least 80 percent of the members of the board of directors of the issuer are independent members.

(D) Senior stock

For purposes of this paragraph, the term ''senior stock'' means stock—

(i) which participates pro rata and fully in the equity value of the corporation with all other common stock of the corporation but which has the right to payment of liquidation proceeds prior to payment of liquidation proceeds in respect of other common stock of the corporation;

(ii) which has a fixed right upon liquidation and upon redemption to an amount equal to the greater of—

(I) the fair market value of such stock on the date of liquidation or redemption (whichever is applicable); or

(II) the fair market value of all assets transferred in exchange for such stock and reduced by the amount of all liabilities of the corporation which has made an election under this paragraph assumed by the transferee corporation in such transfer;

(iii) the holder of which has the right to require the transferee corporation to redeem on a date that is not later than 10 years after the date on which an election under this paragraph was made and pursuant to such election such stock was issued; and

(iv) in respect of which, during the time such stock is outstanding, there is not outstanding any equity interest in the corporation having any liquidation, redemption or dividend rights in the corporation which are superior to those of such stock.

(E) Independent member

The term ''independent member'' means a member of the board of directors of the issuer who (except for services as a member of such board) receives no compensation directly or indirectly—

(i) for services performed in connection with such transferee corporation, or

(ii) for services as a member of the board of directors or as an officer of such transferee corporation.

For purposes of clause (ii), the term ''officer'' includes any individual having powers or responsibilities similar to those of officers.

(F) Coordination with certain private foundation taxes

For purposes of sections 4942 (relating to the excise tax on a failure to distribute income) and 4943 (relating to the excise tax on excess business holdings), the transferee corporation referred to in subparagraph (B) shall be treated as a functionally related business (within the meaning of section 4942(j)(4)) with respect to the issuer during the period commencing with the date on which an election is made under this paragraph and ending on the date that is the earlier of—

(i) the last day of the last taxable year for which more than 50 percent of the gross income of such transferee corporation is derived from, or more than 50 percent of the assets (by value) of such transferee corporation consists of, student loan notes incurred under the Higher Education Act of 1965; or

(ii) the last day of the taxable year of the issuer during which occurs the date which is 10 years after the date on which the election under this paragraph is made.

(G) Election

An election under this paragraph may be revoked only with the consent of the Secretary.

(e) Bonds of certain volunteer fire departments

For purposes of this part and section 103—

(1) In general

A bond of a volunteer fire department shall be treated as a bond of a political subdivision of a State if—

(A) such department is a qualified volunteer fire department with respect to an area within the jurisdiction of such political subdivision, and

(B) such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used for the acquisition, construction, reconstruction, or improvement of a firehouse (including land which is functionally related and subordinate thereto) or firetruck used or to be used by such department.

(2) Qualified volunteer fire department

For purposes of this subsection, the term ''qualified volunteer fire department'' means, with respect to a political subdivision of a State, any organization—

(A) which is organized and operated to provide firefighting or emergency medical services for persons in an area (within the jurisdiction of such political subdivision) which is not provided with any other firefighting services, and

(B) which is required (by written agreement) by the political subdivision to furnish firefighting services in such area.

For purposes of subparagraph (A), other firefighting services provided in an area shall be disregarded in determining whether an organization is a qualified volunteer fire department if such other firefighting services are provided by a qualified volunteer fire department (determined with the application of this sentence) and such organization and the provider of such other services have been continuously providing firefighting services to such area since January 1, 1981.

(3) Treatment as private activity bonds only for certain purposes

Bonds which are part of an issue which meets the requirements of paragraph (1) shall not be treated as private activity bonds except for purposes of sections 147(f) and 149(d).

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2651; amended Pub. L. 100–647, title I, §1013(a)(23), (24)(A), (30)–(33), title VI, §6182(a), (b), Nov. 10, 1988, 102 Stat. 3542, 3543, 3729; Pub. L. 104–188, title I, §1614(a), Aug. 20, 1996, 110 Stat. 1851.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (d)(2)(A), (3)(F)(i), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, which is classified generally to chapter 28 (§1001 et seq.) of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1996—Subsec. (d)(3). Pub. L. 104–188 added par. (3).

1988—Subsec. (b)(1)(A). Pub. L. 100–647, §1013(a)(23)(C), inserted ''tax-exempt'' before ''qualified mortgage bond''.

Pub. L. 100–647, §1013(a)(30), inserted before period at end ''and before the date such residence is again the principal residence of at least 1 of the mortgagors who received such financing''.

Subsec. (b)(2). Pub. L. 100–647, §1013(a)(32), inserted at end ''If the provisions of prior law corresponding to section 142(d) apply to a refunded bond, such provisions shall apply (in lieu of section 142(d)) to the refunding bond.''

Subsec. (b)(2)(A). Pub. L. 100–647, §1013(a)(31), substituted ''described in paragraph'' for ''described paragraph''.

Subsec. (b)(4). Pub. L. 100–647, §1013(a)(23)(A), (B), inserted ''and small issue bonds'' after ''bonds'' in heading, and ''or a qualified small issue bond'' before period at end of subpar. (B).

Subsec. (b)(6). Pub. L. 100–647, §1013(a)(33), added par. (6).

Subsec. (e)(1)(B). Pub. L. 100–647, §6182(b), inserted ''(including land which is functionally related and subordinate thereto)'' after ''a firehouse''.

Subsec. (e)(2). Pub. L. 100–647, §6182(a), inserted at end ''For purposes of subparagraph (A), other firefighting services provided in an area shall be disregarded in determining whether an organization is a qualified volunteer fire department if such other firefighting services are provided by a qualified volunteer fire department (determined with the application of this sentence) and such organization and the provider of such other services have been continuously providing firefighting services to such area since January 1, 1981.''

Subsec. (e)(3). Pub. L. 100–647, §1013(a)(24)(A), added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1614(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(a)(24)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to bonds issued after October 21, 1988.''

Amendment by section 1013(a)(23), (30)–(33) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6182(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE

Section applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, with subsec. (b) applica-

ble to changes in use (and ownership) after Aug. 15, 1986, but only with respect to financing (including refinancings) provided after such date, and with subsec. (d) applicable to payments made after Aug. 15, 1986, see sections 1311 to 1318 of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

PART V—DEDUCTIONS FOR PERSONAL EXEMPTIONS

Sec.
151. Allowance of deductions for personal exemptions.
152. Dependent defined.
153. Cross references.

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(7)(A)(ii), Oct. 4, 1976, 90 Stat. 1794, redesignated item 154 as 153 and struck out former item 153 ''Determination of marital status''.

§ 151. Allowance of deductions for personal exemptions

(a) Allowance of deductions

In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and spouse

An exemption of the exemption amount for the taxpayer; and an additional exemption of the exemption amount for the spouse of the taxpayer if a joint return is not made by the taxpayer and his spouse, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional exemption for dependents

An exemption of the exemption amount for each individual who is a dependent (as defined in section 152) of the taxpayer for the taxable year.

(d) Exemption amount

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''exemption amount'' means $2,000.

(2) Exemption amount disallowed in case of certain dependents

In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual for such individual's taxable year shall be zero.

(3) Phaseout

(A) In general

In the case of any taxpayer whose adjusted gross income for the taxable year exceeds the threshold amount, the exemption amount shall be reduced by the applicable percentage.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means 2 percentage points for each $2,500 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds the threshold amount. In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting ''$1,250'' for ''$2,500''. In no event shall the applicable percentage exceed 100 percent.

(C) Threshold amount

For purposes of this paragraph, the term ''threshold amount'' means—

(i) $150,000 in the case of a joint return or a surviving spouse (as defined in section 2(a)),

(ii) $125,000 in the case of a head of a household (as defined in section 2(b),[1]

(iii) $100,000 in the case of an individual who is not married and who is not a surviving spouse or head of a household, and

(iv) $75,000 in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

(D) Coordination with other provisions

The provisions of this paragraph shall not apply for purposes of determining whether a deduction under this section with respect to any individual is allowable to another taxpayer for any taxable year.

(E) Reduction of phaseout

(i) In general

In the case of taxable years beginning after December 31, 2005, and before January 1, 2010, the reduction under subparagraph (A) shall be equal to the applicable fraction of the amount which would (but for this subparagraph) be the amount of such reduction.

(ii) Applicable fraction

For purposes of clause (i), the applicable fraction shall be determined in accordance with the following table:

For taxable years beginning in calendar year—	The applicable fraction is—
2006 and 2007	2/3
2008 and 2009	1/3.

(F) Termination

This paragraph shall not apply to any taxable year beginning after December 31, 2009.

(4) Inflation adjustments

(A) Adjustment to basic amount of exemption

In the case of any taxable year beginning in a calendar year after 1989, the dollar amount contained in paragraph (1) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1988'' for ''calendar year 1992'' in subparagraph (B) thereof.

[1] So in original. A closing parenthesis probably should precede the comma.

(B) Adjustment to threshold amounts for years after 1991

In the case of any taxable year beginning in a calendar year after 1991, each dollar amount contained in paragraph (3)(C) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1990'' for ''calendar year 1992'' in subparagraph (B) thereof.

(e) Identifying information required

No exemption shall be allowed under this section with respect to any individual unless the TIN of such individual is included on the return claiming the exemption.

(Aug. 16, 1954, ch. 736, 68A Stat. 42; Pub. L. 91–172, title VIII, §801(a)(1), (b)(1), (c)(1), (d)(1), title IX, §941(b), Dec. 30, 1969, 83 Stat. 675, 676, 726; Pub. L. 92–178, title II, §201(a)(1), (b)(1), (c), Dec. 10, 1971, 85 Stat. 510, 511; Pub. L. 94–455, title XIX, §1901(a)(23), Oct. 4, 1976, 90 Stat. 1767; Pub. L. 95–600, title I, §102(a), Nov. 6, 1978, 92 Stat. 2771; Pub. L. 97–34, title I, §104(c), Aug. 13, 1981, 95 Stat. 189; Pub. L. 98–369, div. A, title IV, §426(a), July 18, 1984, 98 Stat. 804; Pub. L. 99–514, title I, §103, title XVIII, §1847(b)(3), Oct. 22, 1986, 100 Stat. 2102, 2856; Pub. L. 100–647, title VI, §6010(a), Nov. 10, 1988, 102 Stat. 3691; Pub. L. 101–508, title XI, §§11101(d)(1)(F), 11104(a), Nov. 5, 1990, 104 Stat. 1388–405, 1388–407; Pub. L. 102–318, title V, §511, July 3, 1992, 106 Stat. 300; Pub. L. 103–66, title XIII, §§13201(b)(3)(G), 13205, Aug. 10, 1993, 107 Stat. 459, 462; Pub. L. 104–188, title I, §§1615(a)(1), 1702(a)(2), Aug. 20, 1996, 110 Stat. 1853, 1868; Pub. L. 106–554, §1(a)(7) [title III, §306(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–634; Pub. L. 107–16, title I, §102(a), June 7, 2001, 115 Stat. 44; Pub. L. 107–147, title IV, §§412(b), 417(6), Mar. 9, 2002, 116 Stat. 53, 56; Pub. L. 108–311, title II, §206, Oct. 4, 2004, 118 Stat. 1176.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

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

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–311 reenacted heading without change and amended text generally. Prior to amendment, text consisted of pars. (1) to (6) relating to additional exemption for dependents in general, exemption denied in case of certain married dependents, child defined, student defined, certain income of handicapped dependents not taken into account, and treatment of missing children, respectively.

2002—Subsec. (c)(6)(B)(iii). Pub. L. 107–147, §417(6), inserted ''as'' before ''such terms''.

Subsec. (c)(6)(C). Pub. L. 107–147, §412(b), substituted ''for principal place of abode requirements'' for ''for earned income credit'' in heading, ''An'' for ''For purposes of section 32, an'' in introductory provisions, and ''principal place of abode requirements of section 2(a)(1)(B), section 2(b)(1)(A), and section 32(c)(3)(A)(ii)'' for ''requirement of section 32(c)(3)(A)(ii)'' in concluding provisions.

2001—Subsec. (d)(3)(E), (F). Pub. L. 107—16, §§102(a), 901, temporarily added subpars. (E) and (F). See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (c)(6). Pub. L. 106–554 added par. (6).

1996—Subsec. (d)(3)(C)(i). Pub. L. 104–188, §1702(a)(2), substituted ''joint return'' for ''joint of a return''.

Subsec. (e). Pub. L. 104–188, §1615(a)(1), added subsec. (e).

1993—Subsec. (d)(3)(E). Pub. L. 103–66, §13205, struck out heading and text of subpar. (E). Text read as follows: ''This paragraph shall not apply to any taxable year beginning after December 31, 1996.''

Subsec. (d)(4)(A)(ii), (B)(ii). Pub. L. 103–66, §13201(b)(3)(G), substituted ''1992'' for ''1989''.

1992—Subsec. (d)(3)(E). Pub. L. 102–318 substituted ''1996'' for ''1995''.

1990—Subsec. (d). Pub. L. 101–508, §11104(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'exemption amount' means—

''(A) $1,900 for taxable years beginning during 1987,

''(B) $1,950 for taxable years beginning during 1988, and

''(C) $2,000 for taxable years beginning after December 31, 1988.

''(2) EXEMPTION AMOUNT DISALLOWED IN THE CASE OF CERTAIN DEPENDENTS.—In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual for such individual's taxable year shall be zero.

''(3) INFLATION ADJUSTMENT FOR YEARS AFTER 1989.—In the case of any taxable year beginning in a calendar year after 1989, the dollar amount contained in paragraph (1)(C) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1988' for 'calendar year 1987' in subparagraph (B) thereof.''

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

1988—Subsec. (c)(1)(B)(ii). Pub. L. 100–647 inserted ''who has not attained the age of 24 at the close of such calendar year'' after ''student''.

1986—Subsec. (c). Pub. L. 99–514, §103(b), redesignated subsec. (e) as (c) and struck out former subsec. (c) which provided for an additional exemption for taxpayer or spouse aged 65 or more.

Subsec. (d). Pub. L. 99–514, §103(b), redesignated subsec. (f) as (d) and struck out former subsec. (d) which provided for an additional exemption for blindness of taxpayer or spouse.

Subsec. (e). Pub. L. 99–514, §103(b), redesignated subsec. (e) as (c).

Pub. L. 99–514, §1847(b)(3), substituted ''section 22(e)'' for ''section 37(e)'' in par. (5)(C).

Subsec. (f). Pub. L. 99–514, §103(b), redesignated subsec. (f) as (d).

Pub. L. 99–514, §103(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''For purposes of this section, the term 'exemption amount' means, with respect to any taxable year, $1,000 increased by an amount equal to $1,000 multiplied by the cost-of-living adjustment (as defined in section 1(f)(3)) for the calendar year in which the taxable year begins. If the amount determined under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10 (or if such amount is a multiple of $5, such amount shall be increased to the next highest multiple of $10).''

1984—Subsec. (e)(5). Pub. L. 98–369 added par. (5).

1981—Subsecs. (b), (c), (d)(1), (2), (e)(1). Pub. L. 97–34, §104(c)(1), substituted ''the exemption amount'' for ''$1,000'' wherever appearing.

Subsec. (f). Pub. L. 97–34, § 104(c)(2), added subsec. (f).

1978—Pub. L. 95–600 increased exemption from $750 to $1,000 with respect to taxable years beginning after Dec. 31, 1978.

1976—Subsec. (e)(4). Pub. L. 94–455 struck out ''and educational institution'' after ''Student'' in heading, substituted in subpars. (A) and (B) ''organization described in section 170(b)(1)(A)(ii)'' for ''institution'', and struck out provisions following subpar. (B) defining educational institution.

1971—Pub. L. 92–178 increased exemption from $650 to $675 with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972, and from $675 to $750 with respect to taxable years beginning after Dec. 31, 1971.

1969—Pub. L. 91–172, § 801(a)(1), (b)(1), (c)(1), (d)(1), increased exemption from $600 to $625 with respect to taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1971, from $625 to $650 for taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972, from $650 to $700 for taxable years beginning after Dec. 31, 1971, and before Jan. 1, 1973, and from $700 to $750 for taxable years beginning after Dec. 31, 1972.

Subsecs. (b), (c), Pub. L. 91–172, § 941(b), substituted ''if a joint return is not made by the taxpayer and his spouse'' for ''if a separate return is made by the taxpayer''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 412(e), Mar. 9, 2002, 116 Stat. 54, provided that: ''The amendments made by this section [amending this section and sections 358, 469, 1091, 1233, 1234A, and 1234B of this title] shall take effect as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763, 2763A–587] to which they relate.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title I, § 102(b), June 7, 2001, 115 Stat. 44, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title III, § 306(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–635, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1615(a)(1) of Pub. L. 104–188 applicable with respect to returns the due date for which, without regard to extensions, is on or after the 30th day after Aug. 20, 1996, with special rule for 1995 and 1996, see section 1615(d) of Pub. L. 104–188, set out as a note under section 21 of this title.

Amendment by section 1702(a)(2) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13201(b)(3)(G) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(F) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11104(a) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11104(c) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6010(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 103 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1847(b)(3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 426(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1984, see section 104(e) of Pub. L. 97–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 102(d)(1) of Pub. L. 95–600 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 6012 and 6013 of this title] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 201(a), (b) of Pub. L. 92–178 provided in part that the increase in exemption from $650 to $675 was effective with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972, and from $675 to $750 was effective with respect to taxable years beginning after Dec. 31, 1971.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 801(a)(1) of Pub. L. 91–172 provided in part that the increase in exemption from $600 to $625 is effective with respect to taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1971.

Section 801(b)(1) of Pub. L. 91–172 provided in part that the increase in the exemption from $625 to $650 is effective with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972.

Section 941(c) of Pub. L. 91–172 provided that: ''The amendments made by subsections (a) [amending section 6012 of this title] and (b) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

REPEALS

Section 801(c)(1), (d)(1) of Pub. L. 91–172 provided for an increase in the personal exemption to $700, effective with respect to taxable years beginning after Dec. 31, 1971, and before Jan. 1, 1973, and to $750, effective with respect to taxable years beginning after Dec. 31, 1972, prior to repeal by section 201(c) of Pub. L. 92–178.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 152. Dependent defined

(a) In general

For purposes of this subtitle, the term ''dependent'' means—

(1) a qualifying child, or

(2) a qualifying relative.

(b) Exceptions

For purposes of this section—

(1) Dependents ineligible

If an individual is a dependent of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year.

(2) Married dependents

An individual shall not be treated as a dependent of a taxpayer under subsection (a) if such individual has made a joint return with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) Citizens or nationals of other countries

(A) In general

The term ''dependent'' does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States.

(B) Exception for adopted child

Subparagraph (A) shall not exclude any child of a taxpayer (within the meaning of subsection (f)(1)(B)) from the definition of ''dependent'' if—

(i) for the taxable year of the taxpayer, the child has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and

(ii) the taxpayer is a citizen or national of the United States.

(c) Qualifying child

For purposes of this section—

(1) In general

The term ''qualifying child'' means, with respect to any taxpayer for any taxable year, an individual—

(A) who bears a relationship to the taxpayer described in paragraph (2),

(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

(C) who meets the age requirements of paragraph (3),

(D) who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins, and

(E) who has not filed a joint return (other than only for a claim of refund) with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(2) Relationship

For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if such individual is—

(A) a child of the taxpayer or a descendant of such a child, or

(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

(3) Age requirements

(A) In general

For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual is younger than the taxpayer claiming such individual as a qualifying child and—

(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

(ii) is a student who has not attained the age of 24 as of the close of such calendar year.

(B) Special rule for disabled

In the case of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during such calendar year, the requirements of subparagraph (A) shall be treated as met with respect to such individual.

(4) Special rule relating to 2 or more who can claim the same qualifying child

(A) In general

Except as provided in subparagraphs (B) and (C), if (but for this paragraph) an individual may be claimed as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who is—

(i) a parent of the individual, or

(ii) if clause (i) does not apply, the taxpayer with the highest adjusted gross income for such taxable year.

(B) More than 1 parent claiming qualifying child

If the parents claiming any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of—

(i) the parent with whom the child resided for the longest period of time during the taxable year, or

(ii) if the child resides with both parents for the same amount of time during such taxable year, the parent with the highest adjusted gross income.

(C) No parent claiming qualifying child

If the parents of an individual may claim such individual as a qualifying child but no parent so claims the individual, such individual may be claimed as the qualifying child of another taxpayer but only if the adjusted gross income of such taxpayer is higher than the highest adjusted gross income of any parent of the individual.

(d) Qualifying relative

For purposes of this section—

(1) In general

The term ''qualifying relative'' means, with respect to any taxpayer for any taxable year, an individual—

(A) who bears a relationship to the taxpayer described in paragraph (2),

(B) whose gross income for the calendar year in which such taxable year begins is less than the exemption amount (as defined in section 151(d)),

(C) with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which such taxable year begins, and

(D) who is not a qualifying child of such taxpayer or of any other taxpayer for any taxable year beginning in the calendar year in which such taxable year begins.

(2) Relationship

For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if the individual is any of the following with respect to the taxpayer:

(A) A child or a descendant of a child.

(B) A brother, sister, stepbrother, or stepsister.

(C) The father or mother, or an ancestor of either.

(D) A stepfather or stepmother.

(E) A son or daughter of a brother or sister of the taxpayer.

(F) A brother or sister of the father or mother of the taxpayer.

(G) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

(H) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

(3) Special rule relating to multiple support agreements

For purposes of paragraph (1)(C), over one-half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

(A) no one person contributed over one-half of such support,

(B) over one-half of such support was received from 2 or more persons each of whom, but for the fact that any such person alone did not contribute over one-half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year,

(C) the taxpayer contributed over 10 percent of such support, and

(D) each person described in subparagraph (B) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such person will not claim such individual as a dependent for any taxable year beginning in such calendar year.

(4) Special rule relating to income of handicapped dependents

(A) In general

For purposes of paragraph (1)(B), the gross income of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year shall not include income attributable to services performed by the individual at a sheltered workshop if—

(i) the availability of medical care at such workshop is the principal reason for the individual's presence there, and

(ii) the income arises solely from activities at such workshop which are incident to such medical care.

(B) Sheltered workshop defined

For purposes of subparagraph (A), the term ''sheltered workshop'' means a school—

(i) which provides special instruction or training designed to alleviate the disability of the individual, and

(ii) which is operated by an organization described in section 501(c)(3) and exempt from tax under section 501(a), or by a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

(5) Special rules for support

For purposes of this subsection—

(A) payments to a spouse which are includible in the gross income of such spouse under section 71 or 682 shall not be treated as a payment by the payor spouse for the support of any dependent, and

(B) in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

(e) Special rule for divorced parents, etc.

(1) In general

Notwithstanding subsection (c)(1)(B), (c)(4), or (d)(1)(C), if—

(A) a child receives over one-half of the child's support during the calendar year from the child's parents—

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and—

(B) such child is in the custody of 1 or both of the child's parents for more than one-half of the calendar year, such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) or (3) are met.

(2) Exception where custodial parent releases claim to exemption for the year

For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

(3) Exception for certain pre-1985 instruments

(A) In general

For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(i) a qualified pre-1985 instrument between the parents applicable to the taxable year beginning in such calendar year provides that the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, and

(ii) the noncustodial parent provides at least $600 for the support of such child during such calendar year.

For purposes of this subparagraph, amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

(B) Qualified pre-1985 instrument

For purposes of this paragraph, the term ''qualified pre-1985 instrument'' means any decree of divorce or separate maintenance or written agreement—

(i) which is executed before January 1, 1985,

(ii) which on such date contains the provision described in subparagraph (A)(i), and

(iii) which is not modified on or after such date in a modification which expressly provides that this paragraph shall not apply to such decree or agreement.

(4) Custodial parent and noncustodial parent

For purposes of this subsection—

(A) Custodial parent

The term ''custodial parent'' means the parent having custody for the greater portion of the calendar year.

(B) Noncustodial parent

The term ''noncustodial parent'' means the parent who is not the custodial parent.

(5) Exception for multiple-support agreement

This subsection shall not apply in any case where over one-half of the support of the child is treated as having been received from a taxpayer under the provision of subsection (d)(3).

(6) Special rule for support received from new spouse of parent

For purposes of this subsection, in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

(f) Other definitions and rules

For purposes of this section—

(1) Child defined

(A) In general

The term ''child'' means an individual who is—

(i) a son, daughter, stepson, or stepdaughter of the taxpayer, or

(ii) an eligible foster child of the taxpayer.

(B) Adopted child

In determining whether any of the relationships specified in subparagraph (A)(i) or paragraph (4) exists, a legally adopted individual of the taxpayer, or an individual who is lawfully placed with the taxpayer for legal adoption by the taxpayer, shall be treated as a child of such individual by blood.

(C) Eligible foster child

For purposes of subparagraph (A)(ii), the term ''eligible foster child'' means an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

(2) Student defined

The term ''student'' means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii), or

(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

(3) Determination of household status

An individual shall not be treated as a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

(4) Brother and sister

The terms ''brother'' and ''sister'' include a brother or sister by the half blood.

(5) Special support test in case of students

For purposes of subsections (c)(1)(D) and (d)(1)(C), in the case of an individual who is—

(A) a child of the taxpayer, and

(B) a student,

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account.

(6) Treatment of missing children

(A) In general

Solely for the purposes referred to in subparagraph (B), a child of the taxpayer—

(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

(ii) who had, for the taxable year in which the kidnapping occurred, the same principal place of abode as the taxpayer for more than one-half of the portion of such year before the date of the kidnapping,

shall be treated as meeting the requirement of subsection (c)(1)(B) with respect to a taxpayer for all taxable years ending during the period that the child is kidnapped.

(B) Purposes

Subparagraph (A) shall apply solely for purposes of determining—

(i) the deduction under section 151(c),

(ii) the credit under section 24 (relating to child tax credit),

(iii) whether an individual is a surviving spouse or a head of a household (as such terms are defined in section 2), and

(iv) the earned income credit under section 32.

(C) Comparable treatment of certain qualifying relatives

For purposes of this section, a child of the taxpayer—

(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

(ii) who was (without regard to this paragraph) a qualifying relative of the taxpayer for the portion of the taxable year before the date of the kidnapping,

shall be treated as a qualifying relative of the taxpayer for all taxable years ending during the period that the child is kidnapped.

(D) Termination of treatment

Subparagraphs (A) and (C) shall cease to apply as of the first taxable year of the taxpayer beginning after the calendar year in which there is a determination that the child is dead (or, if earlier, in which the child would have attained age 18).

(7) Cross references

For provision treating child as dependent of both parents for purposes of certain provisions, see sections 105(b), 132(h)(2)(B), and 213(d)(5).

(Aug. 16, 1954, ch. 736, 68A Stat. 43; Aug. 9, 1955, ch. 693, § 2, 69 Stat. 626; Pub. L. 85–866, title I, § 4(a)–(c), Sept. 2, 1958, 72 Stat. 1607; Pub. L. 86–376, § 1(a), Sept. 23, 1959, 73 Stat. 699; Pub. L. 90–78, § 1, Aug. 31, 1967, 81 Stat. 191; Pub. L. 91–172, title IX, § 912(a), Dec. 30, 1969, 83 Stat. 722; Pub. L. 92–580, § 1(a), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 94–455, title XIX, §§ 1901(a)(24), (b)(7)(B), (8)(A), 1906(b)(13)(A), title XXI, § 2139(a), Oct. 4, 1976, 90 Stat. 1767, 1794, 1834, 1932; Pub. L. 98–369, div. A, title IV, §§ 423(a), 482(b)(2), July 18, 1984, 98 Stat. 799, 848; Pub. L. 99–514, title I, § 104(b)(1)(B), (3), title XIII, § 1301(j)(8), Oct. 22, 1986, 100 Stat. 2104, 2105, 2658; Pub. L. 108–311, title II, § 201, Oct. 4, 2004, 118 Stat. 1169; Pub. L. 109–135, title IV, § 404(a), Dec. 21, 2005, 119 Stat. 2632; Pub. L. 110–351, title V, § 501(a), (b), (c)(2), Oct. 7, 2008, 122 Stat. 3979, 3980.)

AMENDMENTS

2008—Subsec. (c)(1)(E). Pub. L. 110–351, § 501(b), added subpar. (E).

Subsec. (c)(3)(A). Pub. L. 110–351, § 501(a), inserted ''is younger than the taxpayer claiming such individual as a qualifying child and'' after ''such individual'' in introductory provisions.

Subsec. (c)(4). Pub. L. 110–351, § 501(c)(2)(B)(ii), substituted ''who can claim the same'' for ''claiming'' in heading.

Subsec. (c)(4)(A). Pub. L. 110–351, § 501(c)(2)(B)(i), substituted ''Except as provided in subparagraphs (B) and (C), if (but for this paragraph) an individual may be claimed as a qualifying child by 2 or more taxpayers'' for ''Except as provided in subparagraph (B), if (but for this paragraph) an individual may be and is claimed as a qualifying child by 2 or more taxpayers'' in introductory provisions.

Subsec. (c)(4)(C). Pub. L. 110–351, § 501(c)(2)(A), added subpar. (C).

2005—Subsec. (e). Pub. L. 109–135 amended heading and text of subsec. (e) generally. Prior to amendment, text consisted of pars. (1) to (4) relating to special rule for divorced parents, requirements for divorced parents, definitions of custodial and noncustodial parent, and exception for multiple-support agreements.

2004—Pub. L. 108–311 reenacted section catchline without change and amended text generally. Prior to amendment, section consisted of subsecs. (a) to (e) relating to general definition of dependent, rules relating to general definition, multiple support agreements, special support test in case of students, and support test in case of child of divorced parents, etc., respectively.

1986—Subsec. (a)(9). Pub. L. 99–514, § 1301(j)(8), substituted ''section 7703'' for ''section 143''.

Subsec. (d)(2). Pub. L. 99–514, § 104(b)(3), substituted ''section 151(c)(4)'' for ''section 151(e)(4)''.

Subsec. (e)(1)(A). Pub. L. 99–514, § 104(b)(1)(B), substituted ''section 151(c)(3)'' for ''section 151(e)(3)''.

1984—Subsec. (e). Pub. L. 98–369, § 423(a), amended subsec. (e) generally, and in substantially revising support test provisions, enacted par. (1) custodial parent exemption, former par. (1) declaring the general rule that where a child received over one-half of his calendar year support from parents who were divorced or legally separated under a decree of divorce or separate maintenance, or were separated under a written separation agreement and the child was in the custody of one or both parents for more than one-half of the calendar year, the child would be treated as receiving over half of his support from the parent having custody for a greater portion of the calendar year unless treated under special rule provision as having received over half of his support from the parent not having custody; enacted par. (2) release of custodial parent exemption for the year, former par. (2) declaring the special rule that parent without custody would be deemed as furnishing over half of the support where the decree of divorce or separate maintenance, or written agreement, covering the taxable year, provided that parent without custody should be entitled to the section 151 deduction for the child and such parent provided at least $600 calendar year support, or alternatively, such parent without custody provided $1,200 or more calendar year support and the parent with custody did not establish more support of the child than the parent without custody; redesignated as par. (3) former par. (4) provision respecting exception for multiple-support agreement, deleting former par. (3) respecting requirement of an itemized statement of expenditures to resolve more

support claims; added par. (4) respecting exception for certain pre-1985 instruments; added par. (5) enunciating special rule for support received from new spouse of parent, deleting former par. (5) regulations prescription provision; and added par. (6) cross reference provision.

Subsec. (e)(6). Pub. L. 98–369, §482(b)(2), substituted ''section 213(d)(5)'' for ''section 213(d)(4)''.

1976—Subsec. (a)(9). Pub. L. 94–455, §1901(b)(7)(B), substituted ''section 143'' for ''section 153''.

Subsec. (a)(10). Pub. L. 94–455, §1901(a)(24)(A), struck out par. (10) relating to descendents of a taxpayer, who were members of taxpayer's household, before receiving institutional care.

Subsec. (b)(3). Pub. L. 94–455, §1901(a)(24)(B), among other changes struck out ''of the Canal Zone, or of the Republic of Panama'' after ''country contiguous to the United States,'' and provisions relating to children born or adopted in Philippines.

Subsec. (c)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, §1901(b)(8)(A), substituted ''organization described in section 170(b)(1)(A)(ii)'' for ''institution (as defined in section 151(e)(4))''.

Subsec. (e)(2)(B)(i). Pub. L. 94–455, §2139(a), substituted ''each'' for ''all''.

Subsec. (e)(3), (5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1972—Subsec. (b)(3). Pub. L. 92–580 substituted ''citizen or national of the United States'' for ''citizen of the United States'' in two places.

1969—Subsec. (b)(2). Pub. L. 91–172 inserted reference to foster children who satisfy requirements of subsec. (a)(9) of this section.

1967—Subsec. (a). Pub. L. 90–78, §1(b), inserted ''or (e)'' after ''subsection (c)''.

Subsec. (e). Pub. L. 90–78, §1(a), added subsec. (e).

1959—Subsec. (b)(2). Pub. L. 86–376 provided that a child who is a member of an individual's household if placed with such individual by an authorized placement agency for legal adoption by such individual shall be treated as a child by blood.

1958—Subsec. (a)(9). Pub. L. 85–866, §4(a), inserted ''(other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer)''.

Subsec. (b)(3). Pub. L. 85–866, §4(b), among other changes, struck out provision that ''dependent'' does not include any individual who is not a United States citizen unless such individual is a resident of United States or of a contiguous country, or of Canal Zone or Panama, and inserted provision barring exclusion from definition of ''dependent'' any child of taxpayer, legally adopted by him, if, for taxable year of taxpayer, child's principal place of abode is taxpayer's home and child is member of taxpayer's household, if taxpayer is United States citizen.

Subsec. (b)(5). Pub. L. 85–866, §4(c), added par. (5).

1955—Subsec. (b)(3). Act Aug. 9, 1955, substituted ''January 1, 1956'' for ''July 5, 1946''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–351 applicable to taxable years beginning after Dec. 31, 2008, see section 501(d) of Pub. L. 110–351, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Working Families Tax Relief Act of 2004, Pub. L. 108–311, to which such amendment relates, see section 404(d) of Pub. L. 109–135, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(1)(B), (3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(a) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

Amendment by section 482(b)(2) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 482(c) of Pub. L. 98–369, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(24), (b)(7)(B), (8)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 2139(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 1(c) of Pub. L. 92–580 provided that: ''The amendments made by subsections (a) [amending this section] and (b) [amending section 873 of this title] shall apply to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 912(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2 of Pub. L. 90–78 provided that: ''The amendments made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1966.''

EFFECTIVE DATE OF 1959 AMENDMENT

Section 1(b) of Pub. L. 86–376 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1958.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 4(a), (c) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 4(d) of Pub. L. 85–866 provided that: ''The amendment made by subsection (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3(b) of act Aug. 9, 1955, provided that: ''The amendment made by section 2 of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

§ 153. Cross references

(1) For deductions of estates and trusts, in lieu of the exemptions under section 151, see section 642(b).

(2) For exemptions of nonresident aliens, see section 873(b)(3).

(3) For determination of marital status, see section 7703.

(Aug. 16, 1954, ch. 736, 68A Stat. 45, §154; Pub. L. 89–809, title I, §103(c)(2), Nov. 13, 1966, 80 Stat. 1551; renumbered §153 and amended Pub. L. 94–455, title XIX, §1901(b)(7)(A)(i), (C), Oct. 4, 1976, 90 Stat. 1794; Pub. L. 99–514, title XII, §1272(d)(7), title XIII, §1301(j)(8), Oct. 22, 1986, 100 Stat. 2594, 2658; Pub. L. 108–311, title II, §207(14), Oct. 4, 2004, 118 Stat. 1177.)

PRIOR PROVISIONS

A prior section 153, act Aug. 16, 1954, ch. 736, 68A Stat. 45, related to determination of marital status, prior to repeal by Pub. L. 94–455, title XIX, §1901(b)(7)(A)(i), (d), Oct. 4, 1976, 90 Stat. 1794, 1803, applicable with respect to taxable years beginning after Dec. 31, 1976. See section 143 of this title.

AMENDMENTS

2004—Pars. (1) to (4). Pub. L. 108–311 redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: ''For definitions of 'husband' and 'wife', as used in section 152(b)(4), see section 7701(a)(17).''

1986—Par. (4). Pub. L. 99–514, §1272(d)(7), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''For exemptions of citizens deriving income mainly from sources within possessions of the United States, see section 931(e).''

Par. (5). Pub. L. 99–514, §1272(d)(7), redesignated par. (5) as (4).

Pub. L. 99–514, §1301(j)(8), substituted ''section 7703'' for ''section 143''.

1976—Par. (5). Pub. L. 94–455, §1901(b)(7)(C), added par. (5).

1966—Par. (3). Pub. L. 89–809 substituted ''873(b)(3)'' for ''873(d)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1272(d)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

Sec.
161. Allowance of deductions.
162. Trade or business expenses.
163. Interest.
164. Taxes.
165. Losses.
166. Bad debts.
167. Depreciation.
168. Accelerated cost recovery system.
169. Amortization of pollution control facilities.
170. Charitable, etc., contributions and gifts.
171. Amortizable bond premium.
172. Net operating loss deduction.
173. Circulation expenditures.
174. Research and experimental expenditures.
175. Soil and water conservation expenditures; endangered species recovery expenditures.
176. Payments with respect to employees of certain foreign corporations.
[177. Repealed.]
178. Amortization of cost of acquiring a lease.
179. Election to expense certain depreciable business assets.
179A. Deduction for clean-fuel vehicles and certain refueling property.
179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
179C. Election to expense certain refineries.
179D. Energy efficient commercial buildings deduction.
179E. Election to expense advanced mine safety equipment.
180. Expenditures by farmers for fertilizer, etc.
181. Treatment of certain qualified film and television productions.
[182. Repealed.]
183. Activities not engaged in for profit.
[184, 185. Repealed.]
186. Recoveries of damages for antitrust violations, etc.
[187 to 189. Repealed.]
190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly.
191. Amortization of certain rehabilitation expenditures for certified historic structures.[1]
192. Contributions to black lung benefit trust.
193. Tertiary injectants.
194. Treatment of reforestation expenditures.
194A. Contributions to employer liability trusts.
195. Start-up expenditures.
196. Deduction for certain unused business credits.
197. Amortization of goodwill and certain other intangibles.
198. Expensing of environmental remediation costs.
198A. Expensing of Qualified Disaster Expenses.[2]
199. Income attributable to domestic production activities.

AMENDMENTS

2008—Pub. L. 110–343, div. C, title VII, §707(b), Oct. 3, 2008, 122 Stat. 3924, added item 198A.

Pub. L. 110–234, title XV, §15303(a)(2)(C), May 22, 2008, 122 Stat. 1501, and Pub. L. 110–246, title XV, §15303(a)(2)(C), June 18, 2008, 122 Stat. 2263, made identical amendments, inserting ''; endangered species recovery expenditures'' after ''conservation expenditures'' in item 175. The amendment by Pub. L. 110–234 was repealed by Pub. L. 110–246, §4(a), June 18, 2008, 122 Stat. 1664.

2006—Pub. L. 109–432, div. A, title IV, §404(b)(4), Dec. 20, 2006, 120 Stat. 2956, added item 179E.

2005—Pub. L. 109–58, title XIII, §§1323(b)(4), 1331(c), Aug. 8, 2005, 119 Stat. 1015, 1024, added items 179C and 179D.

[1] Section 191 was repealed by Pub. L. 97–34 without corresponding amendment of part analysis.

[2] So in original. The words ''Qualified Disaster Expenses'' probably should not be capitalized.

2004—Pub. L. 108–357, title I, §102(d)(8), title II, §244(b), title III, §§322(c)(5), 338(b)(6), Oct. 22, 2004, 118 Stat. 1429, 1446, 1475, 1481, added items 179B, 181, and 199, and substituted ''Treatment'' for ''Amortization'' in item 194.

1997—Pub. L. 105–34, title IX, §941(b), Aug. 5, 1997, 111 Stat. 885, added item 198.

1993—Pub. L. 103–66, title XIII, §13261(f)(6), Aug. 10, 1993, 107 Stat. 539, added item 197.

1992—Pub. L. 102–486, title XIX, §1913(a)(3)(B), Oct. 24, 1992, 106 Stat. 3019, added item 179A.

1990—Pub. L. 101–508, title XI, §11801(b)(3), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 184 ''Amortization of certain railroad rolling stock'' and item 188 ''Amortization of certain expenditures for child care facilities''.

1986—Pub. L. 99–514, title II, §§201(d)(2)(B), 241(b)(3), 242(b)(3), title IV, §402(b)(3), title VIII, §803(c)(2), Oct. 22, 1986, 100 Stat. 2139, 2181, 2221, 2356, substituted ''Amortization of cost of acquiring a lease'' for ''Depreciation or amortization of improvements made by lessee on lessor's property'' in item 178, and struck out items 177 ''Trademark and trade name expenditures'', 182 ''Expenditures by farmers for clearing land'', 185 ''Amortization of railroad grading and tunnel bores'', and 189 ''Amortization of real property construction period interest and taxes''.

1984—Pub. L. 98–369, div. A, title I, §94(b), title IV, §474(r)(8)(B), July 18, 1984, 98 Stat. 615, 841, reenacted item 195 without change, and substituted ''business credits'' for ''investment credits'' in item 196.

1983—Pub. L. 97–448, title III, §305(b)(2), Jan. 12, 1983, 96 Stat. 2399, redesignated item 194 (relating to contributions to employer liability trusts) as 194A.

1982—Pub. L. 97–248, title II, §205(a)(5)(C), Sept. 3, 1982, 96 Stat. 430, added item 196.

1981—Pub. L. 97–34, title II, §§201(d), 202(d)(3), Aug. 13, 1981, 95 Stat. 219, 221, added item 168 and substituted ''Election to expense certain depreciable business assets'' for ''Additional first-year depreciation allowance for small business'' in item 179.

1980—Pub. L. 96–605, title I, §102(b), Dec. 28, 1980, 94 Stat. 3522, added item 195.

Pub. L. 96–451, title III, §301(c)(2), Oct. 14, 1980, 94 Stat. 1991, added item 194 relating to amortization of reforestation expenditures.

Pub. L. 96–364, title II, §209(c)(2), Sept. 26, 1980, 94 Stat. 1291, added item 194 relating to contributions to employer liability trusts.

Pub. L. 96–223, title II, §251(a)(2)(A), Apr. 2, 1980, 94 Stat. 287, added item 193.

1978—Pub. L. 95–227, §4(b)(2), Feb. 10, 1978, 95 Stat. 17, added item 192.

1977—Pub. L. 95–30, title IV, §402(a)(4), May 23, 1977, 91 Stat. 155, struck out ''on-the-job training and'' after ''certain expenditures for'' in item 188.

1976—Pub. L. 94–455, title II, §201(b), title XIX, §§1901(b)(11)(B), 1951(c)(2)(D), title XXI, §§2122(b)(1), 2124(a)(3)(A), Oct. 4, 1976, 90 Stat. 1527, 1795, 1841, 1915, 1917, struck out item 168 ''Amortization of emergency facilities'' and item 187 ''Amortization of certain coal mine safety equipment'' and added items 189, 190, and 191.

1971—Pub. L. 92–178, title III, §303(c)(6), Dec. 10, 1971, 85 Stat. 522, added item 188.

1969—Pub. L. 91–172, title II, §213(c)(1), title VII, §§704(b)(1), 705(b), 707(b), title IX, §904(b), Dec. 30, 1969, 83 Stat. 572, 669, 674, 675, 712, substituted reference to pollution control facilities for reference to grain storage facilities in item 169, and added items 183 to 187.

1964—Pub. L. 88–272, title II, §203(a)(3)(D). Feb. 26, 1964, 78 Stat. 34, struck out item 181 ''Deduction for certain unused investment credit''.

1962—Pub. L. 87–834, §§2(g)(3), 21(c), Oct. 16, 1962, 76 Stat. 973, 1064, added items 181, 182.

1960—Pub. L. 86–779, §6(b), Sept. 14, 1960, 74 Stat. 1001, added item 180.

1958—Pub. L. 85–866, title I, §15(b), title II, §204(b), Sept. 2, 1958, 72 Stat. 1613, 1680, added items 178 and 179.

1956—Act June 29, 1956, ch. 464, §4(b), 70 Stat. 406, added item 177.

1954—Act Sept. 1, 1954, ch. 1206, title II, §210(b), 68 Stat. 1097, added item 176.

§ 161. Allowance of deductions

In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (sec. 261 and following, relating to items not deductible).

(Aug. 16, 1954, ch. 736, 68A Stat. 45; Pub. L. 95–30, title I, §102(b)(1), May 23, 1977, 91 Stat. 137.)

AMENDMENTS

1977—Pub. L. 95–30 substituted ''section 63'' for ''section 63(a)''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

§ 162. Trade or business expenses

(a) In general

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000. For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year. The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime.

(b) Charitable contributions and gifts excepted

No deduction shall be allowed under subsection (a) for any contribution or gift which would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment, set forth in such section.

(c) Illegal bribes, kickbacks, and other payments

(1) Illegal payments to government officials or employees

No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or is unlawful under the Foreign Corrupt Practices Act of 1977) shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(2) Other illegal payments

No deduction shall be allowed under subsection (a) for any payment (other than a payment described in paragraph (1)) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a State (but only if such State law is generally enforced), which subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer. The burden of proof in respect of the issue, for purposes of this paragraph, as to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(3) Kickbacks, rebates, and bribes under medicare and medicaid

No deduction shall be allowed under subsection (a) for any kickback, rebate, or bribe made by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, or in whole or in part out of Federal funds under a State plan approved under such Act, if such kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receipt of such payments. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

(d) Capital contributions to Federal National Mortgage Association

For purposes of this subtitle, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718) exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock shall treat the excess as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

(e) Denial of deduction for certain lobbying and political expenditures

(1) In general

No deduction shall be allowed under subsection (a) for any amount paid or incurred in connection with—

(A) influencing legislation,

(B) participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office,

(C) any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums, or

(D) any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official.

(2) Exception for local legislation

In the case of any legislation of any local council or similar governing body—

(A) paragraph (1)(A) shall not apply, and

(B) the deduction allowed by subsection (a) shall include all ordinary and necessary expenses (including, but not limited to, traveling expenses described in subsection (a)(2) and the cost of preparing testimony) paid or incurred during the taxable year in carrying on any trade or business—

(i) in direct connection with appearances before, submission of statements to, or sending communications to the committees, or individual members, of such council or body with respect to legislation or proposed legislation of direct interest to the taxpayer, or

(ii) in direct connection with communication of information between the taxpayer and an organization of which the taxpayer is a member with respect to any such legislation or proposed legislation which is of direct interest to the taxpayer and to such organization,

and that portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in clauses (i) and (ii) carried on by such organization.

(3) Application to dues of tax-exempt organizations

No deduction shall be allowed under subsection (a) for the portion of dues or other similar amounts paid by the taxpayer to an organization which is exempt from tax under this subtitle which the organization notifies the taxpayer under section 6033(e)(1)(A)(ii) is allocable to expenditures to which paragraph (1) applies.

(4) Influencing legislation

For purposes of this subsection—

(A) In general

The term ''influencing legislation'' means any attempt to influence any legislation

through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation.

(B) Legislation

The term ''legislation'' has the meaning given such term by section 4911(e)(2).

(5) Other special rules

(A) Exception for certain taxpayers

In the case of any taxpayer engaged in the trade or business of conducting activities described in paragraph (1), paragraph (1) shall not apply to expenditures of the taxpayer in conducting such activities directly on behalf of another person (but shall apply to payments by such other person to the taxpayer for conducting such activities).

(B) De minimis exception

(i) In general

Paragraph (1) shall not apply to any in-house expenditures for any taxable year if such expenditures do not exceed $2,000. In determining whether a taxpayer exceeds the $2,000 limit under this clause, there shall not be taken into account overhead costs otherwise allocable to activities described in paragraphs (1)(A) and (D).

(ii) In-house expenditures

For purposes of clause (i), the term ''in-house expenditures'' means expenditures described in paragraphs (1)(A) and (D) other than—

(I) payments by the taxpayer to a person engaged in the trade or business of conducting activities described in paragraph (1) for the conduct of such activities on behalf of the taxpayer, or

(II) dues or other similar amounts paid or incurred by the taxpayer which are allocable to activities described in paragraph (1).

(C) Expenses incurred in connection with lobbying and political activities

Any amount paid or incurred for research for, or preparation, planning, or coordination of, any activity described in paragraph (1) shall be treated as paid or incurred in connection with such activity.

(6) Covered executive branch official

For purposes of this subsection, the term ''covered executive branch official'' means—

(A) the President,

(B) the Vice President,

(C) any officer or employee of the White House Office of the Executive Office of the President, and the 2 most senior level officers of each of the other agencies in such Executive Office, and

(D)(i) any individual serving in a position in level I of the Executive Schedule under section 5312 of title 5, United States Code, (ii) any other individual designated by the President as having Cabinet level status, and (iii) any immediate deputy of an individual described in clause (i) or (ii).

(7) Special rule for Indian tribal governments

For purposes of this subsection, an Indian tribal government shall be treated in the same manner as a local council or similar governing body.

(8) Cross reference

For reporting requirements and alternative taxes related to this subsection, see section 6033(e).

(f) Fines and penalties

No deduction shall be allowed under subsection (a) for any fine or similar penalty paid to a government for the violation of any law.

(g) Treble damage payments under the antitrust laws

If in a criminal proceeding a taxpayer is convicted of a violation of the antitrust laws, or his plea of guilty or nolo contendere to an indictment or information charging such a violation is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) for two-thirds of any amount paid or incurred—

(1) on any judgment for damages entered against the taxpayer under section 4 of the Act entitled ''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'', approved October 15, 1914 (commonly known as the Clayton Act), on account of such violation or any related violation of the antitrust laws which occurred prior to the date of the final judgment of such conviction, or

(2) in settlement of any action brought under such section 4 on account of such violation or related violation.

The preceding sentence shall not apply with respect to any conviction or plea before January 1, 1970, or to any conviction or plea on or after such date in a new trial following an appeal of a conviction before such date.

(h) State legislators' travel expenses away from home

(1) In general

For purposes of subsection (a), in the case of any individual who is a State legislator at any time during the taxable year and who makes an election under this subsection for the taxable year—

(A) the place of residence of such individual within the legislative district which he represented shall be considered his home,

(B) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the greater of—

(i) the amount generally allowable with respect to such day to employees of the State of which he is a legislator for per diem while away from home, to the extent such amount does not exceed 110 percent of the amount described in clause (ii) with respect to such day, or

(ii) the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government

for per diem while away from home but serving in the United States, and

(C) he shall be deemed to be away from home in the pursuit of a trade or business on each legislative day.

(2) Legislative days

For purposes of paragraph (1), a legislative day during any taxable year for any individual shall be any day during such year on which—

(A) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or

(B) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

(3) Election

An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

(4) Section not to apply to legislators who reside near capitol

For taxable years beginning after December 31, 1980, this subsection shall not apply to any legislator whose place of residence within the legislative district which he represents is 50 or fewer miles from the capitol building of the State.

[(i) Repealed. Pub. L. 101–239, title VI, § 6202(b)(3)(A), Dec. 19, 1989, 103 Stat. 2233]

(j) Certain foreign advertising expenses

(1) In general

No deduction shall be allowed under subsection (a) for any expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a market in the United States. This paragraph shall apply only to foreign broadcast undertakings located in a country which denies a similar deduction for the cost of advertising directed primarily to a market in the foreign country when placed with a United States broadcast undertaking.

(2) Broadcast undertaking

For purposes of paragraph (1), the term ''broadcast undertaking'' includes (but is not limited to) radio and television stations.

(k) Stock reacquisition expenses

(1) In general

Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred by a corporation in connection with the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C)).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) Certain specific deductions

Any—

(i) deduction allowable under section 163 (relating to interest),

(ii) deduction for amounts which are properly allocable to indebtedness and amortized over the term of such indebtedness, or

(iii) deduction for dividends paid (within the meaning of section 561).

(B) Stock of certain regulated investment companies

Any amount paid or incurred in connection with the redemption of any stock in a regulated investment company which issues only stock which is redeemable upon the demand of the shareholder.

***(l)* Special rules for health insurance costs of self-employed individuals**

(1) Allowance of deduction

In the case of a taxpayer who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the amount paid during the taxable year for insurance which constitutes medical care for—

(A) the taxpayer,

(B) the taxpayer's spouse,

(C) the taxpayer's dependents, and

(D) any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27.

(2) Limitations

(A) Dollar amount

No deduction shall be allowed under paragraph (1) to the extent that the amount of such deduction exceeds the taxpayer's earned income (within the meaning of section 401(c)) derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established.

(B) Other coverage

Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of, or any dependent, or individual described in subparagraph (D) of paragraph (1) with respect to, the taxpayer. The preceding sentence shall be applied separately with respect to—

(i) plans which include coverage for qualified long-term care services (as defined in section 7702B(c)) or are qualified long-term care insurance contracts (as defined in section 7702B(b)), and

(ii) plans which do not include such coverage and are not such contracts.

(C) Long-term care premiums

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in section 213(d)(10)) shall be taken into account under paragraph (1).

(3) Coordination with medical deduction

Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the

amount allowable to the taxpayer as a deduction under section 213(a).

(4) Deduction not allowed for self-employment tax purposes

The deduction allowable by reason of this subsection shall not be taken into account in determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2 for taxable years beginning before January 1, 2010, or after December 31, 2010.

(5) Treatment of certain S corporation shareholders

This subsection shall apply in the case of any individual treated as a partner under section 1372(a), except that—

(A) for purposes of this subsection, such individual's wages (as defined in section 3121) from the S corporation shall be treated as such individual's earned income (within the meaning of section 401(c)(1)), and

(B) there shall be such adjustments in the application of this subsection as the Secretary may by regulations prescribe.

(m) Certain excessive employee remuneration

(1) In general

In the case of any publicly held corporation, no deduction shall be allowed under this chapter for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds $1,000,000.

(2) Publicly held corporation

For purposes of this subsection, the term ''publicly held corporation'' means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.

(3) Covered employee

For purposes of this subsection, the term ''covered employee'' means any employee of the taxpayer if—

(A) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such a capacity, or

(B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the 4 highest compensated officers for the taxable year (other than the chief executive officer).

(4) Applicable employee remuneration

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''applicable employee remuneration'' means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

(B) Exception for remuneration payable on commission basis

The term ''applicable employee remuneration'' shall not include any remuneration payable on a commission basis solely on account of income generated directly by the individual performance of the individual to whom such remuneration is payable.

(C) Other performance-based compensation

The term ''applicable employee remuneration'' shall not include any remuneration payable solely on account of the attainment of one or more performance goals, but only if—

(i) the performance goals are determined by a compensation committee of the board of directors of the taxpayer which is comprised solely of 2 or more outside directors,

(ii) the material terms under which the remuneration is to be paid, including the performance goals, are disclosed to shareholders and approved by a majority of the vote in a separate shareholder vote before the payment of such remuneration, and

(iii) before any payment of such remuneration, the compensation committee referred to in clause (i) certifies that the performance goals and any other material terms were in fact satisfied.

(D) Exception for existing binding contracts

The term ''applicable employee remuneration'' shall not include any remuneration payable under a written binding contract which was in effect on February 17, 1993, and which was not modified thereafter in any material respect before such remuneration is paid.

(E) Remuneration

For purposes of this paragraph, the term ''remuneration'' includes any remuneration (including benefits) in any medium other than cash, but shall not include—

(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof, and

(ii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under this chapter.

For purposes of clause (i), section 3121(a)(5) shall be applied without regard to section 3121(v)(1).

(F) Coordination with disallowed golden parachute payments

The dollar limitation contained in paragraph (1) shall be reduced (but not below zero) by the amount (if any) which would have been included in the applicable employee remuneration of the covered employee for the taxable year but for being disallowed under section 280G.

(G) Coordination with excise tax on specified stock compensation

The dollar limitation contained in paragraph (1) with respect to any covered em-

ployee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 4985 directly or indirectly by the expatriated corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.

(5) Special rule for application to employers participating in the Troubled Assets Relief Program

(A) In general

In the case of an applicable employer, no deduction shall be allowed under this chapter—

(i) in the case of executive remuneration for any applicable taxable year which is attributable to services performed by a covered executive during such applicable taxable year, to the extent that the amount of such remuneration exceeds $500,000, or

(ii) in the case of deferred deduction executive remuneration for any taxable year for services performed during any applicable taxable year by a covered executive, to the extent that the amount of such remuneration exceeds $500,000 reduced (but not below zero) by the sum of—

(I) the executive remuneration for such applicable taxable year, plus

(II) the portion of the deferred deduction executive remuneration for such services which was taken into account under this clause in a preceding taxable year.

(B) Applicable employer

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), the term ''applicable employer'' means any employer from whom 1 or more troubled assets are acquired under a program established by the Secretary under section 101(a) of the Emergency Economic Stabilization Act of 2008 if the aggregate amount of the assets so acquired for all taxable years exceeds $300,000,000.

(ii) Disregard of certain assets sold through direct purchase

If the only sales of troubled assets by an employer under the program described in clause (i) are through 1 or more direct purchases (within the meaning of section 113(c) of the Emergency Economic Stabilization Act of 2008), such assets shall not be taken into account under clause (i) in determining whether the employer is an applicable employer for purposes of this paragraph.

(iii) Aggregation rules

Two or more persons who are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of either such subsection, paragraphs (2) and (3) thereof shall be disregarded.

(C) Applicable taxable year

For purposes of this paragraph, the term ''applicable taxable year'' means, with respect to any employer—

(i) the first taxable year of the employer—

(I) which includes any portion of the period during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), and

(II) in which the aggregate amount of troubled assets acquired from the employer during the taxable year pursuant to such authorities (other than assets to which subparagraph (B)(ii) applies), when added to the aggregate amount so acquired for all preceding taxable years, exceeds $300,000,000, and

(ii) any subsequent taxable year which includes any portion of such period.

(D) Covered executive

For purposes of this paragraph—

(i) In general

The term ''covered executive'' means, with respect to any applicable taxable year, any employee—

(I) who, at any time during the portion of the taxable year during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), is the chief executive officer of the applicable employer or the chief financial officer of the applicable employer, or an individual acting in either such capacity, or

(II) who is described in clause (ii).

(ii) Highest compensated employees

An employee is described in this clause if the employee is 1 of the 3 highest compensated officers of the applicable employer for the taxable year (other than an individual described in clause (i)(I)), determined—

(I) on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (without regard to whether those rules apply to the employer), and

(II) by only taking into account employees employed during the portion of the taxable year described in clause (i)(I).

(iii) Employee remains covered executive

If an employee is a covered executive with respect to an applicable employer for any applicable taxable year, such employee shall be treated as a covered executive with respect to such employer for all subsequent applicable taxable years and for all subsequent taxable years in which deferred deduction executive remuneration with respect to services performed in all such applicable taxable years would (but for this paragraph) be deductible.

(E) Executive remuneration

For purposes of this paragraph, the term ''executive remuneration'' means the applicable employee remuneration of the covered executive, as determined under paragraph (4) without regard to subparagraphs (B), (C), and (D) thereof. Such term shall not include any deferred deduction executive remuneration with respect to services performed in a prior applicable taxable year.

(F) Deferred deduction executive remuneration

For purposes of this paragraph, the term ''deferred deduction executive remuneration'' means remuneration which would be executive remuneration for services performed in an applicable taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

(G) Coordination

Rules similar to the rules of subparagraphs (F) and (G) of paragraph (4) shall apply for purposes of this paragraph.

(H) Regulatory authority

The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph and the Emergency Economic Stabilization Act of 2008, including the extent to which this paragraph applies in the case of any acquisition, merger, or reorganization of an applicable employer.

(6) Special rule for application to certain health insurance providers

(A) In general

No deduction shall be allowed under this chapter—

(i) in the case of applicable individual remuneration which is for any disqualified taxable year beginning after December 31, 2012, and which is attributable to services performed by an applicable individual during such taxable year, to the extent that the amount of such remuneration exceeds $500,000, or

(ii) in the case of deferred deduction remuneration for any taxable year beginning after December 31, 2012, which is attributable to services performed by an applicable individual during any disqualified taxable year beginning after December 31, 2009, to the extent that the amount of such remuneration exceeds $500,000 reduced (but not below zero) by the sum of—

(I) the applicable individual remuneration for such disqualified taxable year, plus

(II) the portion of the deferred deduction remuneration for such services which was taken into account under this clause in a preceding taxable year (or which would have been taken into account under this clause in a preceding taxable year if this clause were applied by substituting ''December 31, 2009'' for ''December 31, 2012'' in the matter preceding subclause (I)).

(B) Disqualified taxable year

For purposes of this paragraph, the term ''disqualified taxable year'' means, with respect to any employer, any taxable year for which such employer is a covered health insurance provider.

(C) Covered health insurance provider

For purposes of this paragraph—

(i) In general

The term ''covered health insurance provider'' means—

(I) with respect to taxable years beginning after December 31, 2009, and before January 1, 2013, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and which receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)), and

(II) with respect to taxable years beginning after December 31, 2012, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and with respect to which not less than 25 percent of the gross premiums received from providing health insurance coverage (as defined in section 9832(b)(1)) is from minimum essential coverage (as defined in section 5000A(f)).

(ii) Aggregation rules

Two or more persons who are treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of any such subsection, paragraphs (2) and (3) thereof shall be disregarded.

(D) Applicable individual remuneration

For purposes of this paragraph, the term ''applicable individual remuneration'' means, with respect to any applicable individual for any disqualified taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration (as defined in paragraph (4) without regard to subparagraphs (B), (C), and (D) thereof) for services performed by such individual (whether or not during the taxable year). Such term shall not include any deferred deduction remuneration with respect to services performed during the disqualified taxable year.

(E) Deferred deduction remuneration

For purposes of this paragraph, the term ''deferred deduction remuneration'' means remuneration which would be applicable individual remuneration for services performed in a disqualified taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

(F) Applicable individual

For purposes of this paragraph, the term ''applicable individual'' means, with respect to any covered health insurance provider for

any disqualified taxable year, any individual—

(i) who is an officer, director, or employee in such taxable year, or

(ii) who provides services for or on behalf of such covered health insurance provider during such taxable year.

(G) Coordination

Rules similar to the rules of subparagraphs (F) and (G) of paragraph (4) shall apply for purposes of this paragraph.

(H) Regulatory authority

The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph.

(n) Special rule for certain group health plans

(1) In general

No deduction shall be allowed under this chapter to an employer for any amount paid or incurred in connection with a group health plan if the plan does not reimburse for inpatient hospital care services provided in the State of New York—

(A) except as provided in subparagraphs (B) and (C), at the same rate as licensed commercial insurers are required to reimburse hospitals for such services when such reimbursement is not through such a plan,

(B) in the case of any reimbursement through a health maintenance organization, at the same rate as health maintenance organizations are required to reimburse hospitals for such services for individuals not covered by such a plan (determined without regard to any government-supported individuals exempt from such rate), or

(C) in the case of any reimbursement through any corporation organized under Article 43 of the New York State Insurance Law, at the same rate as any such corporation is required to reimburse hospitals for such services for individuals not covered by such a plan.

(2) State law exception

Paragraph (1) shall not apply to any group health plan which is not required under the laws of the State of New York (determined without regard to this subsection or other provisions of Federal law) to reimburse at the rates provided in paragraph (1).

(3) Group health plan

For purposes of this subsection, the term ''group health plan'' means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to any employee, any former employee, the employer, or any other individual associated or formerly associated with the employer in a business relationship, or any member of their family.

(*o*) Treatment of certain expenses of rural mail carriers

(1) General rule

In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route and who receives qualified reimbursements for the expenses incurred by such employee for the use of a vehicle in performing such services—

(A) the amount allowable as a deduction under this chapter for the use of a vehicle in performing such services shall be equal to the amount of such qualified reimbursements; and

(B) such qualified reimbursements shall be treated as paid under a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) (and section 62(c) shall not apply to such qualified reimbursements).

(2) Special rule where expenses exceed reimbursements

Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimbursements for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.

(3) Definition of qualified reimbursements

For purposes of this subsection, the term ''qualified reimbursements'' means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers' Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted for changes in the Consumer Price Index (as defined in section 1(f)(5)) since 1991.

(p) Treatment of expenses of members of reserve component of Armed Forces of the United States

For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such service.

(q) Cross reference

(1) For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

(2) For special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name, see section 1253.

(3) For special rules relating to—

(A) funded welfare benefit plans, see section 419, and

(B) deferred compensation and other deferred benefits, see section 404.

(Aug. 16, 1954, ch. 736, 68A Stat. 45; Pub. L. 85–866, title I, § 5(a), Sept. 2, 1958, 72 Stat. 1608; Pub. L.

86–779, §§ 7(b), 8(a), Sept. 14, 1960, 74 Stat. 1002, 1003; Pub. L. 87–834, §§ 3(a), 4(b), Oct. 16, 1962, 76 Stat. 973, 976; Pub. L. 91–172, title V, § 516(c)(2)(A), title IX, § 902(a), (b), Dec. 30, 1969, 83 Stat. 648, 710; Pub. L. 92–178, title III, § 310(a), Dec. 10, 1971, 85 Stat. 525; Pub. L. 94–455, title XIX, §§ 1901(c)(4), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1803, 1834; Pub. L. 97–34, title I, § 127(a), Aug. 13, 1981, 95 Stat. 202; Pub. L. 97–35, title XXI, § 2146(b), Aug. 13, 1981, 95 Stat. 801; Pub. L. 97–51, § 139(b)(1), Oct. 1, 1981, 95 Stat. 967; Pub. L. 97–216, title II, § 215(a), July 18, 1982, 96 Stat. 194; Pub. L. 97–248, title I, § 128(b), title II, § 288(a), Sept. 3, 1982, 96 Stat. 366, 571; Pub. L. 98–369, div. A, title V, § 512(b), div. B, title III, § 2354(d), July 18, 1984, 98 Stat. 863, 1102; Pub. L. 98–573, title II, § 232(a), Oct. 30, 1984, 98 Stat. 2991; Pub. L. 99–272, title X, § 10001(a), (c), (d), Apr. 7, 1986, 100 Stat. 222, 223, 227; Pub. L. 99–509, title IX, §§ 9307(c)(2)(B), 9501(a)(1), (b)(1)(A), (2)(A), (c)(1), (d)(1), Oct. 21, 1986, 100 Stat. 1995, 2075–2077; Pub. L. 99–514, title VI, § 613(a), title XI, § 1161(a), title XVIII, § 1895(d)(1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), (7), Oct. 22, 1986, 100 Stat. 2251, 2509, 2936–2940; Pub. L. 100–647, title I, §§ 1011B(b)(1)–(3), 1018(t)(7)(B), title III, § 3011(b)(2), (3), Nov. 10, 1988, 102 Stat. 3488, 3589, 3624, 3625; Pub. L. 101–140, title II, § 203(a)(4), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VI, § 6202(b)(3)(A), title VII, §§ 7107(a)(1), (b), 7862(c)(3)(A), Dec. 19, 1989, 103 Stat. 2233, 2306, 2432; Pub. L. 101–508, title XI, §§ 11111(d)(2), 11410(a), Nov. 5, 1990, 104 Stat. 1388–413, 1388–479; Pub. L. 102–227, title I, § 110(a)(1), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 102–486, title XIX, § 1938(a), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 103–66, title XIII, §§ 13131(d)(2), 13174(a)(1), (b)(1), 13211(a), 13222(a), 13442(a), Aug. 10, 1993, 107 Stat. 435, 457, 469, 477, 568; Pub. L. 104–7, § 1(a), (b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104–188, title I, § 1704(p)(1)–(3), Aug. 20, 1996, 110 Stat. 1886; Pub. L. 104–191, title III, §§ 311(a), 322(b)(2)(B), Aug. 21, 1996, 110 Stat. 2053, 2060; Pub. L. 105–34, title IX, § 934(a), title XII, §§ 1203(a), 1204(a), title XVI, § 1602(c), Aug. 5, 1997, 111 Stat. 882, 994, 995, 1094; Pub. L. 105–206, title VI, § 6012(a), July 22, 1998, 112 Stat. 818; Pub. L. 105–277, div. J, title II, § 2002(a), Oct. 21, 1998, 112 Stat. 2681–901; Pub. L. 108–121, title I, § 109(a), Nov. 11, 2003, 117 Stat. 1341; Pub. L. 108–357, title III, § 318(a), (b), title VIII, § 802(b)(2), Oct. 22, 2004, 118 Stat. 1470, 1568; Pub. L. 110–343, div. A, title III, § 302(a), Oct. 3, 2008, 122 Stat. 3803; Pub. L. 111–148, title IX, § 9014(a), title X, § 10108(g)(1), Mar. 23, 2010, 124 Stat. 868, 913; Pub. L. 111–152, title I, § 1004(d)(2), (3), Mar. 30, 2010, 124 Stat. 1035; Pub. L. 111–240, title II, § 2042(a), Sept. 27, 2010, 124 Stat. 2560.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 111–148, title X, § 10108(g), Mar. 23, 2010, 124 Stat. 913, provided that, applicable to vouchers provided after Dec. 31, 2013, subsection (a) of this section is amended by adding at the end ''For purposes of paragraph (1), the amount of a free choice voucher provided under section 10108 of the Patient Protection and Affordable Care Act shall be treated as an amount for compensation for personal services actually rendered.''

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (c)(1), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

The Social Security Act, referred to in subsec. (c)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 4 of the Clayton Act, referred to in subsec. (g)(1), is classified to section 15 of Title 15, Commerce and Trade.

The Securities Exchange Act of 1934, referred to in subsec. (m)(2), (3)(B), (5)(D)(ii)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. Section 12 of the Act is classified to section 78*l* of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (m)(5), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§ 5201 et seq.) of Title 12, Banks and Banking. Section 101(a) of the Act enacted section 5211(a) of Title 12 and amended section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance. Section 113(c) of the Act is classified to section 5223(c) of Title 12. Section 120 of the Act is classified to section 5230 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2010—Subsec. (*l*)(1). Pub. L. 111–152, § 1004(d)(2), amended par. (1) generally. Prior to amendment, par. (1) authorized a deduction in an amount equal to the applicable percentage of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

Subsec. (*l*)(2)(B). Pub. L. 111–152, § 1004(d)(3), inserted '', or any dependent, or individual described in subparagraph (D) of paragraph (1) with respect to,'' after ''spouse of'' in introductory provisions.

Subsec. (*l*)(4). Pub. L. 111–240 inserted ''for taxable years beginning before January 1, 2010, or after December 31, 2010'' before period at end.

Subsec. (m)(6). Pub. L. 111–148, § 9014(a), added par. (6).

2008—Subsec. (m)(5). Pub. L. 110–343 added par. (5).

2004—Subsec. (m)(4)(G). Pub. L. 108–357, § 802(b)(2), added subpar. (G).

Subsec. (*o*). Pub. L. 108–357, § 318(b), struck out ''reimbursed'' before ''expenses'' in heading.

Subsec. (*o*)(2), (3). Pub. L. 108–357, § 318(a), added par. (2) and redesignated former par. (2) as (3).

2003—Subsecs. (p), (q). Pub. L. 108–121 added subsec. (p) and redesignated former subsec. (p) as (q).

1998—Subsec. (a). Pub. L. 105–206, in last sentence, substituted ''investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime.'' for ''investigate, or provide support services for the investigation of, a Federal crime.''

Subsec. (*l*)(1)(B). Pub. L. 105–277 amended table in subpar. (B) generally. Prior to amendment, table read as follows:

''For taxable years beginning in calendar year—	**The applicable percentage is—**
1997	40
1998 and 1999	45
2000 and 2001	50
2002	60
2003 through 2005	80

"For taxable years beginning in calendar year—	The applicable percentage is—
2006	90
2007 and thereafter	100.''

1997—Subsec. (a). Pub. L. 105–34, §1204(a), inserted at end of concluding provisions ''The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate, or provide support services for the investigation of, a Federal crime.''

Subsec. (*l*)(1)(B). Pub. L. 105–34, §934(a), amended table generally. Prior to amendment, table read as follows:

"For taxable years beginning in calendar year—	The applicable percentage is—
1997	40 percent
1998 through 2002	45 percent
2003	50 percent
2004	60 percent
2005	70 percent
2006 or thereafter	80 percent.''

Subsec. (*l*)(2)(B). Pub. L. 105–34, §1602(c), inserted ''The preceding sentence shall be applied separately with respect to—'' at end and added cls. (i) and (ii).

Subsecs. (*o*), (p). Pub. L. 105–34, §1203(a), added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1996—Subsec. (k). Pub. L. 104–188, §1704(p)(3), substituted ''reaquisition'' for ''redemption'' in heading.

Subsec. (k)(1). Pub. L. 104–188, §1704(p)(1), substituted ''the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C))'' for ''the redemption of its stock''.

Subsec. (k)(2)(A). Pub. L. 104–188, §1704(p)(2), struck out ''or'' at end of cl. (i), added cl. (ii), and redesignated former cl. (ii) as (iii).

Subsec. (*l*)(1). Pub. L. 104–191, §311(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) IN GENERAL.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 30 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.''

Subsec. (*l*)(2)(C). Pub. L. 104–191, §322(b)(2)(B), added subpar. (C).

1995—Subsec. (*l*)(1). Pub. L. 104–7, §1(b), substituted ''30 percent'' for ''25 percent''.

Subsec. (*l*)(6). Pub. L. 104–7, §1(a), struck out par. (6) ''Termination'' which read as follows: ''This subsection shall not apply to any taxable year beginning after December 31, 1993.''

1993—Subsec. (e). Pub. L. 103–66, §13222(a), amended heading and text generally. Prior to amendment, text consisted of pars. (1) and (2) relating to deduction of ordinary and necessary expenses paid or incurred in connection with certain activities relating to congressional, State, and local legislation.

Subsec. (*l*)(2)(B). Pub. L. 103–66, §13174(b)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer.''

Subsec. (*l*)(3). Pub. L. 103–66, §13131(d)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows:

''(A) MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

''(B) HEALTH INSURANCE CREDIT.—The amount otherwise taken into account under paragraph (1) as paid for insurance which constitutes medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32.''

Subsec. (*l*)(6). Pub. L. 103–66, §13174(a)(1), substituted ''December 31, 1993'' for ''June 30, 1992''.

Subsec. (m). Pub. L. 103–66, §13211(a), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 103–66, §13442(a), added subsec. (n). Former subsec. (n) redesignated (*o*).

Pub. L. 103–66, §13211(a), redesignated subsec. (m) as (n).

Subsec. (*o*). Pub. L. 103–66, §13442(a), redesignated subsec. (n) as (*o*).

1992—Subsec. (a). Pub. L. 102–486 inserted at end ''For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year.''

1991—Subsec. (*l*)(6). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Subsec. (*l*)(3). Pub. L. 101–508, §11111(d)(2), substituted heading for one which read: ''Coordination with medical deduction'' and amended text generally. Prior to amendment, text read as follows: ''Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).''

Subsec. (*l*)(6). Pub. L. 101–508, §11410(a), substituted ''December 31, 1991'' for ''September 30, 1990''.

1989—Subsec. (i). Pub. L. 101–239, §6202(b)(3)(A), struck out subsec. (i) which read as follows:

''(1) COVERAGE RELATING TO END STAGE RENAL DISEASE.—The expenses paid or incurred by an employer for a group health plan shall not be allowed as a deduction under this section if the plan differentiates in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner.

''(2) GROUP HEALTH PLAN.—For purposes of this subsection the term 'group health plan' means any plan of, or contributed to by, an employer to provide medical care (as defined in section 213(d) to his employees, former employees, or the families of such employees or former employees, directly or through insurance, reimbursement, or otherwise.''

Subsec. (k)(2)(B)(iv). Pub. L. 101–239, §7862(c)(3)(A), amended cl. (iv) as it existed prior to repeal of subsec. (k) by Pub. L. 100–647, by substituting ''entitlement'' for ''eligibility'' in heading and inserting ''which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary'' after ''or otherwise)'' in subclause (I).

Subsec. (*l*)(2). Pub. L. 101–140 redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''REQUIRED COVERAGE.—Paragraph (1) shall not apply to any taxpayer for any taxable year unless coverage is provided under 1 or more plans meeting the requirements of section 89, treating such coverage as an employer-provided benefit.''

Subsec. (*l*)(5). Pub. L. 101–239, §7107(b), added par. (5). Former par. (5) redesignated (6).

Pub. L. 101–239, §7107(a)(1), substituted ''September 30, 1990'' for ''December 31, 1989''.

Subsec. (*l*)(6). Pub. L. 101–239, §7107(b), redesignated former par. (5) as (6).

1988—Subsec. (i)(2), (3). Pub. L. 100–647, §3011(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which required plans to provide continuation coverage to certain individuals.

Subsec. (k). Pub. L. 100–647, §3011(b)(3), redesignated subsec. (*l*), relating to stock redemption expenses, as (k) and struck out former subsec. (k) which related to continuation coverage requirements of group health plans.

Subsec. (k)(5)(B). Pub. L. 100–647, §1018(t)(7)(B), made amendment identical to Pub. L. 99–509, §9307(c)(2)(B),

which amended directory language of Pub. L. 99–514, §1895(d)(5)(A), by substituting ''section 162(k)(5)'' for ''section 162(k)(2)''. See 1986 Amendment note below.

Subsec . (*l*). Pub. L. 100–647, §3011(b)(3)(A), (B), redesignated subsec. (m), relating to special rules for health insurance costs of self-employed individuals, as (*l*). Former subsec. (*l*), relating to stock redemption expenses, redesignated (k).

Subsec. (m). Pub. L. 100–647, §3011(b)(3)(B), (C), redesignated subsec. (n), relating to cross references, as (m). Former subsec. (m), relating to special rules for health insurance costs of self-employed individuals, redesignated (*l*).

Pub. L. 100–647, §1011B(b)(2), redesignated subsec. (m), relating to cross references, as (n).

Subsec. (m)(2)(A). Pub. L. 100–647, §1011B(b)(3), inserted ''derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established'' after ''401(c))''.

Subsec. (m)(4), (5). Pub. L. 100–647, §1011B(b)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (n). Pub. L. 100–647, §3011(b)(3)(C), redesignated subsec. (n) as (m).

Pub. L. 100–647, §1011B(b)(2), redesignated subsec. (m), relating to cross references, as (n).

1986—Subsec. (i)(1). Pub. L. 99–272, §10001(d), substituted ''Coverage relating to end stage renal disease'' for ''General rule'' in heading.

Subsec. (i)(2), (3). Pub. L. 99–272, §10001(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (k). Pub. L. 99–272, §10001(c), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (k)(2)(A). Pub. L. 99–514, §1895(d)(1)(A), inserted ''If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group.''

Subsec. (k)(2)(B)(i). Pub. L. 99–514, §1895(d)(2)(A), substituted ''Maximum required period'' for ''Maximum period'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of—

''(I) a qualifying event described in paragraph (3)(B) (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying event, and

''(II) any qualifying event not described in subclause (I), the date which is 36 months after the date of the qualifying event.''

Subsec. (k)(2)(B)(i)(II). Pub. L. 99–509, §9501(b)(1)(A)(i), inserted ''(other than a qualifying event described in paragraph (3)(F))''.

Subsec. (k)(2)(B)(i)(III), (IV). Pub. L. 99–509, §9501(b)(1)(A)(ii)–(iv), added subcl. (III), redesignated former subcl. (III) as (IV), and inserted ''or (3)(F)''.

Subsec. (k)(2)(B)(iii). Pub. L. 99–514, §1895(d)(3)(A), inserted ''The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.''

Subsec. (k)(2)(B)(iv). Pub. L. 99–514, §1895(d)(4)(A)(iii), substituted ''Group health plan coverage'' for ''Reemployment'' in heading.

Subsec. (k)(2)(B)(iv)(I). Pub. L. 99–514, §1895(d)(4)(A)(ii), substituted ''covered under any other group health plan (as an employee or otherwise)'' for ''a covered employee under any other group health plan''.

Subsec. (k)(2)(B)(iv)(II). Pub. L. 99–509, §9501(b)(2)(A), inserted ''in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv),''.

Subsec. (k)(2)(B)(v). Pub. L. 99–514, §1895(d)(4)(A)(i), struck out cl. (v), remarriage of spouse, which read as follows: ''In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan.''

Subsec. (k)(3). Pub. L. 99–509, §9501(a)(1), added subpar. (F) and concluding provisions.

Subsec. (k)(5)(B). Pub. L. 99–514, §1895(d)(5)(A), as amended by Pub. L. 99–509, §9307(c)(2)(B), and Pub. L. 100–647, §1018(t)(7)(B), inserted ''of continuation coverage'' and ''If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.'' See 1988 Amendment note above.

Subsec. (k)(6)(B). Pub. L. 99–509, §9501(d)(1), substituted ''(D), or (F)'' for ''or (D)''.

Subsec. (k)(6)(C). Pub. L. 99–514, §1895(d)(6)(A), inserted ''within 60 days after the date of the qualifying event''.

Subsec. (k)(6)(D)(i). Pub. L. 99–509, §9501(d)(1), substituted ''(D), or (F)'' for ''or (D)''.

Subsec. (k)(7)(B)(iii). Pub. L. 99–514, §1895(d)(7), added cl. (iii).

Subsec. (k)(7)(B)(iv). Pub. L. 99–509, §9501(c)(1), added cl. (iv).

Subsec. (*l*). Pub. L. 99–514, §613(a), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 99–272, §10001(c), redesignated former subsec. (k), relating to cross references, as (*l*).

Subsec. (m). Pub. L. 99–514, §1161(a), added subsec. (m) relating to special rules for health insurance costs of self-employed individuals, and further directed that this section be amended ''by redesignating subsection (n) as subsection (m)'', which directory language could not be executed because this section does not contain a subsec. (n).

Pub. L. 99–514, §613(a), redesignated subsec. (*l*), relating to cross references, as (m).

1984—Subsec. (i)(2). Pub. L. 98–369, §2354(d), substituted ''section 213(d)'' for ''section 213(e)''.

Subsec. (j). Pub. L. 98–573 added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 98–369, §512(b), added par. (3).

Subsec. (k). Pub. L. 98–573 redesignated former subsec. (j) as (k).

1982—Subsec. (a). Pub. L. 97–216 inserted provisions under which amounts expended by Members of Congress within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.

Subsec. (c)(1). Pub. L. 97–248, §288(a), substituted ''is unlawful under the Foreign Corrupt Practices Act of 1977'' for ''would be unlawful under the laws of the United States if such laws were applicable to such payment and to such official or employee'' after ''government, the payment'', and ''(or is unlawful under the Foreign Corrupt Practices Act of 1977)'' for ''(or would be unlawful under the laws of the United States)'' before ''shall be upon the Secretary''.

Subsec. (h). Pub. L. 97–248, §128(b)(2), redesignated subsec. (i), relating to State legislators' travel expenses away from home, as (h). Former subsec. (h), relating to group health plans, redesignated (i).

Subsec. (i). Pub. L. 97–248, §128(b)(2), redesignated former subsec. (h), relating to group health plans, as (i). Former subsec. (i), relating to State legislators' travel expenses away from home, redesignated (h). Former subsec. (i), relating to cross references, redesignated (j).

Subsec. (j). Pub. L. 97–248, §128(b)(1), redesignated former subsec. (i), relating to cross references, as (j).

1981—Subsec. (a). Pub L. 97–51 struck out provisions under which amounts expended by Members of Congress within each taxable year for living expenses could not be deductible for income tax purposes in excess of $3,000.

Subsec. (h). Pub. L. 97–35 added subsec. (h) relating to group health plans. Former subsec. (h), as added by Pub. L. 97–34 and relating to State legislators' travel expenses away from home, redesignated (i). See 1982 Amendment note above.

Pub. L. 97–34 added subsec. (h) relating to State legislators' travel expenses away from home. Former subsec. (h), relating to cross references, redesignated (i). See 1982 Amendment note above.

Subsec. (i). Pub. L. 97–35 redesignated former subsec. (h), as added by Pub. L. 97–34 and relating to State leg-

islators' travel expenses away from home, as (i). See 1982 Amendment note above.

Pub. L. 97–34 redesignated former subsec. (h), relating to cross references, as (i). See 1982 Amendment note above.

1976—Subsec. (a). Pub. L. 94–455, § 1901(c)(4), struck out reference to Territory in provisions following par. (3).

Subsec. (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out in pars. (1) and (2) ''or his delegate'' after ''Secretary''.

1971—Subsec. (c). Pub. L. 92–178, § 310(a)(2), substituted ''Illegal bribes, kickbacks, and other payments'' for ''Bribes and illegal kickbacks'' in heading.

Subsec. (c)(2). Pub. L. 92–178, § 310(a)(1), substituted provisions respecting ''Other illegal payments'' for former provisions on ''Other bribes or kickbacks'' reading ''If in a criminal proceeding a taxpayer is convicted of making a payment (other than a payment described in paragraph (1) which is an illegal bribe or kickback, or his plea of guilty or nolo contendere to an indictment or information charging the making of such a payment is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) on account of such payment or any related payment made prior to the date of the final judgment in such proceeding.''

Subsec. (c)(3). Pub. L. 92–178, § 310(a)(1), substituted provisions respecting kickbacks, rebates, and bribes under medicare and medicaid for former statute of limitations provisions.

1969—Subsec. (c). Pub. L. 91–172, § 902(b), designated existing provisions as par. (1), extended the applicability of nondeductible expenses for payments to any official or employee of any government, or of any agency or instrumentality of any government, and added pars. (2) and (3).

Subsecs. (f), (g). Pub. L. 91–172, § 902(a), added subsecs. (f) and (g). Former subsec. (f) redesignated (h).

Subsec. (h). Pub. L. 91–172, §§ 516(c)(2)(A), 902(a), redesignated former subsec. (f) as (h), substituted ''(1) For'' for ''For'', and inserted reference to section 1253 for special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name.

1962—Subsec. (a)(2). Pub. L. 87–834, § 4(b), substituted ''(including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances)'' for ''including the entire amount expended for meals and lodging)''.

Subsecs. (e), (f). Pub. L. 87–834, § 3(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1960—Subsec. (b). Pub. L. 86–779, § 7(b), inserted ''the dollar limitations,'' after ''the percentage limitations,''.

Subsecs. (d), (e). Pub. L. 86–779, § 8(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1958—Subsecs. (c), (d). Pub. L. 85–866, § 5(a), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, § 2042(b), Sept. 27, 2010, 124 Stat. 2560, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

Pub. L. 111–148, title IX, § 9014(b), Mar. 23, 2010, 124 Stat. 870, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009, with respect to services performed after such date.''

Pub. L. 111–148, title X, § 10108(g)(2), Mar. 23, 2010, 124 Stat. 914, provided that: ''The amendments made by this subsection [amending this section] shall apply to vouchers provided after December 31, 2013.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title III, § 302(c)(1), Oct. 3, 2008, 122 Stat. 3806, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 318(c), Oct. 22, 2004, 118 Stat. 1470, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

Amendment by section 802(b)(2) of Pub. L. 108–357 effective Mar. 4, 2003, see section 802(d) of Pub. L. 108–357, set out as an Effective Date note under section 4985 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–121 applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2002, see section 109(c) of Pub. L. 108–121, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. J, title II, § 2002(b), Oct. 21, 1998, 112 Stat. 2681–901, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1998.''

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 934(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Section 1203(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and repealing provisions set out as a note below] shall apply to taxable years beginning after December 31, 1997.''

Section 1204(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts paid or incurred with respect to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1602(c) of Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 311(a) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 311(c) of Pub. L. 104–191, set out as a note under section 104 of this title.

Section 322(c) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section and section 213 of this title] shall apply to taxable years beginning after December 31, 1996.''

Section 1704(p)(4) of Pub. L. 104–188 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply to amounts paid or incurred after September 13, 1995, in taxable years ending after such date.

''(B) PARAGRAPH (2).—The amendment made by paragraph (2) [amending this section] shall take effect as if included in the amendment made by section 613 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1995 AMENDMENT

Section 1(c) of Pub. L. 104–7 provided that:

''(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1993.

''(2) INCREASE.—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1994.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13131(d)(2) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13131(e) of Pub. L. 103–66, set out as a note under section 32 of this title.

Section 13174(a)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section and repealing provisions set out below] shall apply to taxable years ending after June 30, 1992.''

Section 13174(b)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1992.''

Section 13211(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts which would otherwise be deductible for taxable years beginning on or after January 1, 1994.''

Section 13222(e) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 170, 6033, and 7871 of this title] shall apply to amounts paid or incurred after December 31, 1993.''

Section 13442(b) of Pub. L. 103–66, as amended by Pub. L. 104–7, §5, Apr. 11, 1995, 109 Stat. 96, provided that: ''The provisions of this section [amending this section] shall apply to services provided after February 2, 1993, and on or before December 31, 1995.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1938(b) of Pub. L. 102–486 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to costs paid or incurred after December 31, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 110(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11111(d)(2) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11111(f) of Pub. L. 101–508, set out as a note under section 32 of this title.

Section 11410(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6202(b)(5) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section, sections 4980B and 5000 of this title, sections 623 and 631 of Title 29, Labor, and sections 1395p, 1395r, and 1395y of Title 42, The Public Health and Welfare] shall apply to items and services furnished after the date of the enactment of this Act [Dec. 19, 1989].''

Section 7107(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1989.''

Section 7862(c)(3)(D) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section, section 4980B of this title, and section 1162 of Title 29, Labor] shall apply to—

''(i) qualifying events occurring after December 31, 1989, and

''(ii) in the case of qualified beneficiaries who elected continuation coverage after December 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such).''

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011B(b)(1)–(3) and 1018(t)(7)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 3011(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [enacting section 4980B of this title, and amending this section, sections 106 and 414 of this title, section 1167 of Title 29, Labor, and section 300bb–8 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1988, but shall not apply to any plan for any plan year to which section 162(k) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) did not apply by reason of section 10001(e)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [section 10001(e)(2) of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 106 of this title].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 613(b) of Pub. L. 99–514 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any amount paid or incurred after February 28, 1986, in taxable years ending after such date.''

Section 1161(b) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITIONAL RULE.—In the case of any year to which section 89 of the Internal Revenue Code of 1986 does not apply, [former] section 162(m)(2)(B) of such Code shall be applied by substituting any nondiscrimination requirements otherwise applicable for the requirements of section 89 of such Code.

''(3) ASSISTANCE.—The Secretary of the Treasury or his delegate shall provide guidance to self-employed individuals to assist them in meeting the requirements of section 89 of the Internal Revenue Code of 1986 with respect to coverage required by the amendments made by this section [amending this section].''

Section 1895(d)(6)(D) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section, section 1166 of Title 29, Labor, and section 300bb–6 of Title 42, The Public Health and Welfare] shall only apply with respect to qualifying events occurring after the date of the enactment of this Act [Oct. 22, 1986].''

Section 1895(e) of Pub. L. 99–514 provided that: ''Except as otherwise provided in this section, the amendments made by this section [amending this section, section 3121 of this title, sections 1162 and 1165 to 1167 of Title 29, sections 300bb–2, 300bb–5, 300bb–6, 410, 1301, 1320c–13, 1395p, 1395u, 1395cc, 1395dd, 1395mm, 1395ww, 1395yy, 1396a, 1396b, 1396d, and 1396s of Title 42, enacting provisions set out as notes under this section, section 3121 of this title, section 1167 of Title 29, and sections 1395u, 1395y, 1395ww, and 1395yy of Title 42, and amending provisions set out as notes under sections 403, 1395u, 1395cc, 1395mm, 1395ww, 1395yy, and 1396b of Title 42] shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Amendment by section 9307(c)(2)(B) of Pub. L. 99–509 effective as if included in the enactment of Tax Reform Act of 1986, Pub. L. 99–514, see section 9307(c)(2) of Pub. L. 99–509, set out as a note under section 1395u of Title 42.

Section 9501(e) of Pub. L. 99–509 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1162, 1163, 1166, and 1167 of Title 29, Labor] shall take effect as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 [sections 10001 to 10003 of Pub. L. 99–272].

''(2) TREATMENT OF CERTAIN BANKRUPTCY PROCEEDINGS.—Notwithstanding paragraph (1), section 10001(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [set out as a note under section 106 of this

title], and section 10002(d) of such Act [set out as a note under section 1161 of Title 29], the amendments made by this section [amending this section and sections 1162, 1163, 1166, and 1167 of Title 29] and by sections 10001 and 10002 of such Act [enacting sections 1161 to 1168 of Title 29, amending this section, section 106 of this title, and section 1132 of Title 29, and enacting provisions set out as notes under section 106 of this title and sections 1161 and 1166 of Title 29] shall apply in the case of plan years ending during the 12-month period beginning July 1, 1986, but only with respect to—

''(A) a qualifying event described in section 162(k)(3)(F) of the Internal Revenue Code of 1986 or section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)], and

''(B) a qualifying event described in section 162(k)(3)(A) of the Internal Revenue Code of 1986 or section 603(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(1)] relating to the death of a retired employee occurring after the date of the qualifying event described in subparagraph (A).

''(3) TREATMENT OF CURRENT RETIREES.—Section 162(k)(3)(F) of the Internal Revenue Code of 1986 and section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)] apply to covered employees who retired before, on, or after the date of the enactment of this Act [Oct. 21, 1986].

''(4) NOTICE.—In the case of a qualifying event described in section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)] that occurred before the date of the enactment of this Act [Oct. 21, 1986], the notice required under section 606(2) of such Act [29 U.S.C. 1166(2)] (and under section 162(k)(6)(B) of the Internal Revenue Code of 1986) with respect to such event shall be provided no later than 30 days after the date of the enactment of this Act [Oct. 21, 1986].''

Amendment by Pub. L. 99–272 applicable to plan years beginning on or after July 1, 1986, with special rule for collective bargaining agreements, see section 10001(e) of Pub. L. 99–272, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 232(b) of Pub. L. 98–573 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 30, 1984].''

Amendment by section 512(b) of Pub. L. 98–369 applicable to amounts paid or incurred after July 18, 1984, in taxable years ending after such date, subject to an exception for certain extended vacation pay plans, see section 512(c) of Pub. L. 98–369, set out as a note under section 404 of this title.

Amendment by section 2354(d) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e) of Pub. L. 98–369, set out as a note under section 1320a–1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 288(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 952 and 964 of this title] shall apply to payments made after the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 128(b) of Pub. L. 97–248 effective as if such amendment had been originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395x of Title 42, The Public Health and Welfare.

Section 215(d) of Pub. L. 97–216 provided that: ''The amendments made by this section [amending this section and section 280A of this title and repealing provisions set out as a note under this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1981 AMENDMENTS

Section 139(b)(3) of Pub. L. 97–51, as amended by Pub. L. 97–92, § 133a, Dec. 15, 1981, 95 Stat. 1199, provided that: ''The amendments made by this subsection [amending this section and repealing section 31c of Title 2, The Congress] shall apply to taxable years beginning after December 31, 1980.''

Section 2146(c)(2) of Pub. L. 97–35 provided that: ''The amendments made by subsection (b) [amending this section] shall be effective with respect to taxable years beginning on or after January 1, 1982.''

Section 127(b) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after January 1, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(c)(4) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 310(b) of Pub. L. 92–178 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to payments after December 30, 1969, except that section 162(c)(3) of the Internal Revenue Act of 1954 (as added by subsection (a)) shall apply only with respect to kickbacks, rebates, and bribes payment of which is made on or after the date of the enactment of this Act [Dec. 10, 1971].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 902(c) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Section 162(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to all taxable years to which such Code applies. Section 162(g) of such Code (as added by subsection (a)) shall apply with respect to amounts paid or incurred after December 31, 1969. Section 162(c)(1) of such Code (as amended by subsection (b)) shall apply to all taxable years to which such Code applies. Sections 162(c)(2) and (3) of such Code (as amended by subsection (b)) shall apply with respect to payments made after the date of the enactment of this Act [Dec. 30, 1969].''

Amendment by section 516(c)(2)(A) of Pub. L. 91–172 applicable to transfers after Dec. 31, 1969, see section 516(d)(3) of Pub. L. 91–172, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 4(c) of Pub. L. 87–834 provided that: ''The amendments made by this section [amending this section and enacting section 274 of this title] shall apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date.''

Section 3(b) of Pub. L. 87–834 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1962.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 7(c) of Pub. L. 86–779 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 170 of this title] shall apply with respect to taxable years beginning after December 31, 1959.''

Section 8(d) of Pub. L. 86–779 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and section 1054 of this title and amending table of sections for Part IV by adding item 1054 and numbering former item 1054 as 1055] shall apply with respect to taxable years beginning after December 31, 1959.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 5(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply only with respect to expenses paid or incurred after the date of the enactment of this Act [Sept. 2, 1958]. The determination as to whether any expense paid or incurred on or before the date of the enactment of this Act shall be allowed as a deduction shall be made as if this section had not been enacted and without inference drawn from the fact that this section is not made applicable with respect to expenses paid or incurred on or before the date of the enactment of this Act.''

DEDUCTION FOR SPECIAL ASSESSMENTS

Pub. L. 104–208, div. A, title II, §2711, Sept. 30, 1996, 110 Stat. 3009–498, provided that, for purposes of subtitle A of this title, the amount allowed as a deduction under this section for a taxable year would include any amount paid during that year by reason of an assessment under section 2702 of Pub. L. 104–208, formerly set out as a note under section 1817 of Title 12, Banks and Banking, and that section 172(f) of this title would not apply to that deduction.

SPECIAL RULE FOR DEDUCTIONS UNDER SUBSECTION (*l*) FOR CERTAIN TAXABLE YEARS

Section 110(a)(2) of Pub. L. 102–227 provided that, in the case of any taxable year beginning in 1992 only amounts paid before July 1, 1992, by the individual for insurance coverage for periods before July 1, 1992, would be taken into account in determining the amount deductible under subsec. (*l*) of this section with respect to such individual for such taxable year, and that for purposes of subparagraph (A) of subsec. (*l*)(2) of this section, the amount of the earned income described in such subparagraph taken into account for such taxable year would be the amount which bears the same ratio to the total amount of such earned income as the number of months in such taxable year ending before July 1, 1992, bears to the number of months in such taxable year, prior to repeal by Pub. L. 103–66, title XIII, §13174(a)(2), Aug. 10, 1993, 107 Stat. 457.

Section 7107(a)(2) of Pub. L. 101–239 provided that, in the case of any taxable year beginning in 1990 only amounts paid before Oct. 1, 1990, by the individual for insurance coverage for periods before Oct. 1, 1990, would be taken into account in determining the amount deductible under subsec. (*l*) of this section with respect to such individual for such taxable year, and that for purposes of subsec. (*l*)(2)(A) of this section, the amount of the earned income described in such paragraph taken into account for such taxable year would be the amount which bears the same ratio to the total amount of such earned income as the number of months in such taxable year ending before Oct. 1, 1990, bears to the number of months in such taxable year, prior to repeal by Pub. L. 101–508, title XI, §11410(b), Nov. 5, 1990, 104 Stat. 1388–479.

BUSINESS USE OF AUTOMOBILES BY RURAL MAIL CARRIERS

Section 6008 of Pub. L. 100–647 provided that in the case of any employee of the United States Postal Service who performed services involving the collection and delivery of mail on a rural route, such employee was permitted to compute the amount allowable as a deduction under this chapter for the use of an automobile in performing such services by using a standard mileage rate for all miles of such use equal to 150 percent of the basic standard rate, prior to repeal by Pub. L. 105–34, title XII, §1203(b), Aug. 5, 1997, 111 Stat. 995. See subsec. (*o*) of this section.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

LIVING EXPENSES OF MEMBERS OF CONGRESS WHILE AWAY FROM HOME; SENSE OF CONGRESS

Section 139(a) of Pub. L. 97–51, which expressed the sense of Congress that the dollar limits on tax deductions for living expenses of Members of Congress while away from home be the same as such limits for businessmen and other private citizens, was repealed by Pub. L. 97–216, title II, §215(c), July 18, 1982, 96 Stat. 194.

STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME

Section 604 of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, §307, May 23, 1977, 91 Stat. 153; Pub. L. 95–258, §2, Apr. 7, 1978, 92 Stat. 195; Pub. L. 96–167, §3, Dec. 29, 1979, 93 Stat. 1275; Pub. L. 96–178, §1, Jan. 2, 1980, 93 Stat. 1295; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of section 162(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of any individual who was a State legislator at any time during any taxable year beginning before January 1, 1981, and who, for the taxable year, elects the application of this section, for any period during such a taxable year in which he was a State legislator—

''(1) the place of residence of such individual within the legislative district which he represented shall be considered his home, and

''(2) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States.

''(b) LEGISLATIVE DAYS.—For purposes of subsection (a), a legislative day during any taxable year for any individual shall be any day during such year on which (1) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or (2) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

''(c) LIMITATION.—The amount taken into account as living expenses attributable to a trade or business as a State legislator for any taxable year beginning before January 1, 1976, under an election made under this section shall not exceed the amount claimed for such purpose under a return (or amended return) filed before May 21, 1976.

''(d) MAKING AND EFFECT OF ELECTION.—An election under this section shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe.''

[Amendment of section 604 of Pub. L. 94–455 by section 1 of Pub. L. 96–178, which purported to substitute ''January 1, 1979'' for ''January 1, 1978'', was not executed because of the prior amendment by section 3(a)(2), (b) of Pub. L. 96–167 which substituted ''January 1, 1981'' for ''January 1, 1978'' in subsec. (a) and which struck out the last sentence of subsec. (d).]

DENIAL OF DEDUCTION FOR AMOUNTS PAID OR INCURRED ON JUDGMENTS IN SUITS BROUGHT TO RECOVER PRICE INCREASES IN PURCHASE OF NEW PRINCIPAL RESIDENCE

No deductions to be allowed in computing taxable income for two-thirds of any amount paid or incurred on a judgment entered against any person in a suit brought under section 208(b) of Pub. L. 94–12, see section 208(c) of Pub. L. 94–12, title II, Mar. 29, 1975, 89 Stat. 35, set out as a note under section 44 of this title.

DEDUCTIBILITY OF ACCRUED VACATION PAY

Section 97 of Pub. L. 85–866, as amended by Pub. L. 86–496, §2, June 8, 1960, 74 Stat. 164; Pub. L. 88–153, Oct.

17, 1963, 77 Stat. 272; Pub. L. 88–554, §1, Aug. 31, 1964, 78 Stat. 761; Pub. L. 89–692, Oct. 15, 1966, 80 Stat. 1025; Pub. L. 91–172, title IX, §903, Dec. 30, 1969, 83 Stat. 711; Pub. L. 92–580, §3, Oct. 27, 1972, 86 Stat. 1276, provided that deductions for accrued vacation pay under this section would not be denied for any taxable year ending before Jan. 1, 1973, so long as the employee at the time of accrual of pay has performed the necessary qualifying service under an appropriate plan.

INVESTIGATION OF, AND REPORTS ON, TREATMENT OF ENTERTAINMENT AND CERTAIN OTHER EXPENSES

Pub. L. 86–564, title III, §301, June 30, 1960, 74 Stat. 291, authorized the Joint Committee on Internal Revenue Taxation to investigate and report on the use of entertainment and certain other expense deductions to the 87th Congress and authorized the Secretary of the Treasury to report to the 87th Congress on the enforcement program of the Internal Revenue Service relating to such deductions.

FILING OF CLAIMS FOR REFUNDS OF OVERPAYMENTS

Extension of time for filing of claims for refunds or credit of overpayments of income tax resulting from application of this section, see section 96 of Pub. L. 85–866, set out as a note under section 6511 of this title.

§ 163. Interest

(a) General rule

There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

(b) Installment purchases where interest charge is not separately stated

(1) General rule

If personal property or educational services are purchased under a contract—

(A) which provides that payment of part or all of the purchase price is to be made in installments, and

(B) in which carrying charges are separately stated but the interest charge cannot be ascertained,

then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12. For purposes of this paragraph, the term ''educational services'' means any service (including lodging) which is purchased from an educational organization described in section 170(b)(1)(A)(ii) and which is provided for a student of such organization.

(2) Limitation

In the case of any contract to which paragraph (1) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

(c) Redeemable ground rents

For purposes of this subtitle, any annual or periodic rental under a redeemable ground rent (excluding amounts in redemption thereof) shall be treated as interest on an indebtedness secured by a mortgage.

(d) Limitation on investment interest

(1) In general

In the case of a taxpayer other than a corporation, the amount allowed as a deduction under this chapter for investment interest for any taxable year shall not exceed the net investment income of the taxpayer for the taxable year.

(2) Carryforward of disallowed interest

The amount not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as investment interest paid or accrued by the taxpayer in the succeeding taxable year.

(3) Investment interest

For purposes of this subsection—

(A) In general

The term ''investment interest'' means any interest allowable as a deduction under this chapter (determined without regard to paragraph (1)) which is paid or accrued on indebtedness properly allocable to property held for investment.

(B) Exceptions

The term ''investment interest'' shall not include—

(i) any qualified residence interest (as defined in subsection (h)(3)), or

(ii) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer.

(C) Personal property used in short sale

For purposes of this paragraph, the term ''interest'' includes any amount allowable as a deduction in connection with personal property used in a short sale.

(4) Net investment income

For purposes of this subsection—

(A) In general

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

(i) investment income, over

(ii) investment expenses.

(B) Investment income

The term ''investment income'' means the sum of—

(i) gross income from property held for investment (other than any gain taken into account under clause (ii)(I)),

(ii) the excess (if any) of—

(I) the net gain attributable to the disposition of property held for investment, over

(II) the net capital gain determined by only taking into account gains and losses from dispositions of property held for investment, plus

(iii) so much of the net capital gain referred to in clause (ii)(II) (or, if lesser, the net gain referred to in clause (ii)(I)) as the taxpayer elects to take into account under this clause.

Such term shall include qualified dividend income (as defined in section 1(h)(11)(B))

only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.

(C) Investment expenses

The term ''investment expenses'' means the deductions allowed under this chapter (other than for interest) which are directly connected with the production of investment income.

(D) Income and expenses from passive activities

Investment income and investment expenses shall not include any income or expenses taken into account under section 469 in computing income or loss from a passive activity.

(E) Reduction in investment income during phase-in of passive loss rules

Investment income of the taxpayer for any taxable year shall be reduced by the amount of the passive activity loss to which section 469(a) does not apply for such taxable year by reason of section 469(m). The preceding sentence shall not apply to any portion of such passive activity loss which is attributable to a rental real estate activity with respect to which the taxpayer actively participates (within the meaning of section 469(i)(6)) during such taxable year.

(5) Property held for investment

For purposes of this subsection—

(A) In general

The term ''property held for investment'' shall include—

(i) any property which produces income of a type described in section 469(e)(1), and

(ii) any interest held by a taxpayer in an activity involving the conduct of a trade or business—

(I) which is not a passive activity, and

(II) with respect to which the taxpayer does not materially participate.

(B) Investment expenses

In the case of property described in subparagraph (A)(i), expenses shall be allocated to such property in the same manner as under section 469.

(C) Terms

For purposes of this paragraph, the terms ''activity'', ''passive activity'', and ''materially participate'' have the meanings given such terms by section 469.

(6) Phase-in of disallowance

In the case of any taxable year beginning in calendar years 1987 through 1990—

(A) In general

The amount of interest paid or accrued during any such taxable year which is disallowed under this subsection shall not exceed the sum of—

(i) the amount which would be disallowed under this subsection if—

(I) paragraph (1) were applied by substituting ''the sum of the ceiling amount and the net investment income'' for ''the net investment income'', and

(II) paragraphs (4)(E) and (5)(A)(ii) did not apply, and

(ii) the applicable percentage of the excess of—

(I) the amount which (without regard to this paragraph) is not allowable as a deduction under this subsection for the taxable year, over

(II) the amount described in clause (i).

The preceding sentence shall not apply to any interest treated as paid or accrued during the taxable year under paragraph (2).

(B) Applicable percentage

For purposes of this paragraph, the applicable percentage shall be determined in accordance with the following table:

In the case of taxable years beginning in:	The applicable percentage is:
1987	35
1988	60
1989	80
1990	90.

(C) Ceiling amount

For purposes of this paragraph, the term ''ceiling amount'' means—

(i) $10,000 in the case of a taxpayer not described in clause (ii) or (iii),

(ii) $5,000 in the case of a married individual filing a separate return, and

(iii) zero in the case of a trust.

(e) Original issue discount

(1) In general

In the case of any debt instrument issued after July 1, 1982, the portion of the original issue discount with respect to such debt instrument which is allowable as a deduction to the issuer for any taxable year shall be equal to the aggregate daily portions of the original issue discount for days during such taxable year.

(2) Definitions and special rules

For purposes of this subsection—

(A) Debt instrument

The term ''debt instrument'' has the meaning given such term by section 1275(a)(1).

(B) Daily portions

The daily portion of the original issue discount for any day shall be determined under section 1272(a) (without regard to paragraph (7) thereof and without regard to section 1273(a)(3)).

(C) Short-term obligations

In the case of an obligor of a short-term obligation (as defined in section 1283(a)(1)(A)) who uses the cash receipts and disbursements method of accounting, the original issue discount (and any other interest payable) on such obligation shall be deductible only when paid.

(3) Special rule for original issue discount on obligation held by related foreign person

(A) In general

If any debt instrument having original issue discount is held by a related foreign

person, any portion of such original issue discount shall not be allowable as a deduction to the issuer until paid. The preceding sentence shall not apply to the extent that the original issue discount is effectively connected with the conduct by such foreign related person of a trade or business within the United States unless such original issue discount is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(B) Special rule for certain foreign entities

(i) In general

In the case of any debt instrument having original issue discount which is held by a related foreign person which is a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

(ii) Secretarial authority

The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.

(C) Related foreign person

For purposes of subparagraph (A), the term ''related foreign person'' means any person—

(i) who is not a United States person, and

(ii) who is related (within the meaning of section 267(b)) to the issuer.

(4) Exceptions

This subsection shall not apply to any debt instrument described in—

(A) subparagraph (D) of section 1272(a)(2) (relating to obligations issued by natural persons before March 2, 1984), and

(B) subparagraph (E) of section 1272(a)(2) (relating to loans between natural persons).

(5) Special rules for original issue discount on certain high yield obligations

(A) In general

In the case of an applicable high yield discount obligation issued by a corporation—

(i) no deduction shall be allowed under this chapter for the disqualified portion of the original issue discount on such obligation, and

(ii) the remainder of such original issue discount shall not be allowable as a deduction until paid.

For purposes of this paragraph, rules similar to the rules of subsection (i)(3)(B) shall apply in determining the amount of the original issue discount and when the original issue discount is paid.

(B) Disqualified portion treated as stock distribution for purposes of dividend received deduction

(i) In general

Solely for purposes of sections 243, 245, 246, and 246A, the dividend equivalent portion of any amount includible in gross income of a corporation under section 1272(a) in respect of an applicable high yield discount obligation shall be treated as a dividend received by such corporation from the corporation issuing such obligation.

(ii) Dividend equivalent portion

For purposes of clause (i), the dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation is the portion of the amount so includible—

(I) which is attributable to the disqualified portion of the original issue discount on such obligation, and

(II) which would have been treated as a dividend if it had been a distribution made by the issuing corporation with respect to stock in such corporation.

(C) Disqualified portion

(i) In general

For purposes of this paragraph, the disqualified portion of the original issue discount on any applicable high yield discount obligation is the lesser of—

(I) the amount of such original issue discount, or

(II) the portion of the total return on such obligation which bears the same ratio to such total return as the disqualified yield on such obligation bears to the yield to maturity on such obligation.

(ii) Definitions

For purposes of clause (i), the term ''disqualified yield'' means the excess of the yield to maturity on the obligation over the sum referred to[1] subsection (i)(1)(B) plus 1 percentage point, and the term ''total return'' is the amount which would have been the original issue discount on the obligation if interest described in the parenthetical in section 1273(a)(2) were included in the stated redemption price at maturity.

(D) Exception for S corporations

This paragraph shall not apply to any obligation issued by any corporation for any period for which such corporation is an S corporation.

(E) Effect on earnings and profits

This paragraph shall not apply for purposes of determining earnings and profits; except that, for purposes of determining the

[1] So in original. Probably should be followed by ''in''.

dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation, no reduction shall be made for any amount attributable to the disqualified portion of any original issue discount on such obligation.

(F) Suspension of application of paragraph

(i) Temporary suspension

This paragraph shall not apply to any applicable high yield discount obligation issued during the period beginning on September 1, 2008, and ending on December 31, 2009, in exchange (including an exchange resulting from a modification of the debt instrument) for an obligation which is not an applicable high yield discount obligation and the issuer (or obligor) of which is the same as the issuer (or obligor) of such applicable high yield discount obligation. The preceding sentence shall not apply to any obligation the interest on which is interest described in section 871(h)(4) (without regard to subparagraph (D) thereof) or to any obligation issued to a related person (within the meaning of section 108(e)(4)).

(ii) Successive application

Any obligation to which clause (i) applies shall not be treated as an applicable high yield discount obligation for purposes of applying this subparagraph to any other obligation issued in exchange for such obligation.

(iii) Secretarial authority to suspend application

The Secretary may apply this paragraph with respect to debt instruments issued in periods following the period described in clause (i) if the Secretary determines that such application is appropriate in light of distressed conditions in the debt capital markets.

(G) Cross reference

For definition of applicable high yield discount obligation, see subsection (i).

(6) Cross references

For provision relating to deduction of original issue discount on tax-exempt obligation, see section 1288.

For special rules in the case of the borrower under certain loans for personal use, see section 1275(b).

(f) Denial of deduction for interest on certain obligations not in registered form

(1) In general

Nothing in subsection (a) or in any other provision of law shall be construed to provide a deduction for interest on any registration-required obligation unless such obligation is in registered form.

(2) Registration-required obligation

For purposes of this section—

(A) In general

The term ''registration-required obligation'' means any obligation (including any obligation issued by a governmental entity) other than an obligation which—

(i) is issued by a natural person,

(ii) is not of a type offered to the public,

(iii) has a maturity (at issue) of not more than 1 year, or

(iv) is described in subparagraph (B).

(B) Certain obligations not included

An obligation is described in this subparagraph if—

(i) there are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person, and

(ii) in the case of an obligation not in registered form—

(I) interest on such obligation is payable only outside the United States and its possessions, and

(II) on the face of such obligation there is a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.

(C) Authority to include other obligations

Clauses (ii) and (iii) of subparagraph (A), and subparagraph (B), shall not apply to any obligation if—

(i) in the case of—

(I) subparagraph (A), such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, or

(II) subparagraph (B), such obligation is of a type specified by the Secretary in regulations, and

(ii) such obligation is issued after the date on which the regulations referred to in clause (i) take effect.

(3) Book entries permitted, etc.

For purposes of this subsection, rules similar to the rules of section 149(a)(3) shall apply.

(g) Reduction of deduction where section 25 credit taken

The amount of the deduction under this section for interest paid or accrued during any taxable year on indebtedness with respect to which a mortgage credit certificate has been issued under section 25 shall be reduced by the amount of the credit allowable with respect to such interest under section 25 (determined without regard to section 26).

(h) Disallowance of deduction for personal interest

(1) In general

In the case of a taxpayer other than a corporation, no deduction shall be allowed under this chapter for personal interest paid or accrued during the taxable year.

(2) Personal interest

For purposes of this subsection, the term ''personal interest'' means any interest allowable as a deduction under this chapter other than—

(A) interest paid or accrued on indebtedness properly allocable to a trade or business

(other than the trade or business of performing services as an employee),

(B) any investment interest (within the meaning of subsection (d)),

(C) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer,

(D) any qualified residence interest (within the meaning of paragraph (3)),

(E) any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6163, and

(F) any interest allowable as a deduction under section 221 (relating to interest on educational loans).

(3) Qualified residence interest

For purposes of this subsection—

(A) In general

The term ''qualified residence interest'' means any interest which is paid or accrued during the taxable year on—

(i) acquisition indebtedness with respect to any qualified residence of the taxpayer, or

(ii) home equity indebtedness with respect to any qualified residence of the taxpayer.

For purposes of the preceding sentence, the determination of whether any property is a qualified residence of the taxpayer shall be made as of the time the interest is accrued.

(B) Acquisition indebtedness

(i) In general

The term ''acquisition indebtedness'' means any indebtedness which—

(I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and

(II) is secured by such residence.

Such term also includes any indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

(ii) $1,000,000 limitation

The aggregate amount treated as acquisition indebtedness for any period shall not exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return).

(C) Home equity indebtedness

(i) In general

The term ''home equity indebtedness'' means any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate amount of such indebtedness does not exceed—

(I) the fair market value of such qualified residence, reduced by

(II) the amount of acquisition indebtedness with respect to such residence.

(ii) Limitation

The aggregate amount treated as home equity indebtedness for any period shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

(D) Treatment of indebtedness incurred on or before October 13, 1987

(i) In general

In the case of any pre-October 13, 1987, indebtedness—

(I) such indebtedness shall be treated as acquisition indebtedness, and

(II) the limitation of subparagraph (B)(ii) shall not apply.

(ii) Reduction in $1,000,000 limitation

The limitation of subparagraph (B)(ii) shall be reduced (but not below zero) by the aggregate amount of outstanding pre-October 13, 1987, indebtedness.

(iii) Pre-October 13, 1987, indebtedness

The term ''pre-October 13, 1987, indebtedness'' means—

(I) any indebtedness which was incurred on or before October 13, 1987, and which was secured by a qualified residence on October 13, 1987, and at all times thereafter before the interest is paid or accrued, or

(II) any indebtedness which is secured by the qualified residence and was incurred after October 13, 1987, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

(iv) Limitation on period of refinancing

Subclause (II) of clause (iii) shall not apply to any indebtedness after—

(I) the expiration of the term of the indebtedness described in clause (iii)(I), or

(II) if the principal of the indebtedness described in clause (iii)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing).

(E) Mortgage insurance premiums treated as interest

(i) In general

Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this section as interest which is qualified residence interest.

(ii) Phaseout

The amount otherwise treated as interest under clause (i) shall be reduced (but

not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).

(iii) Limitation

Clause (i) shall not apply with respect to any mortgage insurance contracts issued before January 1, 2007.

(iv) Termination

Clause (i) shall not apply to amounts—

(I) paid or accrued after December 31, 2011, or

(II) properly allocable to any period after such date.

(4) Other definitions and special rules

For purposes of this subsection—

(A) Qualified residence

(i) In general

The term ''qualified residence'' means—

(I) the principal residence (within the meaning of section 121) of the taxpayer, and

(II) 1 other residence of the taxpayer which is selected by the taxpayer for purposes of this subsection for the taxable year and which is used by the taxpayer as a residence (within the meaning of section 280A(d)(1)).

(ii) Married individuals filing separate returns

If a married couple does not file a joint return for the taxable year—

(I) such couple shall be treated as 1 taxpayer for purposes of clause (i), and

(II) each individual shall be entitled to take into account 1 residence unless both individuals consent in writing to 1 individual taking into account the principal residence and 1 other residence.

(iii) Residence not rented

For purposes of clause (i)(II), notwithstanding section 280A(d)(1), if the taxpayer does not rent a dwelling unit at any time during a taxable year, such unit may be treated as a residence for such taxable year.

(B) Special rule for cooperative housing corporations

Any indebtedness secured by stock held by the taxpayer as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by the house or apartment which the taxpayer is entitled to occupy as such a tenant-stockholder. If stock described in the preceding sentence may not be used to secure indebtedness, indebtedness shall be treated as so secured if the taxpayer establishes to the satisfaction of the Secretary that such indebtedness was incurred to acquire such stock.

(C) Unenforceable security interests

Indebtedness shall not fail to be treated as secured by any property solely because, under any applicable State or local homestead or other debtor protection law in effect on August 16, 1986, the security interest is ineffective or the enforceability of the security interest is restricted.

(D) Special rules for estates and trusts

For purposes of determining whether any interest paid or accrued by an estate or trust is qualified residence interest, any residence held by such estate or trust shall be treated as a qualified residence of such estate or trust if such estate or trust establishes that such residence is a qualified residence of a beneficiary who has a present interest in such estate or trust or an interest in the residuary of such estate or trust.

(E) Qualified mortgage insurance

The term ''qualified mortgage insurance'' means—

(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

(F) Special rules for prepaid qualified mortgage insurance

Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Veterans Administration or the Rural Housing Administration.

(5) Phase-in of limitation

In the case of any taxable year beginning in calendar years 1987 through 1990, the amount of interest with respect to which a deduction is disallowed under this subsection shall be equal to the applicable percentage (within the meaning of subsection (d)(6)(B)) of the amount which (but for this paragraph) would have been so disallowed.

(i) Applicable high yield discount obligation

(1) In general

For purposes of this section, the term ''applicable high yield discount obligation'' means any debt instrument if—

(A) the maturity date of such instrument is more than 5 years from the date of issue,

(B) the yield to maturity on such instrument equals or exceeds the sum of—

(i) the applicable Federal rate in effect under section 1274(d) for the calendar month in which the obligation is issued, plus

(ii) 5 percentage points, and

(C) such instrument has significant original issue discount.

For purposes of subparagraph (B)(i), the Secretary may by regulation (i) permit a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the taxpayer establishes to the satisfaction of the Secretary that such higher rate is based on the same principles as the applicable Federal rate and is appropriate for the term of the instrument, or (ii) permit, on a temporary basis, a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the Secretary determines that such rate is appropriate in light of distressed conditions in the debt capital markets.

(2) Significant original issue discount

For purposes of paragraph (1)(C), a debt instrument shall be treated as having significant original issue discount if—

(A) the aggregate amount which would be includible in gross income with respect to such instrument for periods before the close of any accrual period (as defined in section 1272(a)(5)) ending after the date 5 years after the date of issue, exceeds—

(B) the sum of—

(i) the aggregate amount of interest to be paid under the instrument before the close of such accrual period, and

(ii) the product of the issue price of such instrument (as defined in sections 1273(b) and 1274(a)) and its yield to maturity.

(3) Special rules

For purposes of determining whether a debt instrument is an applicable high yield discount obligation—

(A) any payment under the instrument shall be assumed to be made on the last day permitted under the instrument, and

(B) any payment to be made in the form of another obligation of the issuer (or a related person within the meaning of section 453(f)(1)) shall be assumed to be made when such obligation is required to be paid in cash or in property other than such obligation.

Except for purposes of paragraph (1)(B), any reference to an obligation in subparagraph (B) of this paragraph shall be treated as including a reference to stock.

(4) Debt instrument

For purposes of this subsection, the term ''debt instrument'' means any instrument which is a debt instrument as defined in section 1275(a).

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection and subsection (e)(5), including—

(A) regulations providing for modifications to the provisions of this subsection and subsection (e)(5) in the case of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, conversion rights, or other circumstances where such modifications are appropriate to carry out the purposes of this subsection and subsection (e)(5), and

(B) regulations to prevent avoidance of the purposes of this subsection and subsection (e)(5) through the use of issuers other than C corporations, agreements to borrow amounts due under the debt instrument, or other arrangements.

(j) Limitation on deduction for interest on certain indebtedness

(1) Limitation

(A) In general

If this subsection applies to any corporation for any taxable year, no deduction shall be allowed under this chapter for disqualified interest paid or accrued by such corporation during such taxable year. The amount disallowed under the preceding sentence shall not exceed the corporation's excess interest expense for the taxable year.

(B) Disallowed amount carried to succeeding taxable year

Any amount disallowed under subparagraph (A) for any taxable year shall be treated as disqualified interest paid or accrued in the succeeding taxable year (and clause (ii) of paragraph (2)(A) shall not apply for purposes of applying this subsection to the amount so treated).

(2) Corporations to which subsection applies

(A) In general

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

(i) such corporation has excess interest expense for such taxable year, and

(ii) the ratio of debt to equity of such corporation as of the close of such taxable year (or on any other day during the taxable year as the Secretary may by regulations prescribe) exceeds 1.5 to 1.

(B) Excess interest expense

(i) In general

For purposes of this subsection, the term ''excess interest expense'' means the excess (if any) of—

(I) the corporation's net interest expense, over

(II) the sum of 50 percent of the adjusted taxable income of the corporation plus any excess limitation carryforward under clause (ii).

(ii) Excess limitation carryforward

If a corporation has an excess limitation for any taxable year, the amount of such excess limitation shall be an excess limitation carryforward to the 1st succeeding taxable year and to the 2nd and 3rd succeeding taxable years to the extent not previously taken into account under this clause. The amount of such a carryforward taken into account for any such succeeding taxable year shall not exceed the excess interest expense for such succeeding

taxable year (determined without regard to the carryforward from the taxable year of such excess limitation).

(iii) Excess limitation

For purposes of clause (ii), the term ''excess limitation'' means the excess (if any) of—

(I) 50 percent of the adjusted taxable income of the corporation, over

(II) the corporation's net interest expense.

(C) Ratio of debt to equity

For purposes of this paragraph, the term ''ratio of debt to equity'' means the ratio which the total indebtedness of the corporation bears to the sum of its money and all other assets reduced (but not below zero) by such total indebtedness. For purposes of the preceding sentence—

(i) the amount taken into account with respect to any asset shall be the adjusted basis thereof for purposes of determining gain,

(ii) the amount taken into account with respect to any indebtedness with original issue discount shall be its issue price plus the portion of the original issue discount previously accrued as determined under the rules of section 1272 (determined without regard to subsection (a)(7) or (b)(4) thereof), and

(iii) there shall be such other adjustments as the Secretary may by regulations prescribe.

(3) Disqualified interest

For purposes of this subsection, the term ''disqualified interest'' means—

(A) any interest paid or accrued by the taxpayer (directly or indirectly) to a related person if no tax is imposed by this subtitle with respect to such interest,

(B) any interest paid or accrued by the taxpayer with respect to any indebtedness to a person who is not a related person if—

(i) there is a disqualified guarantee of such indebtedness, and

(ii) no gross basis tax is imposed by this subtitle with respect to such interest, and

(C) any interest paid or accrued (directly or indirectly) by a taxable REIT subsidiary (as defined in section 856(*l*)) of a real estate investment trust to such trust.

(4) Related person

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term ''related person'' means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer.

(B) Special rule for certain partnerships

(i) In general

Any interest paid or accrued to a partnership which (without regard to this subparagraph) is a related person shall not be treated as paid or accrued to a related person if less than 10 percent of the profits and capital interests in such partnership are held by persons with respect to whom no tax is imposed by this subtitle on such interest. The preceding sentence shall not apply to any interest allocable to any partner in such partnership who is a related person to the taxpayer.

(ii) Special rule where treaty reduction

If any treaty between the United States and any foreign country reduces the rate of tax imposed by this subtitle on a partner's share of any interest paid or accrued to a partnership, such partner's interests in such partnership shall, for purposes of clause (i), be treated as held in part by a tax-exempt person and in part by a taxable person under rules similar to the rules of paragraph (5)(B).

(5) Special rules for determining whether interest is subject to tax

(A) Treatment of pass-thru entities

In the case of any interest paid or accrued to a partnership, the determination of whether any tax is imposed by this subtitle on such interest shall be made at the partner level. Rules similar to the rules of the preceding sentence shall apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(B) Interest treated as tax-exempt to extent of treaty reduction

If any treaty between the United States and any foreign country reduces the rate of tax imposed by this subtitle on any interest paid or accrued by the taxpayer, such interest shall be treated as interest on which no tax is imposed by this subtitle to the extent of the same proportion of such interest as—

(i) the rate of tax imposed without regard to such treaty, reduced by the rate of tax imposed under the treaty, bears to

(ii) the rate of tax imposed without regard to the treaty.

(6) Other definitions and special rules

For purposes of this subsection—

(A) Adjusted taxable income

The term ''adjusted taxable income'' means the taxable income of the taxpayer—

(i) computed without regard to—

(I) any deduction allowable under this chapter for the net interest expense,

(II) the amount of any net operating loss deduction under section 172,

(III) any deduction allowable under section 199, and

(IV) any deduction allowable for depreciation, amortization, or depletion, and

(ii) computed with such other adjustments as the Secretary may by regulations prescribe.

(B) Net interest expense

The term ''net interest expense'' means the excess (if any) of—

(i) the interest paid or accrued by the taxpayer during the taxable year, over

(ii) the amount of interest includible in the gross income of such taxpayer for such taxable year.

The Secretary may by regulations provide for adjustments in determining the amount of net interest expense.

(C) Treatment of affiliated group

All members of the same affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.

(D) Disqualified guarantee

(i) In general

Except as provided in clause (ii), the term ''disqualified guarantee'' means any guarantee by a related person which is—

(I) an organization exempt from taxation under this subtitle, or

(II) a foreign person.

(ii) Exceptions

The term ''disqualified guarantee'' shall not include a guarantee—

(I) in any circumstances identified by the Secretary by regulation, where the interest on the indebtedness would have been subject to a net basis tax if the interest had been paid to the guarantor, or

(II) if the taxpayer owns a controlling interest in the guarantor.

For purposes of subclause (II), except as provided in regulations, the term ''a controlling interest'' means direct or indirect ownership of at least 80 percent of the total voting power and value of all classes of stock of a corporation, or 80 percent of the profit and capital interests in any other entity. For purposes of the preceding sentence, the rules of paragraphs (1) and (5) of section 267(c) shall apply; except that such rules shall also apply to interest in entities other than corporations.

(iii) Guarantee

Except as provided in regulations, the term ''guarantee'' includes any arrangement under which a person (directly or indirectly through an entity or otherwise) assures, on a conditional or unconditional basis, the payment of another person's obligation under any indebtedness.

(E) Gross basis and net basis taxation

(i) Gross basis tax

The term ''gross basis tax'' means any tax imposed by this subtitle which is determined by reference to the gross amount of any item of income without any reduction for any deduction allowed by this subtitle.

(ii) Net basis tax

The term ''net basis tax'' means any tax imposed by this subtitle which is not a gross basis tax.

(7) Coordination with passive loss rules, etc.

This subsection shall be applied before sections 465 and 469.

(8) Treatment of corporate partners

Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—

(A) such corporation's distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

(B) such corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

(C) such corporation's share of the liabilities of such partnership shall be treated as liabilities of such corporation.

(9) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including—

(A) such regulations as may be appropriate to prevent the avoidance of the purposes of this subsection,

(B) regulations providing such adjustments in the case of corporations which are members of an affiliated group as may be appropriate to carry out the purposes of this subsection,

(C) regulations for the coordination of this subsection with section 884, and

(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or interest expense.

(k) Section 6166 interest

No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.

***(l)* Disallowance of deduction on certain debt instruments of corporations**

(1) In general

No deduction shall be allowed under this chapter for any interest paid or accrued on a disqualified debt instrument.

(2) Disqualified debt instrument

For purposes of this subsection, the term ''disqualified debt instrument'' means any indebtedness of a corporation which is payable in equity of the issuer or a related party or equity held by the issuer (or any related party) in any other person.

(3) Special rules for amounts payable in equity

For purposes of paragraph (2), indebtedness shall be treated as payable in equity of the issuer or any other person only if—

(A) a substantial amount of the principal or interest is required to be paid or converted, or at the option of the issuer or a related party is payable in, or convertible into, such equity,

(B) a substantial amount of the principal or interest is required to be determined, or at the option of the issuer or a related party is determined, by reference to the value of such equity, or

(C) the indebtedness is part of an arrangement which is reasonably expected to result

in a transaction described in subparagraph (A) or (B).

For purposes of this paragraph, principal or interest shall be treated as required to be so paid, converted, or determined if it may be required at the option of the holder or a related party and there is a substantial certainty the option will be exercised.

(4) Capitalization allowed with respect to equity of persons other than issuer and related parties

If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.

(5) Exception for certain instruments issued by dealers in securities

For purposes of this subsection, the term ''disqualified debt instrument'' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term ''dealer in securities'' has the meaning given such term by section 475.

(6) Related party

For purposes of this subsection, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations preventing avoidance of this subsection through the use of an issuer other than a corporation.

(m) Interest on unpaid taxes attributable to nondisclosed reportable transactions

No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A)[2] is not met.

(n) Cross references

(1) For disallowance of certain amounts paid in connection with insurance, endowment, or annuity contracts, see section 264.

(2) For disallowance of deduction for interest relating to tax-exempt income, see section 265(a)(2).

(3) For disallowance of deduction for carrying charges chargeable to capital account, see section 266.

(4) For disallowance of interest with respect to transactions between related taxpayers, see section 267.

(5) For treatment of redeemable ground rents and real property held subject to liabilities under redeemable ground rents, see section 1055.

[2] See References in Text note below.

(Aug. 16, 1954, ch. 736, 68A Stat. 46; Pub. L. 88–9, § 1(a), (c), Apr. 10, 1963, 77 Stat. 6, 7; Pub. L. 88–272, title II, § 224(c), Feb. 26, 1964, 78 Stat. 79; Pub. L. 91–172, title II, § 221(a), Dec. 30, 1969, 83 Stat. 574; Pub. L. 92–178, title III, § 304(a)(2), (b)(2), (d), Dec. 10, 1971, 85 Stat. 523, 524; Pub. L. 94–455, title II, §§ 205(c)(3), 209(a), title XIX, §§ 1901(b)(3)(K), (8)(C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1542, 1793, 1794, 1834; Pub. L. 97–248, title II, § 231(b), title III, § 310(b)(2), Sept. 3, 1982, 96 Stat. 498, 596; Pub. L. 97–354, § 5(a)(18), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 98–369, div. A, title I, §§ 42(a)(3), 56(b), 127(f), 128(c), title VI, § 612(c), July 18, 1984, 98 Stat. 556, 574, 652, 654, 911; Pub. L. 99–514, title V, § 511(a), (b), title IX, § 902(e)(1), title XIII, § 1301(j)(3), title XVIII, §§ 1803(a)(4), 1810(e)(1), Oct. 22, 1986, 100 Stat. 2244, 2246, 2382, 2657, 2793, 2825; Pub. L. 100–203, title X, §§ 10102(a), (b), 10212(b), Dec. 22, 1987, 101 Stat. 1330–384, 1330–386, 1330–406; Pub. L. 100–647, title I, §§ 1005(c)(1)–(9), (12), 1006(u)(1), 1009(b)(6), title II, § 2004(b)(1), Nov. 10, 1988, 102 Stat. 3390–3392, 3427, 3449, 3598; Pub. L. 101–239, title VII, §§ 7202(a), (b), 7210(a), Dec. 19, 1989, 103 Stat. 2330, 2331, 2339; Pub. L. 101–508, title XI, § 11701(b), (c), Nov. 5, 1990, 104 Stat. 1388–507; Pub. L. 103–66, title XIII, §§ 13206(d)(1), 13228(a)–(c), Aug. 10, 1993, 107 Stat. 467, 494, 495; Pub. L. 104–188, title I, §§ 1703(n)(4), 1704(f)(2)(A), (B), Aug. 20, 1996, 110 Stat. 1877, 1879; Pub. L. 105–34, title III, § 312(d)(1), title V, § 503(b)(2), title X, § 1005(a), title XVI, § 1604(g)(1), Aug. 5, 1997, 111 Stat. 839, 853, 911, 1099; Pub. L. 105–277, div. J, title IV, § 4003(a)(1), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 106–170, title V, § 544, Dec. 17, 1999, 113 Stat. 1944; Pub. L. 108–27, title III, § 302(b), May 28, 2003, 117 Stat. 762; Pub. L. 108–357, title VIII, §§ 838(a), 841(a), 845(a)–(d), Oct. 22, 2004, 118 Stat. 1596, 1597, 1600, 1601; Pub. L. 109–135, title IV, § 403(a)(15), Dec. 21, 2005, 119 Stat. 2619; Pub. L. 109–222, title V, § 501(a), (b), May 17, 2006, 120 Stat. 354; Pub. L. 109–432, div. A, title IV, § 419(a), (b), Dec. 20, 2006, 120 Stat. 2967; Pub. L. 110–142, § 3(a), Dec. 20, 2007, 121 Stat. 1804; Pub. L. 111–5, div. B, title I, § 1232(a), (b), Feb. 17, 2009, 123 Stat. 341; Pub. L. 111–147, title V, § 502(a)(1), (2)(B), (C), (c), Mar. 18, 2010, 124 Stat. 107, 108; Pub. L. 111–312, title VII, § 759(a), Dec. 17, 2010, 124 Stat. 3323.)

AMENDMENT OF SECTION

Pub. L. 111–147, title V, § 502(a)(1), (2)(B), (C), (c), (f), Mar. 18, 2010, 124 Stat. 107, 108, provided that, applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, subsection (f) of this section is amended as follows:

(1) in paragraph (2):

(A) in subparagraph (A), by inserting ''or'' at the end of clause (ii), by striking '', or'' at the end of clause (iii) and inserting a period, and by striking clause (iv);

(B) by striking out subparagraph (B) and redesignating subparagraph (C) as (B);

(C) by striking out '', and subparagraph (B),'' in introductory provisions of subparagraph (B), as resdesignated; and

(D) by amending clause (i) of subparagraph (B), as redesignated, to read as follows:

''(i) such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, and''; and

(2) in paragraph (3), by inserting before the period at the end the following: '', except that a dematerialized book entry system or other book entry system specified by the Secretary shall be treated as a book entry system described in such section''.

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

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsec. (h)(4)(E)(ii), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

Section 6664(d)(2)(A), referred to in subsec. (m), was redesignated as section 6664(d)(3)(A) by Pub. L. 111–152, title I, §1409(c)(2)(A), Mar. 30, 2010, 124 Stat. 1069.

AMENDMENTS

2010—Subsec. (h)(3)(E)(iv)(I). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2010''.

2009—Subsec. (e)(5)(F), (G). Pub. L. 111–5, §1232(a), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (i)(1). Pub. L. 111–5, §1232(b), in concluding provisions, inserted ''(i)'' before ''permit a rate'' and '', or (ii) permit, on a temporary basis, a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the Secretary determines that such rate is appropriate in light of distressed conditions in the debt capital markets'' before period at end.

2007—Subsec. (h)(3)(E)(iv)(I). Pub. L. 110–142 substituted ''December 31, 2010'' for ''December 31, 2007''.

2006—Subsec. (h)(3)(E). Pub. L. 109–432, §419(a), added subpar. (E).

Subsec. (h)(4)(E), (F). Pub. L. 109–432, §419(b), added subpars. (E) and (F).

Subsec. (j)(8). Pub. L. 109–222, §501(a), added par. (8). Former par. (8) redesignated (9).

Subsec. (j)(9). Pub. L. 109–222 redesignated par. (8) as (9) and added subpar. (D).

2005—Subsec. (j)(6)(A)(i)(III), (IV). Pub. L. 109–135 added subcl. (III) and redesignated former subcl. (III) as (IV).

2004—Subsec. (e)(3)(B), (C). Pub. L. 108–357, §841(a), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (*l*)(2). Pub. L. 108–357, §845(a), inserted ''or equity held by the issuer (or any related party) in any other person'' after ''or a related party''.

Subsec. (*l*)(3). Pub. L. 108–357, §845(d), substituted ''or any other person'' for ''or a related party'' in introductory provisions.

Subsec. (*l*)(4) to (7). Pub. L. 108–357, §845(b), (c), added pars. (4) and (5) and redesignated former pars. (4) and (5) as (6) and (7), respectively.

Subsecs. (m), (n). Pub. L. 108–357, §838(a), added subsec. (m) and redesignated former subsec. (m) as (n).

2003—Subsec. (d)(4)(B). Pub. L. 108–27, §§302(b), 303, temporarily inserted at end ''Such term shall include qualified dividend income (as defined in section 1(h)(11)(B)) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.'' See Effective and Termination Dates of 2003 Amendment note below.

1999—Subsec. (j)(3)(C). Pub. L. 106–170 added subpar. (C).

1998—Subsec. (h)(2)(F). Pub. L. 105–277 added subpar. (F).

1997—Subsec. (h)(2)(E). Pub. L. 105–34, §503(b)(2)(B), struck out ''or 6166 or under section 6166A (as in effect before its repeal by the Economic Recovery Tax Act of 1981)'' after ''section 6163''.

Subsec. (h)(4)(A)(i)(I). Pub. L. 105–34, §312(d)(1), substituted ''section 121'' for ''section 1034''.

Subsec. (j)(2)(B)(iii). Pub. L. 105–34, §1604(g)(1), substituted ''clause (ii)'' for ''clause (i)'' in introductory provisions.

Subsec. (k). Pub. L. 105–34, §503(b)(2)(A), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 105–34, §1005(a), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 105–34, §503(b)(2)(A), redesignated subsec. (k) as (*l*).

Subsec. (m). Pub. L. 105–34, §1005(a), redesignated subsec. (*l*) as (m).

1996—Subsec. (j)(1)(B). Pub. L. 104–188, §1704(f)(2)(A), inserted before period at end ''(and clause (ii) of paragraph (2)(A) shall not apply for purposes of applying this subsection to the amount so treated)''.

Subsec. (j)(6)(E)(ii). Pub. L. 104–188, §1703(n)(4), which directed that cl. (ii) be amended by substituting ''which is'' for ''which is a'', could not be executed, because ''which is a'' does not appear.

Subsec. (j)(7), (8). Pub. L. 104–188, §1704(f)(2)(B), added par. (7) and redesignated former par. (7) as (8).

1993—Subsec. (d)(4)(B). Pub. L. 103–66, §13206(d)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The term 'investment income' means the sum of—

''(i) gross income (other than gain taken into account under clause (ii)) from property held for investment, and

''(ii) any net gain attributable to the disposition of property held for investment.''

Subsec. (j). Pub. L. 103–66, §13228(c)(2), substituted ''for interest on certain indebtedness'' for ''for certain interest paid by corporation to related person'' in heading.

Subsec. (j)(3). Pub. L. 103–66, §13228(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'disqualified interest' means any interest paid or accrued by the taxpayer (directly or indirectly) to a related person if no tax is imposed by this subtitle with respect to such interest.

''(B) EXCEPTION FOR CERTAIN EXISTING INDEBTEDNESS.—The term 'disqualified interest' does not include any interest paid or accrued under indebtedness with a fixed term—

''(i) which was issued on or before July 10, 1989, or

''(ii) which was issued after such date pursuant to a written binding contract in effect on such date and all times thereafter before such indebtedness was issued.''

Subsec. (j)(5)(B). Pub. L. 103–66, §13228(c)(1), struck out ''to a related person'' after ''by the taxpayer'' in introductory provisions.

Subsec. (j)(6)(D), (E). Pub. L. 103–66, §13228(b), added subpars. (D) and (E).

1990—Subsec. (e)(5)(A). Pub. L. 101–508, §11701(b)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''For purposes of clause (ii), rules similar to the rules of subsection (i)(3)(B) shall apply in determining the time when the original issue discount is paid.''

Subsec. (i)(3). Pub. L. 101–508, §11701(b)(2)(B), inserted sentence at end.

Subsec. (i)(3)(B). Pub. L. 101–508, §11701(b)(2)(A), struck out ''(or stock)'' after ''obligation'' wherever appearing.

Subsec. (j)(2)(A)(ii). Pub. L. 101–508, §11701(c)(2), substituted ''or on any other day'' for ''and on such other days''.

Subsec. (j)(2)(C). Pub. L. 101–508, §11701(c)(1), substituted ''reduced (but not below zero) by such'' for ''less such'' in introductory provisions.

1989—Subsec. (e)(5), (6). Pub. L. 101–239, §7202(a), added par. (5) and redesignated former par. (5) as (6).

Subsec. (i). Pub. L. 101–239, §7202(b), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 101–239, §7210(a), added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 101–239, §7202(b), redesignated subsec. (i) as (j).

Subsec. (k). Pub. L. 101–239, §7210(a), redesignated subsec. (j) as (k).

1988—Subsec. (d)(3)(A). Pub. L. 100–647, §1005(c)(1), substituted ''properly allocable to'' for ''incurred or continued to purchase or carry''.

Subsec. (d)(4)(B). Pub. L. 100–647, §1005(c)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'investment income' means the sum of—

''(i) gross income (other than gain described in clause (ii)) from property held for investment, and

''(ii) any net gain attributable to the disposition of property held for investment,

but only to the extent such amounts are not derived from the conduct of a trade or business.''

Subsec. (d)(6)(A). Pub. L. 100–647, §1005(c)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The amount of interest disallowed under this subsection for any such taxable year shall be equal to the sum of—

''(i) the applicable percentage of the amount which (without regard to this paragraph) is not allowed as a deduction under this subsection for the taxable year to the extent such amount does not exceed the ceiling amount,

''(ii) the amount which (without regard to this paragraph) is not allowed as a deduction under this subsection in excess of the ceiling amount, plus

''(iii) the amount of any carryforward to such taxable year under paragraph (2) with respect to which a deduction was disallowed under this subsection for a preceding taxable year.

For purposes of this subparagraph, the amount under clause (i) or (ii) shall be computed without regard to the amount described in clause (iii).''

Subsec. (e)(2)(B). Pub. L. 100–647, §1006(u)(1), substituted ''paragraph (7)'' for ''paragraph (6)''.

Subsec. (h)(2)(A). Pub. L. 100–647, §1005(c)(4), substituted ''properly allocable to'' for ''incurred or continued in connection with the conduct of''.

Subsec. (h)(2)(E). Pub. L. 100–647, §1005(c)(12), inserted ''or under section 6166A (as in effect before its repeal by the Economic Recovery Tax Act of 1981)'' before period at end.

Subsec. (h)(3)(C). Pub. L. 100–647, §1005(c)(5), effective as if enacted immediately before enactment of Pub. L. 100–203 (see 1987 Amendment note below), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The amount under subparagraph (B)(ii)(I) at any time after August 16, 1986, shall not be less than the outstanding aggregate principal amount (as of such time) of indebtedness which was incurred on or before August 16, 1986, and which was secured by the qualified residence on August 16, 1986.''

Subsec. (h)(4). Pub. L. 100–647, §1005(c)(6)(A), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), amended heading by substituting ''Other definitions and special rules—For purposes of this subsection—'' for ''Other definitions and special rules''.

Subsec. (h)(4)(A). Pub. L. 100–647, §1005(c)(6)(B)(i), (7), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), amended subpar. (A) by striking out ''For purposes of this subsection—'' after ''Qualified residence'' in introductory provisions, ''used or'' after ''Residence not'' in cl. (iii) heading, and ''or use'' after ''does not rent'' in cl. (iii) text.

Subsec. (h)(4)(B). Pub. L. 100–647, §1005(c)(6)(B)(ii), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), amended subpar. (B) by substituting ''Any'' for ''For purposes of this paragraph, any''.

Subsec. (h)(4)(C), (D). Pub. L. 100–647, §1005(c)(8), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), par. (4) added subpars. (C) and (D).

Subsec. (h)(5). Pub. L. 100–647, §2004(b)(1), redesignated par. (6) as (5).

Subsec. (h)(6). Pub. L. 100–647, §2004(b)(1), redesignated par. (6) as (5).

Pub. L. 100–647, §1005(c)(9), substituted ''but for this paragraph'' for ''but for this subsection''.

Subsec. (i)(2). Pub. L. 100–647, §1009(b)(6), made technical correction to directory language of Pub. L. 99–514, §902(e)(1), see 1986 Amendment note below.

1987—Subsec. (d)(4)(E). Pub. L. 100–203, §10212(b), substituted ''section 469(m)'' for ''section 469(*l*)''.

Subsec. (h)(3). Pub. L. 100–203, §10102(a), amended par. (3) generally. Prior to amendment (see 1988 Amendment note above), par. (3) read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified residence interest' means interest which is paid or accrued during the taxable year on indebtedness which is secured by any property which (at the time such interest is paid or accrued) is a qualified residence of the taxpayer.

''(B) LIMITATION ON AMOUNT OF INTEREST.—The term 'qualified residence interest' shall not include any interest paid or accrued on indebtedness secured by any qualified residence which is allocable to that portion of the principal amount of such indebtedness which, when added to the outstanding aggregate principal amount of all other indebtedness previously incurred and secured by such qualified residence, exceeds the lesser of—

''(i) the fair market value of such qualified residence, or

''(ii) the sum of—

''(I) the taxpayer's basis in such qualified residence (adjusted only by the cost of any improvements to such residence), plus

''(II) the aggregate amount of qualified indebtedness of the taxpayer with respect to such qualified residence.

''(C) COST NOT LESS THAN BALANCE OF INDEBTEDNESS INCURRED ON OR BEFORE AUGUST 16, 1986.—

''(i) IN GENERAL.—The amount under subparagraph (B)(ii)(I) at any time after August 16, 1986, shall not be less than the outstanding principal amount (as of such time) of indebtedness—

''(I) which was incurred on or before August 16, 1986, and which was secured by the qualified residence on August 16, 1986, or

''(II) which is secured by the qualified residence and was incurred after August 16, 1986, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

''(ii) LIMITATION ON PERIOD OF REFINANCING.—Subclause (II) of clause (i) shall not apply to any indebtedness after—

''(I) the expiration of the term of the indebtedness described in clause (i)(I), or

''(II) if the principal of the indebtedness described in clause (i)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such refinancing).

''(D) TIME FOR DETERMINATION.—Except as provided in regulations, any determination under subparagraph (B) shall be made as of the time the indebtedness is incurred.''

Subsec. (h)(4), (5). Pub. L. 100–203, §10102(b), redesignated par. (5) as (4) and struck out former par. (4) which defined ''qualified indebtedness'' for purposes of this subsection.

1986—Subsec. (d). Pub. L. 99–514, §511(a), substituted ''Limitation on investment interest'' for ''Limitation on interest on investment indebtedness'' in heading, and amended text generally, revising and restating as pars. (1) to (6) provisions of former pars. (1) to (7).

Subsec. (e)(2)(C). Pub. L. 99–514, §1803(a)(4), added subpar. (C).

Subsec. (e)(3)(A). Pub. L. 99–514, § 1810(e)(1)(A), inserted ''The preceding sentence shall not apply to the extent that the original issue discount is effectively connected with the conduct by such foreign related person of a trade or business within the United States unless such original issue discount is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.''

Subsec. (e)(5). Pub. L. 99–514, § 1810(e)(1)(B), redesignated par. (4), relating to cross references, as (5).

Subsec. (f)(3). Pub. L. 99–514, § 1301(j)(3), substituted ''section 149(a)(3)'' for ''section 103(j)(3)''.

Subsec. (h). Pub. L. 99–514, § 511(b), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i)(2). Pub. L. 99–514, § 902(e)(1), as amended by Pub. L. 100–647, § 1009(b)(6), substituted ''section 265(a)(2)'' for ''section 265(2)''.

Pub. L. 99–514, § 511(b), redesignated former subsec. (h) as (i).

1984—Subsec. (d)(3)(D). Pub. L. 98–369, § 56(b), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (e)(1). Pub. L. 98–369, § 42(a)(3), substituted ''debt instrument'' for ''bond'' in two places and struck out ''by an issuer (other than a natural person)'' before '', the portion of the original issue''.

Subsec. (e)(2). Pub. L. 98–369, § 42(a)(3), substituted provisions relating to debt instruments for provisions relating to bonds.

Subsec. (e)(3). Pub. L. 98–369, § 128(c), added par. (3) relating to special rule for original issue discount on obligation held by related foreign person. Former par. (3), relating to exceptions, redesignated (4).

Pub. L. 98–369, § 42(a)(3), added par. (3) relating to exceptions.

Subsec. (e)(4). Pub. L. 98–369, § 128(c), redesignated par. (3), relating to exceptions, as (4).

Pub. L. 98–369, § 42(a)(3), added par. (4) relating to cross references.

Subsec. (f)(2)(C)(i). Pub. L. 98–369, § 127(f), redesignated existing provision as subcl. (I), and in subcl. (I) as so redesignated, inserted reference to subpar. (A) and substituted ''or'' for ''and'', and added subcl. (II).

Subsecs. (g), (h). Pub. L. 98–369, § 612(c), added subsec. (g) and redesignated former subsec. (g) as (h).

1982—Subsec. (d)(4). Pub. L. 97–354 redesignated subpar. (D) as (B). Former subpars. (B) and (C), relating to partnerships and shareholders of electing small business corporations, respectively, were struck out.

Subsec. (e). Pub. L. 97–248, § 231(b), added subsec. (e) relating to original issue discount. Former subsec. (e), setting forth cross references, redesignated (f).

Pub. L. 97–248, § 231(b), redesignated former subsec. (e), setting forth cross references, as (f).

Subsec. (f). Pub. L. 97–248, § 310(b)(2), added subsec. (f) relating to the requirement that obligations be in registered form to be tax-exempt. Former subsec. (f), setting forth cross references, redesignated (g).

Subsec. (g). Pub. L. 97–248, § 310(b)(2), redesignated former subsec. (f), setting forth cross references, as (g).

1976—Subsec. (b)(1). Pub. L. 94–455, § 1901(b)(8)(C), substituted ''organization described in section 170(b)(1)(A)(ii) and which is provided for a student of such organization'' for ''institution (as defined in section 151(e)(4)) and which is provided for a student of such institution''.

Subsec. (d)(1). Pub. L. 94–455, § 209(a)(1), among other changes, substituted in subpar. (A) ''$10,000'' for ''$25,000'' and ''$5,000'' for ''$12,500'', struck out subpar. (C) relating to the excess of net long-term capital gain over short-term capital loss and subpar. (D) relating to the excess of investment interest over amounts in subpar. (A), and in provisions following lettered paragraphs substituted ''$10,000'' for ''$25,000'' and struck out provisions relating to the determination of the amount referred to in subpar. (C).

Subsec. (d)(2). Pub. L. 94–455, § 209(a)(1), among other changes, struck out provisions relating to the limitation on the amount of interest allowable by this par. and to reduction of disallowed investment interest for capital gain deduction purposes.

Subsec. (d)(3)(A). Pub. L. 94–455, § 209(a)(2), inserted provision relating to determination of the amount of net investment income where taxpayer has investment interest for taxable year to which this subsection applies.

Subsec. (d)(3)(B)(iii). Pub. L. 94–455, §§ 205(c)(3), 1901(b)(3)(K), substituted ''1250, and 1254'' for ''and 1250'', and ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''. Section 205(c)(3) of Pub. L. 94–455, which directed the amendment of subsec. (d)(3)(A)(iii), was executed by amending subsec. (d)(3)(B)(iii) to reflect the probable intent of Congress.

Subsec. (d)(3)(E). Pub. L. 94–455, § 209(a)(3), substituted ''limitation in paragraph (1)'' for ''limitations in paragraphs (1) and (2)(A)''.

Subsec. (d)(4)(B), (C). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(5). Pub. L. 94–455, § 209(a)(4), (5), redesignated par. (6) as (5) and inserted provision relating to the application of this paragraph after Dec. 31, 1975, on an allocation basis rather than a specific item basis. Former par. (5), relating to capital gains treatment of investment interest, was struck out.

Pub. L. 94–455, § 1901(b)(3)(K), directed the amendment of par. (5) by substituting ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231'', such par. (5) having been struck out by Pub. L. 94–455, § 209(a)(4).

Subsec. (d)(6). Pub. L. 94–455, §§ 209(a)(4), 1906(b)(13)(A), redesignated par. (7) as (6) and struck out in provision following subpar. (B) ''or his delegate'' after ''Secretary''. Former par. (6) redesignated (5).

Subsec. (d)(7). Pub. L. 94–455, § 209(a)(6), added par. (7). Former par. (7) redesignated (6).

1971—Subsec. (d)(1)(B). Pub. L. 92–178, § 304(b)(2), inserted ''the amount (if any) by which the deductions allowable under this section (determined without regard to this subsection) and sections 162, 164(a)(1) or (2), or 212 attributable to property of the taxpayer subject to a net lease exceeds the rental income produced by such property for the property year, plus'' after ''plus''.

Subsec. (d)(3)(C). Pub. L. 92–178, § 304(d), inserted reference to section 162.

Subsec. (d)(4)(A)(i). Pub. L. 92–178, § 304(a)(2)(A), inserted ''of the lessor'' after ''deductions'' and ''(other than rents and reimbursed amounts with respect to such property)'' after ''section 162''.

Subsec. (d)(7). Pub. L. 92–178, § 304(a)(2)(B), added par. (7).

1969—Subsecs. (d), (e). Pub. L. 91–172 added subsec. (d). Former subsec. (d) redesignated (e).

1964—Subsec. (b)(1). Pub. L. 88–272 included the purchase of educational services, and defined ''educational services''.

1963—Subsecs. (c), (d). Pub. L. 88–9, § 1(a), (c), added subsec. (c), redesignated former subsec. (c) as (d) and added par. (5).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 759(b), Dec. 17, 2010, 124 Stat. 3323, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or accrued after December 31, 2010.''

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1232(c), Feb. 17, 2009, 123 Stat. 341, provided that:

''(1) SUSPENSION.—The amendments made by subsection (a) [amending this section] shall apply to obligations issued after August 31, 2008, in taxable years ending after such date.

''(2) INTEREST RATE AUTHORITY.—The amendments made by subsection (b) [amending this section] shall

apply to obligations issued after December 31, 2009, in taxable years ending after such date.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §3(b), Dec. 20, 2007, 121 Stat. 1804, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or accrued after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §419(d), Dec. 20, 2006, 120 Stat. 2968, provided that: ''The amendments made by this section [amending this section and section 6050H of this title] shall apply to amounts paid or accrued after December 31, 2006.''

Pub. L. 109–222, title V, §501(c), May 17, 2006, 120 Stat. 354, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning on or after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §838(b), Oct. 22, 2004, 118 Stat. 1597, provided that: ''The amendments made by this section [amending this section] shall apply to transactions in taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, §841(c), Oct. 22, 2004, 118 Stat. 1598, provided that: ''The amendments made by this section [amending this section and section 267 of this title] shall apply to payments accrued on or after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, §845(e), Oct. 22, 2004, 118 Stat. 1601, provided that: ''The amendments made by this section [amending this section] shall apply to debt instruments issued after October 3, 2004.''

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 2000, see section 546(a) of Pub. L. 106–170, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Section 503(d) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 2053, 6166, and 6601 of this title] shall apply to estates of decedents dying after December 31, 1997.

''(2) ELECTION.—In the case of the estate of any decedent dying before January 1, 1998, with respect to which there is an election under section 6166 of the Internal Revenue Code of 1986, the executor of the estate may elect to have the amendments made by this section apply with respect to installments due after the effective date of the election; except that the 2-percent portion of such installments shall be equal to the amount which would be the 4-percent portion of such installments without regard to such election. Such an election shall be made before January 1, 1999 in the manner prescribed by the Secretary of the Treasury and, once made, is irrevocable.''

Section 1005(b) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to disqualified debt instruments issued after June 8, 1997.

''(2) TRANSITION RULE.—The amendment made by this section shall not apply to any instrument issued after June 8, 1997, if such instrument is—

''(A) issued pursuant to a written agreement which was binding on such date and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

''(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the issuance.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(n)(4) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

Section 1704(f)(2)(C) of Pub. L. 104–188 provided that: ''The amendments made by this paragraph [amending this section] shall apply as if included in the amendments made by section 7210(a) of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13206(d)(1) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13206(d)(3) of Pub. L. 103–66 set out as a note under section 1 of this title.

Section 13228(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to interest paid or accrued in taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7202(c) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to instruments issued after July 10, 1989.

''(2) EXCEPTIONS.—

''(A) The amendments made by this section shall not apply to any instrument if—

''(i) such instrument is issued in connection with an acquisition—

''(I) which is made on or before July 10, 1989,

''(II) for which there was a written binding contract in effect on July 10, 1989, and at all times thereafter before such acquisition, or

''(III) for which a tender offer was filed with the Securities and Exchange Commission on or before July 10, 1989,

''(ii) the term of such instrument is not greater than—

''(I) the term specified in the written documents described in clause (iii), or

''(II) if no term is determined under subclause (I), 10 years, and

''(iii) the use of such instrument in connection with such acquisition (and the maximum amount of proceeds from such instrument) was determined on or before July 10, 1989, and such determination is evidenced by written documents—

''(I) which were transmitted on or before July 10, 1989, between the issuer and any governmental regulatory bodies or prospective parties to the issuance or acquisition, and

''(II) which are customarily used for the type of acquisition or financing involved.

''(B) The amendments made by this section shall not apply to any instrument issued pursuant to the terms of a debt instrument issued on or before July 10, 1989, or described in subparagraph (A) or (D).

''(C) The amendments made by this section shall not apply to any instrument issued to refinance an original issue discount debt instrument to which the amendments made by this section do not apply if—

''(i) the maturity date of the refinancing instrument is not later than the maturity date of the refinanced instrument,

''(ii) the issue price of the refinancing instrument does not exceed the adjusted issue price of the refinanced instrument,

''(iii) the stated redemption price at maturity of the refinancing instrument is not greater than the stated redemption price at maturity of the refinanced instrument, and

''(iv) the interest payments required under the refinancing instrument before maturity are not less than (and are paid not later than) the interest payments required under the refinanced instrument.

''(D) The amendments made by this section shall not apply to instruments issued after July 10, 1989, pursuant to a reorganization plan in a title 11 or similar case (as defined in section 368(a)(3) of the Internal Revenue Code of 1986) if the amount of proceeds of such instruments, and the maturities of such instruments, do not exceed the amount or maturities specified in the last reorganization plan filed in such case on or before July 10, 1989.''

Section 7210(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to interest paid or accrued in taxable years beginning after July 10, 1989.

''(2) SPECIAL RULE FOR DEMAND LOANS, ETC.—In the case of any demand loan (or other loan without a fixed term) which was outstanding on July 10, 1989, interest on such loan to the extent attributable to periods before September 1, 1989, shall not be treated as disqualified interest for purposes of section 163(j) of the Internal Revenue Code of 1986 (as added by subsection (a)).''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1005(c)(13) of Pub. L. 100–647 provided that: ''For purposes of applying the amendments made by this subsection [amending this section and sections 467, 1255, and 7872 of this title] and the amendments made by section 10102 of the Revenue Act of 1987 [section 10102 of Pub. L. 100–203, amending this section], the provisions of this subsection shall be treated as having been enacted immediately before the enactment of the Revenue Act of 1987.''

Amendment by sections 1006(u)(1) and 1009(b)(6) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(b)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10102(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987.''

Amendment by section 10212(b) of Pub. L. 100–203 effective as if included in the amendments made by section 501 of the Tax Reform Act of 1986, Pub. L. 99–514, see section 10212(c) of Pub. L. 100–203, set out as a note under section 58 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 511(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 467, 703, 1255, 1363, and 7872 of this title] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 902(e)(1) of Pub. L. 99–514 applicable to taxable years ending after Dec. 31, 1986, with certain exceptions and qualifications, see section 902(f) of Pub. L. 99–514, set out as a note under section 265 of this title.

Amendment by section 1301(j)(3) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by sections 1803(a)(4) and 1810(e)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(3) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Section 56(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 263 and 265 of this title] shall apply to short sales after the date of enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Amendment by section 127(f) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 128(c) of Pub. L. 98–369 applicable to obligations issued after June 9, 1984, see section 128(d)(2) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 612(c) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by Pub. L. 97–248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97–248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(3) of Pub. L. 94–455 applicable with respect to taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as an Effective Date note under section 1254 of this title.

Section 209(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975.

''(2) INDEBTEDNESS INCURRED BEFORE SEPTEMBER 11, 1975.—In the case of indebtedness attributable to a specific item of property which—

''(A) is for a specified term, and

''(B) was incurred before September 11, 1975, or is incurred after September 10, 1975, pursuant to a written contract or commitment which on September 11, 1975, and at all times thereafter before the incurring of such indebtedness, is binding on the taxpayer,

the amendments made by this section shall not apply, but section 163(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the enactment of this Act [Oct. 4, 1976]) shall apply. For purposes of the preceding sentence, so much of the net investment income (as defined in section 163(d)(3)(A) of such Code) for any taxable year as is not taken into account under section 163(d) of such Code, as amended by this Act, by reason of the last sentence of section 163(d)(3)(A) of such Code, shall be taken into account for purposes of applying such section as in effect before the date of enactment of this Act [Oct. 4, 1976] with respect to interest on indebtedness referred to in the preceding sentence.''

Amendment by section 1901(b)(8)(C), (3)(K) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 304(e) of Pub. L. 92–178 provided that: ''The amendments made by this section to section 57 of the Internal Revenue Code of 1954 shall apply to taxable years beginning after December 31, 1969. The amendments made by this section to section 163 of such Code shall apply to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 221(b) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 224(d) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) [enacting section 483 of this title] and (b) [amending the analysis preceding section 481 of this title] shall apply to payments made after December 31, 1963, on account of sales or exchanges of property occurring after June 30, 1963, other than any sale or exchange made pursuant to a binding written contract (including an irrevocable written option) entered into before July 1, 1963. The amendments made by subsection (c) [amending this section] shall apply to payments made during taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1963 AMENDMENT

Subsec. (c) effective as of Jan. 1, 1962, and applicable with respect to taxable years ending on or after such date, see section 2 of Pub. L. 88–9, set out as an Effective Date note under section 1055 of this title.

APPLICATION OF SUBSECTION (h) TO TAXABLE YEARS BEGINNING IN 1987

Section 1005(c)(14) of Pub. L. 100–647 provided that:

''(A) For purposes of applying section 163(h) of the 1986 Code to any taxable year beginning during 1987, if, incident to a divorce or legal separation—

''(i) an individual acquires the interest of a spouse or former spouse in a qualified residence in a transfer to which section 1041 of the 1986 Code applies, and

''(ii) such individual incurs indebtedness which is secured by such qualified residence,

the amount determined under paragraph (3)(B)(ii)(I) of section 163(h) of the 1986 Code (as in effect before the amendments made by the Revenue Act of 1987 [Pub. L. 100–203, title X]) with respect to such qualified residence shall be increased by the amount determined under subparagraph (B).

''(B) The amount determined under this subparagraph shall be equal to the excess (if any) of—

''(i) the lesser of the amount of the indebtedness described in subparagraph (A)(ii), or the fair market value of the spouse's or former spouse's interest in the qualified residence as of the time of the transfer, over

''(ii) the basis of the spouse or former spouse in such interest in such residence (adjusted only by the cost of any improvements to such residence).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR TREATMENT OF CERTAIN INCOME FROM S CORPORATIONS

Section 1066 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—If—

''(1) a corporation had an election in effect under subchapter S of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for the taxable years of such corporation beginning in 1982, 1983, and 1984, and

''(2) a shareholder of such corporation makes an election to have this section apply,

then any qualified income which such shareholder takes into account by reason of holding stock in such corporation for any taxable year of such corporation beginning in 1983 or 1984 shall be treated for purposes of section 163(d) of the Internal Revenue Code of 1986 as such income would have been treated but for the enactment of the Subchapter S Revision Act of 1982 [Pub. L. 97–354, see Tables for classification].

''(b) QUALIFIED INCOME.—For purposes of subsection (a), the term 'qualified income' means any income other than income which is attributable to personal services performed by the shareholder for the corporation.

''(c) ELECTION.—The election under subsection (a)(2) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe.''

TRANSITIONAL RULE

For provision that, for purposes of amendments by section 231(b) of Pub. L. 97–248, any evidence of indebtedness issued pursuant to a written commitment which was binding on July 1, 1982, and at all times thereafter be treated as issued on July 1, 1982, see section 231(e) of Pub. L. 97–248, set out as a note under section 1232A of this title.

§ 164. Taxes

(a) General rule

Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued:

(1) State and local, and foreign, real property taxes.

(2) State and local personal property taxes.

(3) State and local, and foreign, income, war profits, and excess profits taxes.

(4) The GST tax imposed on income distributions.

(5) The environmental tax imposed by section 59A.

(6) Qualified motor vehicle taxes.

In addition, there shall be allowed as a deduction State and local, and foreign, taxes not described in the preceding sentence which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in section 212 (relating to expenses for production of income). Notwithstanding the preceding sentence, any tax (not described in the first sentence of this subsection) which is paid or accrued by the taxpayer in connection with an acquisition or disposition of property shall be treated as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.

(b) Definitions and special rules

For purposes of this section—

(1) Personal property taxes

The term ''personal property tax'' means an ad valorem tax which is imposed on an annual basis in respect of personal property.

(2) State or local taxes

A State or local tax includes only a tax imposed by a State, a possession of the United States, or a political subdivision of any of the foregoing, or by the District of Columbia.

(3) Foreign taxes

A foreign tax includes only a tax imposed by the authority of a foreign country.

(4) Special rules for GST tax

(A) In general

The GST tax imposed on income distributions is—

(i) the tax imposed by section 2601, and

(ii) any State tax described in section 2604,

but only to the extent such tax is imposed on a transfer which is included in the gross income of the distributee and to which section 666 does not apply.

(B) Special rule for tax paid before due date

Any tax referred to in subparagraph (A) imposed with respect to a transfer occurring during the taxable year of the distributee (or, in the case of a taxable termination, the trust) which is paid not later than the time prescribed by law (including extensions) for filing the return with respect to such transfer shall be treated as having been paid on the last day of the taxable year in which the transfer was made.

(5) General sales taxes

For purposes of subsection (a)—

(A) Election to deduct State and local sales taxes in lieu of State and local income taxes

At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

(i) without regard to the reference to State and local income taxes, and

(ii) as if State and local general sales taxes were referred to in a paragraph thereof.

(B) Definition of general sales tax

The term ''general sales tax'' means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items.

(C) Special rules for food, etc.

In the case of items of food, clothing, medical supplies, and motor vehicles—

(i) the fact that the tax does not apply with respect to some or all of such items shall not be taken into account in determining whether the tax applies with respect to a broad range of classes of items, and

(ii) the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

(D) Items taxed at different rates

Except in the case of a lower rate of tax applicable with respect to an item described in subparagraph (C), no deduction shall be allowed under this paragraph for any general sales tax imposed with respect to an item at a rate other than the general rate of tax.

(E) Compensating use taxes

A compensating use tax with respect to an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term ''compensating use tax'' means, with respect to any item, a tax which—

(i) is imposed on the use, storage, or consumption of such item, and

(ii) is complementary to a general sales tax, but only if a deduction is allowable under this paragraph with respect to items sold at retail in the taxing jurisdiction which are similar to such item.

(F) Special rule for motor vehicles

In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

(G) Separately stated general sales taxes

If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (other than in connection with the consumer's trade or business) to the seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

(H) Amount of deduction may be determined under tables

(i) In general

At the election of the taxpayer for the taxable year, the amount of the deduction allowed under this paragraph for such year shall be—

(I) the amount determined under this paragraph (without regard to this subparagraph) with respect to motor vehicles, boats, and other items specified by the Secretary, and

(II) the amount determined under tables prescribed by the Secretary with

respect to items to which subclause (I) does not apply.

(ii) Requirements for tables

The tables prescribed under clause (i)—

(I) shall reflect the provisions of this paragraph,

(II) shall be based on the average consumption by taxpayers on a State-by-State basis (as determined by the Secretary) of items to which clause (i)(I) does not apply, taking into account filing status, number of dependents, adjusted gross income, and rates of State and local general sales taxation, and

(III) need only be determined with respect to adjusted gross incomes up to the applicable amount (as determined under section 68(b)).

(I) Application of paragraph

This paragraph shall apply to taxable years beginning after December 31, 2003, and before January 1, 2012.

(6) Qualified motor vehicle taxes

(A) In general

For purposes of this section, the term ''qualified motor vehicle taxes'' means any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle.

(B) Limitation based on vehicle price

The amount of any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle taken into account under subparagraph (A) shall not exceed the portion of such tax attributable to so much of the purchase price as does not exceed $49,500.

(C) Income limitation

The amount otherwise taken into account under subparagraph (A) (after the application of subparagraph (B)) for any taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so treated as—

(i) the excess (if any) of—

(I) the taxpayer's modified adjusted gross income for such taxable year, over

(II) $125,000 ($250,000 in the case of a joint return), bears to

(ii) $10,000.

For purposes of the preceding sentence, the term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year (determined without regard to sections 911, 931, and 933).

(D) Qualified motor vehicle

For purposes of this paragraph—

(i) In general

The term ''qualified motor vehicle'' means—

(I) a passenger automobile or light truck which is treated as a motor vehicle for purposes of title II of the Clean Air Act, the gross vehicle weight rating of which is not more than 8,500 pounds, and the original use of which commences with the taxpayer,

(II) a motorcycle the gross vehicle weight rating of which is not more than 8,500 pounds and the original use of which commences with the taxpayer, and

(III) a motor home the original use of which commences with the taxpayer.

(ii) Other terms

The terms ''motorcycle'' and ''motor home'' have the meanings given such terms under section 571.3 of title 49, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

(E) Qualified motor vehicle taxes not included in cost of acquired property

The last sentence of subsection (a) shall not apply to any qualified motor vehicle taxes.

(F) Coordination with general sales tax

This paragraph shall not apply in the case of a taxpayer who makes an election under paragraph (5) for the taxable year.

(G) Termination

This paragraph shall not apply to purchases after December 31, 2009.

(c) Deduction denied in case of certain taxes

No deduction shall be allowed for the following taxes:

(1) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not prevent the deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

(2) Taxes on real property, to the extent that subsection (d) requires such taxes to be treated as imposed on another taxpayer.

(d) Apportionment of taxes on real property between seller and purchaser

(1) General rule

For purposes of subsection (a), if real property is sold during any real property tax year, then—

(A) so much of the real property tax as is properly allocable to that part of such year which ends on the day before the date of the sale shall be treated as a tax imposed on the seller, and

(B) so much of such tax as is properly allocable to that part of such year which begins on the date of the sale shall be treated as a tax imposed on the purchaser.

(2) Special rules

(A) in the case of any sale of real property, if—

(i) a taxpayer may not, by reason of his method of accounting, deduct any amount for taxes unless paid, and

(ii) the other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year,

then for purposes of subsection (a) the taxpayer shall be treated as having paid, on the date of the sale, so much of such tax as, under paragraph (1) of this subsection, is treated as imposed on the taxpayer. For pur-

poses of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property shall be considered liable for the real property tax for the real property tax year.

(B) In the case of any sale of real property, if the taxpayer's taxable income for the taxable year during which the sale occurs is computed under an accrual method of accounting, and if no election under section 461(c) (relating to the accrual of real property taxes) applies, then, for purposes of subsection (a), that portion of such tax which—

(i) is treated, under paragraph (1) of this subsection, as imposed on the taxpayer, and

(ii) may not, by reason of the taxpayer's method of accounting, be deducted by the taxpayer for any taxable year,

shall be treated as having accrued on the date of the sale.

(e) Taxes of shareholder paid by corporation

Where a corporation pays a tax imposed on a shareholder on his interest as a shareholder, and where the shareholder does not reimburse the corporation, then—

(1) the deduction allowed by subsection (a) shall be allowed to the corporation; and

(2) no deduction shall be allowed the shareholder for such tax.

(f) Deduction for one-half of self-employment taxes

(1) In general

In the case of an individual, in addition to the taxes described in subsection (a), there shall be allowed as a deduction for the taxable year an amount equal to one-half of the taxes imposed by section 1401 for such taxable year.

(2) Deduction treated as attributable to trade or business

For purposes of this chapter, the deduction allowed by paragraph (1) shall be treated as attributable to a trade or business carried on by the taxpayer which does not consist of the performance of services by the taxpayer as an employee.

(g) Cross references

(1) For provisions disallowing any deduction for certain taxes, see section 275.

(2) For treatment of taxes imposed by Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 47; Pub. L. 85–866, title I, §6(a), Sept. 2, 1958, 72 Stat. 1608; Pub. L. 88–272, title II, §207(a), (b)(1), (2), Feb. 26, 1964, 78 Stat. 40–42; Pub. L. 92–580, §4(a), Oct. 27, 1972, 86 Stat. 1277; Pub. L. 94–455, title XIX, §§1901(a)(25), 1951(b)(3)(A), Oct. 4, 1976, 90 Stat. 1767, 1837; Pub. L. 95–600, title I, §111(a), (b), Nov. 6, 1978, 92 Stat. 2777; Pub. L. 96–223, title I, §101(b), Apr. 2, 1980, 94 Stat. 250; Pub. L. 97–473, title II, §202(b)(3), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–21, title I, §124(c)(1), Apr. 20, 1983, 97 Stat. 90; Pub. L. 98–369, div. A, title IV, §474(r)(29)(F), July 18, 1984, 98 Stat. 844; Pub. L. 99–499, title V, §516(b)(2)(A), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 99–514, title I, §134, title XIV, §1432(a)(1), (2), Oct. 22, 1986, 100 Stat. 2116, 2729; Pub. L. 100–418, title I, §1941(b)(2)(A), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title I, §1018(u)(11), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 104–188, title I, §1704(t)(79), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 108–357, title V, §501(a), Oct. 22, 2004, 118 Stat. 1520; Pub. L. 109–135, title IV, §403(r)(1), Dec. 21, 2005, 119 Stat. 2628; Pub. L. 109–432, div. A, title I, §103(a), Dec. 20, 2006, 120 Stat. 2934; Pub. L. 110–343, div. C, title II, §201(a), Oct. 3, 2008, 122 Stat. 3864; Pub. L. 111–5, div. B, title I, §1008(a), (b), Feb. 17, 2009, 123 Stat. 317; Pub. L. 111–148, title IX, §9015(b)(2)(A), Mar. 23, 2010, 124 Stat. 871; Pub. L. 111–312, title VII, §722(a), Dec. 17, 2010, 124 Stat. 3316.)

AMENDMENT OF SUBSECTION (f)

Pub. L. 111–148, title IX, §9015(b)(2)(A), (c), Mar. 23, 2010, 124 Stat. 871, 872, provided that, applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, subsection (f) of this section is amended by inserting ''(other than the taxes imposed by section 1401(b)(2))'' after ''section 1401)''.

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(6)(D)(i)(I), is act July 14, 1955, ch. 360, 69 Stat. 322. Title II of the Act, known as the National Emission Standards Act, is classified generally to subchapter II (§7521 et seq.) of chapter 85 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (b)(6)(D)(ii), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

AMENDMENTS

2010—Subsec. (b)(5)(I). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010''.

2009—Subsec. (a)(6). Pub. L. 111–5, §1008(a), added par. (6).

Subsec. (b)(6). Pub. L. 111–5, §1008(b), added par. (6).

2008—Subsec. (b)(5)(I). Pub. L. 110–343 substituted ''January 1, 2010'' for ''January 1, 2008''.

2006—Subsec. (b)(5)(I). Pub. L. 109–432 substituted ''2008'' for ''2006''.

2005—Subsec. (b)(5)(A). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

''(I) without regard to the reference to State and local income taxes, and

''(II) as if State and local general sales taxes were referred to in a paragraph thereof.''

2004—Subsec. (b)(5). Pub. L. 108–357 added par. (5).

1996—Subsec. (a)(4), (5). Pub. L. 104–188 added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows:

''(4) The environmental tax imposed by section 59A.

''(5) The GST tax imposed on income distributions.''

1988—Subsec. (a)(4). Pub. L. 100–418 struck out par. (4) relating to windfall profit tax imposed by section 4986 and redesignated par. (5) relating to environmental tax as (4).

Subsec. (a)(5). Pub. L. 100–647 substituted ''The GST'' for ''the GST''.

Pub. L. 100–418 redesignated par. (5), relating to environmental tax, as (4).

1986—Subsec. (a). Pub. L. 99–514, §134(a)(2), inserted ''Notwithstanding the preceding sentence, any tax (not described in the first sentence of this subsection) which is paid or accrued by the taxpayer in connection with an acquisition or disposition of property shall be treat-

ed as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.''

Subsec. (a)(4). Pub. L. 99–514, §134(a)(1), struck out par. (4) relating to ''State and local general sales taxes'' and redesignated as par. (4) former par. (5) relating to windfall profit tax.

Subsec. (a)(5). Pub. L. 99–514, §1432(a)(1), added par. (5) relating to GST tax imposed on income distributions.

Pub. L. 99–499 added par. (5) relating to environmental tax.

Subsec. (b)(2). Pub. L. 99–514, §134(b)(1), (2), redesignated par. (3) as (2) and struck out former par. (2), general sales taxes provisions, subpars. (A) to (E) of which covered in general rule, special rules for food, etc., items taxed at different rates, compensating use taxes, and special rules for motor vehicles, respectively.

Subsec. (b)(3). Pub. L. 99–514, §134(b)(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(4). Pub. L. 99–514, §1432(a)(2), added par. (4).

Pub. L. 99–514, §134(b)(2), redesignated par. (4) as (3).

Subsec. (b)(5). Pub. L. 99–514, §134(b)(1), struck out par. (5), separately stated general sales taxes, which read as follows: ''If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.''

1984—Subsec. (f). Pub. L. 98–369 redesignated pars. (2) and (3) as pars. (1) and (2), respectively. Former par. (1), which referred to section 1451 for provisions disallowing any deduction for the payment of the tax imposed by subchapter B of chapter 3 (relating to tax-free covenant bonds), was struck out.

1983—Subsec. (f). Pub. L. 98–21 added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(3). Pub. L. 97–473 added par. (3).

Subsec. (g). Pub. L. 98–21 redesignated subsec. (f) as (g).

1980—Subsec. (a)(5). Pub. L. 96–223 added par. (5).

1978—Subsec. (a)(5). Pub. L. 95–600, §111(a), struck out par. (5) relating to a deduction for State and local taxes on the sale of gasoline, diesel fuel, and other motor fuels.

Subsec. (b)(5). Pub. L. 95–600, §111(b), struck out in heading ''and gasoline taxes'' after ''sales taxes'', and in text ''or of any tax on the sale of gasoline, diesel fuel, or other motor fuel'' after ''sales tax''.

1976—Subsec. (d)(2). Pub. L. 94–455, §1901(a)(25), redesignated subpar. (D) as (B), and struck out subpar. (B) which related to the taxable years that subsec. (d)(1) applied and subpar. (C) which related to the limitations on subsec. (d)(1) where real property tax was allowable as a deduction under the Internal Revenue Code of 1939.

Subsecs. (f), (g). Pub. L. 94–455, §1951(b)(3)(A), redesignated subsec. (g) as (f). Former subsec. (f), which related to payments for municipal services in atomic energy communities, was struck out.

1972—Subsec. (b)(2)(E). Pub. L. 92–580 added subpar. (E).

1964—Subsec. (a). Pub. L. 88–272, §207(a), limited the subsection to State, local and foreign real property, income, war profits, excess profits, and unspecified taxes, on a business or activity described in section 212, and to State and local personal property, general sales, gasoline, diesel fuel and other motor fuel taxes.

Subsec. (b). Pub. L. 88–272, §207(a), added subsec. (b). Former subsec. (b), which denied the deduction for certain Federal income taxes, for Federal war profits and excess profits taxes, import duties, excise and stamp taxes, and estate, inheritance, legacy, succession and gift taxes, local assessments against benefits increasing property values, and certain taxes imposed by any foreign country or possession of the United States if the taxpayer chose to benefit by section 901 relating to foreign tax credit, and for taxes on real property to the extent that they are treated as imposed on another taxpayer, was struck out.

Subsec. (c). Pub. L. 88–272, §207(a), substituted provisions denying the deduction for taxes assessed against local benefits which increase property value, except for so much as is properly allocable to maintenance or interest charges, and for real property taxes to the extent they are treated as imposed on another taxpayer, for provisions relating to certain retail sales taxes and gasoline taxes, the extent to which they were deductible, and to definition of ''state or local sales tax''.

Subsec. (f). Pub. L. 88–272, §207(b)(1), inserted ''State'' before ''real property taxes''.

Subsec. (g). Pub. L. 88–272, §207(b)(2), designated existing provisions as par. (1), substituted ''1451'' for ''1451(f)'' and added par. (2).

1958—Subsecs. (f), (g). Pub. L. 85–866, §6(a), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §722(b), Dec. 17, 2010, 124 Stat. 3316, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

Pub. L. 111–148, title IX, §9015(c), Mar. 23, 2010, 124 Stat. 872, provided that: ''The amendments made by this section [amending this section and sections 1401, 1402, 3101, and 3102 of this title] shall apply with respect to remuneration received, and taxable years beginning, after December 31, 2012.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to purchases on or after Feb. 17, 2009, in taxable years ending after such date, see section 1008(e) of Pub. L. 111–5, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §201(b), Oct. 3, 2008, 122 Stat. 3864, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §103(b), Dec. 20, 2006, 120 Stat. 2934, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title V, §501(b), Oct. 22, 2004, 118 Stat. 1521, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 1988 AMENDMENTS

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

Section 1941(c) of Pub. L. 100–418 provided that: ''The amendments made by this section [amending this section and sections 193, 291, 6161, 6211, 6212, 6213, 6214, 6302, 6344, 6501, 6511, 6512, 6611, 6654, 6655, 6724, 6862, 7422, and 7512 of this title, and repealing sections 280D, 4986 to 4998, 6050C, 6076, 6232, 6429, 6430, and 7241 of this title] shall apply to crude oil removed from the premises on or after the date of the enactment of this Act [Aug. 23, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 134 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see sec-

tion 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1432(a)(1), (2) of Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98–369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

For effective date of amendment by Pub. L. 97–473, see section 204(1) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as an Effective Date note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 111(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see sections 1901(d) and 1951(d) of Pub. L. 94–455, set out as notes under sections 2 and 72 of this title, respectively.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 4(b) of Pub. L. 92–580 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after January 1, 1971.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 207(c) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [enacting section 275 of this title and amending this section and sections 535, 545, 556, 901, and 903 of this title] shall apply to taxable years beginning after December 31, 1963.

''(2) SPECIAL TAXING DISTRICTS.—Section 164(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not prevent the deduction under section 164 of such Code (as so amended) of taxes levied by a special taxing district which is described in section 164(b)(5) of such Code (as in effect for a taxable year ending on December 31, 1963) and which was in existence on December 31, 1963, for the purpose of retiring indebtedness existing on such date.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 6(b) of Pub. L. 85–866 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

SAVINGS PROVISION

Section 1951(b)(3)(B) of Pub. L. 94–455 provided that: ''Notwithstanding subparagraph (A) [amending this section], any amount paid or accrued in a taxable year beginning after December 31, 1976, to the Atomic Energy Commission or its successors for municipal-type services shall be allowed as a deduction under section 164 if such amount would have been deductible by reason of section 164(f) (as in effect for a taxable year ending on December 31, 1976) and if the amount is paid or accrued with respect to real property in a community (within the meaning of section 21(b) of the Atomic Energy Community Act of 1955 (42 U.S.C. 2304(b))) in which the Commission on December 31, 1976, was rendering municipal-type services for which it received compensation from the owners of property within such community.''

§ 165. Losses

(a) General rule

There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

(b) Amount of deduction

For purposes of subsection (a), the basis for determining the amount of the deduction for any loss shall be the adjusted basis provided in section 1011 for determining the loss from the sale or other disposition of property.

(c) Limitation on losses of individuals

In the case of an individual, the deduction under subsection (a) shall be limited to—

(1) losses incurred in a trade or business;

(2) losses incurred in any transaction entered into for profit, though not connected with a trade or business; and

(3) except as provided in subsection (h), losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.

(d) Wagering losses

Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(e) Theft losses

For purposes of subsection (a), any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers such loss.

(f) Capital losses

Losses from sales or exchanges of capital assets shall be allowed only to the extent allowed in sections 1211 and 1212.

(g) Worthless securities

(1) General rule

If any security which is a capital asset becomes worthless during the taxable year, the loss resulting therefrom shall, for purposes of this subtitle, be treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset.

(2) Security defined

For purposes of this subsection, the term ''security'' means—

(A) a share of stock in a corporation;

(B) a right to subscribe for, or to receive, a share of stock in a corporation; or

(C) a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by

a corporation or by a government or political subdivision thereof, with interest coupons or in registered form.

(3) Securities in affiliated corporation

For purposes of paragraph (1), any security in a corporation affiliated with a taxpayer which is a domestic corporation shall not be treated as a capital asset. For purposes of the preceding sentence, a corporation shall be treated as affiliated with the taxpayer only if—

(A) the taxpayer owns directly stock in such corporation meeting the requirements of section 1504(a)(2), and

(B) more than 90 percent of the aggregate of its gross receipts for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the corporation in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, and gains from sales or exchanges of stocks and securities.

In computing gross receipts for purposes of the preceding sentence, gross receipts from sales or exchanges of stocks and securities shall be taken into account only to the extent of gains therefrom.

(h) Treatment of casualty gains and losses

(1) $100 limitation per casualty

Any loss of an individual described in subsection (c)(3) shall be allowed only to the extent that the amount of the loss to such individual arising from each casualty, or from each theft, exceeds $500 ($100 for taxable years beginning after December 31, 2009).

(2) Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income

(A) In general

If the personal casualty losses for any taxable year exceed the personal casualty gains for such taxable year, such losses shall be allowed for the taxable year only to the extent of the sum of—

(i) the amount of the personal casualty gains for the taxable year, plus

(ii) so much of such excess as exceeds 10 percent of the adjusted gross income of the individual.

(B) Special rule where personal casualty gains exceed personal casualty losses

If the personal casualty gains for any taxable year exceed the personal casualty losses for such taxable year—

(i) all such gains shall be treated as gains from sales or exchanges of capital assets, and

(ii) all such losses shall be treated as losses from sales or exchanges of capital assets.

(3) Special rule for losses in federally declared disasters

(A) In general

If an individual has a net disaster loss for any taxable year, the amount determined under paragraph (2)(A)(ii) shall be the sum of—

(i) such net disaster loss, and

(ii) so much of the excess referred to in the matter preceding clause (i) of paragraph (2)(A) (reduced by the amount in clause (i) of this subparagraph) as exceeds 10 percent of the adjusted gross income of the individual.

(B) Net disaster loss

For purposes of subparagraph (A), the term ''net disaster loss'' means the excess of—

(i) the personal casualty losses—

(I) attributable to a federally declared disaster occurring before January 1, 2010, and

(II) occurring in a disaster area, over

(ii) personal casualty gains.

(C) Federally declared disaster

For purposes of this paragraph—

(i) Federally declared disaster

The term ''federally declared disaster'' means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(ii) Disaster area

The term ''disaster area'' means the area so determined to warrant such assistance.

(4) Definitions of personal casualty gain and personal casualty loss

For purposes of this subsection—

(A) Personal casualty gain

The term ''personal casualty gain'' means the recognized gain from any involuntary conversion of property which is described in subsection (c)(3) arising from fire, storm, shipwreck, or other casualty, or from theft.

(B) Personal casualty loss

The term ''personal casualty loss'' means any loss described in subsection (c)(3). For purposes of paragraphs (2) and (3), the amount of any personal casualty loss shall be determined after the application of paragraph (1).

(5) Special rules

(A) Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains

In any case to which paragraph (2)(A) applies, the deduction for personal casualty losses for any taxable year shall be treated as a deduction allowable in computing adjusted gross income to the extent such losses do not exceed the personal casualty gains for the taxable year.

(B) Joint returns

For purposes of this subsection, a husband and wife making a joint return for the taxable year shall be treated as 1 individual.

(C) Determination of adjusted gross income in case of estates and trusts

For purposes of paragraph (2), the adjusted gross income of an estate or trust shall be

computed in the same manner as in the case of an individual, except that the deductions for costs paid or incurred in connection with the administration of the estate or trust shall be treated as allowable in arriving at adjusted gross income.

(D) Coordination with estate tax

No loss described in subsection (c)(3) shall be allowed if, at the time of filing the return, such loss has been claimed for estate tax purposes in the estate tax return.

(E) Claim required to be filed in certain cases

Any loss of an individual described in subsection (c)(3) to the extent covered by insurance shall be taken into account under this section only if the individual files a timely insurance claim with respect to such loss.

(i) Disaster losses

(1) Election to take deduction for preceding year

Notwithstanding the provisions of subsection (a), any loss occurring in a disaster area (as defined by clause (ii) of subsection (h)(3)(C)) and attributable to a federally declared disaster (as defined by clause (i) of such subsection) may, at the election of the taxpayer, be taken into account for the taxable year immediately preceding the taxable year in which the disaster occurred.

(2) Year of loss

If an election is made under this subsection, the casualty resulting in the loss shall be treated for purposes of this title as having occurred in the taxable year for which the deduction is claimed.

(3) Amount of loss

The amount of the loss taken into account in the preceding taxable year by reason of paragraph (1) shall not exceed the uncompensated amount determined on the basis of the facts existing at the date the taxpayer claims the loss.

(4) Use of disaster loan appraisals to establish amount of loss

Nothing in this title shall be construed to prohibit the Secretary from prescribing regulations or other guidance under which an appraisal for the purpose of obtaining a loan of Federal funds or a loan guarantee from the Federal Government as a result of a federally declared disaster (as defined by subsection (h)(3)(C)(i)[1] may be used to establish the amount of any loss described in paragraph (1) or (2).

(j) Denial of deduction for losses on certain obligations not in registered form

(1) In general

Nothing in subsection (a) or in any other provision of law shall be construed to provide a deduction for any loss sustained on any registration-required obligation unless such obligation is in registered form (or the issuance of such obligation was subject to tax under section 4701).

(2) Definitions

For purposes of this subsection—

(A) Registration-required obligation

The term ''registration-required obligation'' has the meaning given to such term by section 163(f)(2) except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply.

(B) Registered form

The term ''registered form'' has the same meaning as when used in section 163(f).

(3) Exceptions

The Secretary may, by regulations, provide that this subsection and section 1287 shall not apply with respect to obligations held by any person if—

(A) such person holds such obligations in connection with a trade or business outside the United States,

(B) such person holds such obligations as a broker dealer (registered under Federal or State law) for sale to customers in the ordinary course of his trade or business,

(C) such person complies with reporting requirements with respect to ownership, transfers, and payments as the Secretary may require, or

(D) such person promptly surrenders the obligation to the issuer for the issuance of a new obligation in registered form,

but only if such obligations are held under arrangements provided in regulations or otherwise which are designed to assure that such obligations are not delivered to any United States person other than a person described in subparagraph (A), (B), or (C).

(k) Treatment as disaster loss where taxpayer ordered to demolish or relocate residence in disaster area because of disaster

In the case of a taxpayer whose residence is located in an area which has been determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if—

(1) not later than the 120th day after the date of such determination, the taxpayer is ordered, by the government of the State or any political subdivision thereof in which such residence is located, to demolish or relocate such residence, and

(2) the residence has been rendered unsafe for use as a residence by reason of the disaster,

any loss attributable to such disaster shall be treated as a loss which arises from a casualty and which is described in subsection (i).

***(l)* Treatment of certain losses in insolvent financial institutions**

(1) In general

If—

(A) as of the close of the taxable year, it can reasonably be estimated that there is a loss on a qualified individual's deposit in a qualified financial institution, and

[1] So in original. Probably should be followed by a second closing parenthesis.

(B) such loss is on account of the bankruptcy or insolvency of such institution,

then the taxpayer may elect to treat the amount so estimated as a loss described in subsection (c)(3) incurred during the taxable year.

(2) Qualified individual defined

For purposes of this subsection, the term ''qualified individual'' means any individual, except an individual—

(A) who owns at least 1 percent in value of the outstanding stock of the qualified financial institution,

(B) who is an officer of the qualified financial institution,

(C) who is a sibling (whether by the whole or half blood), spouse, aunt, uncle, nephew, niece, ancestor, or lineal descendant of an individual described in subparagraph (A) or (B), or

(D) who otherwise is a related person (as defined in section 267(b)) with respect to an individual described in subparagraph (A) or (B).

(3) Qualified financial institution

For purposes of this subsection, the term ''qualified financial institution'' means—

(A) any bank (as defined in section 581),

(B) any institution described in section 591,

(C) any credit union the deposits or accounts in which are insured under Federal or State law or are protected or guaranteed under State law, or

(D) any similar institution chartered and supervised under Federal or State law.

(4) Deposit

For purposes of this subsection, the term ''deposit'' means any deposit, withdrawable account, or withdrawable or repurchasable share.

(5) Election to treat as ordinary loss

(A) In general

In lieu of any election under paragraph (1), the taxpayer may elect to treat the amount referred to in paragraph (1) for the taxable year as an ordinary loss described in subsection (c)(2) incurred during the taxable year.

(B) Limitations

(i) Deposit may not be federally insured

No election may be made under subparagraph (A) with respect to any loss on a deposit in a qualified financial institution if part or all of such deposit is insured under Federal law.

(ii) Dollar limitation

With respect to each financial institution, the aggregate amount of losses attributable to deposits in such financial institution to which an election under subparagraph (A) may be made by the taxpayer for any taxable year shall not exceed $20,000 ($10,000 in the case of a separate return by a married individual). The limitation of the preceding sentence shall be reduced by the amount of any insurance proceeds under any State law which can reasonably be expected to be received with respect to losses on deposits in such institution.

(6) Election

Any election by the taxpayer under this subsection for any taxable year—

(A) shall apply to all losses for such taxable year of the taxpayer on deposits in the institution with respect to which such election was made, and

(B) may be revoked only with the consent of the Secretary.

(7) Coordination with section 166

Section 166 shall not apply to any loss to which an election under this subsection applies.

(m) Cross references

(1) For special rule for banks with respect to worthless securities, see section 582.

(2) For disallowance of deduction for worthlessness of securities to which subsection (g)(2)(C) applies, if issued by a political party or similar organization, see section 271.

(3) For special rule for losses on stock in a small business investment company, see section 1242.

(4) For special rule for losses of a small business investment company, see section 1243.

(5) For special rule for losses on small business stock, see section 1244.

(Aug. 16, 1954, ch. 736, 68A Stat. 49; Pub. L. 85–866, title I, §§7, 57(c)(1), title II, §202(a), Sept. 2, 1958, 72 Stat. 1608, 1646, 1676; Pub. L. 87–426, §2(a), Mar. 31, 1962, 76 Stat. 51; Pub. L. 88–272, title II, §§208(a), 238, Feb. 26, 1964, 78 Stat. 43, 128; Pub. L. 88–348, §3(a), June 30, 1964, 78 Stat. 237; Pub. L. 91–606, title III, §301(h), Dec. 31, 1970, 84 Stat. 1759; Pub. L. 91–677, §1(a), Jan. 12, 1971, 84 Stat. 2061; Pub. L. 91–687, §1, Jan. 12, 1971, 84 Stat. 2071; Pub. L. 92–336, §2(a), July 1, 1972, 86 Stat. 406; Pub. L. 92–418, §2(a), Aug. 29, 1972, 86 Stat. 656, 657; Pub. L. 93–288, title VII, §702(h), formerly title VI, §602(h), May 22, 1974, 88 Stat. 164, renumbered title VII, §702(h), Pub. L. 103–337, div. C, title XXXIV, §3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100; Pub. L. 94–455, title XIX, §1901(a)(26), Oct. 4, 1976, 90 Stat. 1767; Pub. L. 97–248, title II, §203(a), (b), title III, §310(b)(5), Sept. 3, 1982, 96 Stat. 422, 598; Pub. L. 98–369, div. A, title I, §42(a)(4), title VII, §711(c)(1), (2)(A)(i), (ii), title X, §1051(a), July 18, 1984, 98 Stat. 556, 943, 1044; Pub. L. 99–514, title IX, §905(a), title X, §1004(a), Oct. 22, 1986, 100 Stat. 2385, 2388; Pub. L. 100–647, title I, §1009(d)(1), Nov. 10, 1988, 102 Stat. 3449; Pub. L. 100–707, title I, §109(*l*), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 105–34, title IX, §912(a), Aug. 5, 1997, 111 Stat. 878; Pub. L. 106–554, §1(a)(7) [title III, §318(b)(1), (2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645; Pub. L. 108–311, title IV, §408(a)(7)(A), (B), Oct. 4, 2004, 118 Stat. 1191; Pub. L. 110–343, div. C, title VII, §706(a)(1), (2)(A)–(C), (c), Oct. 3, 2008, 122 Stat. 3921–3923; Pub. L. 111–147, title V, §502(a)(2)(D), Mar. 18, 2010, 124 Stat. 107.)

AMENDMENT OF SUBSECTION (j)(2)(A)

Pub. L. 111–147, title V, §502(a)(2)(D), (f), Mar. 18, 2010, 124 Stat. 107, 108, provided that, applicable to obligations issued after the date

which is 2 years after Mar. 18, 2010, subsection (j)(2)(A) of this section is amended by striking ''except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply''.

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsecs. (h)(3)(C)(i) and (k), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (h)(1). Pub. L. 110–343, §706(c), substituted ''$500 ($100 for taxable years beginning after December 31, 2009)'' for ''$100''.

Subsec. (h)(3). Pub. L. 110–343, §706(a)(1), added par. (3). Former par. (3) redesignated (4).

Subsec. (h)(4). Pub. L. 110–343, §706(a)(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (h)(4)(B). Pub. L. 110–343, §706(a)(2)(A), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (h)(5). Pub. L. 110–343, §706(a)(1), redesignated par. (4) as (5).

Subsec. (i)(1). Pub. L. 110–343, §706(a)(2)(B), substituted ''loss occurring in a disaster area (as defined by clause (ii) of subsection (h)(3)(C)) and attributable to a federally declared disaster (as defined by clause (i) of such subsection)'' for ''loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act''.

Subsec. (i)(4). Pub. L. 110–343, §706(a)(2)(C), substituted ''federally declared disaster (as defined by subsection (h)(3)(C)(i)'' for ''Presidentially declared disaster (as defined by section 1033(h)(3))''.

2004—Subsecs. (i)(1), (k). Pub. L. 108–311 inserted ''Robert T. Stafford'' before ''Disaster Relief and Emergency Assistance Act''.

2000—Subsec. (g)(3). Pub. L. 106–554, §1(a)(7) [title III, §318(b)(2)], struck out last sentence of concluding provisions which read as follows: ''As used in subparagraph (A), the term 'stock' does not include nonvoting stock which is limited and preferred as to dividends.''

Subsec. (g)(3)(A). Pub. L. 106–554, §1(a)(7) [title III, §318(b)(1)], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''stock possessing at least 80 percent of the voting power of all classes of its stock and at least 80 percent of each class of its nonvoting stock is owned directly by the taxpayer, and''.

1997—Subsec. (i)(4). Pub. L. 105–34 added par. (4).

1988—Subsecs. (i)(1), (k). Pub. L. 100–707 substituted ''and Emergency Assistance Act'' for ''Act of 1974''.

Subsec. (*l*)(5) to (7). Pub. L. 100–647 added pars. (5) and (6), redesignated former par. (6) as (7), and struck out former par. (5) which read as follows: ''ELECTION.—Any election by the taxpayer under this subsection may be revoked only with the consent of the Secretary and shall apply to all losses of the taxpayer on deposits in the institution with respect to which such election was made.''

1986—Subsec. (h)(4)(E). Pub. L. 99–514, §1004(a), added subpar. (E).

Subsecs. (*l*), (m). Pub. L. 99–514, §905(a), added subsec. (*l*) and redesignated former subsec. (*l*) as (m).

1984—Subsec. (c)(3). Pub. L. 98–369, §711(c)(2)(A)(i), extended limitation to losses of property not connected with a transaction entered into for profit.

Subsec. (h). Pub. L. 98–369, §711(c)(2)(A)(ii), substituted heading ''Treatment of casualty gains and losses'' for ''Casualty and theft losses''; substituted par. (1) ''$100 limitation per casualty'' provision for former par. (1) ''General rule'' provision stating that: ''Any loss of an individual described in subsection (c)(3) shall be allowed for any taxable year only to the extent that—

''(A) the amount of loss to such individual arising from each casualty, or from each theft, exceeds $100, and

''(B) the aggregate amount of all such losses sustained by such individual during the taxable year (determined after application of subparagraph (A) exceeds 10 percent of the adjusted gross income of the individual.'';

added par. (2) ''Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income'' provision and par. (3) ''Definitions of personal casualty gain and personal casualty loss'' provisions; redesignated as par. (4) former par. (2) catchline; added par. (4)(A) ''Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains'' provision; redesignated as par. (4)(B) former par. (2)(A) joint returns provision, substituting ''For purposes of this section'' for ''For purposes of the $100 and 10 percent limitations described in paragraph (1)'' and ''individual'' for ''one individual''; redesignated as par. (4)(C) former par. (2)(B), substituting therein paragraph ''(2)'' for ''(1)''; and redesignated as par. (4)(D) former par. (2)(C).

Pub. L. 98–369, §711(c)(1), amended par. (2) by redesignating subpar. (B) as (C) and by adding a new subpar. (B) relating to the determination of adjusted gross income in case of estates and trusts.

Subsec. (j)(3). Pub. L. 98–369, §42(a)(4), substituted ''section 1287'' for ''subsection (d) of section 1232''.

Subsecs. (k), (*l*). Pub. L. 98–369, §1051(a), added subsec. (k) and redesignated former subsec. (k) as (*l*).

1982—Subsec. (c)(3). Pub. L. 97–248, §203(b), inserted ''except as provided in subsection (h),'' before ''losses of property'' and struck out provisions that a loss described in this paragraph would be allowed only to the extent that the amount of loss to such individual arising from each casualty, or from each theft, exceeded $100, that, for purposes of the $100 limitation, a husband and wife making a joint return under section 6013 for the taxable year in which the loss was allowed as a deduction would be treated as one individual, and that no loss described in this paragraph would be allowed if, at the time of filing the return, such loss had been claimed for estate tax purposes in the estate tax return.

Subsec. (h). Pub. L. 97–248, §203(a), added subsec. (h) relating to casualty and theft losses. Former subsec. (h), relating to disaster losses, redesignated (i).

Subsec. (i). Pub. L. 97–248, §203(a), redesignated former subsec. (h), relating to disaster losses, as (i), in subsec. (i), as so redesignated, further redesignated existing unnumbered provisions as pars. (1) and (2), in par. (1), as so redesignated, substituted ''be taken into account for the taxable year'' for ''be deducted for the taxable year'', in par. (2), as so redesignated, substituted ''shall be treated for purposes of this title as having occurred'' for ''will be deemed to have occurred'', added par. (3), and struck out provision that a deduction under this subsection could not be in excess of so much of the loss as would have been deductible in the taxable year in which the casualty occurred, based on facts existing at the date the taxpayer claimed the loss. Former subsec. (i), setting forth cross references, redesignated (j).

Subsec. (j). Pub. L. 97–248, §310(b)(5), added subsec. (j) relating to denial of deduction for losses on certain obligations not in registered form. Former subsec. (j), setting forth cross references, redesignated (k).

Pub. L. 97–248, §203(a), redesignated former subsec. (i), setting forth cross references, as (j).

Subsec. (k). Pub. L. 97–248, §310(b)(5), redesignated former subsec. (j), setting forth cross references, as (k).

1976—Subsecs. (i), (j). Pub. L. 94–455 redesignated subsec. (j) as subsec. (i). Former subsec. (i), which related to property confiscated by Cuba, was struck out.

1974—Subsec. (h). Pub. L. 93–288 substituted ''Disaster Relief Act of 1974'' for ''Disaster Relief Act of 1970''.

1972—Subsec. (h). Pub. L. 92–418 struck out par. (1) provisions relating to losses attributable to a disaster occurring during period following close of taxable year and on or before time prescribed by law for filing the income tax return for the taxable year without regard to any extension of time, struck out par. (2) designation, and inserted ''attributable to a disaster'' before ''occurring in an area'', and at end of second sentence, inserted ''based on facts existing at the date the taxpayer claims the loss''.

Subsec. (h)(1). Pub. L. 92–336 substituted provisions relating to losses attributable to a disaster which occurs during the period after the close of the taxable year and on or before the last day of the 6th calendar month beginning after the close of the taxable year, for provisions relating to losses attributable to a disaster which occurs during the period following the close of the taxable year and on or before the time prescribed by law for filing the income tax return for the taxable year, determined without regard to any extension of time.

1971—Subsec. (g)(3). Pub. L. 91–687 substituted ''stock possessing at least 80 percent of the voting power of all classes of its stock and at least 80 percent of each class of its nonvoting stock'' for ''at least 95 percent of each class of its stock'' in subpar. (A), and inserted at the end of the subsection the sentence providing that the term ''stock'', as used in subpar. (A), does not include nonvoting stock which is limited and preferred as to dividends.

Subsec. (i)(1). Pub. L. 91–677, §1(a)(1), (2), struck out ''or (2)'' after ''paragraph (1)'' in cl. (B), and substituted ''one or more days in the period beginning on December 31, 1958, and ending on May 16, 1959'' for ''December 31, 1958''.

Subsec. (i)(2)(B). Pub. L. 91–677, §1(a)(3), substituted ''one or more days during the period beginning on December 31, 1958, and ending on May 16, 1959'' for ''December 31, 1958'' and ''the first day in such period on which the property was held by the taxpayer'' for ''December 31, 1958''.

Subsec. (i)(3). Pub. L. 91–677, §1(a)(4), struck out subsec. (i)(3) which authorized a refund or credit to be given for any overpayment attributable to the application of par. (1), provided that a claim was filed for such refund or credit before Jan. 1, 1965.

1970—Subsec. (h)(2). Pub. L. 91–606 substituted ''the Disaster Relief Act of 1970'' for ''sections 1855–1855g of title 42''.

1964—Subsec. (c)(3). Pub. L. 88–272, §208(a), inserted requirement that losses must exceed $100 to be deductible.

Subsec. (i). Pub. L. 88–348 designated existing provisions as par. (1), substituted provisions permitting individuals who were citizens of the United States or resident aliens on Dec. 31, 1958, who sustained any loss of property prior to Jan. 1, 1964, and which was not a loss described in par. (1) or (2) of subsec. (c), to treat such loss as a loss under subsec. (c)(3), except that in cases of tangible property, the property had to be held by the taxpayer, and located in Cuba, on Dec. 31, 1958, for provisions which permitted any loss of tangible property to be treated as a loss from a casualty within subsec. (c)(3), therein, and added pars. (2) and (3).

Pub. L. 88–272, §238, added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 88–272, §238, redesignated former subsec. (i) as (j).

1962—Subsecs. (h), (i). Pub. L. 87–426 added subsec. (h) and redesignated former subsec. (h) as (i).

1958—Subsec. (g)(3)(B). Pub. L. 85–866, §7, substituted ''rental of'' for ''rental from''.

Subsec. (h)(3), (4). Pub. L. 85–866, §57(c)(1), added pars. (3) and (4).

Subsec. (h)(5). Pub. L. 85–866, §202(a), added par. (5).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 706(a)(1), (2)(A)–(C) of Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

Amendment by section 706(c) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 706(d)(2) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §318(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 912(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 905(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1981, see section 905(c)(1) of Pub. L. 99–514, as amended, set out as a note under section 451 of this title.

Section 1004(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to losses sustained in taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(4) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 711(c)(1) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Section 711(c)(2)(A)(v) of Pub. L. 98–369 provided that: ''The amendments made by this subparagraph [amending this section and sections 873, 931, and 1231 of this title] shall apply to taxable years beginning after December 31, 1983.''

Section 1051(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1981, with respect to residences in areas determined by the President of the United States, after such date, to warrant assistance by the Federal Government under the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 203(c) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1982. Such amendments shall also apply to the taxpayer's last taxable year beginning before January 1, 1983, solely for purposes of determining the amount allowable as a deduction with respect to any loss taken into account for such year by reason of an election under section 165(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section).''

Amendment by section 310(b)(5) of Pub. L. 97–248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97–248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–288 effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1972 AMENDMENTS

Section 2(c) of Pub. L. 92–418 provided in part that: ''The amendment made by subsection (a) [amending this section] shall apply to disasters occurring after December 31, 1971, in taxable years ending after such date.''

Section 2(b) of Pub. L. 92–336 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to disasters occurring after December 31, 1971, in taxable years ending after such date.''

EFFECTIVE DATE OF 1971 AMENDMENTS

Section 2 of Pub. L. 91–687 provided that: ''The amendments made by this Act [amending this section] shall apply with respect to taxable years beginning on or after January 1, 1970.''

Section 1(b)(1) of Pub. L. 91–677 provided that: ''The amendments made by subsection (a) [amending this section] shall apply in respect of losses sustained in taxable years ending after December 31, 1958.''

EFFECTIVE DATE OF 1970 AMENDMENT

Section 304 of Pub. L. 91–606 provided that: ''This Act [enacting sections 4401 to 4485 of Title 42, The Public Health and Welfare, amending this section, sections 5064 and 5708 of this title, sections 1706e, 1709, 1715*l* of Title 12, Banks and Banking, sections 241–1, 646 and 758 of Title 20, Education, section 1820 [now 3720] of Title 38, Veterans' Benefits, section 461 of former Title 40, Public Buildings, Property, and Works, section 1681 note of Title 42, repealing sections 1855 to 1855g, 1855aa, 1855aa note, 1855bb to 1855ii, 1855aaa, 1855aaa note, 1855bbb to 1855nnn of Title 42, and section 1926 of Title 7, Agriculture, and enacting provisions set out as notes under section 4401 and section 4434 of Title 42] shall take effect immediately upon its enactment [Dec. 31, 1970], except that sections 226(b), 237, 241, 252(a), and 254 [sections 4436(b), 4456, 4460, 4482(a), and 4484 of Title 42, respectively] shall take effect as of August 1, 1969, and sections 231, 232, and 233 [sections 4451, 4452 of Title 42 and amendments to section 1820 [now 3720] of Title 38, respectively] shall take effect as of April 1, 1970.''

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 208(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to losses sustained after December 31, 1963, in taxable years ending after such date.''

Section 3(b) of Pub. L. 88–348 provided that: ''The amendment made by subsection (a) [amending this section] shall apply in respect of losses sustained in taxable years ending after December 31, 1958.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2(b) of Pub. L. 87–426 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to any disaster occurring after December 31, 1961.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 1(c) of title I of Pub. L. 85–866, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Except as otherwise expressly provided—

''(1) amendments made by this title to subtitle A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to income taxes) [enacting section 558 of this title and amending this section and sections 152, 166, 168, 170, 172, 213, 337, 404, 421, 535, 545, 556, 582, 611, 613, 851, 1015, 1031, 1033, 1034, 1053, 1232, 1233, 1234, 1237, 1341, and 1347 of this title] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954; and

''(2) amendments made by this title to subtitle F of such Code (relating to procedure and administration) [enacting sections 7513 and 7514 of this title and amending sections 6013, 6015, 6212, 6325, 6338, 6339, 6501, 6504, 6511, 6601, 6652, 6653, 6851, 6871, 7213, 7324, 7325, and 7422 of this title] shall take effect as of August 17, 1954, and such subtitle, as so amended, shall apply as provided in section 7851 of the Internal Revenue Code of 1986''.

Amendment by section 57(c)(1) of Pub. L. 85–866 applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as a note under section 243 of this title.

TRANSITIONAL RULE FOR 1984 AMENDMENT

Section 711(c)(2)(B) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of taxable years beginning before January 1, 1984—

''(i) For purposes of paragraph (1)(B) of section 165(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], adjusted gross income shall be determined without regard to the application of section 1231 of such Code to any gain or loss from an involuntary conversion of property described in subsection (c)(3) of section 165 of such Code arising from fire, storm, shipwreck, or other casualty or from theft.

''(ii) Section 1231 of such Code shall be applied after the application of paragraph (1) of section 165(h) of such Code.''

CLARIFICATION OF TREATMENT OF CERTAIN FSLIC FINANCIAL ASSISTANCE

Pub. L. 103–66, title XIII, § 13224, Aug. 10, 1993, 107 Stat. 485, provided that:

''(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986—

''(1) any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of any asset shall be taken into account as compensation for such loss for purposes of section 165 of such Code, and

''(2) any FSLIC assistance with respect to any debt shall be taken into account for purposes of section 166, 585, or 593 of such Code in determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts arising from the worthlessness or partial worthlessness of such debts.

''(b) FSLIC ASSISTANCE.—For purposes of this section, the term 'FSLIC assistance' means any assistance (or right to assistance) with respect to a domestic building and loan association (as defined in section 7701(a)(19) of such Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act [former 12 U.S.C. 1729(f)] or section 21A of the Federal Home Loan Bank Act [12 U.S.C. 1441a] (or under any similar provision of law).

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection—

''(A) The provisions of this section shall apply to taxable years ending on or after March 4, 1991, but only with respect to FSLIC assistance not credited before March 4, 1991.

''(B) If any FSLIC assistance not credited before March 4, 1991, is with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991, for purposes of determining the amount of any

net operating loss carryover to a taxable year ending on or after March 4, 1991, the provisions of this section shall apply to such assistance for purposes of determining the amount of the net operating loss for the taxable year in which such loss was sustained or debt written off. Except as provided in the preceding sentence, this section shall not apply to any FSLIC assistance with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991.

''(2) EXCEPTIONS.—The provisions of this section shall not apply to any assistance to which the amendments made by section 1401(a)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101–73, amending section 597 of this title and repealing provisions set out as a note under section 597 of this title] apply.''

OVERPAYMENTS OR UNDERPAYMENTS OF TAX ATTRIBUTABLE TO CERTAIN AMENDMENTS BY PUB. L. 99–514 OR PUB. L. 100–647

Section 1009(d)(4) of Pub. L. 100–647 provided that: ''If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time before the date 1 year after such date of enactment) credit or refund of any overpayment of tax attributable to amendments made by section 905 of the Reform Act [section 905 of Pub. L. 99–514, amending this section and section 451 of this title] or by this subsection [amending this section and section 451 of this title and provisions set out as a note under section 451 of this title] (or the assessment of any underpayment of tax so attributable) is barred by any law or rule of law—

''(A) credit or refund of any such overpayment may nevertheless be made if claim therefore [sic] is filed before the date 1 year after such date of enactment, and

''(B) assessment of any such underpayment may nevertheless be made if made before the date 1 year after such date of enactment.''

DEDUCTION FOR BUS AND FREIGHT FORWARDER OPERATING AUTHORITY

Section 243 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1002(j), Nov. 10, 1988, 102 Stat. 3371, provided that:

''(a) BUS OPERATING AUTHORITY.—

''(1) IN GENERAL.—Subject to the modifications contained in paragraph (2), section 266 of the Economic Recovery Tax Act of 1981 [section 266 of Pub. L. 97–34, set out below] shall be applied as if the term 'motor carrier operating authority' included a bus operating authority.

''(2) MODIFICATIONS.—For purposes of paragraph (1), section 266 of such Act shall be applied—

''(A) by substituting 'November 19, 1982' for 'July 1, 1980' each place it appears, and

''(B) by substituting 'November 1982' for 'July 1980' in subsection (a) thereof.

''(3) BUS OPERATING AUTHORITY DEFINED.—For purposes of this subsection and section 266 of such Act, the term 'bus operating authority' means—

''(A) a certificate or permit held by a motor common or contract carrier of passengers which was issued pursuant to subchapter II of chapter 109 of title 49, United States Code, and

''(B) a certificate or permit held by a motor carrier authorizing the transportation of passengers, as a common carrier, over regular routes in intrastate commerce which was issued by the appropriate State agency.

''(b) FREIGHT FORWARDER OPERATING AUTHORITY.—

''(1) IN GENERAL.—Subject to the modifications contained in paragraph (2), section 266 of the Economic Recovery Tax Act of 1981 [section 266 of Pub. L. 97–34, set out below] shall be applied as if subsection (b) thereof contained 'or a freight forwarder' after 'contract carrier of property'.

''(2) MODIFICATIONS.—The modifications referred to in this paragraph are:

''(A) 60-MONTH PERIOD.—The 60-month period referred to in section 266(a) of such Act shall begin with the later of—

''(i) the deregulation month, or

''(ii) at the election of the taxpayer, the 1st month of the taxpayer's 1st taxable year beginning after the deregulation month.

''(B) AUTHORITY MUST BE HELD AS OF BEGINNING OF 60-MONTH PERIOD.—A motor carrier operating authority shall not be taken into account unless such authority is held by the taxpayer at the beginning of the 60-month period applicable to the taxpayer under subparagraph (A).

''(C) ADJUSTED BASIS NOT TO EXCEED ADJUSTED BASIS AT BEGINNING OF 60-MONTH PERIOD.—The adjusted basis taken into account with respect to any motor carrier operating authority shall not exceed the adjusted basis of such authority as of the beginning of the 60-month period applicable to the taxpayer under subparagraph (A).

''(3) DEREGULATION MONTH.—For purposes of this section, the term 'deregulation month' means the month in which the Secretary of the Treasury or his delegate determines that a Federal law has been enacted which deregulates the freight forwarding industry.

''(c) SPECIAL RULE FOR MOTOR CARRIER OPERATING AUTHORITY.—In the case of a corporation which was incorporated on December 29, 1969, in the State of Delaware, notwithstanding any other provision of law, there shall be allowed as a deduction for the taxable year of the taxpayer beginning in 1980 an amount equal to $2,705,188 for its entire loss due to a decline in value of its motor carrier operating authority by reason of deregulation.

''(d) APPLICATION OF SECTION 334(b)(2).—For purposes of subsections (a) and (b), the reference to section 334(b)(2) in section 266(c)(2)(A)(ii) of the Economic Recovery Tax Act of 1981 [section 266(c)(2)(A)(ii) of Pub. L. 97–34, set out below] shall be a reference to such section as in effect before its repeal.

''(e) EFFECTIVE DATES.—

''(1) BUS OPERATING AUTHORITY.—

''(A) IN GENERAL.—Subsection (a) shall apply to taxable years ending after November 18, 1982.

''(B) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from subsection (a) is prevented at any time on or before the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986] by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of such subsection) may, notwithstanding such law or rule of law, be made or allowed if claim therefore [sic] is filed on or before the date which is 18 months after such date of enactment.

''(2) FREIGHT FORWARDER OPERATING AUTHORITY.—Subsection (b) shall apply to taxable years ending after the month preceding the deregulation month.''

DEDUCTION FOR MOTOR CARRIER OPERATING AUTHORITY

Pub. L. 97–34, title II, §266, Aug. 13, 1981, 95 Stat. 265, as amended by Pub. L. 97–424, title V, §517(a), Jan. 6, 1983, 96 Stat. 2183; Pub. L. 97–448, title I, §102(n), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [this chapter], in computing the taxable income of a taxpayer who, on July 1, 1980, held one or more motor carrier operating authorities, an amount equal to the aggregate adjusted basis of all motor carrier operating authorities held by the taxpayer on July 1, 1980, or acquired subsequent thereto pursuant to a binding contract in effect on July 1, 1980, shall be allowed as a deduction ratably over a period of 60 months. Such 60-month period shall begin with the month of July 1980 (or if later, the month in which acquired), or at the election of the taxpayer, the first month of the taxpayer's first taxable year beginning after July 1, 1980.

''(b) DEFINITION OF MOTOR CARRIER OPERATING AUTHORITY.—For purposes of this section, the term 'motor carrier operating authority' means a certificate or permit held by a motor common or contract carrier of property and issued pursuant to subchapter II of chapter 109 of title 49 of the United States Code.

''(c) SPECIAL RULES.—

''(1) ADJUSTED BASIS.—For purposes of the Internal Revenue Code of 1986, proper adjustments shall be made in the adjusted basis of any motor carrier operating authority held by the taxpayer on July 1, 1980, for the amounts allowable as a deduction under this section.

''(2) CERTAIN STOCK ACQUISITIONS.—

''(A) IN GENERAL.—Under regulations prescribed by the Secretary of the Treasury or his delegate, and at the election of the holder of the authority, in any case in which a corporation—

''(i) on or before July 1, 1980 (or after such date pursuant to a binding contract in effect on such date), acquired stock in a corporation which held, directly or indirectly, any motor carrier operating authority at the time of such acquisition, and

''(ii) would have been able to allocate to the basis of such authority that portion of the acquiring corporation's cost basis in such stock attributable to such authority if the acquiring corporation had received such authority in the liquidation of the acquired corporation immediately following such acquisition and such allocation would have been proper under section 334(b)(2) of such Code,

the holder of the authority may, for purposes of this section, allocate a portion of the basis of the acquiring corporation in the stock of the acquired corporation to the basis of such authority in such manner as the Secretary may prescribe in such regulations.

''(B) TREATMENT OF CERTAIN NONCORPORATE TAXPAYERS.—Under regulations prescribed by the Secretary of the Treasury or his delegate, and at the election of the holder of the authority, in any case in which—

''(i) a noncorporate taxpayer or group of noncorporate taxpayers on or before July 1, 1980, acquired in one purchase stock in a corporation which held, directly or indirectly, any motor carrier operating authority at the time of such acquisition, and

''(ii) the acquisition referred to in clause (i) would have satisfied the requirements of subparagraph (A) if the stock had been acquired by a corporation,

then, for purposes of subparagraphs (A) and (C), the noncorporate taxpayer or group of noncorporate taxpayers referred to in clause (i) shall be treated as a corporation. The preceding sentence shall apply only if such noncorporate taxpayer (or group of noncorporate taxpayers) on July 1, 1980, held stock constituting control (within the meaning of section 368(c) of the Internal Revenue Code of 1986) of the corporation holding (directly or indirectly) the motor carrier operating authority.

''(C) ADJUSTMENT TO BASIS.—Under regulations prescribed by the Secretary of the Treasury or his delegate, proper adjustment shall be made to the basis of the stock or other assets in the manner provided by such regulations to take into account any allocation under subparagraph (A).

''(3) SECTION 381 OF THE INTERNAL REVENUE CODE OF 1986 TO APPLY.—For purposes of section 381 of the Internal Revenue Code of 1986, any item described in this section shall be treated as an item described in subsection (c) of such section 381.

''(d) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years ending after June 30, 1980.''

[Section 517(b) of Pub. L. 97–424 provided that: ''The amendment made by subsection (a) [adding subsec. (c)(2)(B) of this note] shall apply to taxable years ending after July 30, 1980.'']

TAX TREATMENT OF CERTAIN 1972 DISASTER LOANS

Section 2103 of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) APPLICATION OF SECTION.—This section shall apply to any individual—

''(1) who was allowed a deduction under section 165 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to losses) for a loss attributable to a disaster occurring during calendar year 1972 which was determined by the President, under section 102 of the Disaster Relief Act of 1970, to warrant disaster assistance by the Federal Government.

''(2) who in connection with such disaster—

''(A) received income in the form of cancellation of a disaster loan under section 7 of the Small Business Act [section 636 of Title 15, Commerce and Trade] or an emergency loan under subtitle C of the Consolidated Farm and Rural Development Act [section 1961 et seq. of Title 7, Agriculture], or

''(B) received income in the form of compensation (not taken into account in computing the amount of the deduction) for such loss in settlement of any claim of the taxpayer against a person for that person's liability in tort for the damage or destruction of that taxpayer's property in connection with the disaster, and

''(3) who elects (at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to take the benefits of this section.

''(b) EFFECT OF ELECTION.—In the case of any individual to whom this section applies—

''(1) the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the taxable year in which the income taken into account is received or accrued which is attributable to such income shall not exceed the additional tax under such chapter which would have been payable for the year in which the deduction for the loss was taken if such deduction had not been taken for such year,

''(2) any amount of tax imposed by chapter 1 attributable to the income taken into account which, on October 1, 1975, was unpaid may be paid in 3 equal annual installments (with the first such installment due and payable on April 15, 1977), and

''(3) no interest on any deficiency shall be payable for any period before April 16, 1977, to the extent such deficiency is attributable to the receipt of such compensation, and no interest on any installment referred to in paragraph (2) shall be payable for any period before the due date of such installment.

''(c) INCOME TAKEN INTO ACCOUNT.—For purposes of this section, the income taken into account is—

''(1) in the case of an individual described in subsection (a)(2)(A), the amount of income (not in excess of $5,000) attributable to the cancellation of a disaster loan under section 7 of the Small Business Act or an emergency loan under subtitle C of the Consolidated Farm and Rural Development Act received by reason of the disaster described in subsection (a)(1), or

''(2) in the case of an individual described in subsection (a)(2)(B), the amount of compensation (not in excess of $5,000) for the loss in settlement of any claim of the taxpayer against a person for that person's liability in tort for the damage or destruction of that taxpayer's property in connection with the disaster described in subsection (a)(1).

''(d) PHASEOUT WHERE ADJUSTED GROSS INCOME EXCEEDS $15,000.—If for the taxable year for which the deduction for the loss was taken the individual's adjusted gross income exceeded $15,000, the $5,000 limit set forth in paragraph (1) or (2) of subsection (c) (whichever applies) shall be reduced by one dollar for each full dollar that such adjusted gross income exceeds $15,000. In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting '$7,500' for '$15,000'.

''(e) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of income tax resulting from an elec-

tion made under this section is prevented on the date of the enactment of this Act [Oct. 4, 1976], or at any time within one year after such date, by the operation of any law, or rule of law, refund or credit of such overpayment (to the extent attributable to such election) may, nevertheless, be made or allowed if claim therefor is filed within one year after such date. If the taxpayer makes an election under this section and if assessment of any deficiency for any taxable year resulting from such election is prevented on the date of the enactment of this Act [Oct. 4, 1976], or at any time within one year after such date, by the operation of any law or rule of law, such assessment (to the extent attributable to such election) may, nevertheless, be made if made within one year after such date.''

REFUND OR CREDIT OF OVERPAYMENT; TIME FOR FILING CLAIM; INTEREST

Section 1(b)(2) of Pub. L. 91–677 authorized refund or credit of overpayment attributable to the amendments made by subsec. (a) to subsec. (i) of this section if claim therefor was filed after Jan. 12, 1971, and before July 1, 1971, without interest for any period before Jan. 1, 1972.

§ 166. Bad debts

(a) General rule

(1) Wholly worthless debts

There shall be allowed as a deduction any debt which becomes worthless within the taxable year.

(2) Partially worthless debts

When satisfied that a debt is recoverable only in part, the Secretary may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

(b) Amount of deduction

For purposes of subsection (a), the basis for determining the amount of the deduction for any bad debt shall be the adjusted basis provided in section 1011 for determining the loss from the sale or other disposition of property.

[(c) Repealed. Pub. L. 99–514, title VIII, § 805(a), Oct. 22, 1986, 100 Stat. 2361]

(d) Nonbusiness debts

(1) General rule

In the case of a taxpayer other than a corporation—

(A) subsection (a) shall not apply to any nonbusiness debt; and

(B) where any nonbusiness debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 1 year.

(2) Nonbusiness debt defined

For purposes of paragraph (1), the term ''nonbusiness debt'' means a debt other than—

(A) a debt created or acquired (as the case may be) in connection with a trade or business of the taxpayer; or

(B) a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business.

(e) Worthless securities

This section shall not apply to a debt which is evidenced by a security as defined in section 165(g)(2)(C).

(f) Cross references

(1) For disallowance of deduction for worthlessness of debts owed by political parties and similar organizations, see section 271.

(2) For special rule for banks with respect to worthless securities, see section 582.

(Aug. 16, 1954, ch. 736, 68A Stat. 50; Pub. L. 85–866, title I, § 8, Sept. 2, 1958, 72 Stat. 1608; Pub. L. 89–722, § 1(a), Nov. 2, 1966, 80 Stat. 1151; Pub. L. 91–172, title IV, § 431(c)(1), Dec. 30, 1969, 83 Stat. 619; Pub. L. 94–455, title VI, § 605(a), title XIV, § 1402(b)(1)(A), (2), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1575, 1731, 1732, 1834; Pub. L. 98–369, div. A, title X, § 1001(b)(1), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VIII, § 805(a), (b), title IX, § 901(d)(4)(A), Oct. 22, 1986, 100 Stat. 2361, 2379; Pub. L. 100–647, title I, § 1008(d)(1), (2), Nov. 10, 1988, 102 Stat. 3439.)

AMENDMENTS

1988—Subsec. (d)(1)(A). Pub. L. 100–647, § 1008(d)(1), substituted ''subsection (a)'' for ''subsections (a) and (c)''.

Subsecs. (f), (g). Pub. L. 100–647, § 1008(d)(2), made clarifying amendment to directory language of Pub. L. 99–514, § 805(b), see 1986 Amendment note below.

1986—Subsec. (c). Pub. L. 99–514, § 805(a), struck out subsec. (c), reserve for bad debts, which read as follows: ''In lieu of any deduction under subsection (a), there shall be allowed (in the discretion of the Secretary) a deduction for a reasonable addition to a reserve for bad debts.''

Subsec. (f). Pub. L. 99–514, § 805(b), as amended by Pub. L. 100–647, § 1008(d)(2), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to reserve for certain guaranteed debt obligations, par. (1) thereof providing for allowance of deduction, par. (2) disallowing deduction in other cases, par. (3) relating to opening balance of reserve, and par. (4) relating to suspense account.

Subsec. (g). Pub. L. 99–514, § 805(b), as amended by Pub. L. 100–647, § 1008(d)(2), redesignated subsec. (g) as (f).

Pub. L. 99–514, § 901(d)(4)(A), struck out pars. (3) and (4) which read as follows:

''(3) For special rule for bad debt reserves of certain mutual savings banks, domestic building and loan associations, and cooperative banks, see section 593.

''(4) For special rule for bad debt reserves of banks, small business investment-companies, etc., see sections 585 and 586.''

1984—Subsec. (d)(1)(B). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsecs. (a)(2), (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1)(B). Pub. L. 94–455, § 1401(b)(1)(A), (2), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977, and ''9 months'' would be changed to ''1 year'' for taxable years beginning after Dec. 31, 1977.

Subsec. (f). Pub. L. 94–455, §§ 605(a), 1906(b)(13)(A), redesignated subsec. (g) as (f) and struck out ''or his delegate'' after ''Secretary'' in pars. (1), (3) and (4)(D). Former subsec. (f), which related to treatment of payments made by guarantors of certain noncorporate obligations, was struck out.

Subsecs. (g), (h). Pub. L. 94–455, § 605(a), redesignated subsecs. (g) and (h) as (f) and (g), respectively.

1969—Subsec. (h)(4). Pub. L. 91–172 added par. (4).

1966—Subsecs. (g), (h). Pub. L. 89–722 added subsec. (g) and redesignated former subsec. (g) as (h).

1958—Subsec. (d)(2)(A). Pub. L. 85–866 substituted ''a trade or business of the taxpayer'' for ''a taxpayer's trade or business''.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Section 805(d) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 81, 108, 461, and 805 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who maintained a reserve for bad debts for such taxpayer's last taxable year beginning before January 1, 1987, and who is required by the amendments made by this section to change its method of accounting for any taxable year—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as made with the consent of the Secretary, and

''(C) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall—

''(i) in the case of a taxpayer maintaining a reserve under section 166(f), be reduced by the balance in the suspense account under section 166(f)(4) of such Code as of the close of such last taxable year, and

''(ii) be taken into account ratably in each of the first 4 taxable years beginning after December 31, 1986.''

Section 901(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 172, 291, 582, 585, 593, 596, 856, 1277, and 1361 of this title and repealing section 586 of this title] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1001(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 341, 402, 403, 423, 582, 584, 631, 642, 702, 818, 852, 856, 857, 1222, 1223, 1231, 1232, 1233, 1234, 1235, 1246, 1247, 1248, 1251, and 1278 of this title] shall apply to property acquired after June 22, 1984, and before January 1, 1988.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 605(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 81 of this title] shall apply to guarantees made after December 31, 1975, in taxable years beginning after such date.''

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after July 11, 1969, see section 431(d) of Pub. L. 91–172, set out as an Effective Date note under section 585 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89–722, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) Except as provided in subsections (b) and (c), the amendments made by the first section of this Act [amending this section and section 81 of this title] shall apply to taxable years ending after October 21, 1965.

''(b) If—

''(1) the taxpayer before October 22, 1965, claimed a deduction, for a taxable year ending before such date, under section 166(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for an addition to a reserve for bad debts on account of debt obligations described in section 166(g)(1)(A) of such Code (as amended by the first section of this Act), and

''(2) the assessment of a deficiency of the tax imposed by chapter 1 of such Code for such taxable year and each subsequent taxable year ending before October 22, 1965, is not prevented on December 31, 1966, by the operation of any law or rule of law,

then such deduction on account of such debt obligations shall be allowed for each such taxable year under such section 166(c) to the extent that the deduction would have been allowable under the provisions of such section 166(g)(1)(A) if such provisions applied to such taxable years.

''(c) Section 166(g)(2) of the Internal Revenue Code of 1986 (as amended by the first section of this Act) shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

ESTABLISHMENT OF RESERVE FOR TAXABLE YEAR ENDING AFTER OCT. 21, 1965, AND BEGINNING BEFORE AUG. 2, 1966

Section 1(c) of Pub. L. 89–722, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If the taxpayer establishes a reserve described in section 166(g)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a) of this section) for a taxable year ending after October 21, 1965, and beginning before August 2, 1966, the establishment of such reserve shall not be considered as a change in method of accounting for purposes of section 446(e) of such Code.''

§ 167. Depreciation

(a) General rule

There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business, or

(2) of property held for the production of income.

(b) Cross reference

For determination of depreciation deduction in case of property to which section 168 applies, see section 168.

(c) Basis for depreciation

(1) In general

The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011, for the purpose of determining the gain on the sale or other disposition of such property.

(2) Special rule for property subject to lease

If any property is acquired subject to a lease—

(A) no portion of the adjusted basis shall be allocated to the leasehold interest, and

(B) the entire adjusted basis shall be taken into account in determining the depreciation deduction (if any) with respect to the property subject to the lease.

(d) Life tenants and beneficiaries of trusts and estates

In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of an estate, the allowable deduction shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(e) Certain term interests not depreciable

(1) In general

No depreciation deduction shall be allowed under this section (and no depreciation or amortization deduction shall be allowed under any other provision of this subtitle) to the taxpayer for any term interest in property for any period during which the remainder interest in such property is held (directly or indirectly) by a related person.

(2) Coordination with other provisions

(A) Section 273

This subsection shall not apply to any term interest to which section 273 applies.

(B) Section 305(e)

This subsection shall not apply to the holder of the dividend rights which were separated from any stripped preferred stock to which section 305(e)(1) applies.

(3) Basis adjustments

If, but for this subsection, a depreciation or amortization deduction would be allowable to the taxpayer with respect to any term interest in property—

(A) the taxpayer's basis in such property shall be reduced by any depreciation or amortization deductions disallowed under this subsection, and

(B) the basis of the remainder interest in such property shall be increased by the amount of such disallowed deductions (properly adjusted for any depreciation deductions allowable under subsection (d) to the taxpayer).

(4) Special rules

(A) Denial of increase in basis of remainderman

No increase in the basis of the remainder interest shall be made under paragraph (3)(B) for any disallowed deductions attributable to periods during which the term interest was held—

(i) by an organization exempt from tax under this subtitle, or

(ii) by a nonresident alien individual or foreign corporation but only if income from the term interest is not effectively connected with the conduct of a trade or business in the United States.

(B) Coordination with subsection (d)

If, but for this subsection, a depreciation or amortization deduction would be allowable to any person with respect to any term interest in property, the principles of subsection (d) shall apply to such person with respect to such term interest.

(5) Definitions

For purposes of this subsection—

(A) Term interest in property

The term ''term interest in property'' has the meaning given such term by section 1001(e)(2).

(B) Related person

The term ''related person'' means any person bearing a relationship to the taxpayer described in subsection (b) or (e) of section 267.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations preventing avoidance of this subsection through cross-ownership arrangements or otherwise.

(f) Treatment of certain property excluded from section 197

(1) Computer software

(A) In general

If a depreciation deduction is allowable under subsection (a) with respect to any computer software, such deduction shall be computed by using the straight line method and a useful life of 36 months.

(B) Computer software

For purposes of this section, the term ''computer software'' has the meaning given to such term by section 197(e)(3)(B); except that such term shall not include any such software which is an amortizable section 197 intangible.

(C) Tax-exempt use property subject to lease

In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to computer software, the useful life under subparagraph (A) shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).

(2) Certain interests or rights acquired separately

If a depreciation deduction is allowable under subsection (a) with respect to any property described in subparagraph (B), (C), or (D) of section 197(e)(4), such deduction shall be computed in accordance with regulations prescribed by the Secretary. If such property would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such property, the useful life under such regulations shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).

(3) Mortgage servicing rights

If a depreciation deduction is allowable under subsection (a) with respect to any right

described in section 197(e)(6), such deduction shall be computed by using the straight line method and a useful life of 108 months.

(g) Depreciation under income forecast method

(1) In general

If the depreciation deduction allowable under this section to any taxpayer with respect to any property is determined under the income forecast method or any similar method—

(A) the income from the property to be taken into account in determining the depreciation deduction under such method shall be equal to the amount of income earned in connection with the property before the close of the 10th taxable year following the taxable year in which the property was placed in service,

(B) the adjusted basis of the property shall only include amounts with respect to which the requirements of section 461(h) are satisfied,

(C) the depreciation deduction under such method for the 10th taxable year beginning after the taxable year in which the property was placed in service shall be equal to the adjusted basis of such property as of the beginning of such 10th taxable year, and

(D) such taxpayer shall pay (or be entitled to receive) interest computed under the look-back method of paragraph (2) for any recomputation year.

(2) Look-back method

The interest computed under the look-back method of this paragraph for any recomputation year shall be determined by—

(A) first determining the depreciation deductions under this section with respect to such property which would have been allowable for prior taxable years if the determination of the amounts so allowable had been made on the basis of the sum of the following (instead of the estimated income from such property)—

(i) the actual income earned in connection with such property for periods before the close of the recomputation year, and

(ii) an estimate of the future income to be earned in connection with such property for periods after the recomputation year and before the close of the 10th taxable year following the taxable year in which the property was placed in service,

(B) second, determining (solely for purposes of computing such interest) the overpayment or underpayment of tax for each such prior taxable year which would result solely from the application of subparagraph (A), and

(C) then using the adjusted overpayment rate (as defined in section 460(b)(7)), compounded daily, on the overpayment or underpayment determined under subparagraph (B).

For purposes of the preceding sentence, any cost incurred after the property is placed in service (which is not treated as a separate property under paragraph (5)) shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such cost is incurred) such cost to its value as of the date the property is placed in service. The taxpayer may elect with respect to any property to have the preceding sentence not apply to such property.

(3) Exception from look-back method

Paragraph (1)(D) shall not apply with respect to any property which had a cost basis of $100,000 or less.

(4) Recomputation year

For purposes of this subsection, except as provided in regulations, the term ''recomputation year'' means, with respect to any property, the 3d and the 10th taxable years beginning after the taxable year in which the property was placed in service, unless the actual income earned in connection with the property for the period before the close of such 3d or 10th taxable year is within 10 percent of the income earned in connection with the property for such period which was taken into account under paragraph (1)(A).

(5) Special rules

(A) Certain costs treated as separate property

For purposes of this subsection, the following costs shall be treated as separate properties:

(i) Any costs incurred with respect to any property after the 10th taxable year beginning after the taxable year in which the property was placed in service.

(ii) Any costs incurred after the property is placed in service and before the close of such 10th taxable year if such costs are significant and give rise to a significant increase in the income from the property which was not included in the estimated income from the property.

(B) Syndication income from television series

In the case of property which is 1 or more episodes in a television series, income from syndicating such series shall not be required to be taken into account under this subsection before the earlier of—

(i) the 4th taxable year beginning after the date the first episode in such series is placed in service, or

(ii) the earliest taxable year in which the taxpayer has an arrangement relating to the future syndication of such series.

(C) Special rules for financial exploitation of characters, etc.

For purposes of this subsection, in the case of television and motion picture films, the income from the property shall include income from the exploitation of characters, designs, scripts, scores, and other incidental income associated with such films, but only to the extent that such income is earned in connection with the ultimate use of such items by, or the ultimate sale of merchandise to, persons who are not related persons (within the meaning of section 267(b)) to the taxpayer.

(D) Collection of interest

For purposes of subtitle F (other than sections 6654 and 6655), any interest required to be paid by the taxpayer under paragraph (1) for any recomputation year shall be treated as an increase in the tax imposed by this chapter for such year.

(E) Treatment of distribution costs

For purposes of this subsection, the income with respect to any property shall be the taxpayer's gross income from such property.

(F) Determinations

For purposes of paragraph (2), determinations of the amount of income earned in connection with any property shall be made in the same manner as for purposes of applying the income forecast method; except that any income from the disposition of such property shall be taken into account.

(G) Treatment of pass-thru entities

Rules similar to the rules of section 460(b)(4) shall apply for purposes of this subsection.

(6) Limitation on property for which income forecast method may be used

The depreciation deduction allowable under this section may be determined under the income forecast method or any similar method only with respect to—

(A) property described in paragraph (3) or (4) of section 168(f),

(B) copyrights,

(C) books,

(D) patents, and

(E) other property specified in regulations.

Such methods may not be used with respect to any amortizable section 197 intangible (as defined in section 197(c)).

(7) Treatment of participations and residuals

(A) In general

For purposes of determining the depreciation deduction allowable with respect to a property under this subsection, the taxpayer may include participations and residuals with respect to such property in the adjusted basis of such property for the taxable year in which the property is placed in service, but only to the extent that such participations and residuals relate to income estimated (for purposes of this subsection) to be earned in connection with the property before the close of the 10th taxable year referred to in paragraph (1)(A).

(B) Participations and residuals

For purposes of this paragraph, the term ''participations and residuals'' means, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property.

(C) Special rules relating to recomputation years

If the adjusted basis of any property is determined under this paragraph, paragraph (4) shall be applied by substituting ''for each taxable year in such period'' for ''for such period''.

(D) Other special rules

(i) Participations and residuals

Notwithstanding subparagraph (A), the taxpayer may exclude participations and residuals from the adjusted basis of such property and deduct such participations and residuals in the taxable year that such participations and residuals are paid.

(ii) Coordination with other rules

Deductions computed in accordance with this paragraph shall be allowable notwithstanding paragraph (1)(B), section 263, 263A, 404, 419, or 461(h).

(E) Authority to make adjustments

The Secretary shall prescribe appropriate adjustments to the basis of property and to the look-back method for the additional amounts allowable as a deduction solely by reason of this paragraph.

(8) Special rules for certain musical works and copyrights

(A) In general

If an election is in effect under this paragraph for any taxable year, then, notwithstanding paragraph (1), any expense which—

(i) is paid or incurred by the taxpayer in creating or acquiring any applicable musical property placed in service during the taxable year, and

(ii) is otherwise properly chargeable to capital account,

shall be amortized ratably over the 5-year period beginning with the month in which the property was placed in service. The preceding sentence shall not apply to any expense which, without regard to this paragraph, would not be allowable as a deduction.

(B) Exclusive method

Except as provided in this paragraph, no depreciation or amortization deduction shall be allowed with respect to any expense to which subparagraph (A) applies.

(C) Applicable musical property

For purposes of this paragraph—

(i) In general

The term ''applicable musical property'' means any musical composition (including any accompanying words), or any copyright with respect to a musical composition, which is property to which this subsection applies without regard to this paragraph.

(ii) Exceptions

Such term shall not include any property—

(I) with respect to which expenses are treated as qualified creative expenses to which section 263A(h) applies,

(II) to which a simplified procedure established under section 263A(i)(2) applies, or

(III) which is an amortizable section 197 intangible (as defined in section 197(c)).

(D) Election

An election under this paragraph shall be made at such time and in such form as the Secretary may prescribe and shall apply to all applicable musical property placed in service during the taxable year for which the election applies.

(E) Termination

An election may not be made under this paragraph for any taxable year beginning after December 31, 2010.

(h) Amortization of geological and geophysical expenditures

(1) In general

Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

(2) Half-year convention

For purposes of paragraph (1), any payment paid or incurred during the taxable year shall be treated as paid or incurred on the mid-point of such taxable year.

(3) Exclusive method

Except as provided in this subsection, no depreciation or amortization deduction shall be allowed with respect to such payments.

(4) Treatment upon abandonment

If any property with respect to which geological and geophysical expenses are paid or incurred is retired or abandoned during the 24-month period described in paragraph (1), no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this subsection shall continue with respect to such payment.

(5) Special rule for major integrated oil companies

(A) In general

In the case of a major integrated oil company, paragraphs (1) and (4) shall be applied by substituting ''7-year'' for ''24 month''.

(B) Major integrated oil company

For purposes of this paragraph, the term ''major integrated oil company'' means, with respect to any taxable year, a producer of crude oil—

(i) which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year,

(ii) which had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005, and

(iii) to which subsection (c) of section 613A does not apply by reason of paragraph (4) of section 613A(d), determined—

(I) by substituting ''15 percent'' for ''5 percent'' each place it occurs in paragraph (3) of section 613A(d), and

(II) without regard to whether subsection (c) of section 613A does not apply by reason of paragraph (2) of section 613A(d).

For purposes of clauses (i) and (ii), all persons treated as a single employer under subsections (a) and (b) of section 52 shall be treated as 1 person and, in case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.

(i) Cross references

(1) For additional rule applicable to depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber, see section 611.

(2) For amortization of goodwill and certain other intangibles, see section 197.

(Aug. 16, 1954, ch. 736, 68A Stat. 51; Pub. L. 85–866, title I, § 89(b), Sept. 2, 1958, 72 Stat. 1665; Pub. L. 87–834, § 13(b), (c)(1), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 89–800, § 2, Nov. 8, 1966, 80 Stat. 1513; Pub. L. 90–26, §§ 1, 2(b), June 13, 1967, 81 Stat. 57, 58; Pub. L. 91–172, title IV, § 441(a), title V, § 521(a), (d), Dec. 30, 1969, 83 Stat. 625, 649, 653; Pub. L. 92–178, title I, § 109(a), Dec. 10, 1971, 85 Stat. 508; Pub. L. 93–625, § 3(c), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94–455, title II, §§ 202(c)(3), 203(a), title XIX, §§ 1901(a)(27), 1906(b)(13)(A), title XXI, § 2124(c)(1), (d)(1), Oct. 4, 1976, 90 Stat. 1530, 1768, 1834, 1918; Pub. L. 95–171, § 4(a), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–600, title III, §§ 312(c)(4), 367, title VII, § 701(f)(4), (6), Nov. 6, 1978, 92 Stat. 2826, 2857, 2901, 2902; Pub. L. 95–615, § 7(a), Nov. 8, 1978, 92 Stat. 3098; Pub. L. 95–618, title III, § 301(d)(3), (e)(1), Nov. 9, 1978, 92 Stat. 3200, 3201; Pub. L. 96–541, §§ 2(c), (d), 3, Dec. 17, 1980, 94 Stat. 3204, 3205; Pub. L. 96–613, § 2(a), Dec. 28, 1980, 94 Stat. 3579; Pub. L. 97–34, title II, §§ 203(a)–(c)(1), (d), 209(d)(3), 212(d)(1), 264(a), Aug. 13, 1981, 95 Stat. 221, 222, 227, 239, 264; Pub. L. 97–424, title V, § 541(a)(2), Jan. 6, 1983, 96 Stat. 2192; Pub. L. 98–369, div. A, title X, § 1064, July 18, 1984, 98 Stat. 1047; Pub. L. 99–514, title II, § 201(d)(1), title XV, § 1511(c)(4), title XVIII, § 1809(d)(1), Oct. 22, 1986, 100 Stat. 2139, 2745, 2821; Pub. L. 100–647, title I, § 1002(a)(22), (24), (31), (i)(1), Nov. 10, 1988, 102 Stat. 3356, 3357, 3370; Pub. L. 101–239, title VII, §§ 7622(b)(1) [(d)(1)], 7645(a), Dec. 19, 1989, 103 Stat. 2378, 2381; Pub. L. 101–508, title XI, § 11812(a), (b)(1), Nov. 5, 1990, 104 Stat. 1388–534; Pub. L. 103–66, title XIII, §§ 13206(c)(2), 13261(b), (f)(1), Aug. 10, 1993, 107 Stat. 466, 538, 539; Pub. L. 104–188, title I, § 1604(a), Aug. 20, 1996, 110 Stat. 1836; Pub. L. 105–34, title X, § 1086(a), Aug. 5, 1997, 111 Stat. 957; Pub. L. 108–357, title II, § 242(a), (b), title VIII, § 847(b)(1), (2), Oct. 22, 2004, 118 Stat. 1438, 1439, 1601; Pub. L. 109–58, title XIII, § 1329(a), Aug. 8, 2005, 119 Stat. 1020; Pub. L. 109–135, title IV, § 412(r), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–222, title II, § 207(a), title V, § 503(a), May 17, 2006, 120 Stat. 350, 354; Pub. L. 110–140, title XV, § 1502(a), Dec. 19, 2007, 121 Stat. 1800; Pub. L. 110–172, § 11(a)(13), Dec. 29, 2007, 121 Stat. 2485.)

AMENDMENTS

2007—Subsec. (g)(8)(C)(ii)(II). Pub. L. 110–172 substituted ''section 263A(i)(2)'' for ''section 263A(j)(2)''.

Subsec. (h)(5)(A). Pub. L. 110–140 substituted ''7-year'' for ''5-year''.

2006—Subsec. (g)(8). Pub. L. 109–222, § 207(a), added par. (8).

Subsec. (h)(5). Pub. L. 109–222, § 503(a), added par. (5).

2005—Subsec. (f)(3). Pub. L. 109–135 substituted ''section 197(e)(6)'' for ''section 197(e)(7)''.

Subsecs. (h), (i). Pub. L. 109–58 added subsec. (h) and redesignated former subsec. (h) as (i).

2004—Subsec. (f)(1)(C). Pub. L. 108–357, § 847(b)(1), added subpar. (C).

Subsec. (f)(2). Pub. L. 108–357, § 847(b)(2), inserted at end ''If such property would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such property, the useful life under such regulations shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).''

Subsec. (g)(5)(E) to (G). Pub. L. 108–357, § 242(b), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

Subsec. (g)(7). Pub. L. 108–357, § 242(a), added par. (7).

1997—Subsec. (g)(6). Pub. L. 105–34 added par. (6).

1996—Subsecs. (g), (h). Pub. L. 104–188 added subsec. (g) and redesignated former subsec. (g) as (h).

1993—Subsec. (c). Pub. L. 103–66, § 13261(b)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose of determining the gain on the sale or other disposition of such property.''

Subsec. (e)(2). Pub. L. 103–66, § 13206(c)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''This subsection shall not apply to any term interest to which section 273 applies.''

Subsec. (f). Pub. L. 103–66, § 13261(b)(1), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 103–66, § 13261(b)(1), (f)(1), redesignated subsec. (f) as (g) and amended heading and text generally, designating existing provisions of text as par. (1) and adding par. (2).

1990—Subsec. (b). Pub. L. 101–508, § 11812(a), added subsec. (b) and struck out former subsec. (b) ''Use of certain methods and rates'' which read as follows: ''For taxable years ending after December 31, 1953, the term 'reasonable allowance' as used in subsection (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the Secretary, under any of the following methods:

''(1) the straight line method,

''(2) the declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1),

''(3) the sum of the years-digits method, and

''(4) any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in paragraph (2).

Nothing in this subsection shall be construed to limit or reduce an allowance otherwise allowable under subsection (a).''

Subsec. (c). Pub. L. 101–508, § 11812(a)(1), redesignated subsec. (g) as (c) and struck out former subsec. (c) ''Limitations on use of certain methods and rates'' which read as follows: ''Paragraphs (2), (3), and (4) of subsection (b) shall apply only in the case of property (other than intangible property) described in subsection (a) with a useful life of 3 years or more—

''(1) the construction, reconstruction, or erection of which is completed after December 31, 1953, and then only to that portion of the basis which is properly attributable to such construction, reconstruction, or erection after December 31, 1953, or

''(2) acquired after December 31, 1953, if the original use of such property commences with the taxpayer and commences after such date.

Paragraphs (2), (3), and (4) of subsection (b) shall not apply to any motion picture film, video tape, or sound recording.''

Subsec. (d). Pub. L. 101–508, § 11812(a)(1), redesignated subsec. (h) as (d) and struck out former subsec. (d) ''Agreement as to useful life on which depreciation rate is based'' which read as follows: ''Where, under regulations prescribed by the Secretary, the taxpayer and the Secretary have, after August 16, 1954, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the Secretary in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail or registered mail is served by the party to the agreement initiating such change. This subsection shall not apply with respect to property to which section 168 applies.''

Subsec. (e). Pub. L. 101–508, § 11812(a)(1), redesignated subsec. (r) as (e) and struck out former subsec. (e) which related to changes in method of depreciation from declining balance method and changes with respect to sections 1245 and 1250 property.

Subsec. (e)(3)(B). Pub. L. 101–508, § 11812(b)(1) substituted ''(d)'' for ''(h)''.

Subsec. (e)(4)(B). Pub. L. 101–508, § 11812(b)(1), substituted ''(d)'' for ''(h)'' in heading and text.

Subsec. (f). Pub. L. 101–508, § 11812(a)(1), redesignated subsec. (s) as (f) and struck out former subsec. (f) ''Salvage value'' which read as follows:

''(1) GENERAL RULE.—Under regulations prescribed by the Secretary, a taxpayer may, for purposes of computing the allowance under subsection (a) with respect to personal property, reduce the amount taken into account as salvage value by an amount which does not exceed 10 percent of the basis of such property (as determined under subsection (g) as of the time as of which such salvage value is required to be determined).

''(2) PERSONAL PROPERTY DEFINED.—For purposes of this subsection, the term 'personal property' means depreciable personal property (other than livestock) with a useful life of 3 years or more acquired after October 16, 1962.''

Subsecs. (g), (h). Pub. L. 101–508, § 11812(a)(1), redesignated subsecs. (g) and (h) as (c) and (d), respectively.

Subsec. (j). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (j) which related to special rules for section 1250 property including residential rental property and change in method of depreciation.

Subsec. (k). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (k) which related to depreciation of expenditures to rehabilitate low-income rental housing.

Subsec. (*l*). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (*l*) which related to reasonable allowance in case of property of certain utilities, pre-1970 public utility property and post-1969 public utility property.

Subsec. (m). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (m) which related to class lives.

Subsec. (p). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (p) which related to straight line method for boilers fueled by oil or gas.

Subsec. (q). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (q) which related to retirement or replacement of certain boilers, etc., fueled by oil or gas.

Subsecs. (r), (s). Pub. L. 101–508, § 11812(a)(1), redesignated subsecs. (r) and (s) as (e) and (f), respectively.

1989—Subsec. (r). Pub. L. 101–239, § 7645(a), added subsec. (r).

Pub. L. 101–239, § 7622(b)(1) [(d)(1)], repealed subsec. (r) which provided that trademark or trade name expenditures were not depreciable.

1988—Subsec. (a). Pub. L. 100–647, § 1002(a)(24), struck out at end ''In the case of recovery property (within the meaning of section 168), the deduction allowable under

section 168 shall be deemed to constitute the reasonable allowance provided by this section, except with respect to that portion of the basis of such property to which subsection (k) applies.''

Subsec. (d). Pub. L. 100–647, §1002(a)(31), substituted ''property to which section 168 applies'' for ''recovery property defined in section 168''.

Subsec. (*l*)(3)(G). Pub. L. 100–647, §1002(a)(22), substituted ''section 168(i)(9)(B)'' for ''section 168(e)(3)(C)'' in last sentence.

Subsecs. (r), (s). Pub. L. 100–647, §1002(i)(1), added subsec. (r) and redesignated former subsec. (r) as (s).

1986—Subsec. (c). Pub. L. 99–514, §1809(d)(1), inserted ''Paragraphs (2), (3), and (4) of subsection (b) shall not apply to any motion picture film, video tape, or sound recording.''

Subsec. (m)(4). Pub. L. 99–514, §201(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''This subsection shall not apply with respect to recovery property (within the meaning of section 168) placed in service after December 31, 1980.''

Subsec. (q)(2)(B). Pub. L. 99–514, §1511(c)(4), substituted ''at the underpayment rate established under section 6621'' for ''at the rate determined under section 6621''.

1984—Subsec. (k)(1), (3)(D). Pub. L. 98–369 substituted ''January 1, 1987'' for ''January 1, 1984'' wherever appearing.

1983—Subsec. (*l*)(3)(G). Pub. L. 97–424 inserted provision that, for the purposes of this paragraph, rules similar to the rules of section 168(e)(3)(C) of this title shall apply.

1981—Subsec. (a). Pub. L. 97–34, §203(a), inserted provision that, in the case of recovery property (within the meaning of section 168), the deduction allowable under section 168 shall be deemed to constitute the reasonable allowance provided by this section, except with respect to that portion of the basis of such property to which subsection (k) applies.

Subsec. (d). Pub. L. 97–34, §203(d), provided that subsec. (d) did not apply with respect to recovery property defined in section 168.

Subsec. (k)(2). Pub. L. 97–34, §264(a), substituted ''Except as provided in subparagraph (B), the aggregate amount'' for ''The aggregate amount'' in subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (*l*)(3)(C). Pub. L. 97–34, §209(d)(3), inserted ''and which is placed in service before January 1, 1981'' after ''pre-1970 public utility property''.

Subsec. (m)(4). Pub. L. 97–34, §203(b), added par. (4).

Subsecs. (n), (*o*). Pub. L. 97–34, §212(d)(1), struck out subsec. (n) which dealt with the use of the straight line method of depreciation in certain cases, and subsec. (*o*) which dealt with the method of depreciation to be used in the case of substantially rehabilitated historic property.

Subsec. (r). Pub. L. 97–34, §203(c)(1), redesignated subsec. (s) as (r). Former subsec. (r), relating to the retirement-replacement-betterment method of calculating depreciation, was struck out.

Subsec. (s). Pub. L. 97–34, §203(c)(1), redesignated subsec. (s) as (r).

1980—Subsec. (k). Pub. L. 96–541, §3, substituted in pars. (1) and (3)(D) ''January 1, 1984'' for ''January 1, 1982'' wherever appearing.

Subsec. (n)(4). Pub. L. 96–541, §2(c), added par. (4).

Subsec. (*o*)(3). Pub. L. 96–541, §2(d), added par. (3).

Subsecs. (r), (s). Pub. L. 96–613 added subsec. (r) and redesignated former subsec. (r) as (s).

1978—Subsec. (i). Pub. L. 95–600, §312(c)(4), struck out subsec. (i) which related to a limitation in the case of property constructed or acquired during the suspension period.

Subsec. (k)(1), (3)(D). Pub. L. 95–615 substituted ''January 1, 1979'' for ''January 1, 1978'' wherever appearing.

Pub. L. 95–600, §367, substituted ''January 1, 1982'' for ''January 1, 1979'' wherever appearing.

Subsec. (n). Pub. L. 95–600, §701(f)(4), in par. (1), substituted ''occupied by a certified historic structure (or by any structure in a registered historic district) which is demolished or substantially altered after such date'' for ''occupied by a certified historic structure (as defined in section 191(d)(1)) which is demolished or substantially altered (other than by virtue of a certified rehabilitation as defined in section 191(d)(3) after such date'', inserted ''and'' preceding subpar. (B), substituted ''means'' for ''shall mean'' in subpar. (B), and inserted provision that ''The preceding sentence shall not apply if the last substantial alteration of the structure is a certified rehabilitation.''; in par. (2), substituted heading ''Exceptions'' for ''Exception'', designated existing text as subpar. (A), and added subpar. (B); and added par. (3).

Subsec. (*o*). Pub. L. 95–600, §701(f)(6), inserted in par. (1) ''(other than property with respect to which an amortization deduction has been allowed to the taxpayer under section 191)'' after ''substantially rehabilitated historic property'' and substituted in par. (2) ''section 191(d)(4)'' for ''section 191(d)(3)''.

Subsec. (p). Pub. L. 95–618, §301(d)(3), added subsec. (p). Former subsec. (p) redesignated (r).

Subsec. (q). Pub. L. 95–618, §301(e)(1), added subsec. (q).

Subsec. (r). Pub. L. 95–618, §301(d)(3), redesignated former subsec. (p) as (r).

1977—Subsec. (k). Pub. L. 95–171 substituted ''January 1, 1979'' for ''January 1, 1978'' wherever appearing in pars. (1) and (3)(D).

1976—Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, §§1901(a)(27)(A), 1906(b)(13)(A), substituted ''after August 16, 1954'' for ''after the date of enactment of this title'' and struck out ''or his delegate'' after ''Secretary'' in first sentence before ''shall be binding''.

Subsec. (e). Pub. L. 94–455, §§202(c)(3), 1906(b)(13)(A), substituted in par. (3) ''beginning after December 31, 1975'' for ''beginning after July 24, 1969'' and in pars. (1) to (3) struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(2). Pub. L. 94–455, §1901(a)(27)(B), substituted ''October 16, 1962'' for ''the date of enactment of the Revenue Act of 1962''.

Subsec. (i). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1) and (2) ''or his delegate'' after ''Secretary''.

Subsec. (j). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1), (4)(B), (5)(C), and (6)(A) ''or his delegate'' after ''Secretary''.

Subsec. (k)(1). Pub. L. 94–455, §§203(a)(1), 1906(b)(13)(A), substituted reference to January 1, 1978 for reference to January 1, 1976 and struck out ''or his delegate'' after ''Secretary''.

Subsec. (k)(2)(A). Pub. L. 94–455, §203(a)(2), substituted ''$20,000'' for ''$15,000''.

Subsec. (k)(3)(B). Pub. L. 94–455, §§203(a)(3), 1906(b)(13)(A), substituted ''the Leased Housing Program under section 8 of the United States Housing Act of 1937'' for ''the policies of the Housing and Urban Development Act of 1968'' and struck out ''or his delegate'' after ''Secretary''.

Subsec. (k)(3)(D). Pub. L. 94–455, §203(a)(4), added subpar. (D).

Subsec. (*l*)(3)(F). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (*l*)(4)(A). Pub. L. 94–455, §§1901(a)(27)(C), 1906(b)(13)(A), substituted ''before June 29, 1970,'' for ''within 180 days after the date of the enactment of this subparagraph'' and struck out ''or his delegate'' after ''Secretary''.

Subsec. (*l*)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (m). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1) and (3) ''or his delegate'' after ''Secretary''.

Subsec. (n). Pub. L. 94–455, §2124(c)(1), added subsec. (n). Former subsec. (n) redesignated (p).

Subsec. (*o*). Pub. L. 94–455, §2124(d)(1), added subsec. (*o*).

Subsec. (p). Pub. L. 94–455, §2124(c)(1), redesignated former subsec. (n) as (p).

1975—Subsec. (k)(1). Pub. L. 93–625 substituted ''January 1, 1976'' for ''January 1, 1975''.

1971—Subsecs. (m), (n). Pub. L. 92–178 added subsec. (m) and redesignated former subsec. (m) as (n).

1969—Subsec. (e)(3). Pub. L. 91–172, § 521(d), added par. (3).

Subsecs. (j), (k). Pub. L. 91–172, § 521(a), added subsecs. (j) and (k). Former subsec. (j) redesignated (m).

Subsec. (*l*). Pub. L. 91–172, § 441(a), added subsec. (*l*).

Subsec. (m). Pub. L. 91–172, § 521(a), redesignated former subsec. (j) as (m).

1967—Subsec. (i)(1). Pub. L. 90–26, § 2(b), provided that accelerated depreciation was not to apply if the physical construction, reconstruction or erection by any person was begun during the suspension period or begun, pursuant to an order placed during such period, before May 24, 1967, subject to the proviso that only that portion of the basis which was properly attributable to construction, reconstruction or erection before May 24, 1967, shall be affected by the applicability of the suspension period.

Subsec. (i)(3). Pub. L. 90–26, § 1, substituted ''March 9, 1967'' for ''December 31, 1967''.

1966—Subsecs. (i), (j). Pub. L. 89–800 added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (e). Pub. L. 87–834, § 13(b), designated existing provisions as par. (1) and added par. (2).

Subsecs. (f) to (i). Pub. L. 87–834, § 13(c)(1), added subsec. (f) and redesignated former subsecs. (f), (g), and (h) as (g), (h), and (i), respectively.

1958—Subsec. (d). Pub. L. 85–866 inserted ''certified mail or'' before ''registered mail''.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–140, title XV, § 1502(b), Dec. 19, 2007, 121 Stat. 1800, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [Dec. 19, 2007].''

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title II, § 207(b), May 17, 2006, 120 Stat. 351, provided that: ''The amendments made by this section [amending this section] shall apply to expenses paid or incurred with respect to property placed in service in taxable years beginning after December 31, 2005.''

Pub. L. 109–222, title V, § 503(b), May 17, 2006, 120 Stat. 355, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, § 1329(c), Aug. 8, 2005, 119 Stat. 1020, provided that: ''The amendments made by this section [amending this section and section 263A of this title] shall apply to amounts paid or incurred in taxable years beginning after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 242(c), Oct. 22, 2004, 118 Stat. 1439, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 847(b)(1) of Pub. L. 108–357 applicable to leases entered into after Mar. 12, 2004, and amendment by section 847(b)(2) of Pub. L. 108–357 applicable to leases entered into after Oct. 3, 2004, except that such amendments inapplicable to qualified transportation property, see section 849 of Pub. L. 108–357, set out as an Effective Date note under section 470 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1086(c) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section and section 168 of this title] shall apply to property placed in service after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1604(b) of Pub. L. 104–188, as amended by Pub. L. 105–206, title VI, § 6018(d), July 22, 1998, 112 Stat. 823, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to property placed in service after September 13, 1995.

''(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any property produced or acquired by the taxpayer pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such production or acquisition.

''(3) UNDERPAYMENTS OF INCOME TAX.—No addition to tax shall be made under section 6662 of the Internal Revenue Code of 1986 as a result of the application of subsection (d) of that section (relating to substantial understatements of income tax) with respect to any underpayment of income tax for any taxable year ending before the date of the enactment of this Act [Aug. 20, 1996], to the extent such underpayment was created or increased by the amendments made by subsection (a).''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13206(c)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section and section 305 of this title] shall take effect on April 30, 1993.''

Amendment by section 13261(b) and (f)(1) of Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7622(c)[(e)] of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1245 and 1253 of this title] shall apply to transfers after October 2, 1989.

''(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before the transfer.''

Section 7645(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to interests created or acquired after July 27, 1989, in taxable years ending after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(1) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with excep-

tions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(1) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1511(c)(4) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Section 1809(d)(1) of Pub. L. 99–514 provided that subsec. (c) is amended except with respect to property placed in service by the taxpayer on or before Mar. 28, 1985.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable to taxable years beginning after Dec. 31, 1979, with a special rule for periods beginning before Mar. 1, 1980, see section 541(c) of Pub. L. 97–424, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 264(b) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply with respect to rehabilitation expenditures incurred after December 31, 1980.''

Amendment by sections 203 and 209 of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, except that amendment by section 203(c) of Pub. L. 97–34 effective Jan. 1, 1981, and applicable with respect to taxable years ending after that date, see section 209(a), (b) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 212(d)(1) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after that date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2(b) of Pub. L. 96–613 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1953.''

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENTS

Amendment by section 312(c)(4) of Pub. L. 95–600 applicable to taxable years ending after Dec. 31, 1978, see section 312(d) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Section 701(f)(8) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this subsection [amending this section and sections 57, 191, 280B, 1245, and 1250 of this title] shall take effect as if included in the respective provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to which such amendments relate, as such provision[s] were added to such Code, or amended, by section 2124 of the Tax Reform Act of 1976 [Pub. L. 94–455, title XXI, § 2124, Oct. 4, 1976, 90 Stat. 1916].''

Amendment by Pub. L. 95–615 to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a Termination Date of 1978 Amendment note under section 61 of this title.

Amendment by section 301(d)(3) of Pub. L. 95–618 applicable to property which is placed in service after Sept. 30, 1978, but not to property which is constructed, reconstructed, erected, or acquired pursuant to a contract which, on Oct. 1, 1978, and at all times thereafter, was binding on the taxpayer, see section 301(d)(4) of Pub. L. 95–618, set out as an Effective Date of 1978 Amendment note under section 48 of this title.

Section 301(e)(2) of Pub. L. 95–618 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years ending after the date of enactment of this Act [Nov. 9, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(27)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 202(c)(3) of Pub. L. 94–455 applicable for taxable years ending after Dec. 31, 1975, see section 202(d) of Pub. L. 94–455, set out as a note under section 1250 of this title.

Section 203(b) of Pub. L. 94–455, as amended by Pub. L. 95–171, § 4(b), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–615, § 7(b), Nov. 8, 1978, 92 Stat. 3098, provided that: ''The amendments made by paragraphs (1), (3), and (4) of subsection (a) [amending this section] shall apply to expenditures paid or incurred after December 31, 1975. The amendment made by paragraph (2) of subsection (a) [amending this section] shall apply to expenditures incurred after December 31, 1975.''

[Section 7(b) of Pub. L. 95–615 [which amended section 203(b) of Pub. L. 94–455 exactly as that section 203(b) had been amended by Pub. L. 95–171] to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a Termination Date of 1978 Amendment note under section 61 of this title.]

Section 2124(c)(2), (d)(2) of Pub. L. 94–455, which provided that the amendment of this section was applicable to that portion of the basis attributable to construction, reconstruction, or erection after Dec. 31, 1975, and before Jan. 1, 1981, and with respect to additions to capital account occurring after June 30, 1976, and before July 1, 1981, was repealed by section 2(e)(3), (4) of Pub. L. 96–541.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 5(d) of Pub. L. 93–625 provided that: ''The amendments made by this section [amending section 1250 of this title and enacting and repealing provisions set out as notes under this section] shall apply with respect to property placed in service after December 31, 1973.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 109(d)(1) of Pub. L. 92–178 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 1970.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 441(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to all taxable years for which a return has not been filed before August 1, 1969.''

Section 521(g) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and sections 381 and 1250 of this title] shall apply with respect to taxable years ending after July 24, 1969.''

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–26 applicable with respect to taxable years ending after March 9, 1967, see section 4 of Pub. L. 90–26, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–800 applicable to taxable years ending after Oct. 9, 1966, see section 4 of Pub. L. 89–800, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(b) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, and

amendment by section 13(c)(1) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only if mailing occurs after Sept. 2, 1958, see section 89(d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

DISCONTINUATION OF RETIREMENT-REPLACEMENT-BETTERMENT METHOD OF DEPRECIATION; TRANSITIONAL RULE

Section 203(c)(2), (3) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(2) CHANGE IN METHOD OF ACCOUNTING.—Sections 446 and 481 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to the change in the method of depreciation to comply with the provisions of this subsection [which struck out subsec. (r) of this section relating to the retirement-replacement-betterment method of accounting].

''(3) TRANSITIONAL RULE.—The adjusted basis of RRB property (as defined in section 168(g)(6) of such Code) as of December 31, 1980, shall be depreciated using a useful life of no less than 5 years and no more than 50 years and a method described in section 167(b) of such Code, including the method described in section 167(b)(2) of such Code, switching to the method described in section 167(b)(3) of such Code at a time to maximize the deduction.''

INTERNAL REVENUE CODE PROVISIONS RELATING TO DEPRECIATION AS NOT APPLICABLE TO CALCULATIONS OF SECRETARY OF HEALTH AND HUMAN SERVICES IN DETERMINING COSTS OF PROGRAMS

Section 203(e) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The Secretary of Health and Human Services is not required to apply any provision of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended, in calculating depreciation (for the purpose of determining any cost under a program administered by the Secretary), unless a provision of law requires so expressly.''

CLASS LIFE SYSTEM; APPLICATION TO REAL PROPERTY; GENERAL RULE

Section 5(a) of Pub. L. 93–625, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of buildings and other items of section 1250 property (within the meaning of section 1250(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) placed in service before the effective date of the class lives first prescribed by the Secretary of the Treasury or his delegate under section 167(m) of such Code for the class in which such property falls, if an election under such section 167(m) applies to the taxpayer for the taxable year in which such property is placed in service, the taxpayer may, in accordance with regulations prescribed by the Secretary of the Treasury or his delegate, elect to determine the useful life of such property—

''(1) under Revenue Procedure 62–21 (as amended and supplemented) as in effect on December 31, 1970, or

''(2) on the facts and circumstances.''

TRANSITIONAL RULES FOR REASONABLE ALLOWANCE FOR DEPRECIATION

Section 109(e) of Pub. L. 92–178, as amended by Pub. L. 93–625, § 5(b), Jan. 3, 1975, 88 Stat. 2112; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) [Repealed. Pub. L. 93–625, § 5(b), Jan. 3, 1975, 88 Stat. 2112.]

''(2) SUBSIDIARY ASSETS.—If a significant portion of a class of property first prescribed by the Secretary of the Treasury or his delegate under section 167(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] consists of subsidiary assets, all such subsidiary assets in such class placed in service by the taxpayer during the period beginning on January 1, 1971, and ending on December 31, 1973 (or such earlier date on which a class which includes such subsidiary assets subsequently prescribed by the Secretary of the Treasury or his delegate under such section becomes effective), may, in accordance with regulations prescribed by the Secretary of the Treasury or his delegate, be excluded by the taxpayer from an election under such section.''

REHABILITATION EXPENDITURES FOR LOW INCOME RENTAL HOUSING INCURRED AFTER DECEMBER 31, 1974, AND BEFORE JANUARY 1, 1978, PURSUANT TO CONTRACT ENTERED BEFORE DECEMBER 31, 1974

Pub. L. 93–482, § 4, Oct. 26, 1974, 88 Stat. 1456, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding the provisions of section 167(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to depreciation of expenditures to rehabilitate low income rental housing), the provisions of section 167(k) shall apply with respect to rehabilitation expenditures incurred with respect to low income rental housing after December 31, 1974, and before January 1, 1978, if such expenditures are incurred pursuant to a binding contract entered into before December 31, 1974.''

§ 168. Accelerated cost recovery system

(a) General rule

Except as otherwise provided in this section, the depreciation deduction provided by section 167(a) for any tangible property shall be determined by using—

(1) the applicable depreciation method,

(2) the applicable recovery period, and

(3) the applicable convention.

(b) Applicable depreciation method

For purposes of this section—

(1) In general

Except as provided in paragraphs (2) and (3), the applicable depreciation method is—

(A) the 200 percent declining balance method,

(B) switching to the straight line method for the 1st taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance.

(2) 150 percent declining balance method in certain cases

Paragraph (1) shall be applied by substituting ''150 percent'' for ''200 percent'' in the case of—

(A) any 15-year or 20-year property not referred to in paragraph (3),

(B) any property used in a farming business (within the meaning of section 263A(e)(4)),

(C) any property (other than property described in paragraph (3)) which is a qualified smart electric meter or qualified smart electric grid system, or

(D) any property (other than property described in paragraph (3)) with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(3) Property to which straight line method applies

The applicable depreciation method shall be the straight line method in the case of the following property:

(A) Nonresidential real property.

(B) Residential rental property.

(C) Any railroad grading or tunnel bore.

(D) Property with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(E) Property described in subsection (e)(3)(D)(ii).

(F) Water utility property described in subsection (e)(5).

(G) Qualified leasehold improvement property described in subsection (e)(6).

(H) Qualified restaurant property described in subsection (e)(7).

(I) Qualified retail improvement property described in subsection (e)(8).

(4) Salvage value treated as zero

Salvage value shall be treated as zero.

(5) Election

An election under paragraph (2)(C) or (3)(D) may be made with respect to 1 or more classes of property for any taxable year and once made with respect to any class shall apply to all property in such class placed in service during such taxable year. Such an election, once made, shall be irrevocable.

(c) Applicable recovery period

For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:

In the case of:	The applicable recovery period is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year property	15 years
20-year property	20 years
Water utility property	25 years
Residential rental property	27.5 years
Nonresidential real property	39 years.
Any railroad grading or tunnel bore	50 years.

(d) Applicable convention

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the applicable convention is the half-year convention.

(2) Real property

In the case of—

(A) nonresidential real property,

(B) residential rental property, and

(C) any railroad grading or tunnel bore,

the applicable convention is the mid-month convention.

(3) Special rule where substantial property placed in service during last 3 months of taxable year

(A) In general

Except as provided in regulations, if during any taxable year—

(i) the aggregate bases of property to which this section applies placed in service during the last 3 months of the taxable year, exceed

(ii) 40 percent of the aggregate bases of property to which this section applies placed in service during such taxable year,

the applicable convention for all property to which this section applies placed in service during such taxable year shall be the mid-quarter convention.

(B) Certain property not taken into account

For purposes of subparagraph (A), there shall not be taken into account—

(i) any nonresidential real property[1] residential rental property, and railroad grading or tunnel bore, and

(ii) any other property placed in service and disposed of during the same taxable year.

(4) Definitions

(A) Half-year convention

The half-year convention is a convention which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year.

(B) Mid-month convention

The mid-month convention is a convention which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month.

(C) Mid-quarter convention

The mid-quarter convention is a convention which treats all property placed in service during any quarter of a taxable year (or disposed of during any quarter of a taxable year) as placed in service (or disposed of) on the mid-point of such quarter.

(e) Classification of property

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, property shall be classified under the following table:

[1] So in original. Probably should be ''property,''.

Property shall be treated as:	If such property has a class life (in years) of:
3-year property	4 or less
5-year property	More than 4 but less than 10
7-year property	10 or more but less than 16
10-year property	16 or more but less than 20
15-year property	20 or more but less than 25
20-year property	25 or more.

(2) Residential rental or nonresidential real property

(A) Residential rental property

(i) Residential rental property

The term ''residential rental property'' means any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.

(ii) Definitions

For purposes of clause (i)—

(I) the term ''dwelling unit'' means a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis, and

(II) if any portion of the building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied.

(B) Nonresidential real property

The term ''nonresidential real property'' means section 1250 property which is not—

(i) residential rental property, or

(ii) property with a class life of less than 27.5 years.

(3) Classification of certain property

(A) 3-year property

The term ''3-year property'' includes—

(i) any race horse—

(I) which is placed in service before January 1, 2014, and

(II) which is placed in service after December 31, 2013, and which is more than 2 years old at the time such horse is placed in service by such purchaser,

(ii) any horse other than a race horse which is more than 12 years old at the time it is placed in service, and

(iii) any qualified rent-to-own property.

(B) 5-year property

The term ''5-year property'' includes—

(i) any automobile or light general purpose truck,

(ii) any semi-conductor manufacturing equipment,

(iii) any computer-based telephone central office switching equipment,

(iv) any qualified technological equipment,

(v) any section 1245 property used in connection with research and experimentation,

(vi) any property which—

(I) is described in subparagraph (A) of section 48(a)(3) (or would be so described if ''solar or wind energy'' were substituted for ''solar energy'' in clause (i) thereof and the last sentence of such section did not apply to such subparagraph),

(II) is described in paragraph (15) of section 48(*l*) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) and is a qualifying small power production facility within the meaning of section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), as in effect on September 1, 1986, or

(III) is described in section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), and

(vii) any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which is used in a farming business (as defined in section 263A(e)(4)), the original use of which commences with the taxpayer after December 31, 2008, and which is placed in service before January 1, 2010.

Nothing in any provision of law shall be construed to treat property as not being described in clause (vi)(I) (or the corresponding provisions of prior law) by reason of being public utility property (within the meaning of section 48(a)(3)).

(C) 7-year property

The term ''7-year property'' includes—

(i) any railroad track, and[2]

(ii) any motorsports entertainment complex,

(iii) any Alaska natural gas pipeline,

(iv) any natural gas gathering line the original use of which commences with the taxpayer after April 11, 2005, and

(v) any property which—

(I) does not have a class life, and

(II) is not otherwise classified under paragraph (2) or this paragraph.

(D) 10-year property

The term ''10-year property'' includes—

(i) any single purpose agricultural or horticultural structure (within the meaning of subsection (i)(13)),

(ii) any tree or vine bearing fruit or nuts,

(iii) any qualified smart electric meter, and

(iv) any qualified smart electric grid system.

(E) 15-year property

The term ''15-year property'' includes—

(i) any municipal wastewater treatment plant,

(ii) any telephone distribution plant and comparable equipment used for 2-way exchange of voice and data communications,

(iii) any section 1250 property which is a retail motor fuels outlet (whether or not

[2] So in original. The word ''and'' probably should not appear.

food or other convenience items are sold at the outlet),

(iv) any qualified leasehold improvement property placed in service before January 1, 2012,

(v) any qualified restaurant property placed in service before January 1, 2012,

(vi) initial clearing and grading land improvements with respect to gas utility property,

(vii) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale and the original use of which commences with the taxpayer after April 11, 2005,

(viii) any natural gas distribution line the original use of which commences with the taxpayer after April 11, 2005, and which is placed in service before January 1, 2011, and

(ix) any qualified retail improvement property placed in service after December 31, 2008, and before January 1, 2012.

(F) 20-year property

The term ''20-year property'' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.

(4) Railroad grading or tunnel bore

The term ''railroad grading or tunnel bore'' means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track.

(5) Water utility property

The term ''water utility property'' means property—

(A) which is an integral part of the gathering, treatment, or commercial distribution of water, and which, without regard to this paragraph, would be 20-year property, and

(B) any municipal sewer.

(6) Qualified leasehold improvement property

The term ''qualified leasehold improvement property'' has the meaning given such term in section 168(k)(3) except that the following special rules shall apply:

(A) Improvements made by lessor

In the case of an improvement made by the person who was the lessor of such improvement when such improvement was placed in service, such improvement shall be qualified leasehold improvement property (if at all) only so long as such improvement is held by such person.

(B) Exception for changes in form of business

Property shall not cease to be qualified leasehold improvement property under subparagraph (A) by reason of—

(i) death,

(ii) a transaction to which section 381(a) applies,

(iii) a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as qualified leasehold improvement property and the taxpayer retains a substantial interest in such trade or business,

(iv) the acquisition of such property in an exchange described in section 1031, 1033, or 1038 to the extent that the basis of such property includes an amount representing the adjusted basis of other property owned by the taxpayer or a related person, or

(v) the acquisition of such property by the taxpayer in a transaction described in section 332, 351, 361, 721, or 731 (or the acquisition of such property by the taxpayer from the transferee or acquiring corporation in a transaction described in such section), to the extent that the basis of the property in the hands of the taxpayer is determined by reference to its basis in the hands of the transferor or distributor.

(7) Qualified restaurant property

(A) In general

The term ''qualified restaurant property'' means any section 1250 property which is—

(i) a building, or

(ii) an improvement to a building,

if more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.

(B) Exclusion from bonus depreciation

Property described in this paragraph shall not be considered qualified property for purposes of subsection (k).

(8) Qualified retail improvement property

(A) In general

The term ''qualified retail improvement property'' means any improvement to an interior portion of a building which is nonresidential real property if—

(i) such portion is open to the general public and is used in the retail trade or business of selling tangible personal property to the general public, and

(ii) such improvement is placed in service more than 3 years after the date the building was first placed in service.

(B) Improvements made by owner

In the case of an improvement made by the owner of such improvement, such improvement shall be qualified retail improvement property (if at all) only so long as such improvement is held by such owner. Rules similar to the rules under paragraph (6)(B) shall apply for purposes of the preceding sentence.

(C) Certain improvements not included

Such term shall not include any improvement for which the expenditure is attributable to—

(i) the enlargement of the building,

(ii) any elevator or escalator,

(iii) any structural component benefitting a common area, or

(iv) the internal structural framework of the building.

(D) Exclusion from bonus depreciation

Property described in this paragraph shall not be considered qualified property for purposes of subsection (k).

(f) Property to which section does not apply

This section shall not apply to—

(1) Certain methods of depreciation

Any property if—

(A) the taxpayer elects to exclude such property from the application of this section, and

(B) for the 1st taxable year for which a depreciation deduction would be allowable with respect to such property in the hands of the taxpayer, the property is properly depreciated under the unit-of-production method or any method of depreciation not expressed in a term of years (other than the retirement-replacement-betterment method or similar method).

(2) Certain public utility property

Any public utility property (within the meaning of subsection (i)(10)) if the taxpayer does not use a normalization method of accounting.

(3) Films and video tape

Any motion picture film or video tape.

(4) Sound recordings

Any works which result from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material (such as discs, tapes, or other phonorecordings) in which such sounds are embodied.

(5) Certain property placed in service in churning transactions

(A) In general

Property—

(i) described in paragraph (4) of section 168(e) (as in effect before the amendments made by the Tax Reform Act of 1986), or

(ii) which would be described in such paragraph if such paragraph were applied by substituting ''1987'' for ''1981'' and ''1986'' for ''1980'' each place such terms appear.

(B) Subparagraph (A)(ii) not to apply

Clause (ii) of subparagraph (A) shall not apply to—

(i) any residential rental property or nonresidential real property,

(ii) any property if, for the 1st taxable year in which such property is placed in service—

(I) the amount allowable as a deduction under this section (as in effect before the date of the enactment of this paragraph) with respect to such property is greater than,

(II) the amount allowable as a deduction under this section (as in effect on or after such date and using the half-year convention) for such taxable year, or

(iii) any property to which this section (as amended by the Tax Reform Act of 1986) applied in the hands of the transferor.

(C) Special rule

In the case of any property to which this section would apply but for this paragraph, the depreciation deduction under section 167 shall be determined under the provisions of this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986.

(g) Alternative depreciation system for certain property

(1) In general

In the case of—

(A) any tangible property which during the taxable year is used predominantly outside the United States,

(B) any tax-exempt use property,

(C) any tax-exempt bond financed property,

(D) any imported property covered by an Executive order under paragraph (6), and

(E) any property to which an election under paragraph (7) applies,

the depreciation deduction provided by section 167(a) shall be determined under the alternative depreciation system.

(2) Alternative depreciation system

For purposes of paragraph (1), the alternative depreciation system is depreciation determined by using—

(A) the straight line method (without regard to salvage value),

(B) the applicable convention determined under subsection (d), and

(C) a recovery period determined under the following table:

In the case of:	The recovery period shall be:
(i) Property not described in clause (ii) or (iii)	The class life.
(ii) Personal property with no class life	12 years.
(iii) Nonresidential real and residential rental property	40 years.
(iv) Any railroad grading or tunnel bore or water utility property	50 years.

(3) Special rules for determining class life

(A) Tax-exempt use property subject to lease

In the case of any tax-exempt use property subject to a lease, the recovery period used for purposes of paragraph (2) shall (notwithstanding any other subparagraph of this paragraph) in no event be less than 125 percent of the lease term.

(B) Special rule for certain property assigned to classes

For purposes of paragraph (2), in the case of property described in any of the following subparagraphs of subsection (e)(3), the class life shall be determined as follows:

If property is described in subparagraph:	The class life is:
(A)(iii)	4
(B)(ii)	5

If property is described in subparagraph:	The class life is:
(B)(iii)	9.5
(B)(vii)	10
(C)(i)	10
(C)(iii)	22
(C)(iv)	14
(D)(i)	15
(D)(ii)	20
(E)(i)	24
(E)(ii)	24
(E)(iii)	20
(E)(iv)	39
(E)(v)	39
(E)(vi)	20
(E)(vii)	30
(E)(viii)	35
(E)(ix)	39
(F)	25

(C) Qualified technological equipment

In the case of any qualified technological equipment, the recovery period used for purposes of paragraph (2) shall be 5 years.

(D) Automobiles, etc.

In the case of any automobile or light general purpose truck, the recovery period used for purposes of paragraph (2) shall be 5 years.

(E) Certain real property

In the case of any section 1245 property which is real property with no class life, the recovery period used for purposes of paragraph (2) shall be 40 years.

(4) Exception for certain property used outside United States

Subparagraph (A) of paragraph (1) shall not apply to—

(A) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

(B) rolling stock which is used within and without the United States and which is—

(i) of a rail carrier subject to part A of subtitle IV of title 49, or

(ii) of a United States person (other than a corporation described in clause (i)) but only if the rolling stock is not leased to one or more foreign persons for periods aggregating more than 12 months in any 24-month period;

(C) any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

(D) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

(E) any container of a United States person which is used in the transportation of property to and from the United States;

(F) any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; (43 U.S.C. 1331));

(G) any property which is owned by a domestic corporation (other than a corporation which has an election in effect under section 936) or by a United States citizen (other than a citizen entitled to the benefits of section 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States;

(H) any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962, 47 U.S.C. 702(3)), or any interest therein, of a United States person;

(I) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 168(i)(10)(C) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable system which constitutes part of a communication link exclusively between the United States and one or more foreign countries;

(J) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters within the northern portion of the Western Hemisphere for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or deposits under such waters;

(K) any property described in section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) which is owned by a United States person and which is used in international or territorial waters to generate energy for use in the United States; and

(L) any satellite (not described in subparagraph (H)) or other spacecraft (or any interest therein) held by a United States person if such satellite or other spacecraft was launched from within the United States.

For purposes of subparagraph (J), the term ''northern portion of the Western Hemisphere'' means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any foreign country which is a country of South America.

(5) Tax-exempt bond financed property

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''tax-exempt bond financed property'' means any property to the extent such property is financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a).

(B) Allocation of bond proceeds

For purposes of subparagraph (A), the proceeds of any obligation shall be treated as used to finance property acquired in connection with the issuance of such obligation in the order in which such property is placed in service.

(C) Qualified residential rental projects

The term ''tax-exempt bond financed property'' shall not include any qualified residential rental project (within the meaning of section 142(a)(7)).

(6) Imported property

(A) Countries maintaining trade restrictions or engaging in discriminatory acts

If the President determines that a foreign country—

(i) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

(ii) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce,

the President may by Executive order provide for the application of paragraph (1)(D) to any article or class of articles manufactured or produced in such foreign country for such period as may be provided by such Executive order. Any period specified in the preceding sentence shall not apply to any property ordered before (or the construction, reconstruction, or erection of which began before) the date of the Executive order unless the President determines an earlier date to be in the public interest and specifies such date in the Executive order.

(B) Imported property

For purposes of this subsection, the term ''imported property'' means any property if—

(i) such property was completed outside the United States, or

(ii) less than 50 percent of the basis of such property is attributable to value added within the United States.

For purposes of this subparagraph, the term ''United States'' includes the Commonwealth of Puerto Rico and the possessions of the United States.

(7) Election to use alternative depreciation system

(A) In general

If the taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, the alternative depreciation system under this subsection shall apply to all property in such class placed in service during such taxable year. Notwithstanding the preceding sentence, in the case of nonresidential real property or residential rental property, such election may be made separately with respect to each property.

(B) Election irrevocable

An election under subparagraph (A), once made, shall be irrevocable.

(h) Tax-exempt use property

(1) In general

For purposes of this section—

(A) Property other than nonresidential real property

Except as otherwise provided in this subsection, the term ''tax-exempt use property'' means that portion of any tangible property (other than nonresidential real property) leased to a tax-exempt entity.

(B) Nonresidential real property

(i) In general

In the case of nonresidential real property, the term ''tax-exempt use property'' means that portion of the property leased to a tax-exempt entity in a disqualified lease.

(ii) Disqualified lease

For purposes of this subparagraph, the term ''disqualified lease'' means any lease of the property to a tax-exempt entity, but only if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a) and such entity (or a related entity) participated in such financing,

(II) under such lease there is a fixed or determinable price purchase or sale option which involves such entity (or a related entity) or there is the equivalent of such an option,

(III) such lease has a lease term in excess of 20 years, or

(IV) such lease occurs after a sale (or other transfer) of the property by, or lease of the property from, such entity (or a related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease.

(iii) 35-percent threshold test

Clause (i) shall apply to any property only if the portion of such property leased to tax-exempt entities in disqualified leases is more than 35 percent of the property.

(iv) Treatment of improvements

For purposes of this subparagraph, improvements to a property (other than land) shall not be treated as a separate property.

(v) Leasebacks during 1st 3 months of use not taken into account

Subclause (IV) of clause (ii) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(C) Exception for short-term leases

(i) In general

Property shall not be treated as tax-exempt use property merely by reason of a short-term lease.

(ii) Short-term lease

For purposes of clause (i), the term ''short-term lease'' means any lease the term of which is—

(I) less than 3 years, and

(II) less than the greater of 1 year or 30 percent of the property's present class life.

In the case of nonresidential real property and property with no present class life, subclause (II) shall not apply.

(D) Exception where property used in unrelated trade or business

The term ''tax-exempt use property'' shall not include any portion of a property if such portion is predominantly used by the tax-exempt entity (directly or through a partnership of which such entity is a partner) in an unrelated trade or business the income of which is subject to tax under section 511. For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease.

(E) Nonresidential real property defined

For purposes of this paragraph, the term ''nonresidential real property'' includes residential rental property.

(2) Tax-exempt entity

(A) In general

For purposes of this subsection, the term ''tax-exempt entity'' means—

(i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,

(ii) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter,

(iii) any foreign person or entity, and

(iv) any Indian tribal government described in section 7701(a)(40).

For purposes of applying this subsection, any Indian tribal government referred to in clause (iv) shall be treated in the same manner as a State.

(B) Exception for certain property subject to United States tax and used by foreign person or entity

Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

(i) subject to tax under this chapter, or

(ii) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

(C) Foreign person or entity

For purposes of this paragraph, the term ''foreign person or entity'' means—

(i) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, and

(ii) any person who is not a United States person.

Such term does not include any foreign partnership or other foreign pass-thru entity.

(D) Treatment of certain taxable instrumentalities

For purposes of this subsection, a corporation shall not be treated as an instrumentality of the United States or of any State or political subdivision thereof if—

(i) all of the activities of such corporation are subject to tax under this chapter, and

(ii) a majority of the board of directors of such corporation is not selected by the United States or any State or political subdivision thereof.

(E) Certain previously tax-exempt organizations

(i) In general

For purposes of this subsection, an organization shall be treated as an organization described in subparagraph (A)(ii) with respect to any property (other than property held by such organization) if such organization was an organization (other than a cooperative described in section 521) exempt from tax imposed by this chapter at any time during the 5-year period ending on the date such property was first used by such organization. The preceding sentence and subparagraph (D)(ii) shall not apply to the Federal Home Loan Mortgage Corporation.

(ii) Election not to have clause (i) apply

(I) In general

In the case of an organization formerly exempt from tax under section 501(a) as an organization described in section 501(c)(12), clause (i) shall not apply to such organization with respect to any property if such organization elects not to be exempt from tax under section 501(a) during the tax-exempt use period with respect to such property.

(II) Tax-exempt use period

For purposes of subclause (I), the term ''tax-exempt use period'' means the period beginning with the taxable year in which the property described in subclause (I) is first used by the organization and ending with the close of the 15th taxable year following the last taxable year of the applicable recovery period of such property.

(III) Election

Any election under subclause (I), once made, shall be irrevocable.

(iii) Treatment of successor organizations

Any organization which is engaged in activities substantially similar to those engaged in by a predecessor organization shall succeed to the treatment under this

subparagraph of such predecessor organization.

(iv) First used

For purposes of this subparagraph, property shall be treated as first used by the organization—

(I) when the property is first placed in service under a lease to such organization, or

(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity.

(3) Special rules for certain high technology equipment

(A) Exemption where lease term is 5 years or less

For purposes of this section, the term ''tax-exempt use property'' shall not include any qualified technological equipment if the lease to the tax-exempt entity has a lease term of 5 years or less. Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.

(B) Exception for certain property

(i) In general

For purposes of subparagraph (A), the term ''qualified technological equipment'' shall not include any property leased to a tax-exempt entity if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a),

(II) such lease occurs after a sale (or other transfer) of the property by, or lease of such property from, such entity (or related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease, or

(III) such tax-exempt entity is the United States or any agency or instrumentality of the United States.

(ii) Leasebacks during 1st 3 months of use not taken into account

Subclause (II) of clause (i) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(4) Related entities

For purposes of this subsection—

(A)(i) Each governmental unit and each agency or instrumentality of a governmental unit is related to each other such unit, agency, or instrumentality which directly or indirectly derives its powers, rights, and duties in whole or in part from the same sovereign authority.

(ii) For purposes of clause (i), the United States, each State, and each possession of the United States shall be treated as a separate sovereign authority.

(B) Any entity not described in subparagraph (A)(i) is related to any other entity if the 2 entities have—

(i) significant common purposes and substantial common membership, or

(ii) directly or indirectly substantial common direction or control.

(C)(i) An entity is related to another entity if either entity owns (directly or through 1 or more entities) a 50 percent or greater interest in the capital or profits of the other entity.

(ii) For purposes of clause (i), entities treated as related under subparagraph (A) or (B) shall be treated as 1 entity.

(D) An entity is related to another entity with respect to a transaction if such transaction is part of an attempt by such entities to avoid the application of this subsection.

(5) Tax-exempt use of property leased to partnerships, etc., determined at partner level

For purposes of this subsection—

(A) In general

In the case of any property which is leased to a partnership, the determination of whether any portion of such property is tax-exempt use property shall be made by treating each tax-exempt entity partner's proportionate share (determined under paragraph (6)(C)) of such property as being leased to such partner.

(B) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraph (A) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(C) Presumption with respect to foreign entities

Unless it is otherwise established to the satisfaction of the Secretary, it shall be presumed that the partners of a foreign partnership (and the beneficiaries of any other foreign pass-thru entity) are persons who are not United States persons.

(6) Treatment of property owned by partnerships, etc.

(A) In general

For purposes of this subsection, if—

(i) any property which (but for this subparagraph) is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and

(ii) any allocation to the tax-exempt entity of partnership items is not a qualified allocation,

an amount equal to such tax-exempt entity's proportionate share of such property shall

(except as provided in paragraph (1)(D)) be treated as tax-exempt use property.

(B) Qualified allocation

For purposes of subparagraph (A), the term ''qualified allocation'' means any allocation to a tax-exempt entity which—

(i) is consistent with such entity's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and

(ii) has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this subparagraph, items allocated under section 704(c) shall not be taken into account.

(C) Determination of proportionate share

(i) In general

For purposes of subparagraph (A), a tax-exempt entity's proportionate share of any property owned by a partnership shall be determined on the basis of such entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)), whichever results in the largest proportionate share.

(ii) Determination where allocations vary

For purposes of clause (i), if a tax-exempt entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)) may vary during the period such entity is a partner in the partnership, such share shall be the highest share such entity may receive.

(D) Determination of whether property used in unrelated trade or business

For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514.

(E) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraphs (A), (B), (C), and (D) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(F) Treatment of certain taxable entities

(i) In general

For purposes of this paragraph and paragraph (5), except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.

(ii) Election

If a tax-exempt controlled entity makes an election under this clause—

(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph and paragraph (5), and

(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.

(iii) Tax-exempt controlled entity

(I) In general

The term ''tax-exempt controlled entity'' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (2)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

(II) Only 5-percent shareholders taken into account in case of publicly traded stock

For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (4)) shall be treated as 1 entity.

(III) Section 318 to apply

For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof).

(G) Regulations

For purposes of determining whether there is a qualified allocation under subparagraph (B), the regulations prescribed under paragraph (8) for purposes of this paragraph—

(i) shall set forth the proper treatment for partnership guaranteed payments, and

(ii) may provide for the exclusion or segregation of items.

(7) Lease

For purposes of this subsection, the term ''lease'' includes any grant of a right to use property.

(8) Regulations

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

(i) Definitions and special rules

For purposes of this section—

(1) Class life

Except as provided in this section, the term ''class life'' means the class life (if any) which

would be applicable with respect to any property as of January 1, 1986, under subsection (m) of section 167 (determined without regard to paragraph (4) and as if the taxpayer had made an election under such subsection). The Secretary, through an office established in the Treasury, shall monitor and analyze actual experience with respect to all depreciable assets. The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.

(2) Qualified technological equipment

(A) In general

The term ''qualified technological equipment'' means—

(i) any computer or peripheral equipment,

(ii) any high technology telephone station equipment installed on the customer's premises, and

(iii) any high technology medical equipment.

(B) Computer or peripheral equipment defined

For purposes of this paragraph—

(i) In general

The term ''computer or peripheral equipment'' means—

(I) any computer, and

(II) any related peripheral equipment.

(ii) Computer

The term ''computer'' means a programmable electronically activated device which—

(I) is capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention, and

(II) consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities.

(iii) Related peripheral equipment

The term ''related peripheral equipment'' means any auxiliary machine (whether on-line or off-line) which is designed to be placed under the control of the central processing unit of a computer.

(iv) Exceptions

The term ''computer or peripheral equipment'' shall not include—

(I) any equipment which is an integral part of other property which is not a computer,

(II) typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, and

(III) equipment of a kind used primarily for amusement or entertainment of the user.

(C) High technology medical equipment

For purposes of this paragraph, the term ''high technology medical equipment'' means any electronic, electromechanical, or computer-based high technology equipment used in the screening, monitoring, observation, diagnosis, or treatment of patients in a laboratory, medical, or hospital environment.

(3) Lease term

(A) In general

In determining a lease term—

(i) there shall be taken into account options to renew,

(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

(II) which is with respect to the property subject to the lease or substantially similar property, and

(iii) 2 or more successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property shall be treated as 1 lease.

(B) Special rule for fair rental options on nonresidential real property or residential rental property

For purposes of clause (i) of subparagraph (A), in the case of nonresidential real property or residential rental property, there shall not be taken into account any option to renew at fair market value, determined at the time of renewal.

(4) General asset accounts

Under regulations, a taxpayer may maintain 1 or more general asset accounts for any property to which this section applies. Except as provided in regulations, all proceeds realized on any disposition of property in a general asset account shall be included in income as ordinary income.

(5) Changes in use

The Secretary shall, by regulations, provide for the method of determining the deduction allowable under section 167(a) with respect to any tangible property for any taxable year (and the succeeding taxable years) during which such property changes status under this section but continues to be held by the same person.

(6) Treatments of additions or improvements to property

In the case of any addition to (or improvement of) any property—

(A) any deduction under subsection (a) for such addition or improvement shall be computed in the same manner as the deduction for such property would be computed if such property had been placed in service at the same time as such addition or improvement, and

(B) the applicable recovery period for such addition or improvement shall begin on the later of—

(i) the date on which such addition (or improvement) is placed in service, or

(ii) the date on which the property with respect to which such addition (or improvement) was made is placed in service.

(7) Treatment of certain transferees

(A) In general

In the case of any property transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of computing the depreciation deduction determined under this section with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor. In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect.

(B) Transactions covered

The transactions described in this subparagraph are—

(i) any transaction described in section 332, 351, 361, 721, or 731, and

(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B).

(C) Property reacquired by the taxpayer

Under regulations, property which is disposed of and then reacquired by the taxpayer shall be treated for purposes of computing the deduction allowable under subsection (a) as if such property had not been disposed of.

(8) Treatment of leasehold improvements

(A) In general

In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(B) Treatment of lessor improvements which are abandoned at termination of lease

An improvement—

(i) which is made by the lessor of leased property for the lessee of such property, and

(ii) which is irrevocably disposed of or abandoned by the lessor at the termination of the lease by such lessee,

shall be treated for purposes of determining gain or loss under this title as disposed of by the lessor when so disposed of or abandoned.

(C) Cross reference

For treatment of qualified long-term real property constructed or improved in connection with cash or rent reduction from lessor to lessee, see section 110(b).

(9) Normalization rules

(A) In general

In order to use a normalization method of accounting with respect to any public utility property for purposes of subsection (f)(2)—

(i) the taxpayer must, in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to such property that is the same as, and a depreciation period for such property that is no shorter than, the method and period used to compute its depreciation expense for such purposes; and

(ii) if the amount allowable as a deduction under this section with respect to such property differs from the amount that would be allowable as a deduction under section 167 using the method (including the period, first and last year convention, and salvage value) used to compute regulated tax expense under clause (i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

(B) Use of inconsistent estimates and projections, etc.

(i) In general

One way in which the requirements of subparagraph (A) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of subparagraph (A).

(ii) Use of inconsistent estimates and projections

The procedures and adjustments which are to be treated as inconsistent for purposes of clause (i) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under subparagraph (A)(ii) unless such estimate or projection is also used, for ratemaking purposes, with respect to the other 2 such items and with respect to the rate base.

(iii) Regulatory authority

The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in clause (ii)) which are to be treated as inconsistent for purposes of clause (i).

(C) Public utility property which does not meet normalization rules

In the case of any public utility property to which this section does not apply by reason of subsection (f)(2), the allowance for depreciation under section 167(a) shall be an amount computed using the method and period referred to in subparagraph (A)(i).

(10) Public utility property

The term ''public utility property'' means property used predominantly in the trade or business of the furnishing or sale of—

(A) electrical energy, water, or sewage disposal services,

(B) gas or steam through a local distribution system,

(C) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

(D) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(11) Research and experimentation

The term ''research and experimentation'' has the same meaning as the term research and experimental has under section 174.

(12) Section 1245 and 1250 property

The terms ''section 1245 property'' and ''section 1250 property'' have the meanings given such terms by sections 1245(a)(3) and 1250(c), respectively.

(13) Single purpose agricultural or horticultural structure

(A) In general

The term ''single purpose agricultural or horticultural structure'' means—

(i) a single purpose livestock structure, and

(ii) a single purpose horticultural structure.

(B) Definitions

For purposes of this paragraph—

(i) Single purpose livestock structure

The term ''single purpose livestock structure'' means any enclosure or structure specifically designed, constructed, and used—

(I) for housing, raising, and feeding a particular type of livestock and their produce, and

(II) for housing the equipment (including any replacements) necessary for the housing, raising, and feeding referred to in subclause (I).

(ii) Single purpose horticultural structure

The term ''single purpose horticultural structure'' means—

(I) a greenhouse specifically designed, constructed, and used for the commercial production of plants, and

(II) a structure specifically designed, constructed, and used for the commercial production of mushrooms.

(iii) Structures which include work space

An enclosure or structure which provides work space shall be treated as a single purpose agricultural or horticultural structure only if such work space is solely for—

(I) the stocking, caring for, or collecting of livestock or plants (as the case may be) or their produce,

(II) the maintenance of the enclosure or structure, and

(III) the maintenance or replacement of the equipment or stock enclosed or housed therein.

(iv) Livestock

The term ''livestock'' includes poultry.

(14) Qualified rent-to-own property

(A) In general

The term ''qualified rent-to-own property'' means property held by a rent-to-own dealer for purposes of being subject to a rent-to-own contract.

(B) Rent-to-own dealer

The term ''rent-to-own dealer'' means a person that, in the ordinary course of business, regularly enters into rent-to-own contracts with customers for the use of consumer property, if a substantial portion of those contracts terminate and the property is returned to such person before the receipt of all payments required to transfer ownership of the property from such person to the customer.

(C) Consumer property

The term ''consumer property'' means tangible personal property of a type generally used within the home for personal use.

(D) Rent-to-own contract

The term ''rent-to-own contract'' means any lease for the use of consumer property between a rent-to-own dealer and a customer who is an individual which—

(i) is titled ''Rent-to-Own Agreement'' or ''Lease Agreement with Ownership Option,'' or uses other similar language,

(ii) provides for level (or decreasing where no payment is less than 40 percent of the largest payment), regular periodic payments (for a payment period which is a week or month),

(iii) provides that legal title to such property remains with the rent-to-own dealer until the customer makes all the payments described in clause (ii) or early purchase payments required under the contract to acquire legal title to the item of property,

(iv) provides a beginning date and a maximum period of time for which the contract may be in effect that does not exceed 156 weeks or 36 months from such beginning date (including renewals or options to extend),

(v) provides for payments within the 156-week or 36-month period that, in the aggregate, generally exceed the normal retail price of the consumer property plus interest,

(vi) provides for payments under the contract that, in the aggregate, do not exceed $10,000 per item of consumer property,

(vii) provides that the customer does not have any legal obligation to make all the payments referred to in clause (ii) set forth under the contract, and that at the end of each payment period the customer

may either continue to use the consumer property by making the payment for the next payment period or return such property to the rent-to-own dealer in good working order, in which case the customer does not incur any further obligations under the contract and is not entitled to a return of any payments previously made under the contract, and

(viii) provides that the customer has no right to sell, sublease, mortgage, pawn, pledge, encumber, or otherwise dispose of the consumer property until all the payments stated in the contract have been made.

(15) Motorsports entertainment complex

(A) In general

The term ''motorsports entertainment complex'' means a racing track facility which—

(i) is permanently situated on land, and

(ii) during the 36-month period following the first day of the month in which the asset is placed in service, hosts 1 or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.

(B) Ancillary and support facilities

Such term shall include, if owned by the taxpayer who owns the complex and provided for the benefit of patrons of the complex—

(i) ancillary facilities and land improvements in support of the complex's activities (including parking lots, sidewalks, waterways, bridges, fences, and landscaping),

(ii) support facilities (including food and beverage retailing, souvenir vending, and other nonlodging accommodations), and

(iii) appurtenances associated with such facilities and related attractions and amusements (including ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery of entertainment services, other special purpose structures, facades, shop interiors, and buildings).

(C) Exception

Such term shall not include any transportation equipment, administrative services assets, warehouses, administrative buildings, hotels, or motels.

(D) Termination

Such term shall not include any property placed in service after December 31, 2011.

(16) Alaska natural gas pipeline

The term ''Alaska natural gas pipeline'' means the natural gas pipeline system located in the State of Alaska which—

(A) has a capacity of more than 500,000,000,000 Btu of natural gas per day, and

(B) is—

(i) placed in service after December 31, 2013, or

(ii) treated as placed in service on January 1, 2014, if the taxpayer who places such system in service before January 1, 2014, elects such treatment.

Such term includes the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but does not include any gas processing plant.

(17) Natural gas gathering line

The term ''natural gas gathering line'' means—

(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, and

(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

(i) a gas processing plant,

(ii) an interconnection with a transmission pipeline for which a certificate as an interstate transmission pipeline has been issued by the Federal Energy Regulatory Commission,

(iii) an interconnection with an intrastate transmission pipeline, or

(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

(18) Qualified smart electric meters

(A) In general

The term ''qualified smart electric meter'' means any smart electric meter which—

(i) is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services, and

(ii) does not have a class life (determined without regard to subsection (e)) of less than 10 years.

(B) Smart electric meter

For purposes of subparagraph (A), the term ''smart electric meter'' means any time-based meter and related communication equipment which is capable of being used by the taxpayer as part of a system that—

(i) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day,

(ii) provides for the exchange of information between supplier or provider and the customer's electric meter in support of time-based rates or other forms of demand response,

(iii) provides data to such supplier or provider so that the supplier or provider can provide energy usage information to customers electronically, and

(iv) provides net metering.

(19) Qualified smart electric grid systems

(A) In general

The term ''qualified smart electric grid system'' means any smart grid property which—

(i) is used as part of a system for electric distribution grid communications, mon-

itoring, and management placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services, and

(ii) does not have a class life (determined without regard to subsection (e)) of less than 10 years.

(B) Smart grid property

For the purposes of subparagraph (A), the term ''smart grid property'' means electronics and related equipment that is capable of—

(i) sensing, collecting, and monitoring data of or from all portions of a utility's electric distribution grid,

(ii) providing real-time, two-way communications to monitor or manage such grid, and

(iii) providing real time analysis of and event prediction based upon collected data that can be used to improve electric distribution system reliability, quality, and performance.

(j) Property on Indian reservations

(1) In general

For purposes of subsection (a), the applicable recovery period for qualified Indian reservation property shall be determined in accordance with the table contained in paragraph (2) in lieu of the table contained in subsection (c).

(2) Applicable recovery period for Indian reservation property

For purposes of paragraph (1)—

In the case of:	The applicable recovery period is:
3-year property	2 years
5-year property	3 years
7-year property	4 years
10-year property	6 years
15-year property	9 years
20-year property	12 years
Nonresidential real property	22 years.

(3) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for property to which paragraph (1) applies shall be determined under this section without regard to any adjustment under section 56.

(4) Qualified Indian reservation property defined

For purposes of this subsection—

(A) In general

The term ''qualified Indian reservation property'' means property which is property described in the table in paragraph (2) and which is—

(i) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation,

(ii) not used or located outside the Indian reservation on a regular basis,

(iii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and

(iv) not property (or any portion thereof) placed in service for purposes of conducting or housing class I, II, or III gaming (as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703)).

(B) Exception for alternative depreciation property

The term ''qualified Indian reservation property'' does not include any property to which the alternative depreciation system under subsection (g) applies, determined—

(i) without regard to subsection (g)(7) (relating to election to use alternative depreciation system), and

(ii) after the application of section 280F(b) (relating to listed property with limited business use).

(C) Special rule for reservation infrastructure investment

(i) In general

Subparagraph (A)(ii) shall not apply to qualified infrastructure property located outside of the Indian reservation if the purpose of such property is to connect with qualified infrastructure property located within the Indian reservation.

(ii) Qualified infrastructure property

For purposes of this subparagraph, the term ''qualified infrastructure property'' means qualified Indian reservation property (determined without regard to subparagraph (A)(ii)) which—

(I) benefits the tribal infrastructure,

(II) is available to the general public, and

(III) is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation.

Such term includes, but is not limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

(5) Real estate rentals

For purposes of this subsection, the rental to others of real property located within an Indian reservation shall be treated as the active conduct of a trade or business within an Indian reservation.

(6) Indian reservation defined

For purposes of this subsection, the term ''Indian reservation'' means a reservation, as defined in—

(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term ''former Indian reservations in Oklahoma'' as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25

CFR Part 151 (as in effect on the date of the enactment of this sentence).

(7) Coordination with nonrevenue laws

Any reference in this subsection to a provision not contained in this title shall be treated for purposes of this subsection as a reference to such provision as in effect on the date of the enactment of this paragraph.

(8) Termination

This subsection shall not apply to property placed in service after December 31, 2011.

(k) Special allowance for certain property acquired after December 31, 2007, and before January 1, 2013

(1) Additional allowance

In the case of any qualified property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of the qualified property, and

(B) the adjusted basis of the qualified property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified property

For purposes of this subsection—

(A) In general

The term ''qualified property'' means property—

(i)(I) to which this section applies which has a recovery period of 20 years or less,

(II) which is computer software (as defined in section 167(f)(1)(B)) for which a deduction is allowable under section 167(a) without regard to this subsection,

(III) which is water utility property, or

(IV) which is qualified leasehold improvement property,

(ii) the original use of which commences with the taxpayer after December 31, 2007,

(iii) which is—

(I) acquired by the taxpayer after December 31, 2007, and before January 1, 2013, but only if no written binding contract for the acquisition was in effect before January 1, 2008, or

(II) acquired by the taxpayer pursuant to a written binding contract which was entered into after December 31, 2007, and before January 1, 2013, and

(iv) which is placed in service by the taxpayer before January 1, 2013, or, in the case of property described in subparagraph (B) or (C), before January 1, 2014.

(B) Certain property having longer production periods treated as qualified property

(i) In general

The term ''qualified property'' includes any property if such property—

(I) meets the requirements of clauses (i), (ii), (iii), and (iv) of subparagraph (A),

(II) has a recovery period of at least 10 years or is transportation property,

(III) is subject to section 263A, and

(IV) meets the requirements of clause (iii) of section 263A(f)(1)(B) (determined as if such clauses also apply to property which has a long useful life (within the meaning of section 263A(f))).

(ii) Only pre-January 1, 2013, basis eligible for additional allowance

In the case of property which is qualified property solely by reason of clause (i), paragraph (1) shall apply only to the extent of the adjusted basis thereof attributable to manufacture, construction, or production before January 1, 2013.

(iii) Transportation property

For purposes of this subparagraph, the term ''transportation property'' means tangible personal property used in the trade or business of transporting persons or property.

(iv) Application of subparagraph

This subparagraph shall not apply to any property which is described in subparagraph (C).

(C) Certain aircraft

The term ''qualified property'' includes property—

(i) which meets the requirements of clauses (ii), (iii), and (iv) of subparagraph (A),

(ii) which is an aircraft which is not a transportation property (as defined in subparagraph (B)(iii)) other than for agricultural or firefighting purposes,

(iii) which is purchased and on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of—

(I) 10 percent of the cost, or

(II) $100,000, and

(iv) which has—

(I) an estimated production period exceeding 4 months, and

(II) a cost exceeding $200,000.

(D) Exceptions

(i) Alternative depreciation property

The term ''qualified property'' shall not include any property to which the alternative depreciation system under subsection (g) applies, determined—

(I) without regard to paragraph (7) of subsection (g) (relating to election to have system apply), and

(II) after application of section 280F(b) (relating to listed property with limited business use).

(ii) Qualified New York Liberty Zone leasehold improvement property

The term ''qualified property'' shall not include any qualified New York Liberty Zone leasehold improvement property (as defined in section 1400L(c)(2)).

(iii) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this sub-

section shall not apply to all property in such class placed in service during such taxable year.

(E) Special rules

(i) Self-constructed property

In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iii) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after December 31, 2007, and before January 1, 2013.

(ii) Sale-leasebacks

For purposes of clause (iii) and subparagraph (A)(ii), if property is—

(I) originally placed in service after December 31, 2007, by a person, and

(II) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subclause (II).

(iii) Syndication

For purposes of subparagraph (A)(ii), if—

(I) property is originally placed in service after December 31, 2007, by the lessor of such property,

(II) such property is sold by such lessor or any subsequent purchaser within 3 months after the date such property was originally placed in service (or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and

(III) the user of such property after the last sale during such 3-month period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date of such last sale.

(iv) Limitations related to users and related parties

The term ''qualified property'' shall not include any property if—

(I) the user of such property (as of the date on which such property is originally placed in service) or a person which is related (within the meaning of section 267(b) or 707(b)) to such user or to the taxpayer had a written binding contract in effect for the acquisition of such property at any time on or before December 31, 2007, or

(II) in the case of property manufactured, constructed, or produced for such user's or person's own use, the manufacture, construction, or production of such property began at any time on or before December 31, 2007.

(F) Coordination with section 280F

For purposes of section 280F—

(i) Automobiles

In the case of a passenger automobile (as defined in section 280F(d)(5)) which is qualified property, the Secretary shall increase the limitation under section 280F(a)(1)(A)(i) by $8,000.

(ii) Listed property

The deduction allowable under paragraph (1) shall be taken into account in computing any recapture amount under section 280F(b)(2).

(G) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for qualified property shall be determined under this section without regard to any adjustment under section 56.

(3) Qualified leasehold improvement property

For purposes of this subsection—

(A) In general

The term ''qualified leasehold improvement property'' means any improvement to an interior portion of a building which is nonresidential real property if—

(i) such improvement is made under or pursuant to a lease (as defined in subsection (h)(7))—

(I) by the lessee (or any sublessee) of such portion, or

(II) by the lessor of such portion,

(ii) such portion is to be occupied exclusively by the lessee (or any sublessee) of such portion, and

(iii) such improvement is placed in service more than 3 years after the date the building was first placed in service.

(B) Certain improvements not included

Such term shall not include any improvement for which the expenditure is attributable to—

(i) the enlargement of the building,

(ii) any elevator or escalator,

(iii) any structural component benefiting a common area, and

(iv) the internal structural framework of the building.

(C) Definitions and special rules

For purposes of this paragraph—

(i) Commitment to lease treated as lease

A commitment to enter into a lease shall be treated as a lease, and the parties to such commitment shall be treated as lessor and lessee, respectively.

(ii) Related persons

A lease between related persons shall not be considered a lease. For purposes of the preceding sentence, the term ''related persons'' means—

(I) members of an affiliated group (as defined in section 1504), and

(II) persons having a relationship described in subsection (b) of section 267; except that, for purposes of this clause, the phrase ''80 percent or more'' shall be substituted for the phrase ''more than 50 percent'' each place it appears in such subsection.

(4) Election to accelerate the AMT and research credits in lieu of bonus depreciation

(A) In general

If a corporation elects to have this paragraph apply for the first taxable year of the taxpayer ending after March 31, 2008, in the case of such taxable year and each subsequent taxable year—

(i) paragraph (1) shall not apply to any eligible qualified property placed in service by the taxpayer,

(ii) the applicable depreciation method used under this section with respect to such property shall be the straight line method, and

(iii) each of the limitations described in subparagraph (B) for any such taxable year shall be increased by the bonus depreciation amount which is—

(I) determined for such taxable year under subparagraph (C), and

(II) allocated to such limitation under subparagraph (E).

(B) Limitations to be increased

The limitations described in this subparagraph are—

(i) the limitation imposed by section 38(c), and

(ii) the limitation imposed by section 53(c).

(C) Bonus depreciation amount

For purposes of this paragraph—

(i) In general

The bonus depreciation amount for any taxable year is an amount equal to 20 percent of the excess (if any) of—

(I) the aggregate amount of depreciation which would be allowed under this section for eligible qualified property placed in service by the taxpayer during such taxable year if paragraph (1) applied to all such property, over

(II) the aggregate amount of depreciation which would be allowed under this section for eligible qualified property placed in service by the taxpayer during such taxable year if paragraph (1) did not apply to any such property.

The aggregate amounts determined under subclauses (I) and (II) shall be determined without regard to any election made under subsection (b)(2)(C), (b)(3)(D), or (g)(7) and without regard to subparagraph (A)(ii).

(ii) Maximum amount

The bonus depreciation amount for any taxable year shall not exceed the maximum increase amount under clause (iii), reduced (but not below zero) by the sum of the bonus depreciation amounts for all preceding taxable years.

(iii) Maximum increase amount

For purposes of clause (ii), the term ''maximum increase amount'' means, with respect to any corporation, the lesser of—

(I) $30,000,000, or

(II) 6 percent of the sum of the business credit increase amount, and the AMT credit increase amount, determined with respect to such corporation under subparagraph (E).

(iv) Aggregation rule

All corporations which are treated as a single employer under section 52(a) shall be treated—

(I) as 1 taxpayer for purposes of this paragraph, and

(II) as having elected the application of this paragraph if any such corporation so elects.

(D) Eligible qualified property

For purposes of this paragraph, the term ''eligible qualified property'' means qualified property under paragraph (2), except that in applying paragraph (2) for purposes of this paragraph—

(i) ''March 31, 2008'' shall be substituted for ''December 31, 2007'' each place it appears in subparagraph (A) and clauses (i) and (ii) of subparagraph (E) thereof,

(ii) ''April 1, 2008'' shall be substituted for ''January 1, 2008'' in subparagraph (A)(iii)(I) thereof, and

(iii) only adjusted basis attributable to manufacture, construction, or production—

(I) after March 31, 2008, and before January 1, 2010, and

(II) after December 31, 2010, and before January 1, 2013,

shall be taken into account under subparagraph (B)(ii) thereof.

(E) Allocation of bonus depreciation amounts

(i) In general

Subject to clauses (ii) and (iii), the taxpayer shall, at such time and in such manner as the Secretary may prescribe, specify the portion (if any) of the bonus depreciation amount for the taxable year which is to be allocated to each of the limitations described in subparagraph (B) for such taxable year.

(ii) Limitation on allocations

The portion of the bonus depreciation amount which may be allocated under clause (i) to the limitations described in subparagraph (B) for any taxable year shall not exceed—

(I) in the case of the limitation described in subparagraph (B)(i), the excess of the business credit increase amount over the bonus depreciation amount allocated to such limitation for all preceding taxable years, and

(II) in the case of the limitation described in subparagraph (B)(ii), the excess of the AMT credit increase amount over the bonus depreciation amount allo-

cated to such limitation for all preceding taxable years.

(iii) Business credit increase amount

For purposes of this paragraph, the term ''business credit increase amount'' means the amount equal to the portion of the credit allowable under section 38 (determined without regard to subsection (c) thereof) for the first taxable year ending after March 31, 2008, which is allocable to business credit carryforwards to such taxable year which are—

(I) from taxable years beginning before January 1, 2006, and

(II) properly allocable (determined under the rules of section 38(d)) to the research credit determined under section 41(a).

(iv) AMT credit increase amount

For purposes of this paragraph, the term ''AMT credit increase amount'' means the amount equal to the portion of the minimum tax credit under section 53(b) for the first taxable year ending after March 31, 2008, determined by taking into account only the adjusted minimum tax for taxable years beginning before January 1, 2006. For purposes of the preceding sentence, credits shall be treated as allowed on a first-in, first-out basis.

(F) Credit refundable

For purposes of section 6401(b), the aggregate increase in the credits allowable under part IV of subchapter A for any taxable year resulting from the application of this paragraph shall be treated as allowed under subpart C of such part (and not any other subpart).

(G) Other rules

(i) Election

Any election under this paragraph (including any allocation under subparagraph (E)) may be revoked only with the consent of the Secretary.

(ii) Partnerships with electing partners

In the case of a corporation making an election under subparagraph (A) and which is a partner in a partnership, for purposes of determining such corporation's distributive share of partnership items under section 702—

(I) paragraph (1) shall not apply to any eligible qualified property, and

(II) the applicable depreciation method used under this section with respect to such property shall be the straight line method.

(iii) Special rule for passenger aircraft

In the case of any passenger aircraft, the written binding contract limitation under paragraph (2)(A)(iii)(I) shall not apply for purposes of subparagraphs (C)(i)(I) and (D).

(H) Special rules for extension property

(i) Taxpayers previously electing acceleration

In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

(I) the taxpayer may elect not to have this paragraph apply to extension property, but

(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer a separate bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is extension property and to eligible qualified property which is not extension property.

(ii) Taxpayers not previously electing acceleration

In the case of a taxpayer who did not make the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2008, and each subsequent taxable year, and

(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is extension property.

(iii) Extension property

For purposes of this subparagraph, the term ''extension property'' means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 1201(a) of the American Recovery and Reinvestment Tax Act of 2009 (and the application of such extension to this paragraph pursuant to the amendment made by section 1201(b)(1) of such Act).

(I) Special rules for round 2 extension property

(i) In general

In the case of round 2 extension property, this paragraph shall be applied without regard to—

(I) the limitation described in subparagraph (B)(i) thereof, and

(II) the business credit increase amount under subparagraph (E)(iii) thereof.

(ii) Taxpayers previously electing acceleration

In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, or a taxpayer who made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008—

(I) the taxpayer may elect not to have this paragraph apply to round 2 extension property, but

(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer the bonus depreciation amount, maximum amount,

and maximum increase amount shall be computed and applied to eligible qualified property which is round 2 extension property.

The amounts described in subclause (II) shall be computed separately from any amounts computed with respect to eligible qualified property which is not round 2 extension property.

(iii) Taxpayers not previously electing acceleration

In the case of a taxpayer who neither made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, nor made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008—

(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2010, and each subsequent taxable year, and

(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is round 2 extension property.

(iv) Round 2 extension property

For purposes of this subparagraph, the term ''round 2 extension property'' means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 401(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (and the application of such extension to this paragraph pursuant to the amendment made by section 401(c)(1) of such Act).

(5) Special rule for property acquired during certain pre-2012 periods

In the case of qualified property acquired by the taxpayer (under rules similar to the rules of clauses (ii) and (iii) of paragraph (2)(A)) after September 8, 2010, and before January 1, 2012, and which is placed in service by the taxpayer before January 1, 2012 (January 1, 2013, in the case of property described in subparagraph (2)(B) or (2)(C)), paragraph (1)(A) shall be applied by substituting ''100 percent'' for ''50 percent''.

(*l*) Special allowance for cellulosic biofuel plant property

(1) Additional allowance

In the case of any qualified cellulosic biofuel plant property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of such property, and

(B) the adjusted basis of such property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified cellulosic biofuel plant property

The term ''qualified cellulosic biofuel plant property'' means property of a character subject to the allowance for depreciation—

(A) which is used in the United States solely to produce cellulosic biofuel,

(B) the original use of which commences with the taxpayer after the date of the enactment of this subsection,

(C) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after the date of the enactment of this subsection, but only if no written binding contract for the acquisition was in effect on or before the date of the enactment of this subsection, and

(D) which is placed in service by the taxpayer before January 1, 2013.

(3) Cellulosic biofuel

The term ''cellulosic biofuel'' means any liquid fuel which is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.

(4) Exceptions

(A) Bonus depreciation property under subsection (k)

Such term shall not include any property to which section 168(k) applies.

(B) Alternative depreciation property

Such term shall not include any property described in section 168(k)(2)(D)(i).

(C) Tax-exempt bond-financed property

Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(D) Election out

If a taxpayer makes an election under this subparagraph with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(5) Special rules

For purposes of this subsection, rules similar to the rules of subparagraph (E) of section 168(k)(2) shall apply, except that such subparagraph shall be applied—

(A) by substituting ''the date of the enactment of subsection (*l*)'' for ''December 31, 2007'' each place it appears therein, and

(B) by substituting ''qualified cellulosic biofuel plant property'' for ''qualified property'' in clause (iv) thereof.

(6) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

(7) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified cellulosic biofuel plant property which ceases to be qualified cellulosic biofuel plant property.

(8) Denial of double benefit

Paragraph (1) shall not apply to any qualified cellulosic biofuel plant property with re-

spect to which an election has been made under section 179C (relating to election to expense certain refineries).

(m) Special allowance for certain reuse and recycling property

(1) In general

In the case of any qualified reuse and recycling property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of the qualified reuse and recycling property, and

(B) the adjusted basis of the qualified reuse and recycling property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified reuse and recycling property

For purposes of this subsection—

(A) In general

The term ''qualified reuse and recycling property'' means any reuse and recycling property—

(i) to which this section applies,

(ii) which has a useful life of at least 5 years,

(iii) the original use of which commences with the taxpayer after August 31, 2008, and

(iv) which is—

(I) acquired by purchase (as defined in section 179(d)(2)) by the taxpayer after August 31, 2008, but only if no written binding contract for the acquisition was in effect before September 1, 2008, or

(II) acquired by the taxpayer pursuant to a written binding contract which was entered into after August 31, 2008.

(B) Exceptions

(i) Bonus depreciation property under subsection (k)

The term ''qualified reuse and recycling property'' shall not include any property to which section 168(k) applies.

(ii) Alternative depreciation property

The term ''qualified reuse and recycling property'' shall not include any property to which the alternative depreciation system under subsection (g) applies, determined without regard to paragraph (7) of subsection (g) (relating to election to have system apply).

(iii) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(C) Special rule for self-constructed property

In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iv) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after August 31, 2008.

(D) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for qualified reuse and recycling property shall be determined under this section without regard to any adjustment under section 56.

(3) Definitions

For purposes of this subsection—

(A) Reuse and recycling property

(i) In general

The term ''reuse and recycling property'' means any machinery and equipment (not including buildings or real estate), along with all appurtenances thereto, including software necessary to operate such equipment, which is used exclusively to collect, distribute, or recycle qualified reuse and recyclable materials.

(ii) Exclusion

Such term does not include rolling stock or other equipment used to transport reuse and recyclable materials.

(B) Qualified reuse and recyclable materials

(i) In general

The term ''qualified reuse and recyclable materials'' means scrap plastic, scrap glass, scrap textiles, scrap rubber, scrap packaging, recovered fiber, scrap ferrous and nonferrous metals, or electronic scrap generated by an individual or business.

(ii) Electronic scrap

For purposes of clause (i), the term ''electronic scrap'' means—

(I) any cathode ray tube, flat panel screen, or similar video display device with a screen size greater than 4 inches measured diagonally, or

(II) any central processing unit.

(C) Recycling or recycle

The term ''recycling'' or ''recycle'' means that process (including sorting) by which worn or superfluous materials are manufactured or processed into specification grade commodities that are suitable for use as a replacement or substitute for virgin materials in manufacturing tangible consumer and commercial products, including packaging.

(n) Special allowance for qualified disaster assistance property

(1) In general

In the case of any qualified disaster assistance property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of the qualified disaster assistance property, and

(B) the adjusted basis of the qualified disaster assistance property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified disaster assistance property

For purposes of this subsection—

(A) In general

The term ''qualified disaster assistance property'' means any property—

(i)(I) which is described in subsection (k)(2)(A)(i), or

(II) which is nonresidential real property or residential rental property,

(ii) substantially all of the use of which is—

(I) in a disaster area with respect to a federally declared disaster occurring before January 1, 2010, and

(II) in the active conduct of a trade or business by the taxpayer in such disaster area,

(iii) which—

(I) rehabilitates property damaged, or replaces property destroyed or condemned, as a result of such federally declared disaster, except that, for purposes of this clause, property shall be treated as replacing property destroyed or condemned if, as part of an integrated plan, such property replaces property which is included in a continuous area which includes real property destroyed or condemned, and

(II) is similar in nature to, and located in the same county as, the property being rehabilitated or replaced,

(iv) the original use of which in such disaster area commences with an eligible taxpayer on or after the applicable disaster date,

(v) which is acquired by such eligible taxpayer by purchase (as defined in section 179(d)) on or after the applicable disaster date, but only if no written binding contract for the acquisition was in effect before such date, and

(vi) which is placed in service by such eligible taxpayer on or before the date which is the last day of the third calendar year following the applicable disaster date (the fourth calendar year in the case of nonresidential real property and residential rental property).

(B) Exceptions

(i) Other bonus depreciation property

The term ''qualified disaster assistance property'' shall not include—

(I) any property to which subsection (k) (determined without regard to paragraph (4)), (*l*), or (m) applies,

(II) any property to which section 1400N(d) applies, and

(III) any property described in section 1400N(p)(3).

(ii) Alternative depreciation property

The term ''qualified disaster assistance property'' shall not include any property to which the alternative depreciation system under subsection (g) applies, determined without regard to paragraph (7) of subsection (g) (relating to election to have system apply).

(iii) Tax-exempt bond financed property

Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(iv) Qualified revitalization buildings

Such term shall not include any qualified revitalization building with respect to which the taxpayer has elected the application of paragraph (1) or (2) of section 1400I(a).

(v) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(C) Special rules

For purposes of this subsection, rules similar to the rules of subparagraph (E) of subsection (k)(2) shall apply, except that such subparagraph shall be applied—

(i) by substituting ''the applicable disaster date'' for ''December 31, 2007'' each place it appears therein,

(ii) without regard to ''and before January 1, 2013'' in clause (i) thereof, and

(iii) by substituting ''qualified disaster assistance property'' for ''qualified property'' in clause (iv) thereof.

(D) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of subsection (k)(2)(G) shall apply.

(3) Other definitions

For purposes of this subsection—

(A) Applicable disaster date

The term ''applicable disaster date'' means, with respect to any federally declared disaster, the date on which such federally declared disaster occurs.

(B) Federally declared disaster

The term ''federally declared disaster'' has the meaning given such term under section 165(h)(3)(C)(i).

(C) Disaster area

The term ''disaster area'' has the meaning given such term under section 165(h)(3)(C)(ii).

(D) Eligible taxpayer

The term ''eligible taxpayer'' means a taxpayer who has suffered an economic loss attributable to a federally declared disaster.

(4) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall

apply with respect to any qualified disaster assistance property which ceases to be qualified disaster assistance property.

(Added Pub. L. 97–34, title II, § 201(a), Aug. 13, 1981, 95 Stat. 203; amended Pub. L. 97–248, title II, §§ 206, 208(a)(1), (2)(A), (b), 209(a), (b), 216(a), 224(c)(1), (2), Sept. 3, 1982, 96 Stat. 431, 432, 435, 442, 445, 470, 489; Pub. L. 97–354, § 5(a)(19), (20), Oct. 19, 1982, 96 Stat. 1693, 1694; Pub. L. 97–424, title V, § 541(a)(1), Jan. 6, 1983, 96 Stat. 2192; Pub. L. 97–448, title I, § 102(a)(1)–(5), (8)–(10)(A), (f)(4), Jan. 12, 1983, 96 Stat. 2367, 2368, 2371; Pub. L. 98–369, div. A, title I, §§ 12(a)(3), 31(a), (d), 32(a), 111(a)–(e)(4), (9), 113(a)(2), (b)(1), (2)(A), title IV, § 474(r)(7), title VI, §§ 612(e)(4), (5), 628(b), July 18, 1984, 98 Stat. 503, 509, 518, 530, 631–633, 636, 637, 840, 912, 931; Pub. L. 99–121, title I, § 103(a), (b)(1)(A), (2)–(4), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99–514, title II, § 201(a), title XVIII, §§ 1802(a)(1)–(2)(E)(i), (G), (3), (4)(A), (B), (7), (b)(1), 1809(a)(1)–(2)(C)(i), (4)(A), (B), (b)(1), (2), Oct. 22, 1986, 100 Stat. 2121, 2786–2789, 2791, 2818–2821; Pub. L. 100–647, title I, §§ 1002(a)(5)–(8), (11), (16)(B), (21), (23)(A), (i)(2)(A)–(G), 1018(b)(2), title VI, §§ 6027(a), (b), 6028(a), 6029(a)–(c), 6253, Nov. 10, 1988, 102 Stat. 3353–3356, 3370, 3371, 3577, 3693, 3694, 3753; Pub. L. 101–239, title VII, § 7816(e), (f), (w), Dec. 19, 1989, 103 Stat. 2421, 2423; Pub. L. 101–508, title XI, §§ 11801(c)(8)(B), 11812(b)(2), 11813(b)(9), Nov. 5, 1990, 104 Stat. 1388–524, 1388–534, 1388–552; Pub. L. 103–66, title XIII, §§ 13151(a), 13321(a), Aug. 10, 1993, 107 Stat. 448, 558; Pub. L. 104–88, title III, § 304(a), Dec. 29, 1995, 109 Stat. 943; Pub. L. 104–188, title I, §§ 1120(a), (b), 1121(a), 1613(b)(1)–(4), 1702(h)(1), 1704(t)(54), Aug. 20, 1996, 110 Stat. 1765, 1766, 1850, 1873, 1890; Pub. L. 105–34, title X, § 1086(b), title XII, § 1213(c), title XVI, § 1604(c)(1), Aug. 5, 1997, 111 Stat. 957, 1001, 1097; Pub. L. 105–206, title VI, § 6006(b), July 22, 1998, 112 Stat. 806; Pub. L. 107–147, title I, § 101(a), title VI, § 613(b), Mar. 9, 2002, 116 Stat. 22, 61; Pub. L. 108–27, title II, § 201(a)–(c)(1), May 28, 2003, 117 Stat. 756, 757; Pub. L. 108–311, title III, § 316, title IV, §§ 403(a), 408(a)(6), (8), Oct. 4, 2004, 118 Stat. 1181, 1186, 1191; Pub. L. 108–357, title II, § 211(a)–(e), title III, §§ 336(a), (b), 337(a), title VII, §§ 704(a), (b), 706(a)–(c), title VIII, §§ 847(a), (c)–(e), 901(a)–(c), Oct. 22, 2004, 118 Stat. 1429, 1430, 1479, 1480, 1548–1550, 1601, 1602, 1650; Pub. L. 109–58, title XIII, §§ 1301(f)(5), 1308(a), (b), 1325(a), (b), 1326(a)–(c), Aug. 8, 2005, 119 Stat. 990, 1006, 1016, 1017; Pub. L. 109–135, title IV, §§ 403(j), 405(a)(1), 410(a), 412(s), Dec. 21, 2005, 119 Stat. 2625, 2634, 2636, 2638; Pub. L. 109–432, div. A, title I, §§ 112(a), 113(a), title II, § 209(a), Dec. 20, 2006, 120 Stat. 2940, 2946; Pub. L. 110–172, § 11(b)(1), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 110–185, title I, § 103(a)–(c)(7), (11), (12), Feb. 13, 2008, 122 Stat. 618, 619; Pub. L. 110–234, title XV, § 15344(a), May 22, 2008, 122 Stat. 1520; Pub. L. 110–246, § 4(a), title XV, § 15344(a), June 18, 2008, 122 Stat. 1664, 2282; Pub. L. 110–289, div. C, title III, § 3081(a), July 30, 2008, 122 Stat. 2903; Pub. L. 110–343, div. B, title II, § 201(a), (b), title III, §§ 306(a)–(c), 308(a), div. C, title III, §§ 305(a)(1), (b)(1), (c)(1)–(4), 315(a), 317(a), title V, § 505(a), (b), title VII, § 710(a), Oct. 3, 2008, 122 Stat. 3832, 3848, 3849, 3867, 3868, 3872, 3873, 3879, 3926; Pub. L. 111–5, div. B, title I, § 1201(a)(1), (2)(A)–(D), (3)(A), (b)(1), Feb. 17, 2009, 123 Stat. 333, 334; Pub. L. 111–240, title II, § 2022(a)–(b)(5), Sept. 27, 2010, 124 Stat. 2558; Pub. L. 111–312, title IV, § 401(a)–(d)(5), title VII, §§ 737(a)–(b)(2), 738(a), 739(a), Dec. 17, 2010, 124 Stat. 3304–3306, 3318, 3319.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (e)(3)(B)(vi)(II), (III), (g)(4)(K), and (i)(1), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 168(e) as in effect before the amendments made by the Tax Reform Act of 1986, referred to in subsec. (f)(5)(A)(i), is subsec. (e) of this section prior to the general amendment of this section by Pub. L. 99–514.

The date of the enactment of this paragraph, referred to in subsec. (f)(5)(B)(ii)(I), probably means the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Tax Reform Act of 1986, referred to in subsecs. (f)(5)(B)(iii), (C) and (i)(7)(A), is Pub. L. 99–514, section 201(a) of which amended this section generally.

The Communications Satellite Act of 1962, referred to in subsec. (i)(10)(C), is Pub. L. 87–624, Aug. 31, 1962, 76 Stat. 419, as amended, which is classified generally to chapter 6 (§ 701 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 47 and Tables.

The date of the enactment of this sentence, referred to in subsec. (j)(6), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The date of the enactment of this paragraph, referred to in subsec. (j)(7), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

Section 1201(a), (b)(1) of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (k)(4)(H)(iii), is section 1201(a), (b)(1) of Pub. L. 111–5, which amended this section and sections 1400N and 6211 of this title.

Section 401(a), (c)(1) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, referred to in subsec. (k)(4)(I)(iv), is section 401(a), (c)(1) of Pub. L. 111–312, which amended this section.

The date of the enactment of this subsection and the date of the enactment of subsection (*l*), referred to in subsec. (*l*)(2)(B), (C), (5)(A), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 168, acts Aug. 16, 1954, ch. 746, 68A Stat. 52; Aug. 26, 1957, Pub. L. 85–165, § 4, 71 Stat. 414; Sept. 2, 1958, Pub. L. 85–866, title I, § 9(a), (b), 72 Stat. 1608, 1609, related to deductions with respect to amortization of emergency facilities, prior to repeal by Pub. L. 94–455, title XIX, § 1951(b)(4)(A), Oct. 4, 1976, 90 Stat. 1837.

Section 1951(b)(4)(B) of Pub. L. 94–455 provided that: ''Notwithstanding the repeal made by subparagraph (A) [repealing former section 168], if a certificate was issued before January 1, 1960, with respect to an emergency facility which is or has been placed in service before the date of the enactment of this Act [Oct. 4, 1976], the provisions of [former] section 168 shall not, with respect to such facility, be considered repealed. The benefit of deductions by reason of the preceding sentence shall be allowed to estates and trusts in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary in accordance with regulations prescribed under section 642(f).''

AMENDMENTS

2010—Subsec. (e)(3)(E)(iv), (v), (ix). Pub. L. 111–312, § 737(a), substituted ''January 1, 2012'' for ''January 1, 2010''.

Subsec. (e)(7)(A)(i). Pub. L. 111–312, § 737(b)(1), struck out ''if such building is placed in service after December 31, 2008, and before January 1, 2010,'' after ''building,''.

Subsec. (e)(8)(E). Pub. L. 111–312, § 737(b)(2), struck out subpar. (E). Text read as follows: ''Such term shall not include any improvement placed in service after December 31, 2009.''

Subsec. (i)(15)(D). Pub. L. 111–312, § 738(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (j)(8). Pub. L. 111–312, § 739(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (k). Pub. L. 111–312, § 401(d)(1), substituted ''January 1, 2013'' for ''January 1, 2011'' in heading.

Pub. L. 111–240, § 2022(b)(1), substituted ''January 1, 2011'' for ''January 1, 2010'' in heading.

Subsec. (k)(2)(A)(iii). Pub. L. 111–312, § 401(a)(2), substituted ''January 1, 2013'' for ''January 1, 2011'' in subcls. (I) and (II).

Pub. L. 111–240, § 2022(a)(2), substituted ''January 1, 2011'' for ''January 1, 2010'' in subcls. (I) and (II).

Subsec. (k)(2)(A)(iv). Pub. L. 111–312, § 401(a), substituted ''January 1, 2013'' for ''January 1, 2011'' and ''January 1, 2014'' for ''January 1, 2012''.

Pub. L. 111–240, § 2022(a), substituted ''January 1, 2011'' for ''January 1, 2010'' and ''January 1, 2012'' for ''January 1, 2011''.

Subsec. (k)(2)(B)(ii). Pub. L. 111–312, § 401(a)(2), (d)(2), substituted ''pre-January 1, 2013'' for ''pre-January 1, 2011'' in heading and ''January 1, 2013'' for ''January 1, 2011'' in text.

Pub. L. 111–240, § 2022(a)(2), (b)(2), substituted ''pre-January 1, 2011'' for ''pre-January 1, 2010'' in heading and ''January 1, 2011'' for ''January 1, 2010'' in text.

Subsec. (k)(2)(E)(i). Pub. L. 111–312, § 401(a)(2), substituted ''January 1, 2013'' for ''January 1, 2011''.

Pub. L. 111–240, § 2022(a)(2), substituted ''January 1, 2011'' for ''January 1, 2010''.

Subsec. (k)(4)(D)(ii). Pub. L. 111–312, § 401(d)(3)(B), inserted ''and'' at the end.

Subsec. (k)(4)(D)(iii). Pub. L. 111–312, § 401(d)(3)(C), substituted period for comma at the end.

Pub. L. 111–312, § 401(c)(1), substituted ''or production—'' for ''or production after March 31, 2008, and before January 1, 2010, shall be taken into account under subparagraph (B)(ii) thereof,'' and added subcls. (I) and (II) and concluding provisions.

Subsec. (k)(4)(D)(iv), (v). Pub. L. 111–312, § 401(d)(3)(A), struck out cls. (iv) and (v) which read as follows:

''(iv) 'January 1, 2011' shall be substituted for 'January 1, 2012' in subparagraph (A)(iv) thereof, and

''(v) 'January 1, 2010' shall be substituted for 'January 1, 2011' each place it appears in subparagraph (A) thereof.''

Pub. L. 111–240, § 2022(b)(3), added cls. (iv) and (v).

Subsec. (k)(4)(I). Pub. L. 111–312, § 401(c)(2), added subpar. (I).

Subsec. (k)(5). Pub. L. 111–312, § 401(b), added par. (5).

Subsec. (*l*)(5)(A). Pub. L. 111–312, § 401(d)(4)(A), inserted ''and'' at the end.

Subsec. (*l*)(5)(B). Pub. L. 111–312, § 401(d)(4)(B), (C), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''by substituting 'January 1, 2013' for 'January 1, 2011' in clause (i) thereof, and''.

Pub. L. 111–240, § 2022(b)(4), substituted ''January 1, 2011'' for ''January 1, 2010''.

Subsec. (*l*)(5)(C). Pub. L. 111–312, § 401(d)(4)(C), redesignated subpar. (C) as (B).

Subsec. (n)(2)(C)(ii). Pub. L. 111–312, § 401(d)(5), substituted ''January 1, 2013'' for ''January 1, 2011''.

Pub. L. 111–240, § 2022(b)(5), substituted ''January 1, 2011'' for ''January 1, 2010''.

2009—Subsec. (k). Pub. L. 111–5, § 1201(a)(2)(A), substituted ''January 1, 2010'' for ''January 1, 2009'' in heading.

Subsec. (k)(2)(A)(iii)(I), (II). Pub. L. 111–5, § 1201(a)(1)(B), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (k)(2)(A)(iv). Pub. L. 111–5, § 1201(a)(1), substituted ''January 1, 2010,'' for ''January 1, 2009,'' and ''January 1, 2011.'' for ''January 1, 2010.''

Subsec. (k)(2)(B)(ii). Pub. L. 111–5, § 1201(a)(1)(B), (2)(B), substituted ''pre-January 1, 2010'' for ''pre-January 1, 2009'' in heading and ''January 1, 2010'' for ''January 1, 2009'' in text.

Subsec. (k)(2)(E)(i). Pub. L. 111–5, § 1201(a)(1)(B), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (k)(4)(D)(ii). Pub. L. 111–5, § 1201(a)(3)(A)(i), (iii), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (k)(4)(D)(iii). Pub. L. 111–5, § 1201(b)(1)(A), substituted ''2010'' for ''2009''.

Pub. L. 111–5, § 1201(a)(3)(A)(ii), redesignated cl. (ii) as (iii).

Subsec. (k)(4)(H). Pub. L. 111–5, § 1201(b)(1)(B), added subpar. (H).

Subsec. (*l*)(5)(B). Pub. L. 111–5, § 1201(a)(2)(C), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (n)(2)(C)(ii). Pub. L. 111–5, § 1201(a)(2)(D), substituted ''January 1, 2010'' for ''January 1, 2009''.

2008—Subsec. (b)(2)(C), (D). Pub. L. 110–343, § 306(c), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (b)(3)(I). Pub. L. 110–343, § 305(c)(3), added subpar. (I).

Subsec. (e)(3)(A)(i). Pub. L. 110–246, § 15344(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any race horse which is more than 2 years old at the time it is placed in service,''.

Subsec. (e)(3)(B)(vii). Pub. L. 110–343, § 505(a), added cl. (vii).

Subsec. (e)(3)(D)(iii), (iv). Pub. L. 110–343, § 306(a), added cls. (iii) and (iv).

Subsec. (e)(3)(E)(iv), (v). Pub. L. 110–343, § 305(a)(1), substituted ''January 1, 2010'' for ''January 1, 2008''.

Subsec. (e)(3)(E)(ix). Pub. L. 110–343, § 305(c)(1), added cl. (ix).

Subsec. (e)(7). Pub. L. 110–343, § 305(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'qualified restaurant property' means any section 1250 property which is an improvement to a building if—

''(A) such improvement is placed in service more than 3 years after the date such building was first placed in service, and

''(B) more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.''

Subsec. (e)(8). Pub. L. 110–343, § 305(c)(2), added par. (8).

Subsec. (g)(3)(B). Pub. L. 110–343, § 505(b), inserted table item relating to subpar. (B)(vii).

Pub. L. 110–343, § 305(c)(4), inserted table item relating to subpar. (E)(ix).

Subsec. (i)(15)(D). Pub. L. 110–343, § 317(a), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (i)(18), (19). Pub. L. 110–343, § 306(b), added pars. (18) and (19).

Subsec. (j)(8). Pub. L. 110–343, § 315(a), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (k). Pub. L. 110–185, § 103(c)(11), substituted ''December 31, 2007'' for ''September 10, 2001'' and ''January 1, 2009'' for ''January 1, 2005'' in heading.

Pub. L. 110–185, § 103(a)(1), (3), substituted ''December 31, 2007'' for ''September 10, 2001'' and ''January 1, 2009'' for ''January 1, 2005'' wherever appearing in text.

Subsec. (k)(1)(A). Pub. L. 110–185, § 103(b), substituted ''50 percent'' for ''30 percent''.

Subsec. (k)(2)(A)(iii)(I). Pub. L. 110–185, § 103(a)(2), substituted ''January 1, 2008'' for ''September 11, 2001''.

Subsec. (k)(2)(A)(iv). Pub. L. 110–185, § 103(a)(4), substituted ''January 1, 2010'' for ''January 1, 2006''.

Subsec. (k)(2)(B)(i)(I). Pub. L. 110–185, § 103(c)(1), substituted ''(iii), and (iv)'' for ''and (iii)''.

Subsec. (k)(2)(B)(i)(IV). Pub. L. 110–185, § 103(c)(2), which directed substitution of ''clause (iii)'' for ''clauses (ii) and (iii)'', was executed by substituting ''clause (iii)'' for ''clause (ii) or (iii)'' to reflect the probable intent of Congress.

Subsec. (k)(2)(B)(ii). Pub. L. 110–185, § 103(c)(12), substituted ''pre-January 1, 2009'' for ''pre-January 1, 2005'' in heading.

Subsec. (k)(2)(C)(i). Pub. L. 110–185, §103(c)(3), substituted ‘‘, (iii), and (iv)’’ for ‘‘and (iii)’’.

Subsec. (k)(2)(D)(iii). Pub. L. 110–185, §103(c)(5)(B), struck out last sentence which read as follows: ‘‘The preceding sentence shall be applied separately with respect to property treated as qualified property by paragraph (4) and other qualified property.’’

Subsec. (k)(2)(F)(i). Pub. L. 110–185, §103(c)(4), substituted ‘‘$8,000’’ for ‘‘$4,600’’.

Subsec. (k)(4). Pub. L. 110–289 added par. (4).

Pub. L. 110–185, §103(c)(5)(A), struck out par. (4) which related to treatment of 50-percent bonus depreciation for certain property.

Subsec. (k)(4)(B)(iii). Pub. L. 110–185, §103(a)(4), substituted ‘‘January 1, 2010’’ for ‘‘January 1, 2006’’.

Subsec. (*l*). Pub. L. 110–343, §201(b)(1), (2), substituted ‘‘cellulosic biofuel’’ for ‘‘cellulosic biomass ethanol’’ in heading and wherever appearing in text.

Subsec. (*l*)(2). Pub. L. 110–343, §201(b)(3), substituted ‘‘cellulosic biofuel’’ for ‘‘cellulosic biomass ethanol’’ in heading.

Subsec. (*l*)(3). Pub. L. 110–343, §201(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ‘‘For purposes of this subsection, the term ‘cellulosic biomass ethanol’ means ethanol produced by hydrolysis of any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.’’

Subsec. (*l*)(4). Pub. L. 110–185, §103(c)(6), added subpar. (A) and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Subsec. (*l*)(5)(A). Pub. L. 110–185, §103(c)(7)(A), substituted ‘‘December 31, 2007’’ for ‘‘September 10, 2001’’.

Subsec. (*l*)(5)(B). Pub. L. 110–185, §103(c)(7)(B), substituted ‘‘January 1, 2009’’ for ‘‘January 1, 2005’’.

Subsec. (m). Pub. L. 110–343, §308(a), added subsec. (m).

Subsec. (n). Pub. L. 110–343, §710(a), added subsec. (n).

2007—Subsec. (*l*)(3). Pub. L. 110–172 struck out ‘‘enzymatic’’ before ‘‘hydrolysis’’.

2006—Subsec. (e)(3)(E)(iv), (v). Pub. L. 109–432, §113(a), substituted ‘‘2008’’ for ‘‘2006’’.

Subsec. (j)(8). Pub. L. 109–432, §112(a), substituted ‘‘2007’’ for ‘‘2005’’.

Subsec. (*l*). Pub. L. 109–432, §209(a), added subsec. (*l*).

2005—Subsec. (e)(3)(B)(vi)(I). Pub. L. 109–135, §410(a), substituted ‘‘if ‘solar or wind energy’ were substituted for ‘solar energy’ in clause (i) thereof’’ for ‘‘if ‘solar and wind’ were substituted for ‘solar’ in clause (i) thereof’’.

Pub. L. 109–58, §1301(f)(5), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ‘‘is described in subparagraph (A) of section 48(a)(3) (or would be so described if ‘solar and wind’ were substituted for ‘solar’ in clause (i) thereof),’’.

Subsec. (e)(3)(C)(iv), (v). Pub. L. 109–58, §1326(a), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (e)(3)(E)(vii). Pub. L. 109–58, §1308(a), added cl. (vii).

Subsec. (e)(3)(E)(viii). Pub. L. 109–58, §1325(a), added cl. (viii).

Subsec. (g)(3)(B). Pub. L. 109–58, §1326(c), inserted table item relating to subpar. (C)(iv).

Pub. L. 109–58, §1325(b), inserted table item relating to subpar. (E)(viii).

Pub. L. 109–58, §1308(b), inserted table item relating to subpar. (E)(vii).

Subsec. (i)(15)(D). Pub. L. 109–135, §412(s), substituted ‘‘Such term shall not include’’ for ‘‘This paragraph shall not apply to’’.

Subsec. (i)(17). Pub. L. 109–58, §1326(b), added par. (17).

Subsec. (k)(2)(A)(iv). Pub. L. 109–135, §403(j)(1), substituted ‘‘subparagraph (B) or (C)’’ for ‘‘subparagraphs (B) and (C)’’.

Subsec. (k)(4)(B)(ii). Pub. L. 109–135, §405(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ‘‘which is acquired by the taxpayer after May 5, 2003, and before January 1, 2005, but only if no written binding contract for the acquisition was in effect before May 6, 2003, and’’.

Subsec. (k)(4)(B)(iii). Pub. L. 109–135, §403(j)(2), substituted ‘‘or paragraph (2)(C) (as so modified)’’ for ‘‘and paragraph (2)(C)’’.

2004—Subsec. (b)(2)(A). Pub. L. 108–357, §211(d)(2), inserted ‘‘not referred to in paragraph (3)’’ before comma at end.

Subsec. (b)(3)(G), (H). Pub. L. 108–357, §211(d)(1), added subpars. (G) and (H).

Subsec. (e)(3)(C)(ii). Pub. L. 108–357, §704(a), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (e)(3)(C)(iii). Pub. L. 108–357, §706(a), added cl. (iii). Former cl. (iii) redesignated (iv).

Pub. L. 108–357, §704(a), redesignated cl. (ii) as (iii).

Subsec. (e)(3)(C)(iv). Pub. L. 108–357, §706(a), redesignated cl. (iii) as (iv).

Subsec. (e)(3)(E)(iv), (v). Pub. L. 108–357, §211(a), added cls. (iv) and (v).

Subsec. (e)(3)(E)(vi). Pub. L. 108–357, §901(a), added cl. (vi).

Subsec. (e)(3)(F). Pub. L. 108–357, §901(b), added subpar. (F).

Subsec. (e)(6), (7). Pub. L. 108–357, §211(b), (c), added pars. (6) and (7).

Subsec. (g)(3)(A). Pub. L. 108–357, §847(a), inserted ‘‘(notwithstanding any other subparagraph of this paragraph)’’ after ‘‘shall’’.

Subsec. (g)(3)(B). Pub. L. 108–357, §901(c), inserted table items relating to subpars. (E)(vi) and (F).

Pub. L. 108–357, §706(c), which directed amendment of table by inserting item relating to subpar. (C)(iii) after item relating to subpar. (C)(ii), was executed by making the insertion after item relating to subpar. (C)(i) to reflect the probable intent of Congress.

Pub. L. 108–357, §211(e), inserted table items relating to subpars. (E)(iv) and (E)(v).

Subsec. (h)(2)(A). Pub. L. 108–357, §847(e), added cl. (iv) and concluding provisions.

Subsec. (h)(3)(A). Pub. L. 108–357, §847(d), inserted at end ‘‘Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.’’

Subsec. (i)(3)(A)(ii), (iii). Pub. L. 108–357, §847(c), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (i)(15). Pub. L. 108–357, §704(b), added par. (15).

Subsec. (i)(16). Pub. L. 108–357, §706(b), added par. (16).

Subsec. (j)(8). Pub. L. 108–311, §316, substituted ‘‘2005’’ for ‘‘2004’’.

Subsec. (k)(2)(A)(iv). Pub. L. 108–357, §336(a)(2), substituted ‘‘subparagraphs (B) and (C)’’ for ‘‘subparagraph (B)’’.

Subsec. (k)(2)(B)(i). Pub. L. 108–311, §403(a)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ‘‘The term ‘qualified property’ includes property—

‘‘(I) which meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

‘‘(II) which has a recovery period of at least 10 years or is transportation property, and

‘‘(III) which is subject to section 263A by reason of clause (ii) or (iii) of subsection (f)(1)(B) thereof.’’

Subsec. (k)(2)(B)(iv). Pub. L. 108–357, §336(b)(1), added cl. (iv).

Subsec. (k)(2)(C). Pub. L. 108–357, §336(a)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (k)(2)(D). Pub. L. 108–357, §336(a)(1), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (k)(2)(D)(ii). Pub. L. 108–311, §408(a)(6)(A), inserted ‘‘is’’ after ‘‘if property’’ in introductory provisions.

Pub. L. 108–311, §403(a)(2)(B), inserted ‘‘clause (iii) and’’ before ‘‘subparagraph (A)(ii)’’ in introductory provisions.

Subsec. (k)(2)(D)(ii)(I). Pub. L. 108–311, §408(a)(6)(B), struck out ‘‘is’’ before ‘‘originally’’.

Subsec. (k)(2)(D)(iii), (iv). Pub. L. 108–311, §403(a)(2)(A), added cls. (iii) and (iv).

Subsec. (k)(2)(E). Pub. L. 108–357, §336(a)(1), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (k)(2)(E)(iii)(II). Pub. L. 108–357, §337(a), which directed amendment of subcl. (II) by inserting before comma at end ''(or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months)'', was executed by making the insertion before '', and'' to reflect the probable intent of Congress.

Subsec. (k)(2)(F). Pub. L. 108–357, §336(a)(1), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 108–311, §408(a)(8), substituted ''minimum'' for ''miniumum'' in heading.

Subsec. (k)(2)(G). Pub. L. 108–357, §336(a)(1), redesignated subpar. (F) as (G).

Subsec. (k)(4)(A)(ii). Pub. L. 108–357, §336(b)(2), substituted ''paragraph (2)(D)'' for ''paragraph (2)(C)''.

Subsec. (k)(4)(B)(iii). Pub. L. 108–357, §336(b)(3), inserted ''and paragraph (2)(C)'' after ''of this paragraph)''.

Subsec. (k)(4)(C). Pub. L. 108–357, §336(b)(4), substituted ''subparagraphs (B), (C), and (E)'' for ''subparagraphs (B) and (D)''.

Subsec. (k)(4)(D). Pub. L. 108–357, §336(b)(5), substituted ''Paragraph (2)(F)'' for ''Paragraph (2)(E)''.

2003—Subsec. (k). Pub. L. 108–27, §201(c)(1), substituted ''January 1, 2005'' for ''September 11, 2004'' in heading.

Subsec. (k)(2)(A)(iii). Pub. L. 108–27, §201(b)(2), substituted ''January 1, 2005'' for ''September 11, 2004'' in subcls. (I) and (II).

Subsec. (k)(2)(B)(ii). Pub. L. 108–27, §201(b)(1), substituted ''pre-January 1, 2005'' for ''pre-September 11, 2004'' in heading and ''January 1, 2005'' for ''September 11, 2004'' in text.

Subsec. (k)(2)(C)(iii). Pub. L. 108–27, §201(b)(3), inserted at end ''The preceding sentence shall be applied separately with respect to property treated as qualified property by paragraph (4) and other qualified property.''

Subsec. (k)(2)(D)(i). Pub. L. 108–27, §201(b)(1)(A), substituted ''January 1, 2005'' for ''September 11, 2004''.

Subsec. (k)(4). Pub. L. 108–27, §201(a), added par. (4).

2002—Subsec. (j)(8). Pub. L. 107–147, §613(b), substituted ''December 31, 2004'' for ''December 31, 2003''.

Subsec. (k). Pub. L. 107–147, §101(a), added subsec. (k).

1998—Subsec. (c). Pub. L. 105–206, §6006(b)(2), reenacted subsec. heading without change and substituted ''For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:'' for ''For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the applicable recovery period shall be determined in accordance with the following table:''.

Subsec. (c)(2). Pub. L. 105–206, §6006(b)(1), struck out heading and text of par. (2). Text read as follows: ''In the case of property to which an election under subsection (b)(2)(C) applies, the applicable recovery period shall be determined under the table contained in subsection (g)(2)(C).''

1997—Subsec. (e)(3)(A)(iii). Pub. L. 105–34, §1086(b)(1), added cl. (iii).

Subsec. (g)(3)(B). Pub. L. 105–34, §1086(b)(2), inserted table item relating to subpar. (A)(iii).

Subsec. (i)(8)(C). Pub. L. 105–34, §1213(c), added subpar. (C).

Subsec. (i)(14). Pub. L. 105–34, §1086(b)(3), added par. (14).

Subsec. (j)(6). Pub. L. 105–34, §1604(c)(1), inserted concluding provisions ''For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term 'former Indian reservations in Oklahoma' as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25 CFR Part 151 (as in effect on the date of the enactment of this sentence).''

1996—Subsec. (b)(3)(F). Pub. L. 104–188, §1613(b)(1), added subpar. (F).

Subsec. (c)(1). Pub. L. 104–188, §1613(b)(2), inserted table item relating to water utility property.

Subsec. (e)(3)(B). Pub. L. 104–188, §1702(h)(1)(B), inserted closing provisions.

Subsec. (e)(3)(B)(vi)(I). Pub. L. 104–188, §1704(t)(54), provided that section 11813(b)(9)(A)(i) of Pub. L. 101–508 shall be applied as if a comma appeared after ''(3)(A)(ix)'' in the material proposed to be stricken. See 1990 Amendment note below.

Subsec. (e)(3)(B)(vi)(III). Pub. L. 104–188, §1702(h)(1)(A), added subcl. (III).

Subsec. (e)(3)(E)(iii). Pub. L. 104–188, §1120(a), added cl. (iii).

Subsec. (e)(3)(F). Pub. L. 104–188, §1613(b)(3)(B)(i), struck out subpar. (F) which read as follows: ''20-YEAR PROPERTY.—The term '20-year property' includes any municipal sewers.''

Subsec. (e)(5). Pub. L. 104–188, §1613(b)(3)(A), added par. (5).

Subsec. (g)(2)(C)(iv). Pub. L. 104–188, §1613(b)(4), inserted ''or water utility property'' after ''tunnel bore''.

Subsec. (g)(3)(B). Pub. L. 104–188, §1120(b), inserted table item relating to subpar. (E)(iii).

Pub. L. 104–188, §1613(b)(3)(B)(ii), struck out table item relating to subpar. (F) for which the class life was 50.

Subsec. (g)(4)(K). Pub. L. 104–188, §1702(h)(1)(C), substituted ''section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' for ''section 48(a)(3)(A)(iii)''.

Subsec. (i)(8). Pub. L. 104–188, §1121(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.''

1995—Subsec. (g)(4)(B)(i). Pub. L. 104–88 substituted ''rail carrier subject to part A of subtitle IV'' for ''domestic railroad corporation providing transportation subject to subchapter I of chapter 105''.

1993—Subsec. (c)(1). Pub. L. 103–66, §13151(a), substituted ''39 years'' for ''31.5 years'' in table item relating to nonresidential real property.

Subsec. (j). Pub. L. 103–66, §13321(a), added subsec. (j).

1990—Subsec. (e)(2)(A). Pub. L. 101–508, §11812(b)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The term 'residential rental property' has the meaning given such term by section 167(j)(2)(B).''

Subsec. (e)(3)(B)(vi)(I). Pub. L. 101–508, §11813(b)(9)(A)(i), which directed the substitution of ''subparagraph (A) of section 48(a)(3) (or would be so described if 'solar and wind' were substituted for 'solar' in clause (i) thereof)'' for ''paragraph (3)(A)(viii), (3)(A)(ix) or (4) of section 48(*l*)'' was executed by making the substitution for ''paragraph (3)(A)(viii), (3)(A)(ix), or (4) of section 48(*l*)''. See 1996 Amendment note above.

Subsec. (e)(3)(B)(vi)(II). Pub. L. 101–508, §11813(b)(9)(A)(ii), inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''48(*l*)''.

Subsec. (e)(3)(D)(i). Pub. L. 101–508, §11813(b)(9)(B)(i), substituted ''subsection (i)(13)'' for ''section 48(p)''.

Subsec. (f)(2). Pub. L. 101–508, §11812(b)(2)(C), substituted ''subsection (i)(10)'' for ''section 167(*l*)(3)(A).''

Subsec. (g)(4). Pub. L. 101–508, §11813(b)(9)(C), substituted heading for one which read: ''Property used predominantly outside the United States'' and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection, rules similar to the rules under section 48(a)(2) (including the exceptions contained in subparagraph (B) thereof) shall apply in determining whether property is used predominantly outside the United States. In addition to the exceptions contained in such subparagraph (B), there shall be excepted any satellite or other spacecraft (or

any interest therein) held by a United States person if such satellite or spacecraft was launched from within the United States.''

Subsec. (i)(1). Pub. L. 101–508, §11812(b)(2)(D), inserted at end ''The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.''

Subsec. (i)(7)(B)(i). Pub. L. 101–508, §11801(c)(8)(B), struck out, ''371(a), 374(a),'' after ''361,''.

Subsec. (i)(9)(A)(ii). Pub. L. 101–508, §11812(b)(2)(E), struck out ''(determined without regard to section 167(*l*))'' after ''section 167''.

Subsec. (i)(10). Pub. L. 101–508, §11812(b)(2)(B), amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''The term 'public utility property' has the meaning given such term by section 167(*l*)(3)(A).''

Subsec. (i)(13). Pub. L. 101–508, §11813(b)(9)(B)(ii), added par. (13).

1989—Subsec. (b)(3)(D), (E). Pub. L. 101–239, §7816(f), redesignated subpar. (D), relating to property described in subsec. (e)(3)(D)(ii), as (E).

Subsec. (b)(5). Pub. L. 101–239, §7816(e)(1), substituted ''paragraph (2)(C)'' for ''paragraph (2)(B)''.

Subsec. (c)(2). Pub. L. 101–239, §7816(e)(2), substituted ''subsection (b)(2)(C)'' for ''subsection (b)(2)(B)''.

Subsec. (i)(1). Pub. L. 101–239, §7816(w), made clarifying amendment to directory language of Pub. L. 100–647, §6253, see 1988 Amendment note below.

1988—Subsec. (b)(2). Pub. L. 100–647, §1002(a)(11)(A), substituted ''150 percent declining balance method in certain cases'' for ''15-year and 20-year property'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of 15-year and 20-year property, paragraph (1) shall be applied by substituting '150 percent' for '200 percent'.''

Subsec. (b)(2)(B), (C). Pub. L. 100–647, §6028(a), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(3)(C). Pub. L. 100–647, §1002(i)(2)(B)(i), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(3)(D). Pub. L. 100–647, §6029(b), added subpar. (D) relating to property described in subsec. (e)(3)(D)(ii).

Pub. L. 100–647, §1002(i)(2)(B)(i), redesignated subpar. (C), relating to property with respect to which the taxpayer elects under par. (5), as (D).

Subsec. (b)(5). Pub. L. 100–647, §1002(i)(2)(B)(ii), substituted ''paragraph (3)(D)'' for ''paragraph (3)(C)''.

Pub. L. 100–647, §1002(a)(11)(B), substituted ''paragraph (2)(B) or (3)(C)'' for ''paragraph (3)(C)''.

Subsec. (c). Pub. L. 100–647, §1002(a)(11)(C), amended subsec. (c) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (c)(1). Pub. L. 100–647, §1002(i)(2)(A), inserted table item relating to any railroad grading or tunnel bore.

Subsec. (d)(2)(C). Pub. L. 100–647, §1002(i)(2)(D), added subpar. (C).

Subsec. (d)(3)(A)(i). Pub. L. 100–647, §1002(a)(5), struck out ''and which are'' after ''this section applies''.

Subsec. (d)(3)(B). Pub. L. 100–647, §1002(a)(23)(A), struck out ''real'' after ''Certain'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of subparagraph (A), nonresidential real property and residential rental property shall not be taken into account.''

Subsec. (d)(3)(B)(i). Pub. L. 100–647, §1002(i)(2)(E), substituted ''residential rental property, and railroad grading or tunnel bore'' for ''and residential rental property''.

Subsec. (e)(3)(B)(v). Pub. L. 100–647, §1002(a)(21), substituted ''any section 1245 property'' for ''any property''.

Subsec. (e)(3)(C). Pub. L. 100–647, §6027(b)(1)(C), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''any single-purpose agricultural or horticultural structure (within the meaning of section 48(p)), and''.

Subsec. (e)(3)(D). Pub. L. 100–647, §6029(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''The term '10-year property' includes any single purpose agricultural or horticultural structure (within the meaning of section 48(p)).''

Pub. L. 100–647, §6027(a), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (e)(3)(E), (F). Pub. L. 100–647, §6027(a), redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e)(4). Pub. L. 100–647, §1002(i)(2)(C), added par. (4).

Subsec. (f)(4). Pub. L. 100–647, §1002(a)(16)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Any sound recording described in section 48(r)(5).''

Subsec. (f)(5)(B)(ii). Pub. L. 100–647, §1002(a)(6)(A)(i), substituted ''1st taxable year'' for ''1st full taxable year''.

Subsec. (f)(5)(B)(iii). Pub. L. 100–647, §1002(a)(6)(A)(ii), added cl. (iii).

Subsec. (f)(5)(C). Pub. L. 100–647, §100–647, §1002(a)(6)(B), added subpar. (C).

Subsec. (g)(2)(C). Pub. L. 100–647, §1002(i)(2)(F), added item (iv) in table.

Subsec. (g)(3)(B). Pub. L. 100–647, §6029(c), substituted ''(D)(i)'' for ''(D)'' and added item for ''(D)(ii)'' in table.

Pub. L. 100–647, §6027(b)(2), substituted ''(D)'' for ''(C)(ii)'', ''(E)(i)'' for ''(D)(i)'', ''(E)(ii)'' for ''(D)(ii)'', and ''(F)'' for ''(E)'' in table.

Subsec. (h)(2)(B). Pub. L. 100–647, §1002(a)(8), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(i) INCOME FROM PROPERTY SUBJECT TO UNITED STATES TAX.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

''(I) subject to tax under this chapter, or

''(II) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

''(ii) MOVIES AND SOUND RECORDINGS.—Clause (iii) of subparagraph (A) shall not apply with respect to any qualified film (as defined in section 48(k)(1)(B)) or any sound recording (as defined in section 48(r)(5)).''

Subsec. (i)(1). Pub. L. 100–647, §6253, as amended by Pub. L. 101–239, §7816(w), amended par. (1) generally, substituting a single par. relating to class life for former subpar. (A) relating to class life generally, (B) relating to Secretarial authority, (C) relating to effect of modification, (D) prohibiting modification of assigned property before January 1, 1992, and (E) relating to assigned property and item.

Subsec. (i)(1)(E)(iii). Pub. L. 100–647, §1002(i)(2)(G), added cl. (iii), which provided: ''SPECIAL RULE FOR RAILROAD GRADING OR TUNNEL BORES.—In the case of any property which is a railroad grading or tunnel bore—

''(I) such property shall be treated as an assigned property,

''(II) the recovery period applicable to such property shall be treated as an assigned item, and

''(III) clause (ii) of subparagraph (D) shall not apply.''

Subsec. (i)(7)(A). Pub. L. 100–647, §1002(a)(7)(A), inserted at end ''In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect.''

Subsec. (i)(7)(B). Pub. L. 100–647, §1002(a)(7)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The transactions described

in this subparagraph are any transaction described in section 332, 351, 361, 371(a), 374(a), 721, or 731. Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B).''

Subsec. (i)(7)(D). Pub. L. 100–647, §1002(a)(7)(C), struck out subpar. (D) which read as follows: ''This paragraph shall not apply to any transaction to which subsection (f)(5) applies (relating to churning transactions).''

Subsec. (j)(9)(E). Pub. L. 100–647, §1018(b)(2), amended subpar. (E), as amended by section 1802(a)(2) of Pub. L. 99–514 and as in effect before the general amendment by section 201(a) of Pub. L. 99–514, by substituting ''this paragraph and paragraph (8)'' for ''this paragraph'' in cls. (i) and (ii)(I) and by striking out cl. (iii) and inserting a new cl. (iii) which read as follows: ''TAX-EXEMPT CONTROLLED ENTITY.—

''(I) IN GENERAL.—The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

''(II) ONLY 5-PERCENT SHAREHOLDERS TAKEN INTO ACCOUNT IN CASE OF PUBLICLY TRADED STOCK.—For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (7)) shall be treated as 1 entity.

''(III) SECTION 318 TO APPLY.—For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof).''

1986—Pub. L. 99–514, §201(a), amended section generally, applicable, with exceptions enumerated in sections 203, 204, and 251(d) of Pub. L. 99–514 [set out as notes below and under section 46 of this title], to property placed in service after Dec. 31, 1986, modifying existing accelerated cost recovery system by substituting new subsecs. (a) to (i) for former subsecs. (a) to (k). See following paragraphs of 1986 Amendment note for amendments to former text by sections 1802 and 1809 of Pub. L. 99–514.

Subsec. (b)(2)(A). Pub. L. 99–514, §1809(a)(2)(A)(i)(I), struck out closing provisions relating to determination, in the case of 19-year real property, of applicable percentage in taxable year in which the property is placed in service.

Subsec. (b)(2)(B). Pub. L. 99–514, §1809(a)(2)(A)(i)(II), substituted ''Mid-month convention for 19-year real property'' for ''Special rule for year of disposition'' in heading and amended text generally, substituting ''In the case of 19-year real property, the amount of the deduction determined under any provision of this section (or for purposes of section 57(a)(12)(B) or 312(k)) for any taxable year shall be determined on the basis of the number of months (using a mid-month convention) in which the property is in service.'' for prior provisions.

Subsec. (b)(3)(A). Pub. L. 99–514, §1809(a)(1)(A), which directed that the table be amended by striking ''and low-income housing'' in last item, was executed by striking ''and low-income housing'' after ''19-year real property'' in next-to-the-last item, to reflect the probable intent of Congress, because that phrase did not appear in last item.

Pub. L. 99–514, §1809(a)(1)(B), inserted at the end item for low-income housing with recovery periods of 15, 35, or 45 years.

Subsec. (b)(4)(B). Pub. L. 99–514, §1809(a)(2)(B), substituted ''Monthly convention'' for ''Special rule for year of disposition'' in heading and amended text generally, substituting ''In the case of low-income housing, the amount of the deduction determined under any provision of this section (or for purposes of section 57(a)(12)(B) or 312(k)) for any taxable year shall be determined on the basis of the number of months (treating all property placed in service or disposed of during any month as placed in service or disposed of on the first day of such month) in which the property is in service.'' for prior provisions.

Subsec. (f)(2)(B). Pub. L. 99–514, §1809(a)(2)(A)(ii), redesignated existing provisions as entire subpar. (B), struck out ''(i) In general'', redesignated subcls. (I) and (II) as cls. (i) and (ii), and in cl. (ii) struck out ''(taking into account the next to the last sentence of subsection (b)(2)(A))'' after ''assign percentages'' and struck out heading, ''(ii) Special rule for disposition'' and text, ''In the case of a disposition of 19-year real property or low-income housing described in clause (i), subsection (b)(2)(B) shall apply.''

Subsec. (f)(10)(A). Pub. L. 99–514, §1809(b)(1), amended subpar. (A) generally, substituting ''In the case of recovery property transferred in a transaction described in subparagraph (B), for purposes of computing the deduction allowable under subsection (a) with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor—

''(i) if the transaction is described in subparagraph (B)(i), the transferee shall be treated in the same manner as the transferor, or

''(ii) if the transaction is described in clause (ii) or (iii) of subparagraph (B) and the transferor made an election with respect to such property under subsection (b)(3) or (f)(2)(C), the transferee shall be treated as having made the same election (or its equivalent).''

for prior provisions.

Subsec. (f)(10)(B). Pub. L. 99–514, §1809(b)(2), inserted at end ''Clause (i) shall not apply in the case of the termination of a partnership under section 708(b)(1)(B).''

Subsec. (f)(12)(B)(ii). Pub. L. 99–514, §1809(a)(4)(A), amended cl. (ii) generally, substituting ''In the case of 19-year real property, the amount of the deduction allowed shall be determined by using the straight-line method (without regard to salvage value) and a recovery period of 19 years.'' for prior provisions.

Subsec. (f)(12)(C). Pub. L. 99–514, §1809(a)(4)(B), substituted ''Exception for low- and moderate-income housing'' for ''Exception for projects for residential rental property'' in heading and amended text generally, substituting ''Subparagraph (A) shall not apply to—

''(i) any low-income housing, and

''(ii) any other recovery property which is placed in service in connection with projects for residential rental property financed by the proceeds of obligations described in section 103(b)(4)(A).''

for prior provisions.

Subsec. (f)(14), (15). Pub. L. 99–514, §1802(b)(1), redesignated the par. (13) relating to motor vehicle operating leases as (14) and redesignated former par. (14) as (15).

Subsec. (j)(2)(B)(ii). Pub. L. 99–514, §1809(a)(2)(C)(i), substituted ''Cross reference'' for ''19-year real property'' in heading and amended text generally, substituting ''For other applicable conventions, see paragraphs (2)(B) and (4)(B) of subsection (b).'' for prior provisions.

Subsec. (j)(3)(D). Pub. L. 99–514, §1802(a)(1), inserted at end ''For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease.''

Subsec. (j)(4)(E)(i). Pub. L. 99–514, §1802(a)(2)(A), (G), substituted ''any property (other than property held by such organization)'' for ''any property of which such organization is the lessee'', ''first used by'' for ''first leased to'', and ''preceding sentence and subparagraph (D)(ii)'' for ''preceding sentence''.

Subsec. (j)(4)(E)(ii). Pub. L. 99–514, §1802(a)(2)(B), (C), struck out ''of which such organization is the lessee'' after ''respect to any property'' in subcl. (I) and substituted ''is first used by the organization'' for ''is placed in service under the lease'' in subcl. (II).

Subsec. (j)(4)(E)(iv). Pub. L. 99–514, §1802(a)(2)(D), added cl. (iv), first used, which read as follows: ''For

purposes of this subparagraph, property shall be treated as first used by the organization—

''(I) when the property is first placed in service under a lease to such organization, or

''(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity.''

Subsec. (j)(5)(C)(iv). Pub. L. 99–514, §1802(a)(3), struck out cl. (iv), relating to exclusion of property not subject to rapid obsolescence.

Subsec. (j)(8), (9)(A). Pub. L. 99–514, §1802(a)(4)(A), (B)(i), struck out ''and paragraphs (4) and (5) of section 48(a)'' after ''For purposes of this subsection'' in introductory provisions.

Subsec. (j)(9)(B)(i). Pub. L. 99–514, §1802(a)(4)(B)(ii), inserted a comma between ''loss'' and ''deduction''.

Subsec. (j)(9)(D). Pub. L. 99–514, §1802(a)(7)(A), added subpar. (D), determination of whether property used in unrelated trade or business, which read as follows: ''For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514.'' Former subpar. (D) was redesignated (E).

Subsec. (j)(9)(E). Pub. L. 99–514, §1802(a)(7), redesignated former subpar. (D) as (E) and substituted ''(C), and (D)'' for ''and (C)''. Former subpar. (E), was redesignated (F).

Pub. L. 99–514, §1802(a)(2)(E)(i), added subpar. (E), treatment of certain taxable entities, consisting of cl. (i), in general, which read: ''For purposes of this paragraph, except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.'', cl. (ii), election, which read: ''If a tax-exempt controlled entity makes an election under this clause—

''(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph, and

''(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.'', and cl. (iii), tax-exempt controlled entity, which read ''The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (by value) of the stock in such corporation is held (directly or through the application of section 318 determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof) by 1 or more tax-exempt entities.'' Former subpar. (E) was redesignated (F).

Subsec. (j)(9)(F). Pub. L. 99–514, §1802(a)(7)(A), redesignated former subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 99–514, §1802(a)(2)(E)(i), redesignated former subpar. (E) as (F).

Subsec. (j)(9)(G). Pub. L. 99–514, §1802(a)(7)(A), redesignated former subpar. (F) as (G).

1985—Subsec. (b)(2). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' in heading and wherever appearing in text.

Subsec. (b)(2)(A)(i). Pub. L. 99–121, §103(a), substituted ''19-year recovery period'' for ''18-year recovery period''.

Subsec.(b)(3)(A). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' in table.

Pub. L. 99–121, §103(b)(2), substituted ''19, 35, or 45 years'' for ''18, 35, or 45'' in table.

Subsec. (b)(3)(B)(ii), (iii). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' wherever appearing.

Subsec. (c)(2)(D). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' in heading and in text.

Subsec. (d)(2)(B). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property''.

Subsec. (f)(1)(B)(ii). Pub. L. 99–121, §103(b)(3)(B), substituted ''March 15, 1984, and before May, 9, 1985, the'' for ''March 15, 1984, the''.

Subsec. (f)(1)(B)(iii), (iv). Pub. L. 99–121, §103(b)(3)(A), (C), added cl. (iii), redesignated former cl. (iii) as (iv), and in cl. (iv) substituted '', (ii), or (iii)'' for ''or (ii)''.

Subsec. (f)(2), (5). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' wherever appearing.

Subsec. (f)(12)(B)(ii). Pub. L. 99–121, §103(b)(4), substituted ''19-year real property'' for ''15-year real property'' in heading and wherever appearing in text, and substituted ''19 years'' for ''15 years''.

Subsec. (j). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' wherever appearing in headings, table, and text.

1984—Subsec. (b)(2). Pub. L. 98–369, §111(a)(1), substituted ''18-year real property'' for ''15-year real property'' in heading and wherever appearing in text.

Pub. L. 98–369, §111(d), inserted in provision following cl. (ii) ''(using a mid-month convention)''.

Subsec. (b)(2)(A). Pub. L. 98–369, §111(b)(3)(A), struck out in text following cl. (ii) provision that for purposes of this subparagraph ''low-income housing'' means property described in section 1250(a)(1)(B)(i), (ii), (iii), or (iv).

Subsec. (b)(2)(A)(i). Pub. L. 98–369, §111(a)(2), substituted ''18-year recovery period'' for ''15-year recovery period''.

Subsec. (b)(2)(A)(ii). Pub. L. 98–369, §111(a)(3), struck out ''(200 percent declining balance method in the case of low-income housing)'' after ''declining balance method''.

Subsec. (b)(2)(B). Pub. L. 98–369, §111(d), inserted ''(using a mid-month convention)''.

Subsec. (b)(3)(A). Pub. L. 98–369, §111(e)(9)(A), substituted ''under paragraph (1), (2), or (4)'' for ''under paragraphs (1) and (2)''.

Pub. L. 98–369, §111(e)(9)(B), substituted in table ''18-year real property and low-income housing'' for ''15-year real property'' and ''18'' for ''15'' and struck out ''years'' after ''45''.

Subsec. (b)(3)(B)(ii). Pub. L. 98–369, §111(e)(2), substituted ''18-year real property or low-income housing,'' for ''15-year real property''.

Subsec. (b)(3)(B)(iii). Pub. L. 98–369, §111(e)(1), substituted ''18-year real property or low-income housing'' for ''15-year real property''.

Subsec. (b)(4). Pub. L. 98–369, §111(b)(1), added par. (4).

Subsec. (c)(2)(D). Pub. L. 98–369, §111(b)(3)(B), amended subpar. (D) generally, substituting ''18-year real property'' for ''15-year real property'' in heading and text and including within such definition section 1250 property which is not low-income housing.

Subsec. (c)(2)(F), (G). Pub. L. 98–369, §111(b)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (d)(2)(B). Pub. L. 98–369, §111(e)(3), substituted ''18-year real property or low-income housing'' for ''15-year real property''.

Subsec. (e). Pub. L. 98–369, §113(b)(2)(A), substituted ''title'' for ''section'' in provision preceding par. (1).

Subsec. (e)(5). Pub. L. 98–369, §113(b)(1), added par. (5).

Subsec. (f)(1)(B). Pub. L. 98–369, §111(c), designated existing provision as cl. (i), inserted heading, inserted '', and before March 16, 1984,'' and struck out provision that for the purposes of the preceding sentence, the method of computing the deduction allowable with respect to such first component be determined as if it were a separate building, which provision is covered in cl. (iii), and added cls. (ii) and (iii).

Subsec. (f)(2)(B). Pub. L. 98–369, § 111(e)(1), substituted ''18-year real property or low-income housing'' for ''15-year real property'' wherever appearing.

Subsec. (f)(2)(C)(i). Pub. L. 98–369, § 111(e)(4), substituted in table ''18-year real property or low-income housing'' for ''15-year real property''.

Subsec. (f)(2)(C)(ii)(II), (E), (5). Pub. L. 98–369, § 111(e)(1), substituted ''18-year real property or low-income housing'' for ''15-year real property''.

Subsec. (f)(8)(B)(ii)(I). Pub. L. 98–369, § 12(a)(3)(A), in par. (8) as amended by section 209(a) of Pub. L. 97–248, substituted ''1990'' for ''1986''.

Subsec. (f)(12)(C). Pub. L. 98–369, § 628(b)(1), designated provisions preceding cl. (i) and cl. (i) as subpar. (C), and struck out cls. (ii), (iii), and (iv) which dealt with the application of subpar. (A) to a sewage or solid waste disposal facility, an air or water pollution control facility or a facility which has received an urban development action grant under section 119 of the Housing and Community Development Act of 1974.

Subsec. (f)(12)(D), (E). Pub. L. 98–369, § 628(b)(2), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: ''For purposes of this paragraph, the term 'existing facility' means a plant or property in operation before July 1, 1982.''

Subsec. (f)(13). Pub. L. 98–369, § 32(a), added second par. (13) relating to motor vehicle operating leases.

Subsec. (f)(14). Pub. L. 98–369, § 113(a)(2), added par. (14).

Subsec. (g)(2). Pub. L. 98–369, § 31(d), inserted ''If any property (other than section 1250 class property) does not have a present class life within the meaning of the preceding sentence, the Secretary may prescribe a present class life for such property which reasonably reflects the anticipated useful life of such property to the industry or other group.''

Subsec. (i)(1)(D)(i). Pub. L. 98–369, § 474(r)(7)(D), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted ''subparts A, B, and D of part IV'' for ''subpart A of part IV''.

Pub. L. 98–369, § 474(r)(7)(A), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted ''subparts A, B, and D of part IV'' for ''subpart A of part IV''.

Subsec. (i)(1)(D)(iii). Pub. L. 98–369, § 612(e)(5), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted ''section 26(b)(2)'' for ''section 25(b)(2)''.

Pub. L. 98–369, § 612(e)(4), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted ''section 26(b)(2)'' for ''section 25(b)(2)''.

Pub. L. 98–369, § 474(r)(7)(E), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted ''section 25(b)(2)'' for ''the last sentence of section 53(a)''.

Pub. L. 98–369, § 474(r)(7)(B), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted ''section 25(b)(2)'' for ''the last sentence of section 53(a)''.

Subsec. (i)(4)(A). Pub. L. 98–369, § 12(a)(3)(B), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted ''1989'' for ''1985'' in cls. (i) and (ii).

Pub. L. 98–369, § 474(r)(7)(C), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted ''section 38'' for ''subpart A of part IV of subchapter A of this chapter''.

Subsecs. (j), (k). Pub. L. 98–369, § 31(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1983—Subsec. (b)(2)(A). Pub. L. 97–448, § 102(a)(5), substituted ''In the case of 15-year real property'' for ''For purposes of this subparagraph'' in third sentence.

Subsec. (c)(2)(F). Pub. L. 97–448, § 102(a)(8), added subpar. (F).

Subsec. (d)(2)(B). Pub. L. 97–448, § 102(a)(2), substituted ''paragraph (7) or (10) of subsection (f)'' for ''subsection (f)(7)''.

Subsec. (e)(3)(C), (D). Pub. L. 97–424, § 541(a)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (e)(4)(D). Pub. L. 97–448, § 102(a)(9)(A), inserted provision that, in the case of the acquisition of property by any partnership which results from the termination of another partnership under section 708(b)(1)(B), the determination of whether the acquiring partnership is related to the other partnership shall be made immediately before the event resulting in such termination occurs.

Subsec. (e)(4)(H), (I). Pub. L. 97–448, § 102(a)(9)(B), added subpars. (H) and (I).

Subsec. (f)(4)(B). Pub. L. 97–448, § 102(f)(4), substituted ''Election made on return'' for ''Made on return'' as the subpar. (B) heading, designated existing provisions as cl. (i), added heading for cl. (i), substituted ''Except as provided in clause (ii), any election'' for ''Any election'', in cl. (i) as so designated, and added cl. (ii).

Subsec. (f)(5). Pub. L. 97–448, § 102(a)(1), inserted provision that, in the case of 15-year real property, the first sentence of this paragraph shall not apply to the taxable year in which the property is placed in service or disposed of.

Subsec. (f)(8)(D). Pub. L. 97–448, § 102(a)(10)(A), amended subpar. (D), as in effect before the amendments made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248], by inserting at end thereof the following new sentence: ''Under regulations prescribed by the Secretary, public utility property shall not be treated as qualified leased property unless the requirements of rules similar to the rules of subsection (e)(3) of this section and section 46(f) are met with respect to such property.'' See 1982 Amendment note below for subsec. (f)(8)(D).

Subsec. (f)(13). Pub. L. 97–448, § 102(a)(3), added par. (13).

Subsec. (g)(8)(A). Pub. L. 97–448, § 102(a)(4)(B), substituted ''Qualified coal utilization property'' for ''In general'' in heading.

Subsec. (g)(8)(B). Pub. L. 97–448, § 102(a)(4)(C), substituted ''Coal utilization property'' for ''In general'' in heading.

Subsec. (h)(4). Pub. L. 97–448, § 102(a)(4)(A), substituted ''coal utilization property which would otherwise be 15-year public utility property'' for ''coal utilization property which is not 3-year property, 5-year property, or 10-year property (determined without regard to this paragraph)''.

1982—Subsec. (b)(1). Pub. L. 97–248, § 206(a), substituted ''table'' for ''tables'' in introductory provisions, struck out designation ''(A)'' preceding the table and struck out subpar. (A) heading which had limited the application of the table to property placed in service after Dec. 31, 1980, and before Jan. 1, 1985, and struck out subpars. (B) and (C), which had provided tables, respectively, for property placed in service in 1985 and for property placed in service after Dec. 31, 1985.

Subsec. (e)(4). Pub. L. 97–248, §§ 206(b), 224(c)(1), substituted ''1981'' for ''1986'' in heading, in subpar. (E) inserted provision that a similar rule shall apply in the case of a deemed liquidation under section 338, and struck out former subpar. (H) which had provided for special rules for property placed in service before certain percentages took effect.

Subsec. (f)(8). Pub. L. 97–248, § 209(a), amended par. (8) generally, substituting provisions relating to special rules for finance leases for provisions relating to special rule for leases.

Subsec. (f)(8)(A). Pub. L. 97–248, § 208(a)(2)(A), inserted ''except as provided in subsection (i),'' before ''for purposes of this subtitle''.

Subsec. (f)(8)(B)(i)(I). Pub. L. 97–354, § 5(a)(19), substituted ''an S corporation'' for ''an electing small business corporation (within the meaning of section 1371(b))'' in subsec. (f)(8)(B)(i)(I) as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].

Pub. L. 97–248, § 208(b)(1), inserted ''which is not a related person with respect to the lessee''.

Subsec. (f)(8)(B)(iii). Pub. L. 97–248, § 208(b)(2), in subcl. (I) substituted ''120 percent of the present class life of the property, or'' for ''90 percent of the useful life of such property for purposes of section 167, or'', and in subcl. II substituted ''the period equal to the recovery period determined with respect to such property under subsection (i)(2)'' for ''150 percent of the present class life of such property''.

Subsec. (f)(8)(C)(i). Pub. L. 97–354, § 5(a)(20), in par. (8) as amended by section 209(a) of Pub. L. 97–248, substituted ''an S corporation'' for ''an electing small business corporation within the meaning of section 1371(b)''.

Subsec. (f)(8)(D). Pub. L. 97–248, § 208(b)(3), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

''(D) QUALIFIED LEASED PROPERTY DEFINED.—For purposes of subparagraph (A), the term 'qualified leased property' means recovery property (other than a qualified rehabilitated building within the meaning of section 48(g)(1)) which is—

''(i) new section 38 property (as defined in section 48(b)) of the lessor which is leased within 3 months after such property was placed in service and which, if acquired by the lessee, would have been new section 38 property of the lessee,

''(ii) property—

''(I) which was new section 38 property of the lessee,

''(II) which was leased within 3 months after such property was placed in service by the lessee, and

''(III) with respect to which the adjusted basis of the lessor does not exceed the adjusted basis of the lessee at the time of the lease, or

''(iii) property which is a qualified mass commuting vehicle (as defined in section 103(b)(9)) and which is financed in whole or in part by obligations the interest on which is excludable from income under section 103(a).

For purposes of this title (other than this subparagraph), any property described in clause (i) or (ii) to which subparagraph (A) applies shall be deemed originally placed in service not earlier than the date such property is used under the lease. In the case of property placed in service after December 31, 1980, and before the date of the enactment of this subparagraph, this subparagraph shall be applied by submitting 'the date of the enactment of this subparagraph' for 'such property was placed in service'.'' See 1983 Amendment note above for subsec. (f)(8)(D).

Subsec. (f)(8)(H) to (K). Pub. L. 97–248, § 208(b)(4), added subpars. (H) to (J) and redesignated former subpar. (H) as (K).

Subsec. (f)(10)(B)(i). Pub. L. 97–248, § 224(c)(2), struck out ''(other than a transaction with respect to which the basis is determined under section 334(b)(2))'' after ''section 332''.

Subsec. (f)(12). Pub. L. 97–248, § 216(a), added par. (12).

Subsec. (i). Pub. L. 97–248, § 209(b), amended subsec. (i) generally, substituting provisions concerning limitations relating to leases of finance lease property for provisions concerning limitations relating to lease of qualified leased property.

Pub. L. 97–248, § 208(a)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 97–248, § 208(a)(1), redesignated former subsec. (i) as (j).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title IV, § 401(e), Dec. 17, 2010, 124 Stat. 3306, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1400L and 1400N of this title] shall apply to property placed in service after December 31, 2010, in taxable years ending after such date.

''(2) TEMPORARY 100 PERCENT EXPENSING.—The amendment made by subsection (b) [amending this section] shall apply to property placed in service after September 8, 2010, in taxable years ending after such date.''

Pub. L. 111–312, title VII, § 737(c), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendments made by this section [amending this section and section 179 of this title] shall apply to property placed in service after December 31, 2009.''

Pub. L. 111–312, title VII, § 738(b), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009.''

Pub. L. 111–312, title VII, § 739(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009.''

Pub. L. 111–240, title II, § 2022(c), Sept. 27, 2010, 124 Stat. 2559, provided that: ''The amendments made by this section [amending this section and sections 1400L and 1400N of this title] shall apply to property placed in service after December 31, 2009, in taxable years ending after such date.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1201(c), Feb. 17, 2009, 123 Stat. 334, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1400N and 6211 of this title] shall apply to property placed in service after December 31, 2008, in taxable years ending after such date.

''(2) TECHNICAL AMENDMENTS.—The amendments made by subsections (a)(3) [amending this section and section 6211 of this title] and (b)(2) [amending section 6211 of this title] shall apply to taxable years ending after March 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, § 201(c), Oct. 3, 2008, 122 Stat. 3832, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date.''

Pub. L. 110–343, div. B, title III, § 306(d), Oct. 3, 2008, 122 Stat. 3849, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008].''

Pub. L. 110–343, div. B, title III, § 308(b), Oct. 3, 2008, 122 Stat. 3851, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after August 31, 2008.''

Pub. L. 110–343, div. C, title III, § 305(a)(2), Oct. 3, 2008, 122 Stat. 3867, provided that: ''The amendments made by this subsection [amending this section] shall apply to property placed in service after December 31, 2007.''

Pub. L. 110–343, div. C, title III, § 305(b)(2), Oct. 3, 2008, 122 Stat. 3867, provided that: ''The amendment made by this subsection [amending this section] shall apply to property placed in service after December 31, 2008.''

Pub. L. 110–343, div. C, title III, § 305(c)(5), Oct. 3, 2008, 122 Stat. 3868, provided that: ''The amendments made by this subsection [amending this section] shall apply to property placed in service after December 31, 2008.''

Pub. L. 110–343, div. C, title III, § 315(b), Oct. 3, 2008, 122 Stat. 3872, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007.''

Pub. L. 110–343, div. C, title III, § 317(b), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007.''

Pub. L. 110–343, div. C, title V, § 505(c), Oct. 3, 2008, 122 Stat. 3880, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2008.''

Pub. L. 110–343, div. C, title VII, § 710(b), Oct. 3, 2008, 122 Stat. 3928, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007, with respect [to] disasters declared after such date.''

Pub. L. 110–289, div. C, title III, § 3081(d), July 30, 2008, 122 Stat. 2907, provided that: ''The amendments made by this section [amending this section and section 1324 of Title 31, Money and Finance] shall apply to taxable years ending after March 31, 2008.''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out

as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15344(b), May 22, 2008, 122 Stat. 1520, and Pub. L. 110–246, §4(a), title XV, §15344(b), June 18, 2008, 122 Stat. 1664, 2282, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2008.''

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

Pub. L. 110–185, title I, §103(d), Feb. 13, 2008, 122 Stat. 619, provided that: ''The amendments made by this section [amending this section and sections 1400L and 1400N of this title] shall apply to property placed in service after December 31, 2007, in taxable years ending after such date.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §11(b)(3), Dec. 29, 2007, 121 Stat. 2488, provided that: ''The amendments made by this subsection [amending this section and section 6724 of this title] shall take effect as if included in the provision of the Tax Relief and Health Care Act of 2006 [Pub. L. 109–432] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §112(b), Dec. 20, 2006, 120 Stat. 2940, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2005.''

Pub. L. 109–432, div. A, title I, §113(b), Dec. 20, 2006, 120 Stat. 2940, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2005.''

Pub. L. 109–432, div. A, title II, §209(b), Dec. 20, 2006, 120 Stat. 2947, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Dec. 20, 2006] in taxable years ending after such date.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 403(j) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–135, title IV, §405(b), Dec. 21, 2005, 119 Stat. 2634, provided that: ''The amendments made by this section [amending this section and section 1400L of this title] shall take effect as if included in section 201 of the Jobs and Growth Tax Relief and Reconciliation Act of 2003 [probably means the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27].''

Pub. L. 109–135, title IV, §410(b), Dec. 21, 2005, 119 Stat. 2636, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 11813 of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508].''

Amendment by section 1301(f)(5) of Pub. L. 109–58 effective as if included in the amendments made by section 710 of the American Jobs Creation Act of 2004, Pub. L. 108–357, see section 1301(g) of Pub. L. 109–58, set out as a note under section 45 of this title.

Pub. L. 109–58, title XIII, §1308(c), Aug. 8, 2005, 119 Stat. 1006, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to property placed in service after April 11, 2005.

''(2) EXCEPTION.—The amendments made by this section [amending this section] shall not apply to any property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before April 11, 2005, or, in the case of self-constructed property, has started construction on or before such date.''

Pub. L. 109–58, title XIII, §1325(c), Aug. 8, 2005, 119 Stat. 1016, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to property placed in service after April 11, 2005.

''(2) EXCEPTION.—The amendments made by this section [amending this section] shall not apply to any property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before April 11, 2005, or, in the case of self-constructed property, has started construction on or before such date.''

Amendment by section 1326(a)–(c) of Pub. L. 109–58 applicable to property placed in service after Apr. 11, 2005, with exception for property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before Apr. 11, 2005, or, in the case of self-constructed property, has started construction on or before such date, see section 1326(e) of Pub. L. 109–58, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title II, §211(f), Oct. 22, 2004, 118 Stat. 1430, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title III, §336(c), Oct. 22, 2004, 118 Stat. 1480, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002 [Pub. L. 107–147].''

Pub. L. 108–357, title III, §337(b), Oct. 22, 2004, 118 Stat. 1480, provided that: ''The amendment made by this section [amending this section] shall apply to property sold after June 4, 2004.''

Pub. L. 108–357, title VII, §704(c), Oct. 22, 2004, 118 Stat. 1548, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to any property placed in service after the date of the enactment of this Act [Oct. 22, 2004].

''(2) SPECIAL RULE FOR ASSET CLASS 80.0.—In the case of race track facilities placed in service after the date of the enactment of this Act, such facilities shall not be treated as theme and amusement facilities classified under asset class 80.0.

''(3) NO INFERENCE.—Nothing in this section or the amendments made by this section shall be construed to affect the treatment of property placed in service on or before the date of the enactment of this Act.''

Pub. L. 108–357, title VII, §706(d), Oct. 22, 2004, 118 Stat. 1550, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2004.''

Amendment by section 847(a), (c), (d) of Pub. L. 108–357 applicable to leases entered into after Mar. 12, 2004, and amendment by section 847(e) of Pub. L. 108–357 applicable to leases entered into after Oct. 3, 2004, except that such amendments inapplicable to qualified transportation property, see section 849 of Pub. L. 108–357, set out as an Effective Date note under section 470 of this title.

Pub. L. 108–357, title VIII, §901(d), Oct. 22, 2004, 118 Stat. 1651, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 403(a) of Pub. L. 108–311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, to which such amendment relates, see section 403(f) of Pub. L. 108–311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–27, title II, §201(d), May 28, 2003, 117 Stat. 757, provided that: ''The amendments made by this section [amending this section and section 1400L of this

title] shall apply to taxable years ending after May 5, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title I, §101(b), Mar. 9, 2002, 116 Stat. 25, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after September 10, 2001, in taxable years ending after such date.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1086(b) of Pub. L. 105–34 applicable to property placed in service after Aug. 5, 1997, see section 1086(c) of Pub. L. 105–34, set out as a note under section 167 of this title.

Amendment by section 1213(c) of Pub. L. 105–34 applicable to leases entered into after Aug. 5, 1997, see section 1213(e) of Pub. L. 105–34, set out as an Effective Date note under section 110 of this title.

Section 1604(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if included in the amendments made by section 13321 of the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103–66], except that such amendment shall not apply—

''(A) with respect to property (with an applicable recovery period under section 168(j) of the Internal Revenue Code of 1986 of 6 years or less) held by the taxpayer if the taxpayer claimed the benefits of section 168(j) of such Code with respect to such property on a return filed before March 18, 1997, but only if such return is the first return of tax filed for the taxable year in which such property was placed in service, or

''(B) with respect to wages for which the taxpayer claimed the benefits of section 45A of such Code for a taxable year on a return filed before March 18, 1997, but only if such return was the first return of tax filed for such taxable year.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1120(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to property which is placed in service on or after the date of the enactment of this Act [Aug. 20, 1996] and to which section 168 of the Internal Revenue Code of 1986 applies after the amendment made by section 201 of the Tax Reform Act of 1986 [Pub. L. 99–514]. A taxpayer may elect (in such form and manner as the Secretary of the Treasury may prescribe) to have such amendments apply with respect to any property placed in service before such date and to which such section so applies.''

Section 1121(b) of Pub. L. 104–188 provided that: ''Subparagraph (B) of section 168(i)(8) of the Internal Revenue Code of 1986, as added by the amendment made by subsection (a), shall apply to improvements disposed of or abandoned after June 12, 1996.''

Section 1613(b)(5) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section] shall apply to property placed in service after June 12, 1996, other than property placed in service pursuant to a binding contract in effect before June 10, 1996, and at all times thereafter before the property is placed in service.''

Amendment by section 1702(h)(1) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13151(b) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to property placed in service by the taxpayer on or after May 13, 1993.

''(2) EXCEPTION.—The amendments made by this section [amending this section] shall not apply to property placed in service by the taxpayer before January 1, 1994, if—

''(A) the taxpayer or a qualified person entered into a binding written contract to purchase or construct such property before May 13, 1993, or

''(B) the construction of such property was commenced by or for the taxpayer or a qualified person before May 13, 1993.

For purposes of this paragraph, the term 'qualified person' means any person who transfers his rights in such a contract or such property to the taxpayer but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.''

Section 13321(b) of Pub. L. 103–66 provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(2) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

Amendment by section 11813(b)(9) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1002(a)(23)(B) of Pub. L. 100–647 provided that: ''Clause (ii) of section 168(d)(3)(B) of the 1986 Code (as added by subparagraph (A)) shall apply to taxable years beginning after March 31, 1988, unless the taxpayer elects, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have such clause apply to taxable years beginning on or before such date.''

Amendment by sections 1002(a)(5)–(8), (11), (16)(B), (21), (i)(2)(A)–(G), and 1018(b)(2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6027(c) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this

section] shall apply to property placed in service after December 31, 1988.

''(2) EXCEPTION.—The amendments made by this section shall not apply to any property if such property is placed in service before January 1, 1990, and if such property—

''(A) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

''(B) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.''

Section 6028(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1988.

''(2) EXCEPTION.—The amendments made by this section shall not apply to any property if such property is placed in service before July 1, 1989, and if such property—

''(A) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

''(B) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.''

Section 6029(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT; TRANSITIONAL RULES

Sections 203 and 204 of Pub. L. 99–514, as amended by Pub. L. 99–509, title VIII, §8071, Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100–647, title I, §1002(c)(1), (2), (4)–(8), (d)(1)–(7)(A), (8)–(35), Nov. 10, 1988, 102 Stat. 3358–3367, provided that:

''SEC. 203. EFFECTIVE DATES; GENERAL TRANSITIONAL RULES.

''(a) GENERAL EFFECTIVE DATES.—

''(1) SECTION 201.—

''(A) IN GENERAL.—Except as provided in this section, section 204, and section 251(d) [set out as a note under section 46 of this title], the amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

''(B) ELECTION TO HAVE AMENDMENTS MADE BY SECTION 201 APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have the amendments made by section 201 apply to any property placed in service after July 31, 1986, and before January 1, 1987. No election may be made under this subparagraph with respect to property to which section 168 of the Internal Revenue Code of 1986 would not apply by reason of section 168(f)(5) of such Code if such property were placed in service after December 31, 1986.

''(2) SECTION 202.—

''(A) IN GENERAL.—The amendments made by section 202 [amending section 179 of this title] shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

''(B) SPECIAL RULE FOR FISCAL YEARS INCLUDING JANUARY 1, 1987.—In the case of any taxable year (other than a calendar year) which includes January 1, 1987, for purposes of applying the amendments made by section 202 to property placed in service during such taxable year and after December 31, 1986—

''(i) the limitation of section 179(b)(1) of the Internal Revenue Code of 1986 (as amended by section 202) shall be reduced by the aggregate deduction under section 179 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) for section 179 property placed in service during such taxable year and before January 1, 1987,

''(ii) the limitation of section 179(b)(2) of such Code (as so amended) shall be applied by taking into account the cost of all section 179 property placed in service during such taxable year, and

''(iii) the limitation of section 179(b)(3) of such Code shall be applied by taking into account the taxable income for the entire taxable year reduced by the amount of any deduction under section 179 of such Code for property placed in service during such taxable year and before January 1, 1987.

''(b) GENERAL TRANSITIONAL RULE.—

''(1) IN GENERAL.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—

''(A) any property which is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on March 1, 1986,

''(B) property which is constructed or reconstructed by the taxpayer if—

''(i) the lesser of (I) $1,000,000, or (II) 5 percent of the cost of such property has been incurred or committed by March 1, 1986, and

''(ii) the construction or reconstruction of such property began by such date, or

''(C) an equipped building or plant facility if construction has commenced as of March 1, 1986, pursuant to a written specific plan and more than one-half of the cost of such equipped building or facility has been incurred or committed by such date.

For purposes of this paragraph, all members of the same affiliated group of corporations (within the meaning of section 1504 of the Internal Revenue Code of 1986) filing a consolidated return shall be treated as one taxpayer.

''(2) REQUIREMENT THAT CERTAIN PROPERTY BE PLACED IN SERVICE BEFORE CERTAIN DATE.—

''(A) IN GENERAL.—Paragraph (1) and section 204(a) (other than paragraph (8) or (12) thereof) shall not apply to any property unless such property has a class life of at least 7 years and is placed in service before the applicable date determined under the following table:

"In the case of property with a class life of:	**The applicable date is:**
At least 7 but less than 20 years	January 1, 1989
20 years or more	January 1, 1991.

''(B) RESIDENTIAL RENTAL AND NONRESIDENTIAL REAL PROPERTY.—In the case of residential rental property and nonresidential real property, the applicable date is January 1, 1991.

''(C) CLASS LIVES.—For purposes of subparagraph (A)—

''(i) the class life of property to which section 168(g)(3)(B) of the Internal Revenue Code of 1986 (as added by section 201) applies shall be the class life in effect on January 1, 1986, except that computer-based telephone central office switching equipment described in section 168(e)(3)(B)(iii) of such Code shall be treated as having a class life of 6 years,

''(ii) property described in section 204(a) shall be treated as having a class life of 20 years, and

''(iii) property with no class life shall be treated as having a class life of 12 years.

''(D) SUBSTITUTION OF APPLICABLE DATES.—If any provision of this Act [see Tables for classification] substitutes a date for an applicable date, this paragraph shall be applied by using such date.

''(3) PROPERTY QUALIFIES IF SOLD AND LEASED BACK IN 3 MONTHS.—Property shall be treated as meeting

the requirements of paragraphs (1) and (2) or section 204(a) with respect to any taxpayer if such property is acquired by the taxpayer from a person—

''(A) in whose hands such property met the requirements of paragraphs (1) and (2) or section 204(a) (or would have met such requirements if placed in service by such person), or

''(B) who placed the property in service before January 1, 1987,

and such property is leased back by the taxpayer to such person, or is leased to such person, not later than the earlier of the applicable date under paragraph (2) or the day which is 3 months after such property was placed in service.

''(4) PLANT FACILITY.—For purposes of paragraph (1), the term 'plant facility' means a facility which does not include any building (or with respect to which buildings constitute an insignificant portion) and which is—

''(A) a self-contained single operating unit or processing operation,

''(B) located on a single site, and

''(C) identified as a single unitary project as of March 1, 1986.

''(c) PROPERTY FINANCED WITH TAX-EXEMPT BONDS.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection or section 204, subparagraph (C) of section 168(g)(1) of the Internal Revenue Code of 1986 (as added by this Act) shall apply to property placed in service after December 31, 1986, in taxable years ending after such date, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after March 1, 1986.

''(2) EXCEPTIONS.—

''(A) CONSTRUCTION OR BINDING AGREEMENTS.—Subparagraph (C) of section 168(g)(1) of such Code (as so added) shall not apply to obligations with respect to a facility—

''(i)(I) the original use of which commences with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before March 2, 1986, and was completed on or after such date,

''(II) with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before March 2, 1986, and some of such expenditures are incurred on or after such date, or

''(III) acquired on or after March 2, 1986, pursuant to a binding contract entered into before such date, and

''(ii) described in an inducement resolution or other comparable preliminary approval adopted by the issuing authority (or by a voter referendum) before March 2, 1986.

''(B) REFUNDING.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1986, which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before March 2, 1986, subparagraph (C) of section 168(g)(1) of such Code (as so added) shall apply only with respect to an amount equal to the basis in such property which has not been recovered before the date such refunded obligation is issued.

''(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1987, subparagraph (C) of section 168(g)(1) of such Code (as so added) shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before March 2, 1986.

''(C) FACILITIES.—In the case of an inducement resolution or other comparable preliminary approval adopted by an issuing authority before March 2, 1986, for purposes of subparagraphs (A) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

''(D) SIGNIFICANT EXPENDITURES.—For purposes of this paragraph, the term 'significant expenditures' means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

''(d) MID-QUARTER CONVENTION.—In the case of any taxable year beginning before October 1, 1987 in which property to which the amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] do not apply is placed in service, such property shall be taken into account in determining whether section 168(d)(3) of the Internal Revenue Code of 1986 (as added by section 201) applies for such taxable year to property to which such amendments apply. The preceding sentence shall only apply to property which would be taken into account if such amendments did apply.

''(e) NORMALIZATION REQUIREMENTS.—

''(1) IN GENERAL.—A normalization method of accounting shall not be treated as being used with respect to any public utility property for purposes of section 167 or 168 of the Internal Revenue Code of 1986 if the taxpayer, in computing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, reduces the excess tax reserve more rapidly or to a greater extent than such reserve would be reduced under the average rate assumption method.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) EXCESS TAX RESERVE.—The term 'excess tax reserve' means the excess of—

''(i) the reserve for deferred taxes (as described in section 167(*l*)(3)(G)(ii) or 168(e)(3)(B)(ii) of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]), over

''(ii) the amount which would be the balance in such reserve if the amount of such reserve were determined by assuming that the corporate rate reductions provided in this Act [see Tables for classification] were in effect for all prior periods.

''(B) AVERAGE RATE ASSUMPTION METHOD.—The average rate assumption method is the method under which the excess in the reserve for deferred taxes is reduced over the remaining lives of the property as used in its regulated books of account which gave rise to the reserve for deferred taxes. Under such method, if timing differences for the property reverse, the amount of the adjustment to the reserve for the deferred taxes is calculated by multiplying—

''(i) the ratio of the aggregate deferred taxes for the property to the aggregate timing differences for the property as of the beginning of the period in question, by

''(ii) the amount of the timing differences which reverse during such period.

''SEC. 204. ADDITIONAL TRANSITIONAL RULES.

''(a) OTHER TRANSITIONAL RULES.—

''(1) URBAN RENOVATION PROJECTS.—

''(A) IN GENERAL.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property which is an integral part of any qualified urban renovation project.

''(B) QUALIFIED URBAN RENOVATION PROJECT.—For purposes of subparagraph (A), the term 'qualified urban renovation project' means any project—

''(i) described in subparagraph (C), (D), (E), or (G) which before March 1, 1986, was publicly announced by a political subdivision of a State for a renovation of an urban area within its jurisdiction,

''(ii) described in subparagraph (C), (D) or (G) which before March 1, 1986, was identified as a single unitary project in the internal financing plans of the primary developer of the project,

''(iii) described in subparagraph (C) or (D), which is not substantially modified on or after March 1, 1986, and

''(iv) described in subparagraph (F) or (H).

''(C) PROJECT WHERE AGREEMENT ON DECEMBER 19, 1984.—A project is described in this subparagraph if—

''(i) a political subdivision granted on July 11, 1985, development rights to the primary developer-purchaser of such project, and

''(ii) such project was the subject of a development agreement between a political subdivision and a bridge authority on December 19, 1984.

For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1994' for 'January 1, 1991' each place it appears.

''(D) CERTAIN ADDITIONAL PROJECTS.—A project is described in this subparagraph if it is described in any of the following clauses of this subparagraph and the primary developer of all such projects is the same person:

''(i) A project is described in this clause if the development agreement with respect thereto was entered into during April 1984 and the estimated cost of the project is approximately $194,000,000.

''(ii) A project is described in this clause if the development agreement with respect thereto was entered into during May 1984 and the estimated cost of the project is approximately $190,000,000.

''(iii) A project is described in this clause if the project has an estimated cost of approximately $92,000,000 and at least $7,000,000 was spent before September 26, 1985, with respect to such project.

''(iv) A project is described in this clause if the estimated project cost is approximately $39,000,000 and at least $2,000,000 of construction cost for such project were incurred before September 26, 1985.

''(v) A project is described in this clause if the development agreement with respect thereto was entered into before September 26, 1985, and the estimated cost of the project is approximately $150,000,000.

''(vi) A project is described in this clause if the board of directors of the primary developer approved such project in December 1982, and the estimated cost of such project is approximately $107,000,000.

''(vii) A project is described in this clause if the board of directors of the primary developer approved such project in December 1982, and the estimated cost of such project is approximately $59,000,000.

''(viii) A project is described in this clause if the Board of Directors of the primary developer approved such project in December 1983, following selection of the developer by a city council on September 26, 1983, and the estimated cost of such project is approximately $107,000,000.

''(E) PROJECT WHERE PLAN CONFIRMED ON OCTOBER 4, 1984.—A project is described in this subparagraph if—

''(i) a State or an agency, instrumentality, or political subdivision thereof approved the filing of a general project plan on June 18, 1981, and on October 4, 1984, a State or an agency, instrumentality, or political subdivision thereof confirmed such plan,

''(ii) the project plan as confirmed on October 4, 1984, included construction or renovation of office buildings, a hotel, a trade mart, theaters, and a subway complex, and

''(iii) significant segments of such project were the subject of one or more conditional designations granted by a State or an agency, instrumentality, or political subdivision thereof to one or more developers before January 1, 1985.

The preceding sentence shall apply with respect to a property only to the extent that a building on such property site was identified as part of the project plan before September 26, 1985, and only to the extent that the size of the building on such property site was not substantially increased by reason of a modification to the project plan with respect to such property on or after such date. For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1998' for 'January 1, 1991' each place it appears.

''(F) A project is described in this subparagraph if it is a sports and entertainment facility which—

''(i) is to be used by both a National Hockey League team and a National Basketball Association team;

''(ii) is to be constructed on a platform utilizing air rights over land acquired by a State authority and identified as site B in a report dated May 30, 1984, prepared for a State urban development corporation; and

''(iii) is eligible for real property tax, and power and energy benefits pursuant to the provisions of State legislation approved and effective July 7, 1982.

A project is also described in this subparagraph if it is a mixed-use development which is—

''(I) to be constructed above a public railroad station utilized by the national railroad passenger corporation and commuter railroads serving two States; and

''(II) will include the reconstruction of such station so as to make it a more efficient transportation center and to better integrate the station with the development above, such reconstruction plans to be prepared in cooperation with a State transportation authority.

For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1998' for the applicable date that would otherwise apply.

''(G) A project is described in this subparagraph if—

''(i) an inducement resolution was passed on March 9, 1984, for the issuance of obligations with respect to such project,

''(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986,

''(iii) an application was submitted on January 31, 1984, for an Urban Development Action Grant with respect to such project, and

''(iv) an Urban Development Action Grant was preliminarily approved for all or part of such project on July 3, 1986.

''(H) A project is described in this subparagraph if it is a redevelopment project, with respect to which $10,000,000 in industrial revenue bonds were approved by a State Development Finance Authority on January 15, 1986, a village transferred approximately $4,000,000 of bond volume authority to the State in June 1986, and a binding Redevelopment Agreement was executed between a city and the development team on June 30, 1986.

''(2) CERTAIN PROJECTS GRANTED FERC LICENSES, ETC.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property which is part of a project—

''(A) which is certified by the Federal Energy Regulatory Commission before March 2, 1986, as a qualifying facility for purposes of the Public Utility Regulatory Policies Act of 1978 [see Short Title note set out under 16 U.S.C. 2601],

''(B) which was granted before March 2, 1986, a hydroelectric license for such project by the Federal Energy Regulatory Commission, or

''(C) which is a hydroelectric project of less than 80 megawatts that filed an application for a permit, exemption, or license with the Federal Energy Regulatory Commission before March 2, 1986.

''(3) SUPPLY OR SERVICE CONTRACTS.—The amendments made by section 201 shall not apply to any property which is readily identifiable with and necessary to carry out a written supply or service contract, or agreement to lease, which was binding on March 1, 1986.

''(4) PROPERTY TREATED UNDER PRIOR TAX ACTS.—The amendments made by section 201 shall not apply—

''(A) to property described in section 12(c)(2) (as amended by the Technical and Miscellaneous Revenue Act of 1988), 31(g)(5), or 31(g)(17)(J) of the Tax Reform Act of 1984 [sections 12(c)(2) and 31(g)(5), (17)(J) of Pub. L. 98–369, set out below],

''(B) to property described in section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982, as amended by the Tax Reform Act of 1984 [section 209(d)(1)(B) of Pub. L. 97–248, as amended, set out below], and

''(C) to property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 216(b)(3) of Pub. L. 97–248, set out below].

''(5) SPECIAL RULES FOR PROPERTY INCLUDED IN MASTER PLANS OF INTEGRATED PROJECTS.—The amendments made by section 201 shall not apply to any property placed in service pursuant to a master plan which is clearly identifiable as of March 1, 1986, for any project described in any of the following subparagraphs of this paragraph:

''(A) A project is described in this subparagraph if—

''(i) the project involves production platforms for offshore drilling, oil and gas pipeline to shore, process and storage facilities, and a marine terminal, and

''(ii) at least $900,000,000 of the costs of such project were incurred before September 26, 1985.

''(B) A project is described in this subparagraph if—

''(i) such project involves a fiber optic network of at least 20,000 miles, and

''(ii) before September 26, 1985, construction commenced pursuant to the master plan and at least $85,000,000 was spent on construction.

''(C) A project is described in this subparagraph if—

''(i) such project passes through at least 10 States and involves intercity communication links (including one or more repeater sites, terminals and junction stations for microwave transmissions, regenerators or fiber optics and other related equipment),

''(ii) the lesser of $150,000,000 or 5 percent of the total project cost has been expended, incurred, or committed before March 2, 1986, by one or more taxpayers each of which is a member of the same affiliated group (as defined in section 1504(a) [of the Internal Revenue Code of 1986]), and

''(iii) such project consists of a comprehensive plan for meeting network capacity requirements as encompassed within either:

''(I) a November 5, 1985, presentation made to and accepted by the Chairman of the Board and the president of the taxpayer, or

''(II) the approvals by the Board of Directors of the parent company of the taxpayer on May 3, 1985, and September 22, 1985, and of the executive committee of said board on December 23, 1985.

''(D) A project is described in this subparagraph if—

''(i) such project is part of a flat rolled product modernization plan which was initially presented to the Board of Directors of the taxpayer on July 8, 1983,

''(ii) such program will be carried out at 3 locations, and

''(iii) such project will involve a total estimated minimum capital cost of at least $250,000,000.

''(E) A project is described in this subparagraph if the project is being carried out by a corporation engaged in the production of paint, chemicals, fiberglass, and glass, and if—

''(i) the project includes a production line which applies a thin coating to glass in the manufacture of energy efficient residential products, if approved by the management committee of the corporation on January 29, 1986,

''(ii) the project is a turbogenerator which was approved by the president of such corporation and at least $1,000,000 of the cost of which was incurred or committed before such date,

''(iii) the project is a waste-to-energy disposal system which was initially approved by the management committee of the corporation on March 29, 1982, and at least $5,000,000 of the cost of which was incurred before September 26, 1985,

''(iv) the project, which involves the expansion of an existing service facility and the addition of new lab facilities needed to accommodate topcoat and undercoat production needs of a nearby automotive assembly plant, was approved by the corporation's management committee on March 5, 1986, or

''(v) the project is part of a facility to consolidate and modernize the silica production of such corporation and the project was approved by the president of such corporation on August 19, 1985.

''(F) A project is described in this subparagraph if—

''(i) such project involves a port terminal and oil pipeline extending generally from the area of Los Angeles, California, to the area of Midland, Texas, and

''(ii) before September 26, 1985, there is a binding contract for dredging and channeling with respect thereto and a management contract with a construction manager for such project.

''(G) A project is described in this subparagraph if—

''(i) the project is a newspaper printing and distribution plant project with respect to which a contract for the purchase of 8 printing press units and related equipment to be installed in a single press line was entered into on January 8, 1985, and

''(ii) the contract price for such units and equipment represents at least 50 percent of the total cost of such project.

''(H) A project is described in this subparagraph if it is the second phase of a project involving direct current transmission lines spanning approximately 190 miles from the United States-Canadian border to Ayer, Massachusetts, alternating current transmission lines in Massachusetts from Ayers to Millbury to West Medway, DC–AC converted terminals to Monroe, New Hampshire, and Ayer, Massachusetts, and other related equipment and facilities.

''(I) A project is described in this subparagraph if it involves not more than two natural gas-fired combined cycle electric generating units each having a net electrical capability of approximately 233 megawatts, and a sales contract for approximately one-half of the output of the 1st unit was entered into in December 1985.

''(J) A project is described in this subparagraph if—

''(i) the project involves an automobile manufacturing facility (including equipment and incidental appurtenances) to be located in the United States, and

''(ii) either—

''(I) the project was the subject of a memorandum of understanding between 2 automobile manufacturers that was signed before September 25, 1985, the automobile manufacturing facility (including equipment and incidental appurtenances) will involve a total estimated cost of approximately $750,000,000, and will have an annual production capacity of approximately 240,000 vehicles or

''(II) the Board of Directors of an automobile manufacturer approved a written plan for the conversion of existing facilities to produce new models of a vehicle not currently produced in the United States, such facilities will be placed in service by July 1, 1987, and such Board action occurred in July 1985 with respect to a $602,000,000 expenditure, a $438,000,000 expenditure, and a $321,000,000 expenditure.

''(K) A project is described in this subparagraph if—

''(i) the project involves a joint venture between a utility company and a paper company for a supercalendered paper mill, and at least $50,000,000 was incurred or committed with respect to such project before March 1, 1986, or

''(ii) the project involves a paper mill for the manufacture of newsprint (including a cogeneration facility) is generally based on a written design and feasibility study that was completed on December 15, 1981, and will be placed in service before January 1, 1991, or

''(iii) the project is undertaken by a Maine corporation and involves the modernization of pulp and paper mills in Millinocket and/or East Millinocket, Maine, or

''(iv) the project involves the installation of a paper machine for production of coated publication papers, the modernization of a pulp mill, and the installation of machinery and equipment with respect to related processes, as of December 31, 1985, in excess of $50,000,000 was incurred for the project, as of July 1986, in excess of $150,000,000 was incurred for the project, and the project is located in Pine Bluff, Arkansas, or

''(v) the project involves property of a type described in ADR classes 26.1, 26.2, 25, 00.3 and 00.4 included in a paper plant which will manufacture and distribute tissue, towel or napkin products; is located in Effingham County, Georgia; and is generally based upon a written General Description which was submitted to the Georgia Department of Revenue on or about June 13, 1985.

''(L) A project is described in this subparagraph if—

''(i) a letter of intent with respect to such project was executed on June 4, 1985, and

''(ii) a 5-percent downpayment was made in connection with such project for 2 10-unit press lines and related equipment.

''(M) A project is described in this subparagraph if—

''(i) the project involves the retrofit of ammonia plants,

''(ii) as of March 1, 1986, more than $390,000 had been expended for engineering and equipment, and

''(iii) more than $170,000 was expensed in 1985 as a portion of preliminary engineering expense.

''(N) A project is described in this subparagraph if the project involves bulkhead intermodal flat cars which are placed in service before January 1, 1987, and either—

''(i) more than $2,290,000 of expenditures were made before March 1, 1986, with respect to a project involving up to 300 platforms, or

''(ii) more than $95,000 of expenditures were made before March 1, 1986, with respect to a project involving up to 850 platforms.

''(O) A project is described in this subparagraph if—

''(i) the project involves the production and transportation of oil and gas from a well located north of the Arctic Circle, and

''(ii) more than $200,000,000 of cost had been incurred or committed before September 26, 1985.

''(P) A project is described in this subparagraph if—

''(i) a commitment letter was entered into with a financial institution on January 23, 1986, for the financing of the project,

''(ii) the project involves intercity communication links (including microwave and fiber optics communications systems and related property),

''(iii) the project consists of communications links between—

''(I) Omaha, Nebraska, and Council Bluffs, Iowa,

''(II) Waterloo, Iowa and Sioux City, Iowa,

''(III) Davenport, Iowa and Springfield, Illinois, and

''(iv) the estimated cost of such project is approximately $13,000,000.

''(Q) A project is described in this subparagraph if—

''(i) such project is a mining modernization project involving mining, transport, and milling operations,

''(ii) before September 26, 1985, at least $20,000,000 was expended for engineering studies which were approved by the Board of Directors of the taxpayer on January 27, 1983, and

''(iii) such project will involve a total estimated minimum cost of $350,000,000.

''(R) A project is described in this subparagraph if—

''(i) such project is a dragline acquired in connection with a 3-stage program which began in 1980 to increase production from a coal mine,

''(ii) at least $35,000,000 was spent before September 26, 1985, on the 1st 2 stages of the program, and

''(iii) at least $4,000,000 was spent to prepare the mine site for the dragline.

''(S) A project is described in this subparagraph if—it is a project consisting of a mineral processing facility using a heap leaching system (including waste dumps, low-grade dumps, a leaching area, and mine roads) and if—

''(i) convertible subordinated debentures were issued in August 1985, to finance the project,

''(ii) construction of the project was authorized by the Board of Directors of the taxpayer on or before December 31, 1985,

''(iii) at least $750,000 was paid or incurred with respect to the project on or before December 31, 1985, and

''(iv) the project is placed in service on or before December 31, 1986.

''(T) A project is described in this subparagraph if it is a plant facility on Alaska's North Slope which is placed in service before January 1, 1988, and—

''(i) the approximate cost of which is $675,000,000, of which approximately $400,000,000 was spent on off-site construction,

''(ii) the approximate cost of which is $445,000,000, of which approximately $400,000,000 was spent on off-site construction and more than 50 percent of the project cost was spent prior to December 31, 1985, or

''(iii) the approximate cost of which is $375,000,000, of which approximately $260,000,000 was spent on off-site construction.

''(U) A project is described in this subparagraph if it involves the connecting of existing retail stores in the downtown area of a city to a new covered area, the total project will be 250,000 square feet, a formal Memorandum of Understanding relating to development of the project was executed with the city on July 2, 1986, and the estimated cost of the project is $18,186,424.

''(V) A project is described in this subparagraph if it includes a 200,000 square foot office tower, a 200-room hotel, a 300,000 square foot retail center, an 800-space parking facility, the total cost is projected to be $60,000,000, and $1,250,000 was expended with respect to the site before August 25, 1986.

''(W) A project is described in this subparagraph if it is a joint use and development project including an integrated hotel, convention center, office, related retail facilities and public mass transpor-

tation terminal, and vehicle parking facilities which satisfies the following conditions:

''(i) is developed within certain air space rights and upon real property exchanged for such joint use and development project which is owned or acquired by a state department of transportation, a regional mass transit district in a county with a population of at least 5,000,000 and a community redevelopment agency;

''(ii) such project affects an existing, approximately 40 acre public mass transportation busway terminal facility located adjacent to an interstate highway;

''(iii) a memorandum of understanding with respect to such joint use and development project is executed by a state department of transportation, such a county regional mass transit district and a community redevelopment agency on or before December 31, 1986, and

''(iv) a major portion of such joint use and development project is placed in service by December 31, 1990.

''(X) A project is described in this subparagraph if—

''(i) it is an $8,000,000 project to provide advanced control technology for adipic acid at a plant, which was authorized by the company's Board of Directors in October 1985, at December 31, 1985, $1,400,000 was committed and $400,000 expended with respect to such project, or

''(ii) it is an $8,300,000 project to achieve compliance with State and Federal regulations for particulates emissions, which was authorized by the company's Board of Directors in December 1985, by March 31, 1986, $250,000 was committed and $250,000 was expended with respect to such project, or

''(iii) it is a $22,000,000 project for the retrofit of a plant that makes a raw material for aspartame, which was approved in the company's December 1985 capital budget, if approximately $3,000,000 of the $22,000,000 was spent before August 1, 1986.

''(Y) A project is described in this subparagraph if such project passes through at least 9 States and involves an intercity communication link (including multiple repeater sites and junction stations for microwave transmissions and amplifiers for fiber optics); the link from Buffalo to New York/Elizabeth was completed in 1984; the link from Buffalo to Chicago was completed in 1985; and the link from New York to Washington is completed in 1986.

''(Z) A project is described in this subparagraph if—

''(i) such project involves a fiber optic network of at least 475 miles, passing through Minnesota and Wisconsin; and

''(ii) before January 1, 1986, at least $15,000,000 was expended or committed for electronic equipment or fiber optic cable to be used in constructing the network.

''(6) NATURAL GAS PIPELINE.—The amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any interstate natural gas pipeline (and related equipment) if—

''(A) 3 applications for the construction of such pipeline were filed with the Federal Energy Regulatory Commission before November 22, 1985 (and 2 of which were filed before September 26, 1985), and

''(B) such pipeline has 1 of its terminal points near Bakersfield, California.

''(7) CERTAIN LEASEHOLD IMPROVEMENTS.—The amendments made by section 201 shall not apply to any reasonable leasehold improvements, equipment and furnishings placed in service by a lessee or its affiliates if—

''(A) the lessee or an affiliate is the original lessee of each building in which such property is to be used,

''(B) such lessee is obligated to lease the building under an agreement to lease entered into before September 26, 1985, and such property is provided for such building, and

''(C) such buildings are to serve as world headquarters of the lessee and its affiliates.

For purposes of this paragraph, a corporation is an affiliate of another corporation if both corporations are members of a controlled group of corporations within the meaning of section 1563(a) of the Internal Revenue Code of 1954 without regard to section 1563(b)(2) of such Code. Such lessee shall include a securities firm that meets the requirements of subparagraph (A), except the lessee is obligated to lease the building under a lease entered into on June 18, 1986.

''(8) SOLID WASTE DISPOSAL FACILITIES.—The amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to the taxpayer who originally places in service any qualified solid waste disposal facility (as defined in section 7701(e)(3)(B) of the Internal Revenue Code of 1986) if before March 2, 1986—

''(A) there is a binding written contract between a service recipient and a service provider with respect to the operation of such facility to pay for the services to be provided by such facility,

''(B) a service recipient or governmental unit (or any entity related to such recipient or unit) made a financial commitment of at least $200,000 for the financing or construction of such facility,

''(C) such facility is the Tri-Cities Solid Waste Recovery Project involving Fremont, Newark, and Union City, California, and has received an authority to construct from the Environmental Protection Agency or from a State or local agency authorized by the Environmental Protection Agency to issue air quality permits under the Clean Air Act [42 U.S.C. 7401 et seq.],

''(D) a bond volume carryforward election was made for the facility and the facility is for Chattanooga, Knoxville, or Kingsport, Tennessee, or

''(E) such facility is to serve Haverhill, Massachusetts.

''(9) CERTAIN SUBMERSIBLE DRILLING UNITS.—In the case of a binding contract entered into on October 30, 1984, for the purchase of 6 semi-submersible drilling units at a cost of $425,000,000, such units shall be treated as having an applicable date under subsection [section] 203(b)(2) of January 1, 1991.

''(10) WASTEWATER OR SEWAGE TREATMENT FACILITY.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property which is part of a wastewater or sewage treatment facility if—

''(A) site preparation for such facility commenced before September 1985, and a parish council approved a service agreement with respect to such facility on December 4, 1985;

''(B) a city-parish advertised in September 1985, for bids for construction of secondary treatment improvements for such facility, in May 1985, the city-parish received statements from 16 firms interested in privatizing the wastewater treatment facilities, and the metropolitan council selected a privatizer at its meeting on November 20, 1985, and adopted a resolution authorizing the Mayor to enter into contractual negotiation with the selected privatizer;

''(C) the property is part of a wastewater treatment facility serving Greenville, South Carolina with respect to which a binding service agreement between a privatizer and the Western Carolina Regional Sewer Authority with respect to such facility was signed before January 1, 1986; or

''(D) such property is part of a wastewater treatment facility (located in Cameron County, Texas, within one mile of the City of Harlingen), an application for a wastewater discharge permit was filed

with respect to such facility on December 4, 1985, and a City Commission approved a letter of intent relating to a service agreement with respect to such facility on August 7, 1986; or a wastewater facility (located in Harlingen, Texas) which is a subject of such letter of intent and service agreement and the design of which was contracted for in a letter of intent dated January 23, 1986.

''(11) CERTAIN AIRCRAFT.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any new aircraft with 19 or fewer passenger seats if—

''(A) the aircraft is manufactured in the United States. For purposes of this subparagraph, an aircraft is 'manufactured' at the point of its final assembly,

''(B) the aircraft was in inventory or in the planned production schedule of the final assembly manufacturer, with orders placed for the engine(s) on or before August 16, 1986, and

''(C) the aircraft is purchased or subject to a binding contract on or before December 31, 1986, and is delivered and placed in service by the purchaser, before July 1, 1987.

''(12) CERTAIN SATELLITES.—The amendments made by section 201 shall not apply to any satellite with respect to which—

''(A) on or before January 28, 1986, there was a binding contract to construct or acquire a satellite, and

''(i) an agreement to launch was in existence on that date, or

''(ii) on or before August 5, 1983, the Federal Communications Commission had authorized the construction and for which the authorized party has a specific although undesignated agreement to launch in existence on January 28, 1986;

''(B) by order adopted on July 25, 1985, the Federal Communications Commission granted the taxpayer an orbital slot and authorized the taxpayer to launch and operate 2 satellites with a cost of approximately $300,000,000; or

''(C) the International Telecommunications Satellite Organization or the International Maritime Satellite Organization entered into written binding contracts before May 1, 1985.

''(13) CERTAIN NONWIRE LINE CELLULAR TELEPHONE SYSTEMS.—The amendments made by section 201 shall not apply to property that is part of a nonwire line system in the Domestic Public Cellular Radio Telecommunications Service for which the Federal Communications Commission has issued a construction permit before September 26, 1985, but only if such property is placed in service before January 1, 1987.

''(14) CERTAIN COGENERATION FACILITIES.—The amendments made by section 201 shall not apply to projects consisting of 1 or more facilities for the cogeneration and distribution of electricity and steam or other forms of thermal energy if—

''(A) at least $100,000 was paid or incurred with respect to the project before March 1, 1986, a memorandum of understanding was executed on September 13, 1985, and the project is placed in service before January 1, 1989,

''(B) at least $500,000 was paid or incurred with respect to the projects before May 6, 1986, the projects involve a 22-megawatt combined cycle gas turbine plant and a 45-megawatt coal waste plant, and applications for qualifying facility status were filed with the Federal Energy Regulatory Commission on March 5, 1986,

''(C) the project cost approximates $125,000,000 to $140,000,000 and an application was made to the Federal Energy Regulatory Commission in July 1985,

''(D) an inducement resolution for such facility was adopted on September 10, 1985, a development authority was given an inducement date of September 10, 1985, for a loan not to exceed $80,000,000 with respect to such facility, and such facility is expected to have a capacity of approximately 30 megawatts of electric power and 70,000 pounds of steam per hour,

''(E) at least $1,000,000 was incurred with respect to the project before May 6, 1986, the project involves a 52-megawatt combined cycle gas turbine plant and a petition was filed with the Connecticut Department of Public Utility Control to approve a power sales agreement with respect to the project on March 27, 1986,

''(F) the project has a planned scheduled capacity of approximately 38,000 kilowatts, the project property is placed in service before January 1, 1991, and the project is operated, established, or constructed pursuant to certain agreements, the negotiation of which began before 1986, with public or municipal utilities conducting business in Massachusetts, or

''(G) the Board of Regents of Oklahoma State University took official action on July 25, 1986, with respect to the project.

In the case of the project described in subparagraph (F), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1991' for 'January 1, 1989'.

''(15) CERTAIN ELECTRIC GENERATING STATIONS.—The amendments made by section 201 shall not apply to a project located in New Mexico consisting of a coal-fired electric generating station (including multiple generating units, coal mine equipment, and transmission facilities) if—

''(A) a tax-exempt entity will own an equity interest in all property included in the project (except the coal mine equipment), and

''(B) at least $72,000,000 was expended in the acquisition of coal leases, land and water rights, engineering studies, and other development costs before May 6, 1986.

For purposes of this paragraph, section 203(b)(2) shall be applied by substituting 'January 1, 1996' for 'January 1, 1991' each place it appears.

''(16) SPORTS ARENAS.—

''(A) INDOOR SPORTS FACILITY.—The amendments made by section 201 shall not apply to up to $20,000,000 of improvements made by a lessee of any indoor sports facility pursuant to a lease from a State commission granting the right to make limited and specified improvements (including planned seat explanations), if architectural renderings of the project were commissioned and received before December 22, 1985.

''(B) METROPOLITAN SPORTS ARENA.—The amendments made by section 201 shall not apply to any property which is part of an arena constructed for professional sports activities in a metropolitan area, provided that such arena is capable of seating no less than 18,000 spectators and a binding contract to incur significant expenditures for its construction was entered into before June 1, 1986.

''(17) CERTAIN WASTE-TO-ENERGY FACILITIES.—The amendments made by section 201 shall not apply to 2 agricultural waste-to-energy powerplants (and required transmission facilities), in connection with which a contract to sell 100 megawatts of electricity to a city was executed in October 1984.

''(18) CERTAIN COAL-FIRED PLANTS.—The amendments made by section 201 shall not apply to one of three 540 megawatt coal-fired plants that are placed in service after a sale leaseback occurring after January 1, 1986, if—

''(A) the Board of Directors of an electric power cooperation authorized the investigation of a sale leaseback of a nuclear generation facility by resolution dated January 22, 1985, and

''(B) a loan was extended by the Rural Electrification Administration on February 20, 1986, which contained a covenant with respect to used property leasing from unit II.

''(19) CERTAIN RAIL SYSTEMS.—

''(A) The amendments made by section 201 shall not apply to a light rail transit system, the approximate cost of which is $235,000,000, if, with respect

to which, the board of directors of a corporation (formed in September 1984 for the purpose of developing, financing, and operating the system) authorized a $300,000 expenditure for a feasibility study in April 1985.

''(B) The amendments made by section 201 shall not apply to any project for rehabilitation of regional railroad rights of way and properties including grade crossings which was authorized by the Board of Directors of such company prior to October 1985; and/or was modified, altered or enlarged as a result of termination of company contracts, but approved by said Board of Directors no later than January 30, 1986, and which is in the public interest, and which is subject to binding contracts or substantive commitments by December 31, 1987.

''(20) CERTAIN DETERGENT MANUFACTURING FACILITY.—The amendments made by section 201 shall not apply to a laundry detergent manufacturing facility, the approximate cost of which is $13,200,000, with respect to which a project agreement was fully executed on March 17, 1986.

''(21) CERTAIN RESOURCE RECOVERY FACILITY.—The amendments made by section 201 shall not apply to any of 3 resource recovery plants, the aggregate cost of which approximates $300,000,000, if an industrial development authority adopted a bond resolution with respect to such facilities on December 17, 1984, and the projects were approved by the department of commerce of a Commonwealth on December 27, 1984.

''(22) The amendments made by section 201 shall not apply to a computer and office support center building in Minneapolis, with respect to which the first contract, with an architecture firm, was signed on April 30, 1985, and a construction contract was signed on March 12, 1986.

''(23) CERTAIN DISTRICT HEATING AND COOLING FACILITIES.—The amendments made by section 201 shall not apply to pipes, mains, and related equipment included in district heating and cooling facilities, with respect to which the development authority of a State approved the project through an inducement resolution adopted on October 8, 1985, and in connection with which approximately $11,000,000 of tax-exempt bonds are to be issued.

''(24) CERTAIN VESSELS.—

''(A) CERTAIN OFFSHORE VESSELS.—The amendments made by section 201 shall not apply to any offshore vessel the construction contract for which was signed on February 28, 1986, and the approximate cost of which is $9,000,000.

''(B) CERTAIN INLAND RIVER VESSEL.—The amendments made by section 201 shall not apply to a project involving the reconstruction of an inland river vessel docked on the Mississippi River at St. Louis, Missouri, on July 14, 1986, and with respect to which:

''(i) the estimated cost of reconstruction is approximately $39,000,000;

''(ii) reconstruction was commenced prior to December 1, 1985;

''(iii) at least $17,000,000 was expended before December 31, 1985; and

''(C) SPECIAL AUTOMOBILE CARRIER VESSELS.—The amendments made by section 201 shall not apply to two new automobile carrier vessels which will cost approximately $47,000,000 and will be constructed by a United States-flag carrier to operate, under the United States-flag and with an American crew, to transport foreign automobiles to the United States, in a case where negotiations for such transportation arrangements commenced in April 1985, formal contract bids were submitted prior to the end of 1985, and definitive transportation contracts were awarded in May 1986.

''(D) The amendments made by section 201 shall not apply to a 562-foot passenger cruise ship, which was purchased in 1980 for the purpose of returning the vessel to United States service, the approximate cost of refurbishment of which is approximately $47,000,000.

''(E) The amendments made by section 201 shall not apply to the Muskegon, Michigan, Cross-Lake Ferry project having a projected cost of approximately $7,200,000.

''(F) The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $28,000,000, and which will be constructed for and placed in service by OSG Car Carriers, Inc., to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985, and definitive transportation contracts were awarded before June 1986.

''(25) CERTAIN WOOD ENERGY PROJECTS.—The amendments made by section 201 shall not apply to two wood energy projects for which applications with the Federal Energy Regulatory Commission were filed before January 1, 1986, which are described as follows:

''(A) a 26.5 megawatt plant in Fresno, California, and

''(B) a 26.5 megawatt plant in Rocklin, California.

''(26) The amendments made by section 201 shall not apply to property which is a geothermal project of less than 20 megawatts that was certified by the Federal Energy Regulatory Commission on July 14, 1986, as a qualifying small power production facility for purposes of the Public Utility Regulatory Policies Act of 1978 [see Short Title note set out under 16 U.S.C. 2601] pursuant to an application filed with the Federal Energy Regulatory Commission on April 17, 1986.

''(27) CERTAIN ECONOMIC DEVELOPMENT PROJECTS.—The amendments made by section 201 shall not apply to any of the following projects:

''(A) A mixed use development on the East River the total cost of which is approximately $400,000,000, with respect to which a letter of intent was executed on January 24, 1984, and with respect to which approximately $2.5 million had been spent by March 1, 1986.

''(B) A 356-room hotel, banquet, and conference facility (including 540,000 square feet of office space) the approximate cost of which is $158,000,000, with respect to which a letter of intent was executed on June 1, 1984, and with respect to which an inducement resolution and bond resolution was adopted on August 20, 1985.

''(C) Phase 1 of a 4-phase project involving the construction of laboratory space and ground-floor retail space the estimated cost of which is $22,000,000 and with respect to which a memoradum [sic] of understanding was made on August 29, 1983.

''(D) A project involving the development of a 490,000 square foot mixed-use building at 152 W. 57th Street, New York, New York, the estimated cost of which is $100,000,000, and with respect to which a building permit application was filed in May 1986.

''(E) A mixed-use project containing a 300 unit, 12-story hotel, garage, two multi-rise office buildings, and also included a park, renovated riverboat, and barge with festival marketplace, the capital outlays for which approximate $68,000,000.

''(F) The construction of a three-story office building that will serve as the home office for an insurance group and its affiliated companies, with respect to which a city agreed to transfer its ownership of the land for the project in a Redevelopment Agreement executed on September 18, 1985, once certain conditions are met.

''(G) A commercial bank formed under the laws of the State of New York which entered into an agreement on September 5, 1985, to construct its headquarters at 60 Wall Street, New York, New York, with respect to such headquarters.

''(H) Any property which is part of a commercial and residential project, the first phase of which is currently under construction, to be developed on land which is the subject of an ordinance passed on

July 20, 1981, by the city council of the city in which such land is located, designating such land and the improvements to be placed thereon as a residential-business planned development, which development is being financed in part by the proceeds of industrial development bonds in the amount of $62,600,000 issued on December 4, 1985.

''(I) A 600,000 square foot mixed use building known as Flushing Center with respect to which a letter of intent was executed on March 26, 1986.

In the case of the building described in subparagraph (I), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1993' for the applicable date which would otherwise apply.

''(28) The amendments made by section 201 shall not apply to an $80,000,000 capital project steel seamless tubular casings minimill and melting facility located in Youngstown, Ohio, which was purchased by the taxpayer in April 1985, and—

''(A) the purchase and renovation of which was approved by a committee of the Board of Directors on February 22, 1985, and

''(B) as of December 31, 1985, more than $20,000,000 was incurred or committed with respect to the renovation.

''(29) The amendments made by section 201 shall not apply to any project for residential rental property if—

''(A) an inducement resolution with respect to such project was adopted by the State housing development authority on January 25, 1985, and

''(B) such project was the subject of a law suit filed on October 25, 1985.

''(30) The amendments made by section 201 shall not apply to a 30 megawatt electric generating facility fueled by geothermal and wood waste, the approximate cost of which is $55,000,000, and with respect to which a 30-year power sales contract was executed on March 22, 1985.

''(31) The amendments made by section 201 shall not apply to railroad maintenance-of-way equipment, with respect to which a Boston bank entered into a firm binding contract with a major northeastern railroad before March 2, 1986, to finance $10,500,000 of such equipment, if all of the equipment was placed in service before August 1, 1986.

''(32) The amendment made by section 201 shall not apply to—

''(A) a facility constructed on approximately seven acres of land located on Ogle's Poso Creek Oil field, the primary fuel of which will be bituminous coal from Utah or Wyoming, with respect to which an application for an authority to construct was filed on December 26, 1985, an authority to construct was issued on July 2, 1986, and a prevention of significant deterioration permit application was submitted in May 1985,

''(B) a facility constructed on approximately seven acres of land located on Teorco's Jasmin oil field, the primary fuel of which will be bituminous coal from Utah or Wyoming, with respect to which an authority to construct was filed on December 26, 1985, an authority to construct was issued on July 2, 1986, and a prevention of significant deterioration permit application was submitted in July 1985,

''(C) the Mountain View Apartments, in Hadley, Massachusetts,

''(D) a facility expected to have a capacity of not less than 65 megawatts of electricity, the steam from which is to be sold to a pulp and paper mill, with respect to which application was made to the Federal Regulatory Commission for certification as a qualified facility on November 1, 1985, and received such certification on January 24, 1986,

''(E) $5,000,000 of equipment ordered in 1986, in connection with a 60,000 square foot plant in Masontown, Pennsylvania, that was completed in 1983,

''(F) a magnetic resonance imaging machine, with respect to which a binding contract to purchase was entered into in April 1986, in connection with the construction of a magnetic resonance imaging clinic with respect to which a Determination of Need certification was obtained from a State Department of Public Health on October 22, 1985, if such property is placed in service before December 31, 1986,

''(G) a company located in Salina, Kansas, which has been engaged in the construction of highways and city streets since 1946, but only to the extent of $1,410,000 of investment in new section 38 property,

''(H) a $300,000 project undertaken by a small metal finishing company located in Minneapolis, Minnesota, the first parts of which were received and paid for in January 1986, with respect to which the company received Board approval to purchase the largest piece of machinery it has ever ordered in 1985,

''(I) A $1,200,000 finishing machine that was purchased on April 2, 1986 and placed into service in September 1986 by a company located in Davenport, Iowa,

''(J) A 25 megawatt small power production facility, with respect to which Qualifying Facility status numbered QF86–593–000 was granted on March 5, 1986,

''(K) A 250 megawatt coal-fired electric plant in northeastern Nevada estimated to cost $600,000,000 and known as the Thousand Springs project, on which the Sierra Pacific Power Company, a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate (and section 203(b)(2) shall be applied with respect to such plant by substituting 'January 1, 1995' for 'January 1, 1991'),

''(L) 128 units of rental housing in connection with the Point Gloria Limited Partnership,

''(M) property which is part of the Kenosha Downtown Redevelopment Project and which is financed with the proceeds of bonds issued pursuant to section 1317(6)(W) [set out as a note under section 141 of this title],

''(N) Lakeland Park Phase II, in Baton Rouge, Louisiana,

''(O) the Santa Rosa Hotel, in Pensacola, Florida,

''(P) the Sheraton Baton Rouge, in Baton Rouge, Louisiana,

''(Q) $300,000 of equipment placed in service in 1986, in connection with the renovation of the Best Western Townhouse Convention Center in Cedar Rapids, Iowa,

''(R) the segment of a nationwide fiber optics telecommunications network placed in service by SouthernNet, the total estimated cost of which is $37,000,000,

''(S) two cogeneration facilities, to be placed in service by the Reading Anthracite Coal Company (or any subsidiary thereof), costing approximately $110,000,000 each, with respect to which filings were made with the Federal Energy Regulatory Commission by December 31, 1985, and which are located in Pennsylvania,

''(T) a portion of a fiber optics network placed in service by LDX NET after December 31, 1988, but only to the extent the cost of such portion does not exceed $25,000,000,

''(U) 3 newly constructed fishing vessels, and one vessel that is overhauled, constructed by Mid Coast Marine, but only to the extent of $6,700,000 of investment,

''(V) $350,000 of equipment acquired in connection with the reopening of a plant in Bristol, Rhode Island, which plant was purchased by Buttonwoods, Ltd., Associates on February 7, 1986,

''(W) $4,046,000 of equipment placed in service by Brendle's Incorporated, acquired in connection with a Distribution Center,

''(X) a multi-family mixed-use housing project located in a home rule city, the zoning for which was changed to residential business planned develop-

ment on November 26, 1985, and with respect to which both the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions,

''(Y) the Myrtle Beach Convention Center, in South Carolina, to the extent of $25,000,000 of investment, and

''(Z) railroad cars placed in service by the Pullman Leasing Company, pursuant to an April 3, 1986 purchase order, costing approximately $10,000,000.

''(33) The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—

''(A) $400,000 of equipment placed in service by Super Key Market, if such equipment is placed in service before January 1, 1987,

''(B) the Trolley Square project, the total project cost of which is $24,500,000, and the amount of depreciable real property of which is $14,700,000.

''(C)(i) a waste-to-energy project in Derry, New Hampshire, costing approximately $60,000,000, and

''(ii) a waste-to-energy project in Manchester, New Hampshire, costing approximately $60,000,000,

''(D) the City of Los Angeles Co-composting project, the estimated cost of which is $62,000,000, with respect to which, on July 17, 1985, the California Pollution Control Financing Authority issued an initial resolution in the maximum amount of $75,000,000 to finance this project,

''(E) the St. Charles, Missouri Mixed-Use Center,

''(F) Oxford Place in Tulsa, Oklahoma,

''(G) an amount of investment generating $20,000,000 of investment tax credits attributable to property used on the Illinois Diversatech Campus,

''(H) $25,000,000 of equipment used in the Melrose Park Engine Plant that is sold and leased back by Navistar,

''(I) 80,000 vending machines, for a cost approximating $3,400,000 placed into service by Folz Vending Co.,

''(J) A 25.85 megawatt alternative energy facility located in Deblois, Maine, with respect to which certification by the Federal Energy Regulatory Commission was made on April 3, 1986,

''(K) Burbank Manors, in Illinois, and

''(L) a cogeneration facility to be built at a paper company in Turners Falls, Massachusetts, with respect to which a letter of intent was executed on behalf of the paper company on September 26, 1985.

''(40) [Par. (40) probably should follow par. (39).] CERTAIN TRUCKS, ETC.—The amendments made by section 201 shall not apply to trucks, tractor units, and trailers which a privately held truck leasing company headquartered in Des Moines, Iowa, contracted to purchase in September 1985 but only to the extent the aggregate reduction in Federal tax liability by reason of the application of this paragraph does not exceed $8,500,000.

''(34) The amendments made by section 201 shall not apply to an approximately 240,000 square foot beverage container manufacturing plant located in Batesville, Mississippi, or plant equipment used exclusively on the plant premises if—

''(A) a 2-year supply contract was signed by the taxpayer and a customer on November 1, 1985,

''(B) such contract further obligated the customer to purchase beverage containers for an additional 5-year period if physical signs of construction of the plant are present before September 1986,

''(C) ground clearing for such plant began before August 1986, and

''(D) construction is completed, the equipment is installed, and operations are commenced before July 1, 1987.

''(35) The amendments made by section 201 shall not apply to any property which is part of the multifamily housing at the Columbia Point Project in Boston, Massachusetts. A project shall be treated as not described in the preceding sentence and as not described in section 252(f)(1)(D) [set out as a note under section 42 of this title] unless such project includes at substantially all times throughout the compliance period (within the meaning of section 42(i)(1) of the Internal Revenue Code of 1986), a facility which provides health services to the residents of such project for fees commensurate with the ability of such individuals to pay for such services.

''(36) The amendments made by section 201 shall not apply to any ethanol facility located in Blair, Nebraska, if—

''(A) in July of 1984 an initial binding construction contract was entered into for such facility,

''(B) in June of 1986, certain Department of Energy recommended contract changes required a change of contractor, and

''(C) in September of 1986, a new contract to construct such facility, consistent with such recommended changes, was entered into.

''(37) The amendments made by section 201 shall not apply to any property which is part of a sewage treatment facility if, prior to January 1, 1986, the City of Conyers, Georgia, selected a privatizer to construct such facility, received a guaranteed maximum price bid for the construction of such facility, signed a letter of intent and began substantial negotiations of a service agreement with respect to such facility.

''(38) The amendments made by section 201 shall not apply to—

''(A) a $28,000,000 wood resource complex for which construction was authorized by the Board of Directors on August 9, 1985,

''(B) an electrical cogeneration plant in Bethel, Maine which is to generate 2 megawatts of electricity from the burning of wood residues, with respect to which a contract was entered into on July 10, 1984, and with respect to which $200,000 of the expected $2,000,000 cost had been committed before June 15, 1986,

''(C) a mixed income housing project in Portland, Maine which is known as the Back Bay Tower and which is expected to cost $17,300,000,

''(D) the Eastman Place project and office building in Rochester, New York, which is projected to cost $20,000,000, with respect to which an inducement resolution was adopted in December 1986, and for which a binding contract of $500,000 was entered into on April 30, 1986,

''(E) the Marquis Two project in Atlanta, Georgia which has a total budget of $72,000,000 and the construction phase of which began under a contract entered into on March 26, 1986,

''(F) a 166-unit continuing care retirement center in New Orleans, Louisiana, the construction contract for which was signed on February 12, 1986, and is for a maximum amount not to exceed $8,500,000,

''(G) the expansion of the capacity of an oil refining facility in Rosemont, Minnesota from 137,000 to 207,000 barrels per day which is expected to be completed by December 31, 1990, and

''(H) a project in Ransom, Pennsylvania which will burn coal waste (known as 'culm') with an approximate cost of $64,000,000 and for which a certification from the Federal Energy Regulatory Commission was received on March 11, 1986.

''(39) The amendments made by section 201 shall not apply to any facility for the manufacture of an improved particle board if a binding contract to purchase such equipment was executed March 3, 1986, such equipment will be placed in service by January 1, 1988, and such facility is located in or near Moncure, North Carolina.

''(b) SPECIAL RULE FOR CERTAIN PROPERTY.—The provisions of section 168(f)(8) of the Internal Revenue Code of 1954 (as amended by section 209 of the Tax Equity and Fiscal Responsibility Act of 1982) shall continue to apply to any transaction permitted by reason of section 12(c)(2) of the Tax Reform Act of 1984 or section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982 (as amended by the Tax Reform Act of 1984)

[section 12(c)(2) of Pub. L. 98–369 and section 209(d)(1)(B) of Pub. L. 97–248, respectively, set out below].

''(c) APPLICABLE DATE IN CERTAIN CASES.—

''(1) Section 203(b)(2) shall be applied by substituting 'January 1, 1992' for 'January 1, 1991' in the following cases.

''(A) in the case of a 2-unit nuclear powered electric generating plant (and equipment and incidental appurtenances), located in Pennsylvania and constructed pursuant to contracts entered into by the owner operator of the facility before December 31, 1975, including contracts with the engineer/constructor and the nuclear steam system supplier, such contracts shall be treated as contracts described in section 203(b)(1)(A),

''(B) a cogeneration facility with respect to which an application with the Federal Energy Regulatory Commission was filed on August 2, 1985, and approved October 15, 1985.

''(C) in the case of a 1,300 megawatt coal-fired steam powered electric generating plant (and related equipment and incidental appurtenances), which the three owners determined in 1984 to convert from nuclear power to coal power and for which more than $600,000,000 had been incurred or committed for construction before September 25, 1985, except that no investment tax credit will be allowable under section 49(d)(3) added by section 211(a) of this Act [section 49(d) of this title does not contain a par. (3)] for any qualified progress expenditures made after December 31, 1990.

''(2) Section 203(b)(2) shall be applied by substituting 'April 1, 1992' for the applicable date that would otherwise apply, in the case of the second unit of a twin steam electric generating facility and related equipment which was granted a certificate of public convenience and necessity by a public service commission prior to January 1, 1982, if the first unit of the facility was placed in service prior to January 1, 1985, and before September 26, 1985, more than $100,000,000 had been expended toward the construction of the second unit.

''(3) Section 203(b)(2) shall be applied by substituting 'January 1, 1990,' (or, in the case of a project described in subparagraph (B), by substituting 'April 1, 1992') for the applicable date that would otherwise apply in the case of—

''(A) new commercial passenger aircraft used by a domestic airline, if a binding contract with respect to such aircraft was entered into on or before April 1, 1986, and such aircraft has a present class life of 12 years,

''(B) a pumped storage hydroelectric project with respect to which an application was made to the Federal Energy Regulatory Commission for a license on February 4, 1974, and license was issued August 1, 1977, the project number of which is 2740, and

''(C) a newsprint mill in Pend Oreille county, Washington, costing about $290,000,000.

In the case of an aircraft described in subparagraph (A), section 203(b)(1)(A) shall be applied by substituting 'April 1, 1986' for 'March 1, 1986' and section 49(e)(1)(B) of the Internal Revenue Code of 1986 shall not apply.

''(4) The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to a limited amount of the following property or a limited amount of property set forth in a submission before September 16, 1986, by the following taxpayers:

''(A) Arena project, Michigan, but only with respect to $78,000,000 of investments.

''(B) Campbell Soup Company, Pennsylvania, California, North Carolina, Ohio, Maryland, Florida, Nebraska, Michigan, South Carolina, Texas, New Jersey, and Delaware, but only with respect to $9,329,000 of regular investment tax credits.

''(C) The Southeast Overtown/Park West development, Florida, but only with respect to $200,000,000 of investments.

''(D) Equipment placed in service and operated by Leggett and Platt before July 1, 1987, but only with respect to $2,000,000 of regular investment tax credits, and subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986 shall not apply to such equipment.

''(E) East Bank Housing Project.

''(F) $1,561,215 of investments by Standard Telephone Company.

''(G) Five aircraft placed in service before January 1, 1987, by Presidential Air.

''(H) A rehabilitation project by Ann Arbor Railroad, but only with respect to $2,900,000 of investments.

''(I) Property that is part of a cogeneration project located in Ada, Michigan, but only with respect to $30,000,000 of investments.

''(J) Anchor Store Project, Michigan, but only with respect to $21,000,000 of investments.

''(K) A waste-fired electrical generating facility of Biogen Power, but only with respect to $34,000,000 of investments.

''(L) $14,000,000 of television transmitting towers placed in service by Media General, Inc., which were subject to binding contracts as of January 21, 1986, and will be placed in service before January 1, 1988,

''(M) Interests of Samuel A. Hardage (whether owned individually or in partnership form).

''(N) Two aircraft of Mesa Airlines with an aggregate cost of $5,723,484.

''(O) Yarn-spinning equipment used at Spray Cotton Mills, but only with respect to $3,000,000 of investments.

''(P) 328 units of low-income housing at Angelus Plaza, but only with respect to $20,500,000 of investments.

''(Q) One aircraft of Continental Aviation Services with a cost of approximately $15,000,000 that was purchased pursuant to a contract entered into during March of 1983 and that is placed in service by December 31, 1988.

''(d) RAILROAD GRADING AND TUNNEL BORES.—

''(1) IN GENERAL.—In the case of expenditures for railroad grading and tunnel bores which were incurred by a common carrier by railroad to replace property destroyed in a disaster occurring on or about April 17, 1983, near Thistle, Utah, such expenditures, to the extent not in excess of $15,000,000, shall be treated as recovery property which is 5-year property under section 168 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this Act) and which is placed in service at the time such expenditures were incurred.

''(2) BUSINESS INTERRUPTION PROCEEDS.—Business interruption proceeds received for loss of use, revenues, or profits in connection with the disaster described in paragraph (1) and devoted by the taxpayer described in paragraph (1) to the construction of replacement track and related grading and tunnel bore expenditures shall be treated as constituting an amount received from the involuntary conversion of property under section 1033(a)(2) of such Code.

''(3) EFFECTIVE DATE.—This subsection shall apply to taxable years ending after April 17, 1983.

''(e) TREATMENT OF CERTAIN DISASTER LOSSES.—

''(1) IN GENERAL.—In the case of a disaster described in paragraph (2), at the election of the taxpayer, the amendments made by section 201 of this Act [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title]—

''(A) shall not apply to any property placed in service during 1987 or 1988, or

''(B) shall apply to any property placed in service during 1985 or 1986,

which is property to replace property lost, damaged, or destroyed in such disaster.

''(2) DISASTER TO WHICH SECTION APPLIES.—This section shall apply to a flood which occurred on Novem-

ber 3 through 7, 1985, and which was declared a natural disaster area by the President of the United States.''

Section 1002(c)(3) of Pub. L. 100–647 provided that: ''Notwithstanding section 203 of the Reform Act [section 203 of Pub. L. 99–514, set out above], the amendments made by section 201 of the Reform Act [section 201 of Pub. L. 99–514, amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall apply to any real property which was acquired before January 1, 1987, and was converted on or after such date from personal use to a use for which depreciation is allowable.''

Amendment by section 201(a) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by sections 1802(a)(1)–(2)(D), (G), (3), (4)(A), (B), (7), (b)(1), 1809(a)(1)–(2)(B), (4)(A), (B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1802(a)(2)(E)(ii) of Pub. L. 99–514 provided that:

''(I) Except as otherwise provided in this clause, the amendment made by clause (i) [amending this section] shall apply to property placed in service after September 27, 1985; except that such amendment shall not apply to any property acquired pursuant to a binding written contract in effect on such date (and at all times thereafter).

''(II) If an election under this subclause is made with respect to any property, the amendment made by clause (i) shall apply to such property whether or not placed in service on or before September 27, 1985.''

Section 1809(a)(2)(C)(i) of Pub. L. 99–514 provided in part that amendment by section 1809(a)(2)(C)(i) of Pub. L. 99–514 is effective on and after Oct. 22, 1986.

Section 1809(b)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to property placed in service by the transferee after December 31, 1985, in taxable years ending after such date.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 105(b) of Pub. L. 99–121, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by section 103 [amending this section and sections 47, 48, 57, 312, and 1245 of this title] shall apply with respect to property placed in service by the taxpayer after May 8, 1985.

''(2) EXCEPTION.—The amendments made by section 103 shall not apply to property placed in service by the taxpayer before January 1, 1987, if—

''(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before May 9, 1985, or

''(B) construction of such property was commenced by or for the taxpayer or a qualified person before May 9, 1985.

For purposes of this paragraph, the term 'qualified person' means any person whose rights in such a contract or such property are transferred to the taxpayer, but only if such property is not placed in service before such rights are transferred to the taxpayer.

''(3) SPECIAL RULE FOR COMPONENTS.—For purposes of applying section 168(f)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 103) to components placed in service after December 31, 1986, property to which paragraph (2) of this subsection applies shall be treated as placed in service by the taxpayer before May 9, 1985.

''(4) TECHNICAL CORRECTION.—The amendment made by paragraph (6) of section 103(b) [amending section 47 of this title] shall apply as if included in the amendments made by section 111 of the Tax Reform Act of 1984 [Pub. L. 98–369, see Effective Date of 1984 Amendment note below].

''(5) SPECIAL RULE FOR LEASING OF QUALIFIED REHABILITATED BUILDINGS.—The amendment made by paragraph (5) of section 103(b) to section 48(g)(2)(B)(v) of the Internal Revenue Code of 1986 shall not apply to leases entered into before May 22, 1985, but only if the lessee signed the lease before May 17, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 12 of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Section 31(g) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1802(a)(2)(F), (10)(A)–(D)(i), (E)–(G), Oct. 22, 1986, 100 Stat. 2095, 2788, 2790, 2791; Pub. L. 100–647, title I, §1018(b)(1), Nov. 10, 1988, 102 Stat. 3577, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 46, 48, and 7701 of this title] shall apply—

''(A) to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date, and

''(B) to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983.

''(2) LEASES ENTERED INTO ON OR BEFORE MAY 23, 1983.—The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if the property is leased pursuant to—

''(A) a lease entered into on or before May 23, 1983 (or a sublease under such a lease), or

''(B) any renewal or extension of a lease entered into on or before May 23, 1983, if such renewal or extension is pursuant to an option exercisable by the tax-exempt entity which was held by the tax-exempt entity on May 23, 1983.

''(3) BINDING CONTRACTS, ETC.—

''(A) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if such lease is pursuant to 1 or more written binding contracts which, on May 23, 1983, and at all times thereafter, required—

''(i) the taxpayer (or his predecessor in interest under the contract) to acquire, construct, reconstruct, or rehabilitate such property, and

''(ii) the tax-exempt entity (or a tax-exempt predecessor thereof) to be the lessee of such property.

''(B) Paragraph (9) of section 168(j) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall not apply with respect to any property owned by a partnership if—

''(i) such property was acquired by such partnership on or before October 21, 1983, or

''(ii) such partnership entered into a written binding contract which, on October 21, 1983, and at all times thereafter, required the partnership to acquire or construct such property.

''(C) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than any foreign person or entity)—

''(i) if—

''(I) on or before May 23, 1983, the taxpayer (or his predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, reconstruct, or rehabilitate such property and such property had not previously been used by the tax-exempt entity, or

''(II) the taxpayer or the tax-exempt entity acquired the property after June 30, 1982, and on or before May 23, 1983, or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982, and on or before May 23, 1983, and

''(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of such property.

''(4) OFFICIAL GOVERNMENTAL ACTION ON OR BEFORE NOVEMBER 1, 1983.—

''(A) IN GENERAL.—The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than the United States, any agency or instrumentality thereof, or any foreign person or entity) if—

''(i) on or before November 1, 1983, there was significant official governmental action with respect to the project or its design, and

''(ii) the lease to the tax-exempt entity is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of the property.

''(B) SIGNIFICANT OFFICIAL GOVERNMENTAL ACTION.—For purposes of subparagraph (A), the term 'significant official governmental action' does not include granting of permits, zoning changes, environmental impact statements, or similar governmental actions.

''(C) SPECIAL RULE FOR CREDIT UNIONS.—In the case of any property leased to a credit union pursuant to a written binding contract with an expiration date of December 31, 1984, which was entered into by such organization on August 23, 1984—

''(i) such credit union shall not be treated as an agency or instrumentality of the United States; and

''(ii) clause (ii) of subparagraph (A) shall be applied by substituting 'January 1, 1987' for 'January 1, 1985'.

''(D) SPECIAL RULE FOR GREENVILLE AUDITORIUM BOARD.—For purposes of this paragraph, significant official governmental action taken by the Greenville County Auditorium Board of Greenville, South Carolina, before May 23, 1983, shall be treated as significant official governmental action with respect to the coliseum facility subject to a binding contract to lease which was in effect on January 1, 1985.

''(E) TREATMENT OF CERTAIN HISTORIC STRUCTURES.—If—

''(i) on June 16, 1982, the legislative body of the local governmental unit adopted a bond ordinance to provide funds to renovate elevators in a deteriorating building owned by the local governmental unit and listed in the National Register, and

''(ii) the chief executive officer of the local governmental unit, in connection with the renovation of such building, made an application on June 1, 1983, to a State agency for a Federal historic preservation grant and made an application on June 17, 1983, to the Economic Development Administration of the United States Department of Commerce for a grant,

the requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met.

''(5) MASS COMMUTING VEHICLES.—The amendments made by this section shall not apply to any qualified mass commuting vehicle (as defined in section 103(b)(9) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which is financed in whole or in part by obligations the interest on which is excludable from gross income under section 103(a) of such Code if—

''(A) such vehicle is placed in service before January 1, 1988, or

''(B) such vehicle is placed in service on or after such date—

''(i) pursuant to a binding contract or commitment entered into before April 1, 1983, and

''(ii) solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee.

''(6) CERTAIN TURBINES AND BOILERS.—The amendments made by this section shall not apply to any property described in section 208(d)(3)(E) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 208(d)(3)(E) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note below].

''(7) CERTAIN FACILITIES FOR WHICH RULING REQUESTS FILED ON OR BEFORE MAY 23, 1983.—The amendments made by this section shall not apply with respect to any facilities described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1986 (relating to certain sewage or solid waste disposal facilities), as in effect on the day before the date of the enactment of this Act [July 18, 1984], if a ruling request with respect to the lease of such facility to the tax-exempt entity was filed with the Internal Revenue Service on or before May 23, 1983.

''(8) RECOVERY PERIOD FOR CERTAIN QUALIFIED SEWAGE FACILITIES.—

''(A) IN GENERAL.—In the case of any property (other than 15-year real property) which is part of a qualified sewage facility, the recovery period used for purposes of paragraph (1) of section 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall be 12 years. For purposes of the preceding sentence, the term '15-year real property' includes 18-year real property.

''(B) QUALIFIED SEWAGE FACILITY.—For purposes of subparagraph (A), the term 'qualified sewage facility' means any facility which is part of the sewer system of a city, if—

''(i) on June 15, 1983, the City Council approved a resolution under which the city authorized the procurement of equity investments for such facility, and

''(ii) on July 12, 1983, the Industrial Development Board of the city approved a resolution to issue a $100,000,000 industrial development bond issue to provide funds to purchase such facility.

''(9) PROPERTY USED BY THE POSTAL SERVICE.—In the case of property used by the United States Postal Service, paragraphs (1) and (2) shall be applied by substituting 'October 31' for 'May 23'.

''(10) EXISTING APPROPRIATIONS.—The amendments made by this section shall not apply to personal property leased to or used by the United States if—

''(A) an express appropriation has been made for rentals under such lease for the fiscal year 1983 before May 23, 1983, and

''(B) the United States or an agency or instrumentality thereof has not provided an indemnification against the loss of all or a portion of the tax benefits claimed under the lease or service contract.

''(11) SPECIAL RULE FOR CERTAIN PARTNERSHIPS.—

''(A) PARTNERSHIPS FOR WHICH QUALIFYING ACTION EXISTED BEFORE OCTOBER 21, 1983.—Paragraph (9) of section 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall not apply to any property acquired, directly or indirectly, before January 1, 1985, by any partnership described in subparagraph (B).

''(B) APPLICATION FILED BEFORE OCTOBER 21, 1983.—A partnership is described in this subparagraph if—

''(i) before October 21, 1983, the partnership was organized, a request for exemption with respect to such partnership was filed with the Department of Labor, and a private placement memorandum stating the maximum number of units in the partnership that would be offered had been circulated,

''(ii) the interest in the property to be acquired, directly or indirectly (including through acquiring an interest in another partnership) by such partnership was described in such private placement memorandum, and

''(iii) the marketing of partnership units in such partnership is completed not later than two years after the later of the date of the enactment of this Act [July 18, 1984] or the date of publication in the Federal Register of such exemption by the Department of Labor and the aggregate number of units in such partnership sold does not exceed the amount described in clause (i).

''(C) PARTNERSHIPS FOR WHICH QUALIFYING ACTION EXISTED BEFORE MARCH 6, 1984.—Paragraph (9) of sec-

tion 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall not apply to any property acquired directly or indirectly, before January 1, 1986, by any partnership described in subparagraph (D). For purposes of this subparagraph, property shall be deemed to have been acquired prior to January 1, 1986, if the partnership had entered into a written binding contract to acquire such property prior to January 1, 1986 and the closing of such contract takes place within 6 months of the date of such contract (24 months in the case of new construction).

''(D) PARTNERSHIP ORGANIZED BEFORE MARCH 6, 1984.—A partnership is described in this subparagraph if—

''(i) before March 6, 1984, the partnership was organized and publicly announced the maximum amount (as shown in the registration statement, prospectus or partnership agreement, whichever is greater) of interests which would be sold in the partnership, and

''(ii) the marketing or partnership interests in such partnership was completed not later than the 90th day after the date of the enactment of this Act [July 18, 1984] and the aggregate amount of interest in such partnership sold does not exceed the maximum amount described in clause (i).

''(12) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (C)(2).—The amendment made by subsection (c)(2) [amending section 48(g)(2)(B)(i) of this title] to the extent it relates to subsection (f)(12) of section 168 of the Internal Revenue Code of 1986 shall take effect as if it had been included in the amendments made by section 216(a) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 216(a) of Pub. L. 97–248, which amended this section].

''(13) SPECIAL RULE FOR SERVICE CONTRACTS NOT INVOLVING TAX-EXEMPT ENTITIES.—In the case of a service contract or other arrangement described in section 7701(e) of the Internal Revenue Code of 1986 (as added by this section) with respect to which no party is a tax-exempt entity, such section 7701(e) shall not apply to—

''(A) such contract or other arrangement if such contract or other arrangement was entered into before November 5, 1983, or

''(B) any renewal or other extension of such contract or other arrangement pursuant to an option contained in such contract or other arrangement on November 5, 1983.

''(14) PROPERTY LEASED TO SECTION 593 ORGANIZATIONS.—For purposes of the amendment made by subsection (f) [enacting section 46(e)(4) of this title], paragraphs (1), (2), and (4) shall be applied by substituting—

''(A) 'November 5, 1983' for 'May 23, 1983' and 'November 1, 1983', as the case may be, and

''(B) 'organization described in section 593 of the Internal Revenue Code of 1986' for 'tax-exempt entity'.

''(15) SPECIAL RULES RELATING TO FOREIGN PERSONS OR ENTITIES.—

''(A) IN GENERAL.—In the case of tax-exempt use property which is used by a foreign person or entity, the amendments made by this section shall not apply to any property which—

''(i) is placed in service by the taxpayer before January 1, 1984, and

''(ii) is used by such foreign person or entity pursuant to a lease entered into before January 1, 1984.

''(B) SPECIAL RULE FOR SUBLEASES.—If tax-exempt use property is being used by a foreign person or entity pursuant to a sublease under a lease described in subparagraph (A)(ii), subparagraph (A) shall apply to such property only if such property was used before January 1, 1984, by any foreign person or entity pursuant to such lease.

''(C) BINDING CONTRACTS, ETC.—The amendments made by this section shall not apply with respect to any property (other than aircraft described in subparagraph (D)) leased to a foreign person or entity—

''(i) if—

''(I) on or before May 23, 1983, the taxpayer (or a predecessor in interest under the contract) or the foreign person or entity entered into a written binding contract to acquire, construct, or rehabilitate such property and such property had not previously been used by the foreign person or entity, or

''(II) the taxpayer or the foreign person or entity acquired the property or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982 and on or before May 23, 1983, and

''(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1984, which requires the foreign person or entity to be the lessee of such property.

''(D) CERTAIN AIRCRAFT.—The amendments made by this section shall not apply with respect to any widebody, four-engine, commercial aircraft used by a foreign person or entity if—

''(i) on or before November 1, 1983, the foreign person or entity entered into a written binding contract to acquire such aircraft, and

''(ii) such aircraft is originally placed in service by such foreign person or entity (or its successor in interest under the contract) after May 23, 1983, and before January 1, 1986.

''(E) USE AFTER 1983.—Qualified container equipment placed in service before January 1, 1984, which is used before such date by a foreign person shall not, for purposes of section 47 of the Internal Revenue Code of 1986, be treated as ceasing to be section 38 property by reason of the use of such equipment before January 1, 1985, by a foreign person or entity. For purposes of this subparagraph, the term 'qualified container equipment' means any container, container chassis, or container trailer of a United States person with a present class life of not more than 6 years.

''(16) ORGANIZATIONS ELECTING EXEMPTION FROM RULES RELATING TO PREVIOUSLY TAX-EXEMPT ORGANIZATIONS MUST ELECT TAXATION OF EXEMPT ARBITRAGE PROFITS.—

''(A) IN GENERAL.—An organization may make the election under section 168(j)(4)(E)(ii) of the Internal Revenue Code of 1986 (relating to election not to have rules relating to previously tax-exempt organizations apply) only if such organization elects the tax treatment of exempt arbitrage profits described in subparagraph (B).

''(B) TAXATION OF EXEMPT ARBITRAGE PROFITS.—

''(i) IN GENERAL.—In the case of an organization which elects the application of this subparagraph, there is hereby imposed a tax on the exempt arbitrage profits of such organization.

''(ii) RATE OF TAX, ETC.—The tax imposed by clause (i)—

''(I) shall be the amount of tax which would be imposed by section 11 of such Code if the exempt arbitrage profits were taxable income (and there were no other taxable income), and

''(II) shall be imposed for the first taxable year of the tax-exempt use period (as defined in section 168(j)(4)(E)(ii) of such Code).

''(C) EXEMPT ARBITRAGE PROFITS.—

''(i) IN GENERAL.—For purposes of this paragraph, the term exempt arbitrage profits means the aggregate amount described in clauses (i) and (ii) of subparagraph (D) of section 103(c)(6) of such Code for all taxable years for which the organization was exempt from tax under section 501(a) of such Code with respect to obligations—

''(I) associated with property described in section 168(j)(4)(E)(i), and

''(II) issued before January 1, 1985.

''(ii) APPLICATION OF SECTION 103(b)(6).—For purposes of this paragraph, section 103(b)(6) of such Code shall apply to obligations issued before January 1, 1985, but the amount described in clauses (i) and (ii) of subparagraph (D) thereof shall be determined without regard to clauses (i)(II) and (ii) of subparagraph (F) thereof.

''(D) OTHER LAWS APPLICABLE.—

''(i) IN GENERAL.—Except as provided in clause (ii), all provisions of law, including penalties, appli-

cable with respect to the tax imposed by section 11 of such Code shall apply with respect to the tax imposed by this paragraph.

''(ii) NO CREDITS AGAINST TAX, ETC.—The tax imposed by this paragraph shall not be treated as imposed by section 11 of such Code for purposes of—

''(I) part VI of subchapter A of chapter 1 of such Code (relating to minimum tax for tax preferences), and

''(II) determining the amount of any credit allowable under subpart A of part IV of such subchapter.

''(E) ELECTION.—Any election under subparagraph (A)—

''(i) shall be made at such time and in such manner as the Secretary may prescribe,

''(ii) shall apply to any successor organization which is engaged in substantially similar activities, and

''(iii) once made, shall be irrevocable.

''(17) CERTAIN TRANSITIONAL LEASED PROPERTY.—The amendments made by this section shall not apply to property described in section 168(c)(2)(D) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act [July 18, 1984], and which is described in any of the following subparagraphs:

''(A) Property is described in this subparagraph if such property is leased to a university, and—

''(i) on June 16, 1983, the Board of Administrators of the university adopted a resolution approving the rehabilitation of the property in connection with an overall campus development program; and

''(ii) the property houses a basketball arena and university offices.

''(B) Property is described in this subparagraph if such property is leased to a charitable organization, and—

''(i) on August 21, 1981, the charitable organization acquired the property, with a view towards rehabilitating the property; and

''(ii) on June 12, 1982, an arson fire caused substantial damage to the property, delaying the planned rehabilitation.

''(C) Property is described in this subparagraph if such property is leased to a corporation that is described in section 501(c)(3) of the Internal Revenue Code of 1986 (relating to organizations exempt from tax) pursuant to a contract—

''(i) which was entered into on August 3, 1983; and

''(ii) under which the corporation first occupied the property on December 22, 1983.

''(D) Property is described in this subparagraph if such property is leased to an educational institution for use as an Arts and Humanities Center and with respect to which—

''(i) in November 1982, an architect was engaged to design a planned renovation;

''(ii) in January 1983, the architectural plans were completed;

''(iii) in December 1983, a demolition contract was entered into; and

''(iv) in March 1984, a renovation contract was entered into.

''(E) Property is described in this subparagraph if such property is used by a college as a dormitory, and—

''(i) in October 1981, the college purchased the property with a view towards renovating the property;

''(ii) renovation plans were delayed because of a zoning dispute; and

''(iii) in May 1983, the court of highest jurisdiction in the State in which the college is located resolved the zoning dispute in favor of the college.

''(F) Property is described in this subparagraph if such property is a fraternity house related to a university with respect to which—

''(i) in August 1982, the university retained attorneys to advise the university regarding the rehabilitation of the property;

''(ii) on January 21, 1983, the governing body of the university established a committee to develop rehabilitation plans;

''(iii) on January 10, 1984, the governor of the state in which the university is located approved historic district designation for an area that includes the property; and

''(iv) on February 2, 1984, historic preservation certification applications for the property were filed with a historic landmarks commission.

''(G) Property is described in this subparagraph if such property is leased to a retirement community with respect to which—

''(i) on January 5, 1977, a certificate of incorporation was filed with the appropriate authority of the state in which the retirement community is located; and

''(ii) on November 22, 1983, the Board of Trustees adopted a resolution evidencing the intention to begin immediate construction of the property.

''(H) Property is described in this subparagraph if such property is used by a university, and—

''(i) in July 1982, the Board of Trustees of the university adopted a master plan for the financing of the property; and

''(ii) as of August 1, 1983, at least $60,000 in private expenditures had been expended in connection with the property.

In the case of Clemson University, the preceding sentence applies only to the Continuing Education Center and the component housing project.

''(I) Property is described in this subparagraph if such property is used by a university as a fine arts center and the Board of Trustees of such university authorized the sale-leaseback agreement with respect to such property on March 7, 1984.

''(J) Property is described in this subparagraph if such property is used by a tax-exempt entity as an international trade center, and

''(i) prior to 1982, an environmental impact study for such property was completed;

''(ii) on June 24, 1981, a developer made a written commitment to provide one-third of the financing for the development of such property; and

''(iii) on October 20, 1983, such developer was approved by the Board of Directors of the tax-exempt entity.

''(K) Property is described in this subparagraph if such property is used by university of osteopathic medicine and health sciences, and on or before December 31, 1983, the Board of Trustees of such university approved the construction of such property.

''(L) Property is described in this subparagraph if such property is used by a tax-exempt entity, and—

''(i) such use is pursuant to a lease with a taxpayer which placed substantial improvements in service;

''(ii) on May 23, 1983, there existed architectural plans and specifications (within the meaning of sec. 48(g)(1)(C)(ii) of the Internal Revenue Code of 1986); and

''(iii) prior to May 23, 1983, at least 10 percent of the total cost of such improvements was actually paid or incurred.

Property is described in this subparagraph if such property was leased to a tax-exempt entity pursuant to a lease recorded in the Register of Deed of Essex County, New Jersey, on May 7, 1984, and a deed of such property was recorded in the Register of Deed of Essex County, New Jersey, on May 7, 1984.

''(M) Property is described in this subparagraph if such property is used as a convention center and on June 2, 1983, the City Council of the city in which the center is located provided for over $6 million for the project.

''(18) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (c)(1).—

''(A) IN GENERAL.—The amendment made by subsection (c)(1) [enacting section 48(g)(2)(B)(vi) of this title] shall not apply to property—

''(i) leased by the taxpayer on or before November 1, 1983, or

''(ii) leased by the taxpayer after November 1, 1983, if on or before such date the taxpayer entered into a written binding contract requiring the taxpayer to lease such property.

''(B) LIMITATION.—Subparagraph (A) shall apply to the amendment made by subsection (c)(1) only to the extent such amendment relates to property described in subclause (II), (III), or (IV) of section 168(j)(3)(B)(ii) of the Internal Revenue Code of 1986 (as added by this section).

''(19) SPECIAL RULE FOR CERTAIN ENERGY MANAGEMENT CONTRACTS.—

''(A) IN GENERAL.—The amendments made by subsection (e) [amending section 7701 of this title] shall not apply to property used pursuant to an energy management contract that was entered into prior to May 1, 1984.

''(B) DEFINITION OF ENERGY MANAGEMENT CONTRACT.—For purposes of subparagraph (A), the term 'energy management contract' means a contract for the providing of energy conservation or energy management services.

''(20) DEFINITIONS.—For purposes of this subsection—

''(A) TAX-EXEMPT ENTITY.—The term 'tax-exempt entity' has the same meaning as when used in section 168(j) of the Internal Revenue Code of 1986 (as added by this section), except that such term shall include any related entity (within the meaning of such section).

''(B) TREATMENT OF IMPROVEMENTS.—

''(i) IN GENERAL.—For purposes of this subsection, an improvement to property shall not be treated as a separate property unless such improvement is a substantial improvement with respect to such property.

''(ii) SUBSTANTIAL IMPROVEMENT.—For purposes of clause (i), the term 'substantial improvement' has the meaning given such term by section 168(f)(1)(C) of such Code determined—

''(I) by substituting 'property' for 'building' each place it appears therein,

''(II) by substituting '20 percent' for '25 percent' in clause (ii) thereof, and

''(III) without regard to clause (iii) thereof.

''(C) FOREIGN PERSON OR ENTITY.—The term 'foreign person or entity' has the meaning given to such term by subparagraph (C) of section 168(j)(4) of such Code (as added by this section). For purposes of this subparagraph and subparagraph (A), such subparagraph (C) shall be applied without regard to the last sentence thereof.

''(D) LEASES AND SUBLEASES.—The determination of whether there is a lease or sublease to a tax-exempt entity shall take into account sections 168(j)(6)(A), 168(j)(8)(A), and 7701(e) of the Internal Revenue Code of 1986 (as added by this section).''

[Section 1802(a)(10)(B) of Pub. L. 99–514 provided in part that amendment by section 1802(a)(10)(B) of Pub. L. 99–514, amending section 31(g)(15)(D)(ii) of Pub. L. 98–369, set out above, is effective with respect to property placed in service by the taxpayer after July 18, 1984.]

[Section 1802(a)(10)(D)(ii) of Pub. L. 99–514 provided that: ''The amendment made by clause (i) [amending section 31(g)(20)(B)(ii) of Pub. L. 98–369, set out above] shall not apply to any property if—

''(I) on or before March 28, 1985, the taxpayer (or a predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, or rehabilitate the property, or

''(II) the taxpayer or the tax-exempt entity began the construction, reconstruction, or rehabilitation of the property on or before March 28, 1985.'']

Section 32(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1802(b)(2), Oct. 22, 1986, 100 Stat. 2095, 2791, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to agreements described in section 168(f)(14) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) entered into more than 90 days after the date of the enactment of this Act [July 18, 1984].''

Section 111(g) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 48, 51, 312, and 1245 of this title] shall apply with respect to property placed in service by the taxpayer after March 15, 1984.

''(2) EXCEPTION.—The amendments made by this section shall not apply to property placed in service by the taxpayer before January 1, 1987, if—

''(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before March 16, 1984, or

''(B) construction of such property was commenced by or for the taxpayer or a qualified person before March 16, 1984.

For purposes of this paragraph the term 'qualified person' means any person who transfers his rights in such a contract or such property to the taxpayer, but only if such property is not placed in service by such person before such rights are transferred to the taxpayer.

''(3) SPECIAL RULES FOR APPLICATION OF PARAGRAPH (2).—

''(A) CERTAIN INVENTORY.—In the case of any property which—

''(i) is held by a person as property described in section 1221(1) [26 U.S.C. 1221(1)], and

''(ii) is disposed of by such person before January 1, 1985,

such person shall not, for purposes of paragraph (2), be treated as having placed such property in service before such property is disposed of merely because such person rented such property or held such property for rental. No deduction for depreciation or amortization shall be allowed to such person with respect to such property,

''(B) CERTAIN PROPERTY FINANCED BY BONDS.—In the case of any property with respect to which—

''(i) bonds were issued to finance such property before 1984, and

''(ii) an architectural contract was entered into before March 16, 1984,

paragraph (2) shall be applied by substituting 'May 2' for 'March 16'.

''(4) SPECIAL RULE FOR COMPONENTS.—For purposes of applying section 168(f)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) to components placed in service after December 31, 1986, property to which paragraph (2) applies shall be treated as placed in service by the taxpayer before March 16, 1984.

''(5) SPECIAL RULE FOR MID-MONTH CONVENTION.—In the case of the amendment made by subsection (d) [amending subsec. (b)(2)(A), (B) of this section]—

''(A) paragraph (1) shall be applied by substituting 'June 22, 1984' for 'March 15, 1984', and

''(B) paragraph (2) shall be applied by substituting 'June 23, 1984' for 'March 15, 1984' each place it appears.''

Amendment by section 113(a)(2) of Pub. L. 98–369 applicable to property placed in service after Mar. 15, 1984, in taxable years ending after such date, see section 113(c)(1) of Pub. L. 98–369, set out as a note under section 48 of this title.

Section 113(c)(2) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) The amendments made by paragraphs (1) of subsection (b) [amending this section] shall apply to any motion picture film or video tape placed in service before, on, or after the date of the enactment of this Act [July 18, 1984], except that such amendment shall not apply to—

''(i) any qualified film placed in service by the taxpayer before March 15, 1984, if the taxpayer treated such film as recovery property for purposes of section

168 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on a return of tax under chapter 1 of such Code filed before March 16, 1984, or

''(ii) any qualified film placed in service by the taxpayer before January 1, 1985, if—

''(I) 20 percent or more of the production costs of such film were incurred before March 16, 1984, and

''(II) the taxpayer treats such film as recovery property for purposes of section 168 of such Code.

No credit shall be allowable under section 38 of such Code with respect to any qualified film described in clause (ii), except to the extent provided in section 48(k) of such Code.

''(B) The amendment made by paragraph (2) and (3) of subsection (b) [amending this section and sections 46 and 48 of this title] shall apply as if included in the amendments made by section 201(a), 211(a)(1), and 211(f)(1) of the Economic Recovery Tax Act of 1981 [sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97–34, enacting this section and amending section 46 of this title].

''(C) The amendment made by paragraph (4) of subsection (b) [amending section 48 of this title] shall take effect as if included in the amendments made by section 205(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 205(a)(1) of Pub. L. 97–248, amending section 48 of this title].

''(D) For purposes of this paragraph, the terms 'qualified film' and 'production costs' have the same respective meanings as when used in section 48(k) of the Internal Revenue Code of 1986.''

Amendment by section 474(r)(7) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Amendment by section 628(b) of Pub. L. 98–369 applicable to property placed in service after Dec. 31, 1983, with certain conditions and exceptions, see section 631(b) of Pub. L. 98–369, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

Section 102(a)(10)(B) of Pub. L. 97–448, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to property to which the provisions of section 168(f)(8) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the amendments made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248]) apply.''

Amendment by section 541 of Pub. L. 97–424 applicable to taxable years beginning after Dec. 31, 1979, with a special rule for periods beginning before Mar. 1, 1980, see section 541(c) of Pub. L. 97–424, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Section 208(d) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(4), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title X, § 1067(a), July 18, 1984, 98 Stat. 1048; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by subsections (a) and (b) of this section [amending this section and section 47 of this title] shall apply to agreements entered into after July 1, 1982, or to property placed in service after July 1, 1982.

''(2) TRANSITIONAL RULE FOR CERTAIN SAFE HARBOR LEASE PROPERTY.—

''(A) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and section 47 of this title] shall not apply to transitional safe harbor lease property.

''(B) SPECIAL RULE FOR CERTAIN PROVISIONS.—Subparagraph (A) shall not apply with respect to the provisions of paragraph (6) of section 168(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)(1)), to the provisions of section 168(f)(8)(J) of such Code (as added by subsection (b)(4)), or to the amendment made by subsection (b)(1).

''(3) TRANSITIONAL SAFE HARBOR LEASE PROPERTY.—For purposes of this subsection, the term 'transitional safe harbor lease property' means property described in any of the following subparagraphs:

''(A) IN GENERAL.—Property is described in this subparagraph if such property is placed in service before January 1, 1983, if—

''(i) with respect to such property a binding contract to acquire or to construct such property was entered into by the lessee after December 31, 1980, and before July 2, 1982, or

''(ii) such property was acquired by the lessee, or construction of such property was commenced by or for the lessee, after December 31, 1980, and before July 2, 1982.

''(B) CERTAIN QUALIFIED LESSEES.—Property is described in this subparagraph if such property is placed in service before July 1, 1982, and with respect to which—

''(i) an agreement to which section 168(f)(8)(A) of the Internal Revenue Code of 1986 applies was entered into before August 15, 1982, and

''(ii) the lessee under such agreement is a qualified lessee (within the meaning of paragraph (6)).

''(C) AUTOMOTIVE MANUFACTURING PROPERTY.—

''(i) IN GENERAL.—Property is described in this subparagraph if—

''(I) such property is used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacture of automobiles or light-duty trucks,

''(II) such property is automotive manufacturing property, and

''(III) such property would be described in subparagraph (A) if 'October 1' were substituted for 'January 1'.

''(ii) LIGHT-DUTY TRUCK.—For purposes of this subparagraph, the term 'light-duty truck' means any truck with a gross vehicle weight of 13,000 pounds or less. Such term shall not include any truck tractor.

''(iii) AUTOMOTIVE MANUFACTURING PROPERTY.—For purposes of this subparagraph, the term 'automotive manufacturing property' means machinery, equipment, and special tools of the type included in the former asset depreciation range guideline classes 37.11 and 37.12.

''(iv) SPECIAL TOOLS USED BY CERTAIN VENDORS.—For purposes of this subparagraph, any special tools owned by a taxpayer described in subclause (I) of clause (i) which are used by a vendor solely for the production of component parts for sale to the taxpayer shall be treated as automotive manufacturing property used directly by such taxpayer.

''(D) CERTAIN AIRCRAFT.—Property is described in this subparagraph if such property—

''(i) is a commercial passenger aircraft (other than a helicopter), and

''(ii) would be described in subparagraph (A) if 'January 1, 1984' were substituted for 'January 1, 1983'.

For purposes of determining whether property described in this subparagraph is described in subparagraph (A), subparagraph (A)(ii) shall be applied by substituting 'June 25, 1981' for 'December 31, 1980' and by substituting 'February 20, 1982' for 'July 2, 1982' and construction of the aircraft shall be treated as having been begun during the period referred to in subparagraph (A)(ii) if during such period construction or reconstruction of a subassembly was commenced, or the stub wing join occurred.

''(E) TURBINES AND BOILERS.—Property is described in this subparagraph if such property—

''(i) is a turbine or boiler of a cooperative organization engaged in the furnishing of electric energy to persons in rural areas, and

''(ii) would be property described in subparagraph (A) if 'July 1' were substituted for 'January 1'.

For purposes of determining whether property described in this subparagraph is described in subparagraph (A), such property shall be treated as having been acquired during the period referred to in subparagraph (A)(ii) if at least 20 percent of the cost of such property is paid during such period.

''(F) PROPERTY USED IN THE PRODUCTION OF STEEL.—Property is described in this subparagraph if such property—

''(i) is used by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacture or production of steel, and

''(ii) would be described in subparagraph (A) if 'January 1, 1984' were substituted for 'January 1, 1983'.

''(G) COAL GASIFICATION FACILITIES.—

''(i) IN GENERAL.—Property is described in this subparagraph if such property—

''(I) is used directly in connection with the manufacture or production of low sulfur gaseous fuel from coal, and

''(II) would be described in subparagraph (A) if 'July 1, 1984' were substituted for 'January 1, 1983'.

''(ii) SPECIAL RULE.—For purposes of determining whether property described in this subparagraph is described in subparagraph (A), such property shall be treated as having been acquired during the period referred to in subparagraph (A)(ii) if at least 20 percent of the cost of such property is paid during such period.

''(iii) LIMITATION ON AMOUNT.—Clause (i) shall only apply to the lease of an undivided interest in the property in an amount which does not exceed the lesser of—

''(I) 50 percent of the cost basis of such property, or

''(II) $67,500,000.

''(iv) PLACED IN SERVICE.—In the case of property to which this subparagraph applies—

''(I) such property shall be treated as placed in service when the taxpayer receives an operating permit with respect to such property from a State environmental protection agency, and

''(II) the term of the lease with respect to such property shall be treated as being 5 years.

''(4) SPECIAL RULE FOR ANTIAVOIDANCE PROVISIONS.—The provisions of paragraph (6) of section 168(i) of such Code (as added by subsection (a)(1)), and the amendment made by subsection (b)(1) [amending this section] shall apply to leases entered into after February 19, 1982, in taxable years ending after such date.

''(5) SPECIAL RULE FOR MASS COMMUTING VEHICLES.—The amendments made by this section (other than section 168(i)(1) and (7) of such Code, as added by subsection (a)(1) or section 168(f)(8)(J) of such Code, as added by subsection (b)(4)) and section 209 [amending this section and section 48 of this title] shall not apply to qualified leased property described in section 168(f)(8)(D)(V) of such Code (as in effect after the amendments made by this section) which—

''(A) is placed in service before January 1, 1988, or

''(B) is placed in service after such date—

''(i) pursuant to a binding contract or commitment entered into before April 1, 1983, and

''(ii) solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee.

''(6) QUALIFIED LESSEE DEFINED.—

''(A) IN GENERAL.—The term 'qualified lessee' means a taxpayer which is a lessee of an agreement to which section 168(f)(8)(A) of such Code applies and which—

''(i) had net operating losses in each of the three most recent taxable years ending before July 1, 1982, and had an aggregate net operating loss for the five most recent taxable years ending before July 1, 1982, and

''(ii) which uses the property subject to the agreement to manufacture and produce within the United States a class of products in an industry with respect to which—

''(I) the taxpayer produced less than 5 percent of the total number of units (or value) of such products during the period covering the three most recent taxable years of the taxpayer ending before July 1, 1982, and

''(II) four or fewer United States persons (including as one person an affiliated group as defined in section 1504(a)) other than the taxpayer manufactured 85 percent or more of the total number of all units (or value) within such class of products manufactured and produced in the United States during such period.

''(B) CLASS OF PRODUCTS.—For purposes of subparagraph (A)—

''(i) the term 'class of products' means any of the categories designated and numbered as a 'class of products' in the 1977 Census of Manufacturers compiled and published by the Secretary of Commerce under title 13 of the United States Code, and

''(ii) information—

''(I) compiled or published by the Secretary of Commerce, as part of or in connection with the Statistical Abstract of the United States or the Census of Manufacturers, regarding the number of units (or value) of a class of products manufactured and produced in the United States during any period, or

''(II) if information under subclause (I) is not available, so compiled or published with respect to the number of such units shipped or sold by such manufacturers during any period,

shall constitute prima facie evidence of the total number of all units of such class of products manufactured and produced in the United States in such period.

''(6) UNDERPAYMENTS OF TAX FOR 1982.—No addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1954 (relating to failure by corporation to pay estimated income tax) for any period before October 15, 1982, with respect to any underpayment of estimated tax by a taxpayer with respect to any tax imposed by chapter 1 of such Code to the extent that such underpayment was created or increased by any provision of this section.

''(7) COORDINATION WITH AT RISK RULES.—Subparagraph (J) of section 168(f)(8) of the Internal Revenue Code of 1986 (as added by subsection (b)(4)) shall take effect as provided in such subparagraph (J).''

[Section 1067(c) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [enacting section 208(d)(3)(G) of Pub. L. 97–248, set out above] shall take effect as if included in the provision of section 208(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].''

Section 209(d) of Pub. L. 97–248; as amended by Pub. L. 98–369, div. A, title I, §12(a)(1), (2), July 18, 1984, 98 Stat. 503, provided that:

''(1) SUBSECTION (a).—

''(A) IN GENERAL.—Except as provided in subparagraph (B) and paragraph (2), the amendments made

by this section [amending this section and section 48 of this title] shall apply to agreements entered into after December 31, 1987.

''(B) SPECIAL RULE FOR FARM PROPERTY AGGREGATING $150,000 OR LESS.—

''(i) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall also apply to any agreement entered into after July 1, 1982, and before January 1, 1988, if the property subject to such agreement is section 38 property which is used for farming purposes (within the meaning of section 2032A(e)(5)).

''(ii) $150,000 LIMITATION.—The provisions of clause (i) shall not apply to any agreement if the sum of—

''(I) the cost basis of the property subject to the agreement, plus

''(II) the cost basis of any property subject to an agreement to which this subparagraph previously applied, which was entered into during the same calendar year, and with respect to which the lessee was the lessee of the agreement described in subclause (I) (or any related person within the meaning of section 168(e)(4)(D)),

exceeds $150,000. For purposes of subclause (II), in the case of an individual, there shall not be taken into account any agreement of any individual who is a related person involving property which is used in a trade or business of farming of such related person which is separate from the trade or business of farming of the lessee described in subclause (II).

''(2) SPECIAL RULE FOR DEFINITION OF NEW SECTION 38 PROPERTY.—The amendment made by subsection (c) [amending section 48 of this title] shall apply to property placed in service after December 31, 1983.''

Section 216(b) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply with respect to property placed in service after December 31, 1982, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after June 30, 1982.

''(2) EXCEPTIONS.—

''(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments made by this section [amending this section] shall not apply with respect to facilities the original use of which commences with the taxpayer and—

''(i) the construction, reconstruction, or rehabilitation of which began before July 1, 1982, or

''(ii) with respect to which a binding agreement to incur significant expenditures was entered into before July 1, 1982.

''(B) REFUNDING.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1982 which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before July 1, 1982, the amendments made by this section [amending this section] shall apply only with respect to the basis in such property which has not been recovered before the date such refunding obligation is issued.

''(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1983, the amendments made by this section shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before July 1, 1982.

In the case of an inducement resolution adopted by an issuing authority before July 1, 1982, for purposes of applying subparagraphs (A)(i) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

''(3) CERTAIN PROJECTS FOR RESIDENTIAL REAL PROPERTY.—For purposes of clause (i) of section 168(f)(12)(C) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section), any obligation issued to finance a project described in the table contained in paragraph (1) of section 1104(n) of the Mortgage Subsidy Bond Tax Act of 1980 [section 1104(n) of Pub. L. 96–499, set out as a note under section 103A of this title] shall be treated as an obligation described in section 103(b)(4)(A) of the Internal Revenue Code of 1986.''

Amendment by section 224(c)(1), (2) of Pub. L. 97–248 to apply to any target corporation, within the meaning of section 338 of this title, with respect to which the acquisition date, within the meaning of such section, occurs after Aug. 31, 1982, and also to apply to certain acquisitions before September 1, 1982, but not to apply in the case of certain acquisitions of financial institutions, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE

Section 209(a)–(c) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 102(d)(1), (g), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle A (§§ 201–209) of title II of Pub. L. 97–34, enacting this section, amending sections 44E, 46, 50A, 53, 57, 167, 172, 179, 263, 312, 381, 453, 812, 825, 964, 1033, 1245, and 1250 of this title, and enacting provisions set out as notes under this section and sections 46 and 167 of this title] shall apply to property placed in service after December 31, 1980, in taxable years ending after such date.

''(b) SPECIAL RULE FOR RRB PROPERTY.—The amendment made by subsection (c) of section 203 [amending section 167 of this title and enacting provisions set out as notes under section 167 of this title] shall take effect on January 1, 1981, and shall apply with respect to taxable years ending after such date.

''(c) SPECIAL RULE FOR CARRYOVERS.—

''(1)(A) Except as provided in subparagraph (B), the amendments made by subsections (a) and (b) of section 207 [amending sections 172, 812, and 825 of this title] shall apply to net operating losses in taxable years ending after December 31, 1975.

''(B) The amendments made by subparagraph (B)(i) of section 207(a)(2) [amending section 172 of this title] shall take effect as if they had been included in the amendments made by section 1(a) of Public Law 96–595 [amending section 172 of this title]; except that the amendments made by such subparagraph shall apply only to net operating losses in taxable years ending after December 31, 1972.

''(C) If any net operating loss for any taxable year ending on or before December 31, 1975, could be a net operating loss carryover to a taxable year ending in 1981 by reason of subclause (II) of section 172(b)(1)(E)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [Aug. 13, 1981] and as modified by section 1(b) of Public Law 96–595 [set out as an Effective Date of 1980 Amendment note under section 172 of this title]), such net operating loss shall be a net operating loss carryover under section 172 of such Code to each of the 15 taxable years following the taxable year of such loss.

''(2)(A) The amendments made by subsection (c)(1) of section 207 [amending sections 46 and 50A of this title] shall apply to unused credit years ending after December 31, 1973.

''(B) The amendment made by subsection (c)(2) of section 207 [amending section 53 of this title] shall apply to unused credit years beginning after December 31, 1976.

''(C) The amendments made by subsection (c)(3) of section 207 [amending section 44E of this title] shall apply to unused credit years ending after September 30, 1980.

''(3) CARRYOVER MUST HAVE BEEN ALIVE IN 1981.—The amendments made by subsections (a), (b), and (c) of

section 207 [amending sections 44E, 46, 50A, 53, 172, 812, and 825 of this title] shall not apply to any amount which, under the law in effect on the day before the date of the enactment of this Act [Aug. 13, 1981], could not be carried to a taxable year ending in 1981.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

DEPRECIATION STUDY

Pub. L. 105–277, div. J, title II, §2022, Oct. 21, 1998, 112 Stat. 2681–903, provided that: ''The Secretary of the Treasury (or the Secretary's delegate)—

''(1) shall conduct a comprehensive study of the recovery periods and depreciation methods under section 168 of the Internal Revenue Code of 1986, and

''(2) not later than March 31, 2000, shall submit the results of such study, together with recommendations for determining such periods and methods in a more rational manner, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN FARM FINANCE LEASES

Section 1801(a)(2) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(a), Nov. 10, 1988, 102 Stat. 3577, provided that:

''(A) IN GENERAL.—If—

''(i) any partnership or grantor trust is the lessor under a specified agreement,

''(ii) such partnership or grantor trust met the requirements of section 168(f)(8)(C)(i) of the Internal Revenue Code of 1954 (relating to special rules for finance leases) when the agreement was entered into, and

''(iii) a person became a partner in such partnership (or a beneficiary in such trust) after its formation but before September 26, 1985,

then, for purposes of applying the revenue laws of the United States in respect to such agreement, the portion of the property allocable to partners (or beneficiaries) not described in clause (iii) shall be treated as if it were subject to a separate agreement and the portion of such property allocable to the partner or beneficiary described in clause (iii) shall be treated as if it were subject to a separate agreement.

''(B) SPECIFIED AGREEMENT.—For purposes of subparagraph (A), the term 'specified agreement' means an agreement to which subparagraph (B) of section 209(d)[(1)] of the Tax Equity and Fiscal Responsibility Act of 1982 [section 209(d)(1) of Pub. L. 97–248, set out as a note above] applies which is—

''(i) an agreement dated as of December 20, 1982, as amended and restated as of February 1, 1983, involving approximately $8,734,000 of property at December 31, 1983,

''(ii) an agreement dated as of December 15, 1983, as amended and restated as of January 3, 1984, involving approximately $13,199,000 of property at December 31, 1984, or

''(iii) an agreement dated as of October 25, 1984, as amended and restated as of December 1, 1984, involving approximately $966,000 of property at December 31, 1984.''

CERTAIN RESIDENTIAL REAL PROPERTY TREATED AS RESIDENTIAL RENTAL PROPERTY

Section 1809(a)(4)(C) of Pub. L. 99–514 provided that: ''Any property described in paragraph (3) of section 631(d) of the Tax Reform Act of 1984 [section 631(d) of Pub. L. 99–369, set out as a note under section 103 of this title] shall be treated as property described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1954 [now 1986] as amended by subparagraph (B).''

COORDINATION WITH IMPUTED INTEREST CHANGES

Section 1809(a)(5) of Pub. L. 99–514 provided that: ''In the case of any property placed in service before May 9, 1985 (or treated as placed in service before such date by section 105(b)(3) of Public Law 99–121 [set out as a note above])—

''(A) any reference in any amendment made by this subsection [amending this section and sections 57 and 312 of this title] to 19-year real property shall be treated as a reference to 18-year real property, and

''(B) section 168(f)(12)(B)(ii) of the Internal Revenue Code of 1954 [now 1986] (as amended by paragraph (4)(A)) shall be applied by substituting '18 years' for '19 years'.''

TERMINATION OF SAFE HARBOR LEASING RULES

Section 12(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to special rules for leasing), as in effect after the amendments made by section 208 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248] but before the amendments made by section 209 of such Act, shall not apply to agreements entered into after December 31, 1983. The preceding sentence shall not apply to property described in paragraph (3)(G) or (5) of section 208(d) of such Act [set out as an Effective Date of 1982 Amendments note above].''

TRANSITIONAL RULES FOR 1984 AMENDMENT

Section 12(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1801(a)(1), Oct. 22, 1986, 100 Stat. 2095, 2785; Pub. L. 100–647, title I, §1002(d)(7)(B), Nov. 10, 1988, 102 Stat. 3360, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section and section 208(d) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note above] shall not apply with respect to any property if—

''(A) a binding contract to acquire or to construct such property was entered into by or for the lessee before March 7, 1984, or

''(B) such property was acquired by the lessee, or the construction of such property was begun, by or for the lessee, before March 7, 1984.

The preceding sentence shall not apply to any property with respect to which an election is made under this sentence at such time after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] as the Secretary of the Treasury or his delegate may prescribe.

''(2) SPECIAL RULE FOR CERTAIN AUTOMOTIVE PROPERTY.—

''(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to property—

''(i) which is automotive manufacturing property, and

''(ii) with respect to which the lessee is a qualified lessee (within the meaning of section 208(d)(6) of the Tax Equity and Fiscal Responsibility Act of 1982) [Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note above].

''(B) $150,000,000 LIMITATION.—The provisions of subparagraph (A) shall not apply to any agreement if the sum of—

''(i) the cost basis of the property subject to the agreement, plus

''(ii) the cost basis of any property subject to an agreement to which subparagraph (A) previously applied and with respect to which the lessee was the lessee under the agreement described in clause (i) (or any related person within the meaning of section 168(e)(4)(D) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]),

exceeds $150,000,000.

''(C) AUTOMOTIVE MANUFACTURING PROPERTY.—For purposes of this paragraph, the term 'automotive manufacturing property' means—

''(i) property used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacturing of automobiles or trucks (other than truck tractors) with a gross vehicle weight of 13,000 pounds or less,

''(ii) machinery, equipment, and special tools of the type included in former depreciation range guideline classes 37.11 and 37.12, and

''(iii) any special tools owned by the taxpayer which are used by a vendor solely for the production of component parts for sale to the taxpayer.

''(3) SPECIAL RULE FOR CERTAIN COGENERATION FACILITIES.—The amendments made by subsection (a) shall not apply with respect to any property which is part of a coal-fired cogeneration facility—

''(A) for which an application for certification was filed with the Federal Energy Regulatory Commission on December 30, 1983,

''(B) for which an application for a construction permit was filed with a State environmental protection agency on February 20, 1984, and

''(C) which is placed in service before January 1, 1988.''

SPECIAL LEASING RULE REGARDING COAL GASIFICATION FACILITIES

Section 1067(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amount of any recapture under section 47 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to the credit allowed under section 38 of such Code with respect to progress expenditures (within the meaning of section 46(d) of such Code) shall apply only to the percentage of the cost basis of the coal gasification facility to which the amendment made by subsection (a) [amending section 208(d) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note above] applies.''

CERTAIN LEASES BEFORE OCTOBER 20, 1981, TREATED AS QUALIFIED LEASES

Section 208(c) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Nothing in paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], or in any regulations prescribed thereunder, shall be treated as making such paragraph inapplicable to any agreement entered into before October 20, 1981, solely because under such agreement 1 party to such agreement is entitled to the credit allowable under section 38 of such Code with respect to property and another party to such agreement is entitled to the deduction allowable under section 168 of such Code with respect to such property. Section 168(f)(8)(B)(ii) of such Code shall not apply to the party entitled to such credit.''

MOTOR VEHICLE OPERATING LEASES

Section 210 of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title I, § 32(b), title VII, § 712(d), July 18, 1984, 98 Stat. 531, 947; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—In the case of any qualified motor vehicle agreement entered into on or before the 90th day after the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984], the fact that such agreement contains a terminal rental adjustment clause shall not be taken into account in determining whether such agreement is a lease.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED MOTOR VEHICLE AGREEMENT.—The term 'qualified motor vehicle agreement' means any agreement with respect to a motor vehicle (including a trailer)—

''(A) which was entered into before—

''(i) the enactment of any law, or

''(ii) the publication by the Secretary of the Treasury or his delegate of any regulation,

which provides that any agreement with a terminal rental adjustment clause is not a lease,

''(B) with respect to which the lessor under the agreement—

''(i) is personally liable for the repayment of, or

''(ii) has pledged property (but only to the extent of the net fair market value of the lessor's interest in such property), other than property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement, as security for,

all amounts borrowed to finance the acquisition of property subject to the agreement, and

''(C) with respect to which the lessee under the agreement uses the property subject to the agreement in a trade or business or for the production of income.

''(2) TERMINAL RENTAL ADJUSTMENT CLAUSE.—The term 'terminal rental adjustment clause' means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property. Such term also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in the preceding sentence.

''(c) EXCEPTION WHERE LESSEE TOOK POSITION ON RETURN.—Subsection (a) shall not apply to deny a deduction for interest paid or accrued claimed by a lessee with respect to a qualified motor vehicle agreement on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which was filed before the date of the enactment of this Act [Sept. 3, 1982] or to deny a credit for investment in depreciable property claimed by the lessee on such a return pursuant to an agreement with the lessor that the lessor would not claim the credit.''

INFORMATION RETURNS WITH RESPECT TO SAFE HARBOR LEASES

Pub. L. 97–119, title I, § 112, Dec. 29, 1981, 95 Stat. 1640, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) REQUIREMENT OF RETURN.—

''(1) IN GENERAL.—Except as provided in paragraph (2), paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to special rule for leases) shall not apply with respect to an agreement unless a return, signed by the lessor and lessee and containing the information required to be included in the return pursuant to subsection (b), has been filed with the Internal Revenue Service not later than the 30th day after the date on which the agreement is executed.

''(2) SPECIAL RULES FOR AGREEMENTS EXECUTED BEFORE JANUARY 1, 1982.—

''(A) IN GENERAL.—In the case of an agreement executed before January 1, 1982, such agreement shall cease on February 1, 1982, to be treated as a lease under section 168(f)(8) unless a return, signed by the lessor and containing the information required to be included in subsection (b), has been filed with the Internal Revenue Service not later than January 31, 1982.

''(B) FILING BY LESSEE.—If the lessor does not file a return under subparagraph (A), the return requirement under subparagraph (A) shall be satisfied if such return is filed by the lessee before January 31, 1982.

''(3) CERTAIN FAILURE TO FILE.—If—

''(A) a lessor or lessee fails to file any return within the time prescribed by this subsection, and

''(B) such failure is shown to be due to reasonable cause and not due to willful neglect,

the lessor or lessee shall be treated as having filed a timely return if a return is filed within a reasonable time after the failure is ascertained.

''(b) INFORMATION REQUIRED.—The information required to be included in the return pursuant to this subsection is as follows:

''(1) The name, address, and taxpayer identifying number of the lessor and the lessee (and parent company if a consolidated return is filed);

''(2) The district director's office with which the income tax returns of the lessor and lessee are filed;

''(3) A description of each individual property with respect to which the election is made;

''(4) The date on which the lessee places the property in service, the date on which the lease begins and the term of the lease;

''(5) The recovery property class and the ADR midpoint life of the leased property;

''(6) The payment terms between the parties to the lease transaction;

''(7) Whether the ACRS deductions and the investment tax credit are allowable to the same taxpayer;

''(8) The aggregate amount paid to outside parties to arrange or carry out the transaction;

''(9) For the lessor only: the unadjusted basis of the property as defined in section 168(d)(1);

''(10) For the lessor only: if the lessor is a partnership or a grantor trust, the name, address, and taxpayer identifying number of the partners or the beneficiaries, and the district director's office with which the income tax return of each partner or beneficiary is filed; and

''(11) Such other information as may be required by the return or its instructions.

Paragraph (8) shall not apply with respect to any person for any calendar year if it is reasonable to estimate that the aggregate adjusted basis of the property of such person which will be subject to subsection (a) for such year is $1,000,000 or less.

''(c) COORDINATION WITH OTHER INFORMATION REQUIREMENTS.—In the case of agreements executed after December 31, 1982, to the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, the provisions of this section shall be modified to coordinate such provisions with the other information requirements of the Internal Revenue Code of 1986.''

REGULATED PUBLIC UTILITIES; SPECIAL TRANSITIONAL RULE FOR NORMALIZATION REQUIREMENTS

Section 209(d)(1) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, by the terms of the applicable rate order last entered before the date of the enactment of this Act [Aug. 13, 1981] by a regulatory commission having appropriate jurisdiction, a regulated public utility would (but for this provision) fail to meet the requirements of section 168(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to property because, for an accounting period ending after December 31, 1980, such public utility used a method of accounting other than a normalization method of accounting, such regulated public utility shall not fail to meet such requirements if, by the terms of its first rate order determining cost of service with respect to such property which becomes effective after the date of the enactment of this Act and on or before January 1, 1983, such regulated public utility uses a normalization method of accounting. This provision shall not apply to any rate order which, under the rules in effect before the date of the enactment of this Act, required a regulated public utility to use a method of accounting with respect to the deduction allowable by section 167 which, under section 167(*l*), it was not permitted to use.''

INTERIM REGULATIONS WITH RESPECT TO NORMALIZATION; AUTHORITY TO PRESCRIBE

Section 209(d)(4) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Until Congress acts further, the Secretary of the Treasury or his delegate may prescribe such interim regulations as may be necessary or appropriate to determine whether the requirements of section 168(e)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] have been met with respect to property placed in service after December 31, 1980.''

§ 169. Amortization of pollution control facilities

(a) Allowance of deduction

Every person, at his election, shall be entitled to a deduction with respect to the amortization of the amortizable basis of any certified pollution control facility (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis of the pollution control facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any month shall be in lieu of the depreciation deduction with respect to such pollution control facility for such month provided by section 167. The 60-month period shall begin, as to any pollution control facility, at the election of the taxpayer, with the month following the month in which such facility was completed or acquired, or with the succeeding taxable year.

(b) Election of amortization

The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility is completed or acquired, or with the taxable year succeeding the taxable year in which such facility is completed or acquired, shall be made by filing with the Secretary, in such manner, in such form, and within such time, as the Secretary may by regulations prescribe, a statement of such election.

(c) Termination of amortization deduction

A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such pollution control facility.

(d) Definitions and special rules

For purposes of this section—

(1) Certified pollution control facility

The term ''certified pollution control facility'' means a new identifiable treatment facility which is used, in connection with a plant or other property in operation before January 1, 1976, to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or omission of pollutants, contaminants, wastes, or heat and which—

(A) the State certifying authority having jurisdiction with respect to such facility has certified to the Federal certifying authority as having been constructed, reconstructed, erected, or acquired in conformity with the State program or requirements for abatement or control of water or atmospheric pollution or contamination;

(B) the Federal certifying authority has certified to the Secretary (i) as being in compliance with the applicable regulations of Federal agencies and (ii) as being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act, as amended (42 U.S.C. 1857 et seq.); and

(C) does not significantly—

(i) increase the output or capacity, extend the useful life, or reduce the total operating costs of such plant or other property (or any unit thereof), or

(ii) alter the nature of the manufacturing or production process or facility.

(2) State certifying authority

The term ''State certifying authority'' means, in the case of water pollution, the State water pollution control agency as defined in section 13(a) of the Federal Water Pollution Control Act and, in the case of air pollution, the air pollution control agency as defined in section 302(b) of the Clean Air Act. The term ''State certifying authority'' includes any interstate agency authorized to act in place of a certifying authority of the State.

(3) Federal certifying authority

The term ''Federal certifying authority'' means, in the case of water pollution, the Secretary of the Interior and, in the case of air pollution, the Secretary of Health and Human Services.

(4) New identifiable treatment facility

(A) In general

For purposes of paragraph (1), the term ''new identifiable treatment facility'' includes only tangible property (not including a building and its structural components, other than a building which is exclusively a treatment facility) which is of a character subject to the allowance for depreciation provided in section 167, which is identifiable as a treatment facility, and which is property—

(i) the construction, reconstruction, or erection of which is completed by the taxpayer after December 31, 1968, or

(ii) acquired after December 31, 1968, if the original use of the property commences with the taxpayer and commences after such date.

In applying this section in the case of property described in clause (i) there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection after December 31, 1968.

(B) Certain facilities placed in operation after April 11, 2005

In the case of any facility described in paragraph (1) solely by reason of paragraph (5), subparagraph (A) shall be applied by substituting ''April 11, 2005'' for ''December 31, 1968'' each place it appears therein.

(5) Special rule relating to certain atmospheric pollution control facilities

In the case of any atmospheric pollution control facility which is placed in service after April 11, 2005, and used in connection with an electric generation plant or other property which is primarily coal fired—

(A) paragraph (1) shall be applied without regard to the phrase ''in operation before January 1, 1976'', and

(B) in the case of facility[1] placed in service in connection with a plant or other property placed in operation after December 31, 1975, this section shall be applied by substituting ''84'' for ''60'' each place it appears in subsections (a) and (b).

(e) Profitmaking abatement works, etc.

The Federal certifying authority shall not certify any property under subsection (d)(1)(B) to the extent it appears that by reason of profits derived through the recovery of wastes or otherwise in the operation of such property, its costs will be recovered over its actual useful life.

(f) Amortizable basis

(1) Defined

For purposes of this section, the term ''amortizable basis'' means that portion of the adjusted basis (for determining gain) of a certified pollution control facility which may be amortized under this section.

(2) Special rules

(A) If a certified pollution control facility has a useful life (determined as of the first day of the first month for which a deduction is allowable under this section) in excess of 15 years, the amortizable basis of such facility shall be equal to an amount which bears the same ratio to the portion of the adjusted basis of such facility, which would be eligible for amortization but for the application of this subparagraph, as 15 bears to the number of years of useful life of such facility.

(B) The amortizable basis of a certified pollution control facility with respect to which an election under this section is in ef-

[1] So in original. Probably should be ''a facility''.

fect shall not be increased, for purposes of this section, for additions or improvements after the amortization period has begun.

(g) Depreciation deduction

The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be allowed with respect to the portion of the adjusted basis which is not the amortizable basis.

[(h) Repealed. Pub. L. 92–178, title I, § 104(f)(2), Dec. 10, 1971, 85 Stat. 502]

(i) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(j) Cross reference

For special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1245.

(Added Pub. L. 91–172, title VII, § 704(a), Dec. 30, 1969, 83 Stat. 667; amended Pub. L. 92–178, title I, § 104(f)(2), Dec. 10, 1971, 85 Stat. 502; Pub. L. 93–625, § 3(a), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), title XXI, § 2112(b), (c), Oct. 4, 1976, 90 Stat. 1834, 1906; Pub. L. 109–58, title XIII, § 1309(a)–(d), Aug. 8, 2005, 119 Stat. 1007; Pub. L. 109–135, title IV, § 402(e), Dec. 21, 2005, 119 Stat. 2611.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), referred to in subsec. (d)(1)(B), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. The subject matter of section 13(a) of the act, referred to in subsec. (d)(2), is covered by section 1362(1) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (d)(1)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

Section 302(b) of the Clean Air Act, referred to in subsec. (d)(2), formerly classified to section 1857h(b) of Title 42, was reclassified to section 7602(b) of Title 42 on enactment of Pub. L. 95–95.

PRIOR PROVISIONS

A prior section 169, act Aug. 16, 1954, ch. 736, 68A Stat. 55, related to amortization of grain-storage facilities, prior to the reorganization of part VI of subchapter B of chapter 1 of this title by Pub. L. 91–172.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58, § 1309(c), inserted ''and special rules'' after ''Definitions'' in heading.

Subsec. (d)(3). Pub. L. 109–58, § 1309(d), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(4)(B). Pub. L. 109–58, § 1309(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''In the case of any treatment facility used in connection with any plant or other property not in operation before January 1, 1969, the preceding sentence shall be applied by substituting December 31, 1975, for December 31, 1968.''

Subsec. (d)(5). Pub. L. 109–58, § 1309(a), added par. (5).

Subsec. (d)(5)(B). Pub. L. 109–135 inserted ''in the case of facility placed in service in connection with a plant or other property placed in operation after December 31, 1975,'' before ''this section''.

1976—Subsecs. (b), (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1). Pub. L. 94–455, §§ 1906(b)(13)(A), 2112(b), substituted in provisions preceding subpar. (A) ''January 1, 1976,'' for ''January 1, 1969,'' and ''storing, or preventing the creation or emission of'' for ''or storing'', struck out in subpar. (B) ''or his delegate'' after ''Secretary'', and added subpar. (C).

Subsec. (d)(4). Pub. L. 94–455, § 2112(c), among other changes, struck out provisions relating to treatment facilities placed in service by taxpayer before Jan. 1, 1976, and inserted provisions that in case of treatment facilities used in connection with any plan or other property not in operation before Jan. 1, 1969, Dec. 31, 1975, shall be substituted for Dec. 31, 1968, as the cut-off date for taking into account that portion of the basis which is attributable to construction, reconstruction, or erection.

1975—Subsec. (d)(4)(B). Pub. L. 93–625 substituted ''January 1, 1976'' for ''January 1, 1975''.

1971—Subsec. (h). Pub. L. 92–178 struck out provision that investment credit not be allowed. See section 48(a)(8) of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

Pub. L. 109–58, title XIII, § 1309(e), Aug. 8, 2005, 119 Stat. 1007, provided that: ''The amendments made by this section [amending this section] shall apply to facilities placed in service after April 11, 2005.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2112(d)(2) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1975. Such amendments shall not apply in the case of any property with respect to which the amortization period under section 169 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] has begun before January 1, 1976.''

EFFECTIVE DATE

Section 704(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this section and amending sections 642, 1082, 1245, and 1250 of this title] shall apply with respect to taxable years ending after December 31, 1968.''

TRANSFER OF FUNCTIONS

Functions vested in Secretary of the Interior and Secretary of Health, Education, and Welfare by subsec. (d)(1)(B), (3) of this section transferred to Administrator of Environmental Protection Agency by Reorg. Plan No. 3, of 1970, § 2(a)(9), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out in the Appendix to Title 5, Government Organization and Employees.

§ 170. Charitable, etc., contributions and gifts

(a) Allowance of deduction

(1) General rule

There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution

shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(2) Corporations on accrual basis

In the case of a corporation reporting its taxable income on the accrual basis, if—

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) Future interests in tangible personal property

For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) Percentage limitations

(1) Individuals

In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule

Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (F), or

(viii) an organization described in section 509(a)(2) or (3),

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions

Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) 30 percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.

(C) Special limitation with respect to contributions described in subparagraph (A) of certain capital gain property

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount

of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this paragraph, the term ''capital gain property'' means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(D) Special limitation with respect to contributions of capital gain property to organizations not described in subparagraph (A)

(i) In general

In the case of charitable contributions (other than charitable contributions to which subparagraph (A) applies) of capital gain property, the total amount of such contributions of such property taken into account under subsection (a) for any taxable year shall not exceed the lesser of—

(I) 20 percent of the taxpayer's contribution base for the taxable year, or

(II) the excess of 30 percent of the taxpayer's contribution base for the taxable year over the amount of the contributions of capital gain property to which subparagraph (C) applies.

For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions.

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(E) Contributions of qualified conservation contributions

(i) In general

Any qualified conservation contribution (as defined in subsection (h)(1)) shall be allowed to the extent the aggregate of such contributions does not exceed the excess of 50 percent of the taxpayer's contribution base over the amount of all other charitable contributions allowable under this paragraph.

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

(iii) Coordination with other subparagraphs

For purposes of applying this subsection and subsection (d)(1), contributions described in clause (i) shall not be treated as described in subparagraph (A), (B), (C), or (D) and such subparagraphs shall apply without regard to such contributions.

(iv) Special rule for contribution of property used in agriculture or livestock production

(I) In general

If the individual is a qualified farmer or rancher for the taxable year for which the contribution is made, clause (i) shall be applied by substituting ''100 percent'' for ''50 percent''.

(II) Exception

Subclause (I) shall not apply to any contribution of property made after the date of the enactment of this subparagraph which is used in agriculture or livestock production (or available for such production) unless such contribution is subject to a restriction that such property remain available for such production. This subparagraph shall be applied separately with respect to property to which subclause (I) does not apply by reason of the preceding sentence prior to its application to property to which subclause (I) does apply.

(v) Definition

For purposes of clause (iv), the term ''qualified farmer or rancher'' means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.

(vi) Termination

This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2011.

(F) Certain private foundations

The private foundations referred to in subparagraph (A)(vii) and subsection (e)(1)(B) are—

(i) a private operating foundation (as defined in section 4942(j)(3)),

(ii) any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called ''donor'') or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

(G) Contribution base defined

For purposes of this section, the term ''contribution base'' means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

(2) Corporations

In the case of a corporation—

(A) In general

The total deductions under subsection (a) for any taxable year (other than for contributions to which subparagraph (B) applies) shall not exceed 10 percent of the taxpayer's taxable income.

(B) Qualified conservation contributions by certain corporate farmers and ranchers

(i) In general

Any qualified conservation contribution (as defined in subsection (h)(1))—

(I) which is made by a corporation which, for the taxable year during which the contribution is made, is a qualified farmer or rancher (as defined in paragraph (1)(E)(v)) and the stock of which is not readily tradable on an established securities market at any time during such year, and

(II) which, in the case of contributions made after the date of the enactment of this subparagraph, is a contribution of property which is used in agriculture or livestock production (or available for such production) and which is subject to a restriction that such property remain available for such production,

shall be allowed to the extent the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income over the amount of charitable contributions allowable under subparagraph (A).

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(2)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

(iii) Termination

This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2011.

(C) Taxable income

For purposes of this paragraph, taxable income shall be computed without regard to—

(i) this section,

(ii) part VIII (except section 248),

(iii) any net operating loss carryback to the taxable year under section 172,

(iv) section 199, and

(v) any capital loss carryback to the taxable year under section 1212(a)(1).

(3) Temporary suspension of limitations on charitable contributions

In the case of a qualified farmer or rancher (as defined in paragraph (1)(E)(v)), any charitable contribution of food—

(A) to which subsection (e)(3)(C) applies (without regard to clause (ii) thereof), and

(B) which is made during the period beginning on the date of the enactment of this paragraph and before January 1, 2009,

shall be treated for purposes of paragraph (1)(E) or (2)(B), whichever is applicable, as if it were a qualified conservation contribution which is made by a qualified farmer or rancher and which otherwise meets the requirements of such paragraph.

(c) Charitable contribution defined

For purposes of this section, the term ''charitable contribution'' means a contribution or gift to or for the use of—

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). Rules similar to the rules of section 501(j) shall apply for purposes of this paragraph.

(3) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions, and

(B) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(5) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

For purposes of this section, the term ''charitable contribution'' also means an amount treated under subsection (g) as paid for the use of an organization described in paragraph (2), (3), or (4).

(d) Carryovers of excess contributions

(1) Individuals

(A) In general

In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the ''contribution year'') exceeds 50 percent of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) the amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers

In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

(2) Corporations

(A) In general

Any contribution made by a corporation in a taxable year (hereinafter in this paragraph

referred to as the ''contribution year'') in excess of the amount deductible for such year under subsection (b)(2)(A) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two following amounts: (i) the excess of the maximum amount deductible for such succeeding taxable year under subsection (b)(2)(A) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribution not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers

For purposes of subparagraph (A), the excess of—

(i) the contributions made by a corporation in a taxable year to which this section applies, over

(ii) the amount deductible in such year under the limitation in subsection (b)(2)(A),

shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases a net operating loss carryover under section 172 to a succeeding taxable year.

(e) Certain contributions of ordinary income and capital gain property

(1) General rule

The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) the amount of gain which would not have been long-term capital gain (determined without regard to section 1221(b)(3)) if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) in the case of a charitable contribution—

(i) of tangible personal property—

(I) if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(II) which is applicable property (as defined in paragraph (7)(C), but without regard to clause (ii) thereof) which is sold, exchanged, or otherwise disposed of by the donee before the last day of the taxable year in which the contribution was made and with respect to which the donee has not made a certification in accordance with paragraph (7)(D),

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(F),

(iii) of any patent, copyright (other than a copyright described in section 1221(a)(3) or 1231(b)(1)(C)), trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property, or

(iv) of any taxidermy property which is contributed by the person who prepared, stuffed, or mounted the property or by any person who paid or incurred the cost of such preparation, stuffing, or mounting,

the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1252(a), or 1254(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset. For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer.

(2) Allocation of basis

For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary.

(3) Special rule for certain contributions of inventory and other property

(A) Qualified contributions

For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in paragraph (1) or (2) of section 1221(a), by a corporation (other than a corporation which is an S corporation) to an organization which is described in section 501(c)(3) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), but only if—

(i) the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under section 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

(ii) the property is not transferred by the donee in exchange for money, other property, or services;

(iii) the taxpayer receives from the donee a written statement representing

that its use and disposition of the property will be in accordance with the provisions of clauses (i) and (ii); and

(iv) in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, as amended, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hundred and eighty days prior thereto.

(B) Amount of reduction

The reduction under paragraph (1)(A) for any qualified contribution (as defined in subparagraph (A)) shall be no greater than the sum of—

(i) one-half of the amount computed under paragraph (1)(A) (computed without regard to this paragraph), and

(ii) the amount (if any) by which the charitable contribution deduction under this section for any qualified contribution (computed by taking into account the amount determined in clause (i), but without regard to this clause) exceeds twice the basis of such property.

(C) Special rule for contributions of food inventory

(i) General rule

In the case of a charitable contribution of food from any trade or business of the taxpayer, this paragraph shall be applied—

(I) without regard to whether the contribution is made by a C corporation, and

(II) only to food that is apparently wholesome food.

(ii) Limitation

In the case of a taxpayer other than a C corporation, the aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed 10 percent of the taxpayer's aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year, computed without regard to this section.

(iii) Apparently wholesome food

For purposes of this subparagraph, the term ''apparently wholesome food'' has the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.

(iv) Termination

This subparagraph shall not apply to contributions made after December 31, 2011.

(D) Special rule for contributions of book inventory to public schools

(i) Contributions of book inventory

In determining whether a qualified book contribution is a qualified contribution, subparagraph (A) shall be applied without regard to whether the donee is an organization described in the matter preceding clause (i) of subparagraph (A).

(ii) Qualified book contribution

For purposes of this paragraph, the term ''qualified book contribution'' means a charitable contribution of books to a public school which is an educational organization described in subsection (b)(1)(A)(ii) and which provides elementary education or secondary education (kindergarten through grade 12).

(iii) Certification by donee

Subparagraph (A) shall not apply to any contribution of books unless (in addition to the certifications required by subparagraph (A) (as modified by this subparagraph)), the donee certifies in writing that—

(I) the books are suitable, in terms of currency, content, and quantity, for use in the donee's educational programs, and

(II) the donee will use the books in its educational programs.

(iv) Termination

This subparagraph shall not apply to contributions made after December 31, 2011.

(E) This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250, or 1252.

(4) Special rule for contributions of scientific property used for research

(A) Limit on reduction

In the case of a qualified research contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified research contributions

For purposes of this paragraph, the term ''qualified research contribution'' means a charitable contribution by a corporation of tangible personal property described in paragraph (1) of section 1221(a), but only if—

(i) the contribution is to an organization described in subparagraph (A) or subparagraph (B) of section 41(e)(6),

(ii) the property is constructed or assembled by the taxpayer,

(iii) the contribution is made not later than 2 years after the date the construction or assembly of the property is substantially completed,

(iv) the original use of the property is by the donee,

(v) the property is scientific equipment or apparatus substantially all of the use of which by the donee is for research or experimentation (within the meaning of section 174), or for research training, in the United States in physical or biological sciences,

(vi) the property is not transferred by the donee in exchange for money, other property, or services, and

(vii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (v) and (vi).

(C) Construction of property by taxpayer

For purposes of this paragraph, property shall be treated as constructed by the taxpayer only if the cost of the parts used in the construction of such property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in such property.

(D) Corporation

For purposes of this paragraph, the term ''corporation'' shall not include—

(i) an S corporation,

(ii) a personal holding company (as defined in section 542), and

(iii) a service organization (as defined in section 414(m)(3)).

(5) Special rule for contributions of stock for which market quotations are readily available

(A) In general

Subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.

(B) Qualified appreciated stock

Except as provided in subparagraph (C), for purposes of this paragraph, the term ''qualified appreciated stock'' means any stock of a corporation—

(i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and

(ii) which is capital gain property (as defined in subsection (b)(1)(C)(iv)).

(C) Donor may not contribute more than 10 percent of stock of corporation

(i) In general

In the case of any donor, the term ''qualified appreciated stock'' shall not include any stock of a corporation contributed by the donor in a contribution to which paragraph (1)(B)(ii) applies (determined without regard to this paragraph) to the extent that the amount of the stock so contributed (when increased by the aggregate amount of all prior such contributions by the donor of stock in such corporation) exceeds 10 percent (in value) of all of the outstanding stock of such corporation.

(ii) Special rule

For purposes of clause (i), an individual shall be treated as making all contributions made by any member of his family (as defined in section 267(c)(4)).

(6) Special rule for contributions of computer technology and equipment for educational purposes

(A) Limit on reduction

In the case of a qualified computer contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified computer contribution

For purposes of this paragraph, the term ''qualified computer contribution'' means a charitable contribution by a corporation of any computer technology or equipment, but only if—

(i) the contribution is to—

(I) an educational organization described in subsection (b)(1)(A)(ii),

(II) an entity described in section 501(c)(3) and exempt from tax under section 501(a) (other than an entity described in subclause (I)) that is organized primarily for purposes of supporting elementary and secondary education, or

(III) a public library (within the meaning of section 213(1)(A) of the Library Services and Technology Act (20 U.S.C. 9122(1)(A))),[1] as in effect on the date of the enactment of the Community Renewal Tax Relief Act of 2000), established and maintained by an entity described in subsection (c)(1),

(ii) the contribution is made not later than 3 years after the date the taxpayer acquired the property (or in the case of property constructed or assembled by the taxpayer, the date the construction or assembling of the property is substantially completed),

(iii) the original use of the property is by the donor or the donee,

(iv) substantially all of the use of the property by the donee is for use within the United States for educational purposes that are related to the purpose or function of the donee,

(v) the property is not transferred by the donee in exchange for money, other property, or services, except for shipping, installation and transfer costs,

(vi) the property will fit productively into the donee's education plan,

(vii) the donee's use and disposition of the property will be in accordance with the provisions of clauses (iv) and (v), and

(viii) the property meets such standards, if any, as the Secretary may prescribe by regulation to assure that the property meets minimum functionality and suitability standards for educational purposes.

(C) Contribution to private foundation

A contribution by a corporation of any computer technology or equipment to a private foundation (as defined in section 509) shall be treated as a qualified computer contribution for purposes of this paragraph if—

(i) the contribution to the private foundation satisfies the requirements of clauses (ii) and (v) of subparagraph (B), and

(ii) within 30 days after such contribution, the private foundation—

(I) contributes the property to a donee described in clause (i) of subparagraph

[1] So in original. The third closing parenthesis probably should not appear.

(B) that satisfies the requirements of clauses (iv) through (vii) of subparagraph (B), and

(II) notifies the donor of such contribution.

(D) Donations of property reacquired by manufacturer

In the case of property which is reacquired by the person who constructed or assembled the property—

(i) subparagraph (B)(ii) shall be applied to a contribution of such property by such person by taking into account the date that the original construction or assembly of the property was substantially completed, and

(ii) subparagraph (B)(iii) shall not apply to such contribution.

(E) Special rule relating to construction of property

For the purposes of this paragraph, the rules of paragraph (4)(C) shall apply.

(F) Definitions

For the purposes of this paragraph—

(i) Computer technology or equipment

The term ''computer technology or equipment'' means computer software (as defined by section 197(e)(3)(B)), computer or peripheral equipment (as defined by section 168(i)(2)(B)), and fiber optic cable related to computer use.

(ii) Corporation

The term ''corporation'' has the meaning given to such term by paragraph (4)(D).

(G) Termination

This paragraph shall not apply to any contribution made during any taxable year beginning after December 31, 2011.

(7) Recapture of deduction on certain dispositions of exempt use property

(A) In general

In the case of an applicable disposition of applicable property, there shall be included in the income of the donor of such property for the taxable year of such donor in which the applicable disposition occurs an amount equal to the excess (if any) of—

(i) the amount of the deduction allowed to the donor under this section with respect to such property, over

(ii) the donor's basis in such property at the time such property was contributed.

(B) Applicable disposition

For purposes of this paragraph, the term ''applicable disposition'' means any sale, exchange, or other disposition by the donee of applicable property—

(i) after the last day of the taxable year of the donor in which such property was contributed, and

(ii) before the last day of the 3-year period beginning on the date of the contribution of such property,

unless the donee makes a certification in accordance with subparagraph (D).

(C) Applicable property

For purposes of this paragraph, the term ''applicable property'' means charitable deduction property (as defined in section 6050L(a)(2)(A))—

(i) which is tangible personal property the use of which is identified by the donee as related to the purpose or function constituting the basis of the donee's exemption under section 501, and

(ii) for which a deduction in excess of the donor's basis is allowed.

(D) Certification

A certification meets the requirements of this subparagraph if it is a written statement which is signed under penalty of perjury by an officer of the donee organization and—

(i) which—

(I) certifies that the use of the property by the donee was substantial and related to the purpose or function constituting the basis for the donee's exemption under section 501, and

(II) describes how the property was used and how such use furthered such purpose or function, or

(ii) which—

(I) states the intended use of the property by the donee at the time of the contribution, and

(II) certifies that such intended use has become impossible or infeasible to implement.

(f) Disallowance of deduction in certain cases and special rules

(1) In general

No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Contributions of property placed in trust

(A) Remainder interest

In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) Income interests, etc.

No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treat-

ed, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) Denial of deduction in case of payments by certain trusts

In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) Exception

This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) Denial of deduction in case of certain contributions of partial interests in property

(A) In general

In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(B) Exceptions

Subparagraph (A) shall not apply to—

(i) a contribution of a remainder interest in a personal residence or farm,

(ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and

(iii) a qualified conservation contribution.

(4) Valuation of remainder interest in real property

For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary may prescribe a different rate.

(5) Reduction for certain interest

If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution—

(A) shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

(B) in the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term ''bond'' means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) Deductions for out-of-pocket expenditures

No deduction shall be allowed under this section for an out-of-pocket expenditure made by any person on behalf of an organization described in subsection (c) (other than an organization described in section 501(h)(5) (relating to churches, etc.)) if the expenditure is made for the purpose of influencing legislation (within the meaning of section 501(c)(3)).

(7) Reformations to comply with paragraph (2)

(A) In general

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) Rules similar to section 2055(e)(3) to apply

For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(8) Substantiation requirement for certain contributions

(A) General rule

No deduction shall be allowed under subsection (a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

(B) Content of acknowledgement

An acknowledgement meets the requirements of this subparagraph if it includes the following information:

(i) The amount of cash and a description (but not value) of any property other than cash contributed.

(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

For purposes of this subparagraph, the term ''intangible religious benefit'' means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context.

(C) Contemporaneous

For purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of—

(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or

(ii) the due date (including extensions) for filing such return.

(D) Substantiation not required for contributions reported by the donee organization

Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

(E) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

(9) Denial of deduction where contribution for lobbying activities

No deduction shall be allowed under this section for a contribution to an organization which conducts activities to which section 162(e)(1) applies on matters of direct financial interest to the donor's trade or business, if a principal purpose of the contribution was to avoid Federal income tax by securing a deduction for such activities under this section which would be disallowed by reason of section 162(e) if the donor had conducted such activities directly. No deduction shall be allowed under section 162(a) for any amount for which a deduction is disallowed under the preceding sentence.

(10) Split-dollar life insurance, annuity, and endowment contracts

(A) In general

Nothing in this section or in section 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 shall be construed to allow a deduction, and no deduction shall be allowed, for any transfer to or for the use of an organization described in subsection (c) if in connection with such transfer—

(i) the organization directly or indirectly pays, or has previously paid, any premium on any personal benefit contract with respect to the transferor, or

(ii) there is an understanding or expectation that any person will directly or indirectly pay any premium on any personal benefit contract with respect to the transferor.

(B) Personal benefit contract

For purposes of subparagraph (A), the term ''personal benefit contract'' means, with respect to the transferor, any life insurance, annuity, or endowment contract if any direct or indirect beneficiary under such contract is the transferor, any member of the transferor's family, or any other person (other than an organization described in subsection (c)) designated by the transferor.

(C) Application to charitable remainder trusts

In the case of a transfer to a trust referred to in subparagraph (E), references in subparagraphs (A) and (F) to an organization described in subsection (c) shall be treated as a reference to such trust.

(D) Exception for certain annuity contracts

If, in connection with a transfer to or for the use of an organization described in subsection (c), such organization incurs an obligation to pay a charitable gift annuity (as defined in section 501(m)) and such organization purchases any annuity contract to fund such obligation, persons receiving payments under the charitable gift annuity shall not be treated for purposes of subparagraph (B) as indirect beneficiaries under such contract if—

(i) such organization possesses all of the incidents of ownership under such contract,

(ii) such organization is entitled to all the payments under such contract, and

(iii) the timing and amount of payments under such contract are substantially the same as the timing and amount of payments to each such person under such obligation (as such obligation is in effect at the time of such transfer).

(E) Exception for certain contracts held by charitable remainder trusts

A person shall not be treated for purposes of subparagraph (B) as an indirect beneficiary under any life insurance, annuity, or endowment contract held by a charitable remainder annuity trust or a charitable remainder unitrust (as defined in section 664(d)) solely by reason of being entitled to any payment referred to in paragraph (1)(A) or (2)(A) of section 664(d) if—

(i) such trust possesses all of the incidents of ownership under such contract, and

(ii) such trust is entitled to all the payments under such contract.

(F) Excise tax on premiums paid

(i) In general

There is hereby imposed on any organization described in subsection (c) an excise

tax equal to the premiums paid by such organization on any life insurance, annuity, or endowment contract if the payment of premiums on such contract is in connection with a transfer for which a deduction is not allowable under subparagraph (A), determined without regard to when such transfer is made.

(ii) Payments by other persons

For purposes of clause (i), payments made by any other person pursuant to an understanding or expectation referred to in subparagraph (A) shall be treated as made by the organization.

(iii) Reporting

Any organization on which tax is imposed by clause (i) with respect to any premium shall file an annual return which includes—

(I) the amount of such premiums paid during the year and the name and TIN of each beneficiary under the contract to which the premium relates, and

(II) such other information as the Secretary may require.

The penalties applicable to returns required under section 6033 shall apply to returns required under this clause. Returns required under this clause shall be furnished at such time and in such manner as the Secretary shall by forms or regulations require.

(iv) Certain rules to apply

The tax imposed by this subparagraph shall be treated as imposed by chapter 42 for purposes of this title other than subchapter B of chapter 42.

(G) Special rule where State requires specification of charitable gift annuitant in contract

In the case of an obligation to pay a charitable gift annuity referred to in subparagraph (D) which is entered into under the laws of a State which requires, in order for the charitable gift annuity to be exempt from insurance regulation by such State, that each beneficiary under the charitable gift annuity be named as a beneficiary under an annuity contract issued by an insurance company authorized to transact business in such State, the requirements of clauses (i) and (ii) of subparagraph (D) shall be treated as met if—

(i) such State law requirement was in effect on February 8, 1999,

(ii) each such beneficiary under the charitable gift annuity is a bona fide resident of such State at the time the obligation to pay a charitable gift annuity is entered into, and

(iii) the only persons entitled to payments under such contract are persons entitled to payments as beneficiaries under such obligation on the date such obligation is entered into.

(H) Member of family

For purposes of this paragraph, an individual's family consists of the individual's grandparents, the grandparents of such individual's spouse, the lineal descendants of such grandparents, and any spouse of such a lineal descendant.

(I) Regulations

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

(11) Qualified appraisal and other documentation for certain contributions

(A) In general

(i) Denial of deduction

In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of property for which a deduction of more than $500 is claimed unless such person meets the requirements of subparagraphs (B), (C), and (D), as the case may be, with respect to such contribution.

(ii) Exceptions

(I) Readily valued property

Subparagraphs (C) and (D) shall not apply to cash, property described in subsection (e)(1)(B)(iii) or section 1221(a)(1), publicly traded securities (as defined in section 6050L(a)(2)(B)), and any qualified vehicle described in paragraph (12)(A)(ii) for which an acknowledgement under paragraph (12)(B)(iii) is provided.

(II) Reasonable cause

Clause (i) shall not apply if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect.

(B) Property description for contributions of more than $500

In the case of contributions of property for which a deduction of more than $500 is claimed, the requirements of this subparagraph are met if the individual, partnership or corporation includes with the return for the taxable year in which the contribution is made a description of such property and such other information as the Secretary may require. The requirements of this subparagraph shall not apply to a C corporation which is not a personal service corporation or a closely held C corporation.

(C) Qualified appraisal for contributions of more than $5,000

In the case of contributions of property for which a deduction of more than $5,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation obtains a qualified appraisal of such property and attaches to the return for the taxable year in which such contribution is made such information regarding such property and such appraisal as the Secretary may require.

(D) Substantiation for contributions of more than $500,000

In the case of contributions of property for which a deduction of more than $500,000 is

claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation attaches to the return for the taxable year a qualified appraisal of such property.

(E) Qualified appraisal and appraiser

For purposes of this paragraph—

(i) Qualified appraisal

The term ''qualified appraisal'' means, with respect to any property, an appraisal of such property which—

(I) is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and

(II) is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I).

(ii) Qualified appraiser

Except as provided in clause (iii), the term ''qualified appraiser'' means an individual who—

(I) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,

(II) regularly performs appraisals for which the individual receives compensation, and

(III) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.

(iii) Specific appraisals

An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless—

(I) the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and

(II) the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under section 330(c) of title 31, United States Code, at any time during the 3-year period ending on the date of the appraisal.

(F) Aggregation of similar items of property

For purposes of determining thresholds under this paragraph, property and all similar items of property donated to 1 or more donees shall be treated as 1 property.

(G) Special rule for pass-thru entities

In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

(H) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

(12) Contributions of used motor vehicles, boats, and airplanes

(A) In general

In the case of a contribution of a qualified vehicle the claimed value of which exceeds $500—

(i) paragraph (8) shall not apply and no deduction shall be allowed under subsection (a) for such contribution unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization that meets the requirements of subparagraph (B) and includes the acknowledgement with the taxpayer's return of tax which includes the deduction, and

(ii) if the organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction allowed under subsection (a) shall not exceed the gross proceeds received from such sale.

(B) Content of acknowledgement

An acknowledgement meets the requirements of this subparagraph if it includes the following information:

(i) The name and taxpayer identification number of the donor.

(ii) The vehicle identification number or similar number.

(iii) In the case of a qualified vehicle to which subparagraph (A)(ii) applies—

(I) a certification that the vehicle was sold in an arm's length transaction between unrelated parties,

(II) the gross proceeds from the sale, and

(III) a statement that the deductible amount may not exceed the amount of such gross proceeds.

(iv) In the case of a qualified vehicle to which subparagraph (A)(ii) does not apply—

(I) a certification of the intended use or material improvement of the vehicle and the intended duration of such use, and

(II) a certification that the vehicle would not be transferred in exchange for money, other property, or services before completion of such use or improvement.

(v) Whether the donee organization provided any goods or services in consideration, in whole or in part, for the qualified vehicle.

(vi) A description and good faith estimate of the value of any goods or services referred to in clause (v) or, if such goods or services consist solely of intangible religious benefits (as defined in paragraph (8)(B)), a statement to that effect.

(C) Contemporaneous

For purposes of subparagraph (A), an acknowledgement shall be considered to be contemporaneous if the donee organization provides it within 30 days of—

(i) the sale of the qualified vehicle, or

(ii) in the case of an acknowledgement including a certification described in subparagraph (B)(iv), the contribution of the qualified vehicle.

(D) Information to Secretary

A donee organization required to provide an acknowledgement under this paragraph shall provide to the Secretary the information contained in the acknowledgement. Such information shall be provided at such time and in such manner as the Secretary may prescribe.

(E) Qualified vehicle

For purposes of this paragraph, the term ''qualified vehicle'' means any—

(i) motor vehicle manufactured primarily for use on public streets, roads, and highways,

(ii) boat, or

(iii) airplane.

Such term shall not include any property which is described in section 1221(a)(1).

(F) Regulations or other guidance

The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this paragraph. The Secretary may prescribe regulations or other guidance which exempts sales by the donee organization which are in direct furtherance of such organization's charitable purpose from the requirements of subparagraphs (A)(ii) and (B)(iv)(II).

(13) Contributions of certain interests in buildings located in registered historic districts

(A) In general

No deduction shall be allowed with respect to any contribution described in subparagraph (B) unless the taxpayer includes with the return for the taxable year of the contribution a $500 filing fee.

(B) Contribution described

A contribution is described in this subparagraph if such contribution is a qualified conservation contribution (as defined in subsection (h)) which is a restriction with respect to the exterior of a building described in subsection (h)(4)(C)(ii) and for which a deduction is claimed in excess of $10,000.

(C) Dedication of fee

Any fee collected under this paragraph shall be used for the enforcement of the provisions of subsection (h).

(14) Reduction for amounts attributable to rehabilitation credit

In the case of any qualified conservation contribution (as defined in subsection (h)), the amount of the deduction allowed under this section shall be reduced by an amount which bears the same ratio to the fair market value of the contribution as—

(A) the sum of the credits allowed to the taxpayer under section 47 for the 5 preceding taxable years with respect to any building which is a part of such contribution, bears to

(B) the fair market value of the building on the date of the contribution.

(15) Special rule for taxidermy property

(A) Basis

For purposes of this section and notwithstanding section 1012, in the case of a charitable contribution of taxidermy property which is made by the person who prepared, stuffed, or mounted the property or by any person who paid or incurred the cost of such preparation, stuffing, or mounting, only the cost of the preparing, stuffing, or mounting shall be included in the basis of such property.

(B) Taxidermy property

For purposes of this section, the term ''taxidermy property'' means any work of art which—

(i) is the reproduction or preservation of an animal, in whole or in part,

(ii) is prepared, stuffed, or mounted for purposes of recreating one or more characteristics of such animal, and

(iii) contains a part of the body of the dead animal.

(16) Contributions of clothing and household items

(A) In general

In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of clothing or a household item unless such clothing or household item is in good used condition or better.

(B) Items of minimal value

Notwithstanding subparagraph (A), the Secretary may by regulation deny a deduction under subsection (a) for any contribution of clothing or a household item which has minimal monetary value.

(C) Exception for certain property

Subparagraphs (A) and (B) shall not apply to any contribution of a single item of clothing or a household item for which a deduction of more than $500 is claimed if the taxpayer includes with the taxpayer's return a qualified appraisal with respect to the property.

(D) Household items

For purposes of this paragraph—

(i) In general

The term ''household items'' includes furniture, furnishings, electronics, appliances, linens, and other similar items.

(ii) Excluded items

Such term does not include—

(I) food,

(II) paintings, antiques, and other objects of art,

(III) jewelry and gems, and

(IV) collections.

(E) Special rule for pass-thru entities

In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

(17) Recordkeeping

No deduction shall be allowed under subsection (a) for any contribution of a cash, check, or other monetary gift unless the donor maintains as a record of such contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution.

(18) Contributions to donor advised funds

A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3), (4), or (5) of subsection (c), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of paragraph (8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

(g) Amounts paid to maintain certain students as members of taxpayer's household

(1) In general

Subject to the limitations provided by paragraph (2), amounts paid by the taxpayer to maintain an individual (other than a dependent, as defined in section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), or a relative of the taxpayer) as a member of his household during the period that such individual is—

(A) a member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraph (2), (3), or (4) of subsection (c) to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(B) a full-time pupil or student in the twelfth or any lower grade at an educational organization described in section 170(b)(1)(A)(ii) located in the United States,

shall be treated as amounts paid for the use of the organization.

(2) Limitations

(A) Amount

Paragraph (1) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed $50 multiplied by the number of full calendar months during the taxable year which fall within the period described in paragraph (1). For purposes of the preceding sentence, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month.

(B) Compensation or reimbursement

Paragraph (1) shall not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in paragraph (1).

(3) Relative defined

For purposes of paragraph (1), the term ''relative of the taxpayer'' means an individual who, with respect to the taxpayer, bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2).

(4) No other amount allowed as deduction

No deduction shall be allowed under subsection (a) for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in paragraph (1)(A) except as provided in this subsection.

(h) Qualified conservation contribution

(1) In general

For purposes of subsection (f)(3)(B)(iii), the term ''qualified conservation contribution'' means a contribution—

(A) of a qualified real property interest,

(B) to a qualified organization,

(C) exclusively for conservation purposes.

(2) Qualified real property interest

For purposes of this subsection, the term ''qualified real property interest'' means any of the following interests in real property:

(A) the entire interest of the donor other than a qualified mineral interest,

(B) a remainder interest, and

(C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) Qualified organization

For purposes of paragraph (1), the term ''qualified organization'' means an organization which—

(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

(B) is described in section 501(c)(3) and—

(i) meets the requirements of section 509(a)(2), or

(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) Conservation purpose defined

(A) In general

For purposes of this subsection, the term ''conservation purpose'' means—

(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) the preservation of open space (including farmland and forest land) where such preservation is—

(I) for the scenic enjoyment of the general public, or

(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

(iv) the preservation of an historically important land area or a certified historic structure.

(B) Special rules with respect to buildings in registered historic districts

In the case of any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in subparagraph (C)(ii), such contribution shall not be considered to be exclusively for conservation purposes unless—

(i) such interest—

(I) includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and

(II) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior,

(ii) the donor and donee enter into a written agreement certifying, under penalty of perjury, that the donee—

(I) is a qualified organization (as defined in paragraph (3)) with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and

(II) has the resources to manage and enforce the restriction and a commitment to do so, and

(iii) in the case of any contribution made in a taxable year beginning after the date of the enactment of this subparagraph, the taxpayer includes with the taxpayer's return for the taxable year of the contribution—

(I) a qualified appraisal (within the meaning of subsection (f)(11)(E)) of the qualified property interest,

(II) photographs of the entire exterior of the building, and

(III) a description of all restrictions on the development of the building.

(C) Certified historic structure

For purposes of subparagraph (A)(iv), the term ''certified historic structure'' means—

(i) any building, structure, or land area which is listed in the National Register, or

(ii) any building which is located in a registered historic district (as defined in section 47(c)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

(5) Exclusively for conservation purposes

For purposes of this subsection—

(A) Conservation purpose must be protected

A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) No surface mining permitted

(i) In general

Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(ii) Special rule

With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

(6) Qualified mineral interest

For purposes of this subsection, the term ''qualified mineral interest'' means—

(A) subsurface oil, gas, or other minerals, and

(B) the right to access to such minerals.

(i) Standard mileage rate for use of passenger automobile

For purposes of computing the deduction under this section for use of a passenger automobile, the standard mileage rate shall be 14 cents per mile.

(j) Denial of deduction for certain travel expenses

No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.

(k) Disallowance of deductions in certain cases

For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a)[2] of the Internal Security Act of 1950 (50 U.S.C. 790).

***(l)* Treatment of certain amounts paid to or for the benefit of institutions of higher education**

(1) In general

For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.

(2) Amount described

For purposes of paragraph (1), an amount is described in this paragraph if—

(A) the amount is paid by the taxpayer to or for the benefit of an educational organization—

(i) which is described in subsection (b)(1)(A)(ii), and

[2] See References in Text note below.

(ii) which is an institution of higher education (as defined in section 3304(f)), and

(B) such amount would be allowable as a deduction under this section but for the fact that the taxpayer receives (directly or indirectly) as a result of paying such amount the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

If any portion of a payment is for the purchase of such tickets, such portion and the remaining portion (if any) of such payment shall be treated as separate amounts for purposes of this subsection.

(m) Certain donee income from intellectual property treated as an additional charitable contribution

(1) Treatment as additional contribution

In the case of a taxpayer who makes a qualified intellectual property contribution, the deduction allowed under subsection (a) for each taxable year of the taxpayer ending on or after the date of such contribution shall be increased (subject to the limitations under subsection (b)) by the applicable percentage of qualified donee income with respect to such contribution which is properly allocable to such year under this subsection.

(2) Reduction in additional deductions to extent of initial deduction

With respect to any qualified intellectual property contribution, the deduction allowed under subsection (a) shall be increased under paragraph (1) only to the extent that the aggregate amount of such increases with respect to such contribution exceed the amount allowed as a deduction under subsection (a) with respect to such contribution determined without regard to this subsection.

(3) Qualified donee income

For purposes of this subsection, the term ''qualified donee income'' means any net income received by or accrued to the donee which is properly allocable to the qualified intellectual property.

(4) Allocation of qualified donee income to taxable years of donor

For purposes of this subsection, qualified donee income shall be treated as properly allocable to a taxable year of the donor if such income is received by or accrued to the donee for the taxable year of the donee which ends within or with such taxable year of the donor.

(5) 10-year limitation

Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the 10-year period beginning on the date of the contribution of such property.

(6) Benefit limited to life of intellectual property

Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the expiration of the legal life of such property.

(7) Applicable percentage

For purposes of this subsection, the term ''applicable percentage'' means the percentage determined under the following table which corresponds to a taxable year of the donor ending on or after the date of the qualified intellectual property contribution:

Taxable Year of Donor Ending on or After Date of Contribution:	Applicable Percentage:
1st	100
2nd	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th	10
12th	10.

(8) Qualified intellectual property contribution

For purposes of this subsection, the term ''qualified intellectual property contribution'' means any charitable contribution of qualified intellectual property—

(A) the amount of which taken into account under this section is reduced by reason of subsection (e)(1), and

(B) with respect to which the donor informs the donee at the time of such contribution that the donor intends to treat such contribution as a qualified intellectual property contribution for purposes of this subsection and section 6050L.

(9) Qualified intellectual property

For purposes of this subsection, the term ''qualified intellectual property'' means property described in subsection (e)(1)(B)(iii) (other than property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)).

(10) Other special rules

(A) Application of limitations on charitable contributions

Any increase under this subsection of the deduction provided under subsection (a) shall be treated for purposes of subsection (b) as a deduction which is attributable to a charitable contribution to the donee to which such increase relates.

(B) Net income determined by donee

The net income taken into account under paragraph (3) shall not exceed the amount of such income reported under section 6050L(b)(1).

(C) Deduction limited to 12 taxable years

Except as may be provided under subparagraph (D)(i), this subsection shall not apply with respect to any qualified intellectual property contribution for any taxable year of the donor after the 12th taxable year of the donor which ends on or after the date of such contribution.

(D) Regulations

The Secretary may issue regulations or other guidance to carry out the purposes of

this subsection, including regulations or guidance—

(i) modifying the application of this subsection in the case of a donor or donee with a short taxable year, and

(ii) providing for the determination of an amount to be treated as net income of the donee which is properly allocable to qualified intellectual property in the case of a donee who uses such property to further a purpose or function constituting the basis of the donee's exemption under section 501 (or, in the case of a governmental unit, any purpose described in section 170(c)) and does not possess a right to receive any payment from a third party with respect to such property.

(n) Expenses paid by certain whaling captains in support of Native Alaskan subsistence whaling

(1) In general

In the case of an individual who is recognized by the Alaska Eskimo Whaling Commission as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities and who engages in such activities during the taxable year, the amount described in paragraph (2) (to the extent such amount does not exceed $10,000 for the taxable year) shall be treated for purposes of this section as a charitable contribution.

(2) Amount described

(A) In general

The amount described in this paragraph is the aggregate of the reasonable and necessary whaling expenses paid by the taxpayer during the taxable year in carrying out sanctioned whaling activities.

(B) Whaling expenses

For purposes of subparagraph (A), the term ''whaling expenses'' includes expenses for—

(i) the acquisition and maintenance of whaling boats, weapons, and gear used in sanctioned whaling activities,

(ii) the supplying of food for the crew and other provisions for carrying out such activities, and

(iii) storage and distribution of the catch from such activities.

(3) Sanctioned whaling activities

For purposes of this subsection, the term ''sanctioned whaling activities'' means subsistence bowhead whale hunting activities conducted pursuant to the management plan of the Alaska Eskimo Whaling Commission.

(4) Substantiation of expenses

The Secretary shall issue guidance requiring that the taxpayer substantiate the whaling expenses for which a deduction is claimed under this subsection, including by maintaining appropriate written records with respect to the time, place, date, amount, and nature of the expense, as well as the taxpayer's eligibility for such deduction, and that (to the extent provided by the Secretary) such substantiation be provided as part of the taxpayer's return of tax.

***(o)* Special rules for fractional gifts**

(1) Denial of deduction in certain cases

(A) In general

No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interests in the property are held immediately before such contribution by—

(i) the taxpayer, or

(ii) the taxpayer and the donee.

(B) Exceptions

The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

(2) Valuation of subsequent gifts

In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

(A) the fair market value of the property at the time of the initial fractional contribution, or

(B) the fair market value of the property at the time of the additional contribution.

(3) Recapture of deduction in certain cases; addition to tax

(A) Recapture

The Secretary shall provide for the recapture of the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property—

(i) in any case in which the donor does not contribute all of the remaining interests in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) on or before the earlier of—

(I) the date that is 10 years after the date of the initial fractional contribution, or

(II) the date of the death of the donor, and

(ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)—

(I) had substantial physical possession of the property, and

(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

(B) Addition to tax

The tax imposed under this chapter for any taxable year for which there is a recapture under subparagraph (A) shall be increased by 10 percent of the amount so recaptured.

(4) Definitions

For purposes of this subsection—

(A) Additional contribution

The term ''additional contribution'' means any charitable contribution by the taxpayer of any interest in property with respect to which the taxpayer has previously made an initial fractional contribution.

(B) Initial fractional contribution

The term ''initial fractional contribution'' means, with respect to any taxpayer, the first charitable contribution of an undivided portion of the taxpayer's entire interest in any tangible personal property.

(p) Other cross references

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For charitable contributions of estates and trusts, see section 642(c).

(3) For nondeductibility of contributions by common trust funds, see section 584.

(4) For charitable contributions of partners, see section 702.

(5) For charitable contributions of nonresident aliens, see section 873.

(6) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for use of the United States, see section 6973 of title 10, United States Code.

(7) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(8) For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds Federal Prisons" as gifts to or for the use of the United States, see section 4043 of title 18, United States Code.

(9) For charitable contributions to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 58; Aug. 7, 1956, ch. 1031, §1, 70 Stat. 1117; Pub. L. 85–866, title I, §§10(a), 11, 12(a), Sept. 2, 1958, 72 Stat. 1609, 1610; Pub. L. 86–779, §7(a), Sept. 14, 1960, 74 Stat. 1002; Pub. L. 87–834, §13(d), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 87–858, §2(a), (b), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 88–272, title II, §§209(a), (b), (c)(1), (d)(1), (e), 231(b)(1), Feb. 26, 1964, 78 Stat. 43, 45–47, 105; Pub. L. 89–570, §1(b)(1), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title I, §101(j)(2), title II, §201(a)(1), (2)(A), (h)(1), Dec. 30, 1969, 83 Stat. 526, 549, 558, 565; Pub. L. 94–455, title II, §205(c)(1)(A), title X, §1052(c)(2), title XIII, §§1307(c), (d)(1)(B)(i), 1313(b)(1), title XIX, §§1901(a)(28), (b)(8)(A), 1906(b)(13)(A), title XXI, §§2124(e)(1), 2135(a), Oct. 4, 1976, 90 Stat. 1535, 1648, 1726, 1727, 1730, 1768, 1794, 1834, 1919, 1928; Pub. L. 95–30, title III, §309(a), May 23, 1977, 91 Stat. 154; Pub. L. 95–600, title IV, §§402(b)(2), 403(c)(1), Nov. 6, 1978, 92 Stat. 2868; Pub. L. 96–465, title II, §2206(e)(2), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 96–541, §6(a), (b), Dec. 17, 1980, 94 Stat. 3206; Pub. L. 97–34, title I, §121(a), title II, §§222(a), 263(a), Aug. 13, 1981, 95 Stat. 196, 248, 264; Pub. L. 97–248, title II, §286(b)(1), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97–258, §3(f)(1), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 97–354, §5(a)(21), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97–448, title I, §102(f)(7), Jan. 12, 1983, 96 Stat. 2372; Pub. L. 97–473, title II, §202(b)(4), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–369, div. A, title I, §174(b)(5)(A), title III, §301(a)–(c), title IV, §492(b)(1), title X, §§1022(b), 1031(a), 1032(b)(1), 1035(a), July 18, 1984, 98 Stat. 707, 777, 778, 854, 1028, 1033, 1042; Pub. L. 99–514, title I, §142(d), title II, §231(f), title III, §301(b)(2), title XVIII, §1831, Oct. 22, 1986, 100 Stat. 2120, 2180, 2217, 2851; Pub. L. 100–203, title X, §10711(a)(1), Dec. 22, 1987, 101 Stat. 1330–464; Pub. L. 100–647, title VI, §6001(a), Nov. 10, 1988, 102 Stat. 3683; Pub. L. 101–508, title XI, §§11801(a)(11), (c)(5), 11813(b)(10), Nov. 5, 1990, 104 Stat. 1388–520, 1388–523, 1388–554; Pub. L. 103–66, title XIII, §§13172(a), 13222(b), Aug. 10, 1993, 107 Stat. 455, 479; Pub. L. 104–188, title I, §§1206(a), 1316(b), Aug. 20, 1996, 110 Stat. 1776, 1786; Pub. L. 105–34, title II, §224(a), title V, §508(d), title VI, §602(a), title IX, §973(a), Aug. 5, 1997, 111 Stat. 818, 860, 862, 898; Pub. L. 105–206, title VI, §6004(e), July 22, 1998, 112 Stat. 795; Pub. L. 105–277, div. J, title I, §1004(a)(1), Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, §§532(c)(1)(A), (B), 537(a), Dec. 17, 1999, 113 Stat. 1930, 1936; Pub. L. 106–554, §1(a)(7) [title I, §165(a)–(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–626; Pub. L. 107–16, title V, §542(e)(2)(B), June 7, 2001, 115 Stat. 85; Pub. L. 107–147, title IV, §417(7), (22), Mar. 9, 2002, 116 Stat. 56, 57; Pub. L. 108–81, title V, §503, Sept. 25, 2003, 117 Stat. 1003; Pub. L. 108–311, title II, §207(15), (16), title III, §306(a), Oct. 4, 2004, 118 Stat. 1177, 1179; Pub. L. 108–357, title III, §335(a), title IV, §413(c)(30), title VIII, §§882(a), (b), (d), 883(a), 884(a), Oct. 22, 2004, 118 Stat. 1478, 1509, 1627, 1631, 1632; Pub. L. 109–73, title III, §§305(a), 306(a), Sept. 23, 2005, 119 Stat. 2025; Pub. L. 109–135, title IV, §403(a)(16), (gg), Dec. 21, 2005, 119 Stat. 2619, 2631; Pub. L. 109–222, title II, §204(b), May 17, 2006, 120 Stat. 350; Pub. L. 109–280, title XII, §§1202(a), 1204(a), 1206(a), (b)(1), 1213(a)–(d), 1214(a), (b), 1215(a), 1216(a), 1217(a), 1218(a), 1219(c)(1), 1234(a), Aug. 17, 2006, 120 Stat. 1066, 1068, 1069, 1075–1077, 1079, 1080, 1084, 1100; Pub. L. 109–432, div. A, title I, §116(a)(1), (b)(1), (2), Dec. 20, 2006, 120 Stat. 2941; Pub. L. 110–172, §§3(c), 11(a)(14)(A), (B), (15), (16), Dec. 29, 2007, 121 Stat. 2474, 2485; Pub. L. 110–234, title XV, §15302(a), May 22, 2008, 122 Stat. 1501; Pub. L. 110–246, §4(a), title XV, §15302(a), June 18, 2008, 122 Stat. 1664, 2263; Pub. L. 110–343, div. C, title III, §§321(a), 323(a)(1), (b)(1), 324(a), (b), Oct. 3, 2008, 122 Stat. 3873–3875; Pub. L. 111–312, title III, §301(a), title VII, §§723(a), (b), 740(a), 741(a), 742(a), Dec. 17, 2010, 124 Stat. 3300, 3316, 3319.)

AMENDMENT OF SECTION

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note below.

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

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsecs. (b)(1)(E)(iv)(II), (2)(B)(i)(II) and (h)(4)(B)(iii), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

The date of the enactment of this paragraph, referred to in subsec. (b)(3)(B), is the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

The Federal Food, Drug, and Cosmetic Act, as amended, referred to in subsec. (e)(3)(A)(iv), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classi-

fied generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (e)(3)(C)(iii), is the date of enactment of Pub. L. 109–73, which was approved Sept. 23, 2005.

The date of the enactment of the Community Renewal Tax Relief Act of 2000, referred to in subsec. (e)(6)(B)(i)(III), is the date of enactment of H.R. 5662, as enacted by Pub. L. 106–554, which was approved Dec. 21, 2000.

Section 11(a) of the Internal Security Act of 1950 (50 U.S.C. 790), referred to in subsec. (k), was repealed by Pub. L. 103–199, title VIII, § 803(1), Dec. 17, 1993, 107 Stat. 2329.

Section 25 of the State Department Basic Authorities Act of 1956, referred to in subsec. (p)(7), is classified to section 2697 of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Sections 1202(a), 1204(a), 1206(a), (b)(1), 1213(a)–(d), 1214(a), (b), 1215(a), 1216(a), 1217(a), 1218(a), 1219(c)(1), and 1234(a) of Pub. L. 109–280, which directed the amendment of section 170 without specifying the act to be amended, were executed to this section which is section 170 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–312, § 723(a), (b), substituted ''December 31, 2011'' for ''December 31, 2009'' in pars. (1)(E)(vi) and (2)(B)(iii).

Subsec. (e)(1). Pub. L. 111–312, §§ 301(a), 304, temporarily amended subsec. (e)(1) to read as if amendment by Pub. L. 107–16, § 542(e)(2)(B), had never been enacted. See 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below.

Subsec. (e)(3)(C)(iv). Pub. L. 111–312, § 740(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (e)(3)(D)(iv). Pub. L. 111–312, § 741(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (e)(6)(G). Pub. L. 111–312, § 742(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (b). Pub. L. 110–246, § 15302(a), substituted ''December 31, 2009'' for ''December 31, 2007'' in pars. (1)(E)(vi) and (2)(B)(iii).

Subsec. (b)(3). Pub. L. 110–343, § 323(b)(1), added par. (3).

Subsec. (e)(3)(C)(iv). Pub. L. 110–343, § 323(a)(1), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (e)(3)(D)(iii). Pub. L. 110–343, § 324(b), inserted ''of books'' after ''to any contribution'' in introductory provisions.

Subsec. (e)(3)(D)(iv). Pub. L. 110–343, § 324(a), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (e)(6)(G). Pub. L. 110–343, § 321(a), substituted ''December 31, 2009'' for ''December 31, 2007''.

2007—Subsec. (b)(1)(A)(vii). Pub. L. 110–172, § 11(a)(14)(A), substituted ''subparagraph (F)'' for ''subparagraph (E)''.

Subsec. (e)(1)(B)(i)(II). Pub. L. 110–172, § 11(a)(15), inserted '', but without regard to clause (ii) thereof'' after ''paragraph (7)(C)''.

Subsec. (e)(1)(B)(ii). Pub. L. 110–172, § 11(a)(14)(B), substituted ''subsection (b)(1)(F)'' for ''subsection (b)(1)(E)''.

Subsec. (e)(7)(D)(i)(I). Pub. L. 110–172, § 3(c), substituted ''substantial and related'' for ''related''.

Subsec. (*o*)(1)(A). Pub. L. 110–172, § 11(a)(16)(A), in introductory provisions, substituted ''all interests in the property are'' for ''all interest in the property is''.

Subsec. (*o*)(3)(A)(i). Pub. L. 110–172, § 11(a)(16)(B), in introductory provisions, substituted ''interests'' for ''interest'' and ''on or before'' for ''before''.

2006—Subsec. (b)(1)(E) to (G). Pub. L. 109–280, § 1206(a)(1), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively. See Codification note above.

Subsec. (b)(2). Pub. L. 109–280, § 1206(a)(2), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: ''In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed 10 percent of the taxpayer's taxable income computed without regard to—

''(A) this section,

''(B) part VIII (except section 248),

''(C) section 199,

''(D) any net operating loss carryback to the taxable year under section 172, and

''(E) any capital loss carryback to the taxable year under section 1212(a)(1).''

See Codification note above.

Subsec. (d)(2). Pub. L. 109–280, § 1206(b)(1), substituted ''subsection (b)(2)(A)'' for ''subsection (b)(2)'' wherever appearing. See Codification note above.

Subsec. (e)(1)(A). Pub. L. 109–222 inserted ''(determined without regard to section 1221(b)(3))'' after ''long-term capital gain''.

Subsec. (e)(1)(B)(i). Pub. L. 109–280, § 1215(a)(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)),''. See Codification note above.

Subsec. (e)(1)(B)(iv). Pub. L. 109–280, § 1214(a), added cl. (iv). See Codification note above.

Subsec. (e)(3)(C)(iv). Pub. L. 109–280, § 1202(a), substituted ''2007'' for ''2005''. See Codification note above.

Subsec. (e)(3)(D)(iv). Pub. L. 109–280, § 1204(a), substituted ''2007'' for ''2005''. See Codification note above.

Subsec. (e)(4)(B)(ii). Pub. L. 109–432, § 116(b)(1)(A), inserted ''or assembled'' after ''constructed''.

Subsec. (e)(4)(B)(iii). Pub. L. 109–432, § 116(b)(1)(B), inserted ''or assembly'' after ''construction''.

Subsec. (e)(6)(B)(ii). Pub. L. 109–432, § 116(b)(2)(A), inserted ''or assembled'' after ''constructed'' and ''or assembling'' after ''construction''.

Subsec. (e)(6)(D). Pub. L. 109–432, § 116(b)(2)(B), inserted ''or assembled'' after ''constructed'' in introductory provisions and ''or assembly'' after ''construction'' in cl. (i).

Subsec. (e)(6)(G). Pub. L. 109–432, § 116(a)(1), substituted ''2007'' for ''2005''.

Subsec. (e)(7). Pub. L. 109–280, § 1215(a)(2), added par. (7). See Codification note above.

Subsec. (f)(11)(E). Pub. L. 109–280, § 1219(c)(1), amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the term 'qualified appraisal' means, with respect to any property, an appraisal of such property which is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary.'' See Codification note above.

Subsec. (f)(13). Pub. L. 109–280, § 1213(c), added par. (13). See Codification note above.

Subsec. (f)(14). Pub. L. 109–280, § 1213(d), added par. (14). See Codification note above.

Subsec. (f)(15). Pub. L. 109–280, § 1214(b), added par. (15). See Codification note above.

Subsec. (f)(16). Pub. L. 109–280, § 1216(a), added par. (16). See Codification note above.

Subsec. (f)(17). Pub. L. 109–280, § 1217(a), added par. (17). See Codification note above.

Subsec. (f)(18). Pub. L. 109–280, § 1234(a), added par. (18). See Codification note above.

Subsec. (h)(4)(B). Pub. L. 109–280, § 1213(a)(1), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (h)(4)(C). Pub. L. 109–280, § 1213(a)(1), (b), redesignated subpar. (B) as (C), struck out ''any building, structure, or land area which'' after ''means'' in intro-

ductory provisions, inserted ''any building, structure, or land area which'' before ''is listed'' in cl. (i), and inserted ''any building which'' before ''is located'' in cl. (ii). See Codification note above.

Subsecs. (*o*), (p). Pub. L. 109–280, §1218(a), added subsec. (*o*) and redesignated former subsec. (*o*) as (p). See Codification note above.

2005—Subsec. (b)(2)(C) to (E). Pub. L. 109–135, §403(a)(16), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (e)(3)(C). Pub. L. 109–73, §305(a), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (e)(3)(D). Pub. L. 109–73, §306(a), added subpar. (D). Former subpar. (D) redesignated (E).

Pub. L. 109–73, §305(a), redesignated subpar. (C) as (D).

Subsec. (e)(3)(E). Pub. L. 109–73, §306(a), redesignated subpar. (D) as (E).

Subsec. (f)(12)(B)(v), (vi). Pub. L. 109–135, §403(gg), added cls. (v) and (vi).

2004—Subsec. (e)(1)(B)(iii). Pub. L. 108–357, §882(a), added cl. (iii).

Subsec. (e)(6)(G). Pub. L. 108–311, §306(a), substituted ''2005'' for ''2003''.

Subsec. (f)(10)(A). Pub. L. 108–357, §413(c)(30), struck out ''556(b)(2),'' after ''545(b)(2),'' in introductory provisions.

Subsec. (f)(11). Pub. L. 108–357, §883(a), added par. (11).

Subsec. (f)(11)(A)(ii)(I). Pub. L. 108–357, §882(d), inserted ''subsection (e)(1)(B)(iii) or'' before ''section 1221(a)(1)''.

Subsec. (f)(12). Pub. L. 108–357, §884(a), added par. (12).

Subsec. (g)(1). Pub. L. 108–311, §207(15), inserted ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152'' in introductory provisions.

Subsec. (g)(3). Pub. L. 108–311, §207(16), substituted ''subparagraphs (A) through (G) of section 152(d)(2)'' for ''paragraphs (1) through (8) of section 152(a)''.

Subsec. (m). Pub. L. 108–357, §882(b), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 108–357, §335(a), added subsec. (n). Former subsec. (n) redesignated (*o*).

Pub. L. 108–357, §882(b), redesignated subsec. (m) as (n). Amendment was executed before the amendment by Pub. L. 108–357, §335(a). See note below.

Subsec. (*o*). Pub. L. 108–357, §335(a), redesignated subsec. (n) as (*o*).

2003—Subsec. (e)(6)(B)(i)(III). Pub. L. 108–81 substituted ''section 213(1)(A) of the Library Services and Technology Act (20 U.S.C. 9122(1)(A))'' for ''section 213(2)(A) of the Library Services and Technology Act (20 U.S.C. 9122(2)(A))''.

2002—Subsec. (e)(6)(B)(i)(III). Pub. L. 107–147, §417(7), substituted ''2000),'' for '' 2000,''.

Subsec. (e)(6)(B)(iv). Pub. L. 107–147, §417(22), provided that the amendment made by section 165(b)(1) of the Community Renewal Tax Relief Act of 2000 [Pub. L. 106–554, §1(a)(7)[title I, §165(b)(1)]] shall be applied as if it struck ''in any of the grades K–12''. See 2000 Amendment note below.

2001—Subsec. (e)(1). Pub. L. 107–16, §§542(e)(2)(B), 901, temporarily inserted at end ''For purposes of this paragraph, the determination of whether property is a capital asset shall be made without regard to the exception contained in section 1221(a)(3)(C) for basis determined under section 1022.'' See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (e)(6). Pub. L. 106–554, §1(a)(7) [title I, §165(b)(2)], substituted ''educational purposes'' for ''elementary or secondary school purposes'' in heading.

Subsec. (e)(6)(A), (B). Pub. L. 106–554, §1(a)(7) [title I, §165(a)(1)], substituted ''qualified computer contribution'' for ''qualified elementary or secondary educational contribution'' in subpar. (A) and in heading and introductory provisions of subpar. (B).

Subsec. (e)(6)(B)(i)(III). Pub. L. 106–554, §1(a)(7) [title I, §165(a)(2)], added subcl. (III).

Subsec. (e)(6)(B)(ii). Pub. L. 106–554, §1(a)(7) [title I, §165(a)(3)], substituted ''3 years'' for ''2 years''.

Subsec. (e)(6)(B)(iv). Pub. L. 106–554, §1(a)(7) [title I, §165(b)(1)], which directed the amendment of cl. (iv) by striking ''in any grades of the K–12'', was executed by striking out ''in any of the grades K–12'' after ''educational purposes''. See 2002 Amendment note above.

Subsec. (e)(6)(B)(viii). Pub. L. 106–554, §1(a)(7) [title I, §165(d)], added cl. (viii).

Subsec. (e)(6)(C). Pub. L. 106–554, §1(a)(7) [title I, §165(a)(1)], substituted ''qualified computer contribution'' for ''qualified elementary or secondary educational contribution'' in introductory provisions.

Subsec. (e)(6)(D), (E). Pub. L. 106–554, §1(a)(7) [title I, §165(e)], added subpar. (D) and redesignated former subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (e)(6)(F). Pub. L. 106–554, §1(a)(7) [title I, §165(e)], redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 106–554, §1(a)(7) [title I, §165(c)], substituted ''December 31, 2003'' for ''December 31, 2000''.

Subsec. (e)(6)(G). Pub. L. 106–554, §1(a)(7) [title I, §165(e)], redesignated subpar. (F) as (G).

1999—Subsec. (e)(3)(A), (4)(B). Pub. L. 106–170, §532(c)(1)(A), (B), substituted ''section 1221(a)'' for ''section 1221''.

Subsec. (f)(10). Pub. L. 106–170, §537(a), added par. (10).

1998—Subsec. (e)(5)(D). Pub. L. 105–277 struck out heading and text of subpar. (D). Text read as follows: ''This paragraph shall not apply to contributions made—

''(i) after December 31, 1994, and before July 1, 1996, or

''(ii) after June 30, 1998.''

Subsec. (e)(6)(B)(iv). Pub. L. 105–206, §6004(e)(2), substituted ''function of the donee'' for ''function of the organization or entity''.

Subsec. (e)(6)(B)(vi), (vii). Pub. L. 105–206, §6004(e)(1), substituted ''donee's'' for ''entity's''.

Subsec. (e)(6)(C)(ii)(I). Pub. L. 105–206, §6004(e)(3), substituted ''a donee'' for ''an entity''.

Subsec. (e)(6)(F). Pub. L. 105–206, §6004(e)(4), substituted ''2000'' for ''1999''.

1997—Subsec. (e)(5)(D)(ii). Pub. L. 105–34, §602(a), substituted ''June 30, 1998'' for ''May 31, 1997''.

Subsec. (e)(6). Pub. L. 105–34, §224(a), added par. (6).

Subsec. (h)(5)(B)(ii). Pub. L. 105–34, §508(d), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: ''With respect to any contribution of property in which the ownership of the surface estate and mineral interests were separated before June 13, 1976, and remain so separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.''

Subsec. (i). Pub. L. 105–34, §973(a), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: ''For purposes of computing the deduction under this section for use of a passenger automobile the standard mileage rate shall be 12 cents per mile.''

1996—Subsec. (e)(1). Pub. L. 104–188, §1316(b), inserted at end ''For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer.''

Subsec. (e)(5)(D). Pub. L. 104–188, §1206(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''This paragraph shall not apply to contributions made after December 31, 1994.''

1993—Subsec. (f)(8). Pub. L. 103–66, §13172(a), added par. (8).

Subsec. (f)(9). Pub. L. 103–66, §13222(b), added par. (9).

1990—Subsec. (h)(4)(B)(ii). Pub. L. 101–508, §11813(b)(10), substituted ''section 47(c)(3)(B)'' for ''section 48(g)(3)(B)''.

Subsec. (i). Pub. L. 101–508, §11801(a)(11), (c)(5), redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to rule for nonitemization of deductions, applicable percentage for individuals, limitation for taxable years beginning before 1985, and termination.

Subsecs. (j) to (n). Pub. L. 101–508, § 11801(c)(5), redesignated subsecs. (j) to (n) as (i) to (m), respectively.

1988—Subsecs. (m), (n). Pub. L. 100–647 added subsec. (m) and redesignated former subsec. (m) as (n).

1987—Subsec. (c)(2)(D). Pub. L. 100–203 inserted ''(or in opposition to)'' after ''on behalf of''.

1986—Subsec. (b)(1)(C)(iv). Pub. L. 99–514, § 1831, substituted ''this paragraph'' for ''this subparagraph''.

Subsec. (e)(1)(B). Pub. L. 99–514, § 301(b)(2), in closing provisions, struck out ''40 percent (28⅘6 in the case of a corporation) of'' before ''the amount of gain''.

Subsec. (e)(4)(B)(i). Pub. L. 99–514, § 231(f), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the contribution is to an educational organization which is described in subsection (b)(1)(A)(ii) of this section and which is an institution of higher education (as defined in section 3304(f)),''.

Subsecs. (k) to (m). Pub. L. 99–514, § 142(d), added subsec. (k) and redesignated former subsecs. (k) and (*l*) as (*l*) and (m), respectively.

1984—Subsec. (a)(3). Pub. L. 98–369, § 174(b)(5)(A), substituted ''section 267(b) or 707(b)'' for ''section 267(b)''.

Subsec. (b)(1)(A)(vii). Pub. L. 98–369, § 301(c)(2)(A), substituted ''subparagraph (E)'' for ''subparagraph (D)''.

Subsec. (b)(1)(B). Pub. L. 98–369, § 301(a)(2), inserted at end ''If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.''

Subsec. (b)(1)(B)(i). Pub. L. 98–369, § 301(a)(1), substituted ''30 percent'' for ''20 percent''.

Subsec. (b)(1)(C). Pub. L. 98–369, § 301(c)(2)(B), inserted ''described in subparagraph (A)'' in subpar. (C) heading, and in text of cl. (i) substituted ''In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies)'' for ''In the case of charitable contributions of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this paragraph applies shall be taken into account after all other charitable contributions''.

Subsec. (b)(1)(D) to (F). Pub. L. 98–369, § 301(c)(1), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e)(1). Pub. L. 98–369, § 492(b)(1)(A), struck out in provision following subpar. (B) ''1251(c),'' after ''1250(a)''.

Subsec. (e)(1)(B)(ii). Pub. L. 98–369, § 301(c)(2)(C), substituted ''subsection (b)(1)(E)'' for ''subsection (b)(1)(D)''.

Subsec. (e)(3)(C). Pub. L. 98–369, § 492(b)(1)(B), struck out ''1251,'' after ''1250,''.

Subsec. (e)(5). Pub. L. 98–369, § 301(b), added par. (5).

Subsec. (f)(7). Pub. L. 98–369, § 1022(b), added par. (7).

Subsec. (h)(5)(B). Pub. L. 98–369, § 1035(a), designated existing provisions as cl. (i), inserted ''Except as provided in clause (ii)'', and added cl. (ii).

Subsec. (j). Pub. L. 98–369, § 1031(a), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 98–369, § 1031(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 98–369, § 1032(b)(1), added par. (1) and redesignated former pars. (1) to (8) as (2) to (9), respectively.

Pub. L. 98–369, § 1031(a), redesignated subsec. (k) as (*l*).

1983—Subsec. (h)(4)(B)(ii). Pub. L. 97–448 substituted ''section 48(g)(3)(B)'' for ''section 191(d)(2)''.

Subsec. (k)(8). Pub. L. 97–473 added par. (8).

1982—Subsec. (c)(2). Pub. L. 97–248 inserted provision that rules similar to the rules of section 501(j) of this title shall apply for purposes of this paragraph.

Subsec. (e)(3)(A). Pub. L. 97–354, § 5(a)(21)(A), substituted ''an S corporation'' for ''an electing small business corporation within the meaning of section 1371(b)''.

Subsec. (e)(4)(D)(i). Pub. L. 97–354, § 5(a)(21)(B), substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

Subsec. (k)(7). Pub. L. 97–258 substituted ''section 4043 of title 18, United States Code'' for ''section 2 of the Act of May 15, 1952, as amended by the Act of July 9, 1952 (31 U.S.C. 725s–4)''.

1981—Subsec. (b)(2). Pub. L. 97–34, § 263(a), increased to 10 from 5 percent deduction allowable to a corporation in any taxable year for charitable contributions.

Subsec. (e)(4). Pub. L. 97–34, § 222(a), added par. (4).

Subsec. (i). Pub. L. 97–34, § 121(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsecs. (j), (k). Pub. L. 97–34, § 121(a), redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1980—Subsec. (f)(3). Pub. L. 96–541, § 6(a), reenacted subpar. (B), cls. (i) and (ii), substituted cl. (B)(iii) relating to qualified conservation contribution for prior cl. (B)(iii) relating to contribution of a lease on, option to purchase, or easement with respect to real property granted in perpetuity to a subsec. (b)(1)(A) organization exclusively for conservation purposes, deleted cl. (B)(iv) respecting contribution of a remainder interest in real property granted to a subsec. (b)(1)(A) organization exclusively for conservation purposes, and deleted subpar. (C) definition of ''conservation purposes'', now covered in an expanded subsec. (h)(4)(A).

Subsecs. (h), (i). Pub. L. 96–541, § 6(b), added subsec. (h) and redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(6). Pub. L. 96–465, among other changes, inserted references to Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency, and substituted reference to section 25 of the State Department Basic Authorities Act of 1956 for reference to section 1021(e) of the Foreign Service Act of 1946.

Subsec. (j). Pub. L. 96–541, § 6(b), redesignated former subsec. (i) as (j).

1978—Subsec. (e)(1)(B). Pub. L. 95–600 substituted ''40 percent'' for ''50 percent'' and ''28⅘6'' for ''62½ percent''.

1977—Subsec. (f)(3)(B)(iii). Pub. L. 95–30 substituted ''real property granted in perpetuity to an organization'' for ''real property of not less than 30 years' duration granted to an organization''.

1976—Subsec. (a). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(1)(A)(vii). Pub. L. 94–455, § 1901(a)(28)(A)(iii), substituted ''subparagraph (D)'' for ''subparagraph (E)'' after ''described in''.

Subsec. (b)(1)(B)(ii). Pub. L. 94–455, § 1901(a)(28)(A)(iv), substituted ''subparagraph (C)'' for ''subparagraph (D)'' after ''without regard to''.

Subsec. (b)(1)(C). Pub. L. 94–455, § 1901(a)(28)(A)(ii), struck out subpar. (C) which related to unlimited deductions for certain individuals, redesignated subpar. (D) as (C) and, as so redesignated, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in cl. (iii).

Subsec. (b)(1)(D) to (F). Pub. L. 94–455, § 1901(a)(28)(A)(ii), redesignated subpars. (D) to (F) as (C) to (E), respectively.

Subsec. (b)(2). Pub. L. 95–455, § 1052(c)(2), struck out subpar. (D) which related to a special deduction for Western Hemisphere trade corporations, and redesignated subpar. (E) as (D).

Subsec. (c). Pub. L. 94–455, § 1901(a)(28)(A)(v), substituted ''subsection (g)'' for ''subsection (h)'' after ''amount treated under''.

Subsec. (c)(2)(B). Pub. L. 94–455, § 1313(b)(1), inserted ''or to foster national or international amateur sports

competition (but only if no part of its activities involves the provision of athletic facilities or equipment)'' after ''or educational purposes''.

Subsec. (c)(2)(D). Pub. L. 94–445, §1307(d)(1)(B)(i), substituted ''which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation'' for ''no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation'' after ''(D)''.

Subsec. (d)(1)(A). Pub. L. 94–455, §1901(a)(28)(B), struck out ''(30 percent in the case of a contribution year beginning before January 1, 1970)'' after ''exceeds 50 percent''.

Subsec. (e)(1). Pub. L. 94–455, §205(c)(1)(A), substituted ''1252(a), or 1254(a)'' for ''or 1252(a)'' after ''1251(c)''.

Subsec. (e)(1)(B)(ii). Pub. L. 94–455, §1901(a)(28)(A)(vi), substituted ''subsection (b)(1)(D)'' for ''subsection (b)(1)(E)'' after ''foundation described in''.

Subsec. (e)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(3). Pub. L. 94–455, §2135(a), added par. (3).

Subsec. (f)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(3). Pub. L. 94–455, §2124(e)(1), added subpars. (B)(iii), (iv), and (C).

Subsec. (f)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(6). Pub. L. 94–455, §§1307(c), 1901(a)(28)(A)(i), added par. (6). Former par. (6), which related to the partial reduction of unlimited deduction and definitions for transitional income and deduction percentages, was struck out. Section 1901(a)(28)(A)(i) of Pub. L. 94–455 struck out par. (6) a second time.

Subsec. (g). Pub. L. 94–455, §1901(a)(28)(A)(i), struck out subsec. (g) which related to application of unlimited charitable contribution deductions allowed for taxable years beginning before January 1, 1975, and redesignated subsecs. (h), (i), and (j) as (g), (h), and (i), respectively. Section 1901(a)(28)(A)(i) also struck out former subsec. (f)(6) but this direction was not executed as such former subsec. (f)(6) had previously been stricken by section 1307(c) of Pub. L. 94–455.

Subsec. (g)(1)(B). Pub. L. 94–455, §1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4)'' after ''grade at an''.

Subsec. (h). Pub. L. 94–455, §1901(a)(28)(A)(i), (C), redesignated subsec. (i) as (h), and struck out ''64 Stat. 996'' after ''Act of 1950''. Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 94–455, §1901(a)(28)(A)(i), (D), redesignated subsec. (j) as (i) and substituted ''6973 of title 10, United States Code'' for ''3 of the Act of March 31, 1944 (58 Stat. 135; 34 U.S.C. 1115b)'' after ''see section'' in par. (5); struck out par. (6) relating to gifts to library of Post Office Department; struck out ''60 Stat. 924'' after ''1946'' in par. (7); substituted ''as amended by the Act of July 9, 1952 (3 U.S.C. 725s–4)'' for ''(66 Stat. 73, as amended by Act of July 9, 1952, 66 Stat. 479, 31 U.S.C. 725s–4)'' after ''May 15, 1952'' in par. (8); and redesignated pars. (7) and (8) as pars. (6) and (7), respectively. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 94–455, §1901(a)(28)(A)(i), redesignated subsec. (j) as (i).

1969—Subsec. (a)(3). Pub. L. 91–172, §201(a)(1)(B), added par. (3).

Subsec. (b). Pub. L. 91–172, §201(a)(1)(B), (h)(1), increased the general limitation on the charitable contributions deduction for individual taxpayers from 30 percent of adjusted gross income to 50 percent of his contribution base and provided that where a taxpayer makes a contribution to a public charity of property which has appreciated in value the taxpayer could deduct such contributions of property under the 50 percent limitation if he elects to take the unrealized appreciation in value into account for the tax purposes, the unlimited charitable deduction is phased out over a 5-year period and contributions to a private operating foundation and contributions to a private nonoperating foundation distributing such contributions to public charities or private operating foundations within two and half months following the year of receipt are also subjected to 50 percent limitation (30 percent in the case of gifts of appreciated property), and, in par. (1)(C), inserted provisions relating to the determination of the amount of charitable contributions and taxes paid by a married individual who previously filed a joint return with a former deceased spouse.

Subsec. (c). Pub. L. 91–172, §201(a)(1)(B), struck out references to ''Territory'' in pars. (1) and (2)(A), and inserted reference to participation in or intervention in any political campaign on behalf of any candidate for public office in par. (2)(D).

Subsec. (d). Pub. L. 91–172, §201(a)(1)(B), added subsec. (d) consisting of provisions substantially transferred from subsec. (b) in the general amendment of subsec. (b) by Pub. L. 91–172. Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 91–172, §201(a)(1)(B), substituted provisions covering certain contributions of ordinary income and capital gain property for provisions setting out a special rule for charitable contributions.

Subsec. (f). Pub. L. 91–172, §201(a)(1)(B), substituted provisions for the disallowance of the deduction in specified cases for provision covering future interests in tangible personal property.

Subsec. (g). Pub. L. 91–172, §201(a)(2)(A), substituted ''subsection (d)(1)'' for ''subsection (b)(5)'' in two places in par. (1) and struck out par. (2)(B) covering contributions to organizations substantially more than half of the assets and the total income were devoted to charitable purposes.

Subsec. (h). Pub. L. 91–172, §201(a)(1)(A), redesignated subsec. (d) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 91–172, §§101(j)(2), 201(a)(1)(A), redesignated former subsec. (h) as (i), struck out par. (1) covering disallowance of deductions for gifts to charitable organizations engaging in prohibited transactions, and removed the par. (2) designation from the provisions covering disallowance of deductions for use of communist controlled organizations. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 91–172, §201(a)(1)(A), redesignated former subsec. (i) as (j).

1966—Subsec. (e). Pub. L. 89–570 inserted reference to section 617(d)(1).

1964—Subsec. (b)(1)(A)(v), (vi), (2), (5). Pub. L. 88–272, §209 (a), (c)(1), (d)(1), added cls. (v) and (vi) in par. (1)(A), and par. (5), and in par. (2), extended the 2-year carryforward of unused charitable contributions to 5 years and changed the method of computation by including the aggregate of the excess contributions made in taxable years before the contribution year, in cl. (i), and references to third, fourth or fifth succeeding years in cl. (ii).

Subsec. (e). Pub. L. 88–272, §231(b)(1), substituted ''certain property'' for ''section 1245 property'' in heading, and inserted reference to section 1250(a) in text.

Subsec. (f). Pub. L. 88–272, §209(e), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 88–272, §209(b), added subsec. (g). Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 88–272, §209(e), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1962—Subsec. (b)(1)(A)(iv). Pub. L. 87–858, §2(a), added cl. (iv).

Subsec. (b)(1)(B). Pub. L. 87–858, §2(b), substituted ''any charitable contributions described in subparagraph (A)'' for ''any charitable contributions to the organizations described in clauses (i), (ii), and (iii)''.

Subsecs. (e) to (g). Pub. L. 87–834 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1960—Subsec. (c). Pub. L. 86–779, §7(a)(1), inserted sentence additionally defining ''charitable contribution'' for purposes of the section.

Subsecs. (d) to (f). Pub. L. 86–779, §7(a)(2), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1958—Subsec. (b)(1)(C). Pub. L. 85–866, §10(a), inserted sentence allowing substitution, in lieu of amount of tax

paid during year, amount of tax paid in respect of such year, provided amount so included in the year in respect of which payment was made be not included in any other year.

Subsec. (b)(3). Pub. L. 85–866, § 11, added par. (3).

Subsec. (b)(4). Pub. L. 85–866, § 12, added par. (4).

1956—Subsec. (b)(1)(A)(iii). Act Aug. 7, 1956, § 1, provided for the allowance, as deductions, of contributions to medical research organizations.

CHANGE OF NAME

International Communication Agency, and Director thereof, redesignated United States Information Agency, and Director thereof, by section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by section 301(a) of Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as a note under section 121 of this title.

Section 901 of Pub. L. 107–16 applicable to amendments by section 301(a) of Pub. L. 111–312, see section 304 of Pub. L. 111–312, set out as a note under section 121 of this title.

Pub. L. 111–312, title VII, § 723(c), Dec. 17, 2010, 124 Stat. 3316, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2009.''

Pub. L. 111–312, title VII, § 740(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2009.''

Pub. L. 111–312, title VII, § 741(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2009.''

Pub. L. 111–312, title VII, § 742(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 321(b), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made during taxable years beginning after December 31, 2007.''

Pub. L. 110–343, div. C, title III, § 323(a)(2), Oct. 3, 2008, 122 Stat. 3874, provided that: ''The amendment made by this subsection [amending this section] shall apply to contributions made after December 31, 2007.''

Pub. L. 110–343, div. C, title III, § 323(b)(2), Oct. 3, 2008, 122 Stat. 3875, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 3, 2008].''

Pub. L. 110–343, div. C, title III, § 324(c), Oct. 3, 2008, 122 Stat. 3875, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made after December 31, 2007.''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15302(b), May 22, 2008, 122 Stat. 1501, and Pub. L. 110–246, § 4(a), title XV, § 15302(b), June 18, 2008, 122 Stat. 1664, 2263, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2007.''

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

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, § 3(j), Dec. 29, 2007, 121 Stat. 2475, provided that: ''The amendments made by this section [amending this section and sections 408, 1366, 2055, 2522, 4940, 4958, 4962, 6104, 6695A, and 6696 of this title] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 116(a)(2), Dec. 20, 2006, 120 Stat. 2941, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2005.''

Pub. L. 109–432, div. A, title I, § 116(b)(3), Dec. 20, 2006, 120 Stat. 2941, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2005.''

Pub. L. 109–280, title XII, § 1202(b), Aug. 17, 2006, 120 Stat. 1066, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2005.''

Pub. L. 109–280, title XII, § 1204(b), Aug. 17, 2006, 120 Stat. 1066, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2005.''

Pub. L. 109–280, title XII, § 1206(c), Aug. 17, 2006, 120 Stat. 1070, provided that: ''The amendments made by this section [amending this section and section 545 of this title] shall apply to contributions made in taxable years beginning after December 31, 2005.''

Pub. L. 109–280, title XII, § 1213(e), Aug. 17, 2006, 120 Stat. 1076, provided that:

''(1) SPECIAL RULES FOR BUILDINGS IN REGISTERED HISTORIC DISTRICTS.—The amendments made by subsection (a) [amending this section] shall apply to contributions made after July 25, 2006.

''(2) DISALLOWANCE OF DEDUCTION FOR STRUCTURES AND LAND; REDUCTION FOR REHABILITATION CREDIT.—The amendments made by subsections (b) and (d) [amending this section] shall apply to contributions made after the date of the enactment of this Act [Aug. 17, 2006].

''(3) FILING FEE.—The amendment made by subsection (c) [amending this section] shall apply to contributions made 180 days after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, § 1214(c), Aug. 17, 2006, 120 Stat. 1077, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after July 25, 2006.''

Pub. L. 109–280, title XII, § 1215(d)(1), Aug. 17, 2006, 120 Stat. 1079, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to contributions after September 1, 2006.''

Pub. L. 109–280, title XII, § 1216(b), Aug. 17, 2006, 120 Stat. 1080, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after the date of enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, § 1217(b), Aug. 17, 2006, 120 Stat. 1080, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, § 1218(d), Aug. 17, 2006, 120 Stat. 1083, provided that: ''The amendments made by this section [amending this section and sections 2055 and 2522 of this title] shall apply to contributions, bequests, and gifts made after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, §1219(e), Aug. 17, 2006, 120 Stat. 1085, provided that:

''(1) MISSTATEMENT PENALTIES.—Except as provided in paragraph (3), the amendments made by subsection (a) [amending sections 6662 and 6664 of this title] shall apply to returns filed after the date of the enactment of this Act [Aug. 17, 2006].

''(2) APPRAISER PROVISIONS.—Except as provided in paragraph (3), the amendments made by subsections (b), (c), and (d) [enacting section 6695A of this title and amending this section, sections 6664 and 6696 of this title, and section 330 of Title 31, Money and Finance] shall apply to appraisals prepared with respect to returns or submissions filed after the date of the enactment of this Act [Aug. 17, 2006].

''(3) SPECIAL RULE FOR CERTAIN EASEMENTS.—In the case of a contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in section 170(h)(4)(C)(ii) of the Internal Revenue Code of 1986, and an appraisal with respect to the contribution, the amendments made by subsections (a) and (b) [enacting section 6695A of this title and amending sections 6662, 6664, and 6696 of this title] shall apply to returns filed after July 25, 2006.''

Pub. L. 109–280, title XII, §1234(d), Aug. 17, 2006, 120 Stat. 1101, provided that: ''The amendments made by this section [amending this section and sections 2055 and 2522 of this title] shall apply to contributions made after the date which is 180 days after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–222, title II, §204(c), May 17, 2006, 120 Stat. 350, provided that: ''The amendments made by this section [amending this section and section 1221 of this title] shall apply to sales and exchanges in taxable years beginning after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–73, title III, §305(b), Sept. 23, 2005, 119 Stat. 2025, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made on or after August 28, 2005, in taxable years ending after such date.''

Pub. L. 109–73, title III, §306(b), Sept. 23, 2005, 119 Stat. 2026, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made on or after August 28, 2005, in taxable years ending after such date.''

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title III, §335(b), Oct. 22, 2004, 118 Stat. 1479, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to contributions made after December 31, 2004.''

Amendment by section 413(c)(30) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title VIII, §882(f), Oct. 22, 2004, 118 Stat. 1631, provided that: ''The amendments made by this section [amending this section and section 6050L of this title] shall apply to contributions made after June 3, 2004.''

Pub. L. 108–357, title VIII, §883(b), Oct. 22, 2004, 118 Stat. 1632, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after June 3, 2004.''

Pub. L. 108–357, title VIII, §884(c), Oct. 22, 2004, 118 Stat. 1634, provided that: ''The amendments made by this section [enacting section 6720 of this title and amending this section] shall apply to contributions made after December 31, 2004.''

Amendment by section 207(15), (16) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Pub. L. 108–311, title III, §306(b), Oct. 4, 2004, 118 Stat. 1179, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2003.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §165(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–627, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made after December 31, 2000.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §532(d), Dec. 17, 1999, 113 Stat. 1931, provided that: ''The amendments made by this section [amending this section and sections 198, 263A, 267, 341, 367, 475, 543, 751, 775, 818, 856, 857, 864, 865, 871, 954, 988, 995, 1017, 1092, 1221, 1231, 1234, 1256, 1362, 1397B, 4662, and 7704 of this title] shall apply to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after the date of the enactment of this Act [Dec. 17, 1999].''

Pub. L. 106–170, title V, §537(b), Dec. 17, 1999, 113 Stat. 1938, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this section [amending this section], the amendment made by this section shall apply to transfers made after February 8, 1999.

''(2) EXCISE TAX.—Except as provided in paragraph (3) of this subsection, section 170(f)(10)(F) of the Internal Revenue Code of 1986 (as added by this section) shall apply to premiums paid after the date of the enactment of this Act [Dec. 17, 1999].

''(3) REPORTING.—Clause (iii) of such section 170(f)(10)(F) shall apply to premiums paid after February 8, 1999 (determined as if the tax imposed by such section applies to premiums paid after such date).''

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. J, title I, §1004(a)(2), Oct. 21, 1998, 112 Stat. 2681–888, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contributions made after June 30, 1998.''

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 224(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 508(e)(2) of Pub. L. 105–34 provided that: ''The amendments made by subsections (c) and (d) [amending this section and section 2032A of this title] shall apply to easements granted after December 31, 1997.''

Section 602(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contributions made after May 31, 1997.''

Section 973(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1206(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after June 30, 1996.''

Section 1316(f) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 404, 512, 1042, and 1361 of this title] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13172(b) of Pub. L. 103–66 provided that: ''The provisions of this section [amending this section] shall apply to contributions made on or after January 1, 1994.''

Amendment by section 13222(b) of Pub. L. 103–66 applicable to amounts paid or incurred after Dec. 31, 1993, see section 13222(e) of Pub. L. 103–66 set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(10) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6001(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983.

''(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of section 170(m) of the 1986 Code (as added by subsection (a)) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore [sic] is filed before the date 1 year after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10711(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 501, 504, 2055, 2106, and 2522 of this title] shall apply with respect to activities after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 142(d) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 231(f) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 301(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1831 of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(A) of Pub. L. 98–369, applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98–369, set out as a note under section 267 of this title.

Section 301(d) of Pub. L. 98–369 provided that:

''(1) SUBSECTIONS (a) AND (c).—The amendments made by subsections (a) and (c) [amending this section] shall apply to contributions made in taxable years ending after the date of the enactment of this Act [July 18, 1984].

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to contributions made after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Section 492(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 341, 453B, 751, and 1252 of this title and repealing section 1251 of this title] shall apply to taxable years beginning after December 31, 1983.''

Amendment by section 1022(b) of Pub. L. 98–369 applicable to reformations after Dec. 31, 1978, except inapplicable to any reformation to which section 2055(e)(3) of this title as in effect before July 18, 1984, applies, see section 1022(e)(1) of Pub. L. 98–369, set out as a note under section 2055 of this title.

Section 1031(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Section 1032(c) of Pub. L. 98–369 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 501, 2055, and 2522 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].''

Section 1035(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contributions made after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1983 AMENDMENTS

For effective date of amendment by Pub. L. 97–473, see section 204(1) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by Pub. L. 97–248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97–248, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 121(d) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 3, 57, and 63 of this title] shall apply to contributions made after December 31, 1981, in taxable years beginning after such date.''

Section 222(b) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to charitable contributions made after the date of the enactment of this Act [Aug. 13, 1981], in taxable years ending after such date.''

Section 263(b) of Pub. L. 97–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 6(d) of Pub. L. 96–541 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to transfers made after the date of the enactment of this Act [Dec. 17, 1980] in taxable years ending after such date.''

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 402(c)(2) of Pub. L. 95–600 provided that: ''The amendment made by subsection (b)(2) [amending this section by substituting ''40 percent'' for ''50 percent''] shall apply to contributions made after October 31, 1978.''

Section 403(d)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) of subsection (c) [amending this section by substituting ''28⅜₆'' for ''62½ percent''] shall apply to gifts made after December 31, 1978.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 309(b)(1) of Pub. L. 95–30, as amended by Pub. L. 96–541, §6(c), Dec. 17, 1980, 94 Stat. 3207, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to contributions or transfers made after June 13, 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1052(d) of Pub. L. 94–455 provided that: ''The amendments made by subsection (a) and paragraph (1) of subsection (c) [amending section 922 of this title] shall apply with respect to taxable years beginning after December 31, 1975. The amendments made by subsection (b) [repealing sections 921 and 922 of this title] and by subsection (c) (other than paragraph (1)) [amending this section and sections 172, 907, 1503, and 6091 of this title] shall apply with respect to taxable years beginning after December 31, 1979.''

Amendment by section 1307 (d)(1)(B)(i), (c) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1307(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

Amendment by section 1313(b)(1) of Pub. L. 94–455 effective Oct. 5, 1976, see section 1313(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

Amendment by section 1901(a)(28) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 2124(e)(4) of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, §309(b)(2), May 23, 1977, 91 Stat. 154; Pub. L. 96–541, §6(c), Dec. 17, 1980, 94 Stat. 3207, provided that: ''The amendments made by this subsection [amending this section and sections 2055 and 2522 of this title] shall apply with respect to contributions or transfers made after June 13, 1976.''

Section 2135(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] applies to charitable contributions made after the date of enactment of this Act [Oct. 4, 1976], in taxable years ending after such date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(2) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Section 201(g) of Pub. L. 91–172, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1)(A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (a) [amending this section and sections 545, 556, and 809 of this title] shall apply to taxable years beginning after December 31, 1969.

''(B) Subsections (e) and (f)(1) of section 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall apply to contributions paid after December 31, 1969, except that, with respect to a letter or memorandum or similar property described in section 1221(3) of such Code (as amended by section 514 of this Act), such subsection (e) shall apply to contributions paid after July 25, 1969.

''(C) Paragraphs (2), (3), and (4) of section 170(f) of such Code (as amended by subsection (a)) shall apply to transfers in trust and contributions made after July 31, 1969.

''(D) For purposes of applying section 170(d) of such Code (as amended by subsection (a)) with respect to contributions paid in a taxable year beginning before January 1, 1970, subsection (b)(1)(D), subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 of such Code shall not apply.

''(2) The amendments made by subsection (b) [amending section 642 of this title] shall apply with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after December 31, 1969, except that section 642(c)(5) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to transfers in trust made after July 31, 1969.

''(3) The amendment made by subsection (c) [amending section 673 of this title] shall apply to transfers in trust made after April 22, 1969.

''(4)(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraphs (1) and (2) of subsection (d) [amending sections 2055 and 2126 of this title] shall apply in the case of decedents dying after December 31, 1969.

''(B) Such amendments shall not apply in the case of property passing under the terms of a will executed on or before October 9, 1969—

''(i) if the decedent dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,

''(ii) if the decedent at no time after October 9, 1969, had the right to change the portions of the will which pertain to the passing of the property to, or for the use of, an organization described in section 2055(a) [section 2055(a) of this title], or

''(iii) if the will is not republished by codicil or otherwise before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise.

''(C) Such amendments shall not apply in the case of property transferred in trust on or before October 9, 1969—

''(i) if the decedent dies before October 9, 1972, without having amended after October 9, 1969, the instrument governing the disposition of the property,

''(ii) if the property transferred was an irrevocable interest to, or for the use of, an organization described in section 2055(a), or

''(iii) if the instrument governing the disposition of the property was not amended by the decedent before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to change the disposition of the property.

''(D) The amendment made by paragraph (3) of subsection (d) [amending section 2522 of this title] shall apply to gifts made after December 31, 1969, except that the amendments made to section 2522(c)(2) of the Internal Revenue Code of 1986 shall apply to gifts made after July 31, 1969.

''(E) The amendments made by paragraph (4) of subsection (d) [amending sections 2055, 2106, and 2522 of this title] shall apply to gifts and transfers made after December 31, 1969.

''(5) The amendment made by subsection (e) [enacting section 664 of this title] shall apply to transfers in trust made after July 31, 1969.

''(6) The amendments made by subsection (f) [amending section 1011 of this title] shall apply with respect to sales made after December 19, 1969.''

Section 201(h)(2) of Pub. L. 91–172 provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1968.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 209(f) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsections (a), (b), and (c) [amending this section and sections 545 and 556 of this title], shall apply with respect to contributions which are paid in taxable years beginning after December 31, 1963.

''(2) The amendments made by subsection (d) [amending this section and section 381 of this title] shall apply to taxable years beginning after December 31, 1963, with respect to contributions which are paid (or treated as paid under section 170(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) in taxable years beginning after December 31, 1961.

''(3) The amendments made by subsection (e) [amending this section] shall apply to transfers of future interests made after December 31, 1963, in taxable years ending after such date, except that such amendments shall not apply to any transfer of a future interest made before July 1, 1964, where—

''(A) the sole intervening interest or right is a nontransferable life interest reserved by the donor, or

''(B) in the case of a joint gift by husband and wife, the sole intervening interest or right is a nontransferable life interest reserved by the donors which expires not later than the death of whichever of such donors dies later.

For purposes of the exception contained in the preceding sentence, a right to make a transfer of the reserved life interest to the donee of the future interest shall not be treated as making a life interest transferable.''

Amendment by section 231(b)(1) of Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 2(c) of Pub. L. 87–858 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1960.''

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years beginning after Dec. 31, 1959, see section 7(c) of Pub. L. 86–779, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 10(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

Amendment by section 11 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 12(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1957, but only with respect to charitable contributions made after such date.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act Aug. 7, 1956, provided that: ''The amendment made by this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1955.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

United States International Development Cooperation Agency (other than Agency for International Development and Overseas Private Investment Corporation) abolished and functions and authorities transferred, see sections 6561 and 6562 of Title 22, Foreign Relations and Intercourse.

ANTI-ABUSE RULES

Pub. L. 108–357, title VIII, § 882(e), Oct. 22, 2004, 118 Stat. 1631, provided that: ''The Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

''(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

''(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

''(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply.''

AUTHORITY TO WAIVE APPRAISAL REQUIREMENT FOR CERTAIN CHARITABLE CONTRIBUTIONS OF PROPERTY

Section 6281 of Pub. L. 100–647 provided that: ''Notwithstanding paragraph (2) of section 155(a) of the Tax Reform Act of 1984 [section 155(a)(2) of Pub. L. 98–369, set out below], the Secretary of the Treasury or his delegate may in the regulations prescribed pursuant to such section waive the requirement of a qualified appraisal in the case of a qualified contribution (within the meaning of section 170(e)(3)(A) of the 1986 Code) of property described in section 1221(1) [probably means section 1221(1) of the 1986 Code] with a claimed value in excess of $5,000.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF CERTAIN INSTITUTIONS OF HIGHER EDUCATION

Section 1608 of Pub. L. 99–514, which related to treatment of certain amounts paid to or for the benefit of

certain institutions of higher education, was repealed by Pub. L. 100–647, title I, §1016(b), Nov. 10, 1988, 102 Stat. 3575.

SUBSTANTIATION OF CHARITABLE CONTRIBUTIONS OF PROPERTY

Section 155(a) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Not later than December 31, 1984, the Secretary shall prescribe regulations under section 170(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], which require any individual, closely held corporation, or personal service corporation claiming a deduction under section 170 of such Code for a contribution described in paragraph (2)—

''(A) to obtain a qualified appraisal for the property contributed,

''(B) to attach an appraisal summary to the return on which such deduction is first claimed for such contribution, and

''(C) to include on such return such additional information (including the cost basis and acquisition date of the contributed property) as the Secretary may prescribe in such regulations.

Such regulations shall require the taxpayer to retain any qualified appraisal.

''(2) CONTRIBUTIONS TO WHICH PARAGRAPH (1) APPLIES.—For purposes of paragraph (1), a contribution is described in this paragraph—

''(A) if such contribution is of property (other than publicly traded securities), and

''(B) if the claimed value of such property (plus the claimed value of all similar items of property donated to 1 or more donees) exceeds $5,000.

In the case of any property which is nonpublicly traded stock, subparagraph (B) shall be applied by substituting '$10,000' for '$5,000'.

''(3) APPRAISAL SUMMARY.—For purposes of this subsection, the appraisal summary shall be in such form and include such information as the Secretary prescribes by regulations. Such summary shall be signed by the qualified appraiser preparing the qualified appraisal and shall contain the TIN of such appraiser. Such summary shall be acknowledged by the donee of the property appraised in such manner as the Secretary prescribes in such regulations.

''(4) QUALIFIED APPRAISAL.—The term 'qualified appraisal' means an appraisal prepared by a qualified appraiser which includes—

''(A) a description of the property appraised,

''(B) the fair market value of such property on the date of contribution and the specific basis for the valuation,

''(C) a statement that such appraisal was prepared for income tax purposes,

''(D) the qualifications of the qualified appraiser,

''(E) the signature and TIN of such appaiser, [sic] and

''(F) such additional information as the Secretary prescribes in such regulations.

''(5) QUALIFIED APPRAISER.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'qualified appraiser' means an appraiser qualified to make appraisals of the type of property donated, who is not—

''(i) the taxpayer,

''(ii) a party to the transaction in which the taxpayer acquired the property,

''(iii) the donee,

''(iv) any person employed by any of the foregoing persons or related to any of the foregoing persons under section 267(b) of the Internal Revenue Code of 1986, or

''(v) to the extent provided in such regulations, any person whose relationship to the taxpayer would cause a reasonable person to question the independence of such appraiser.

''(B) APPRAISAL FEES.—For purposes of this subsection, an appraisal shall not be treated as a qualified appraisal if all or part of the fee paid for such appraisal is based on a percentage of the appraised value of the property. The preceding sentence shall not apply to fees based on a sliding scale that are paid to a generally recognized association regulating appraisers.

''(6) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) CLOSELY HELD CORPORATION.—The term 'closely held corporation' means any corporation (other than an S corporation) with respect to which the stock ownership requirement of paragraph (2) of section 542(a) of such Code is met.

''(B) PERSONAL SERVICE CORPORATION.—The term 'personal service corporation' means any corporation (other than an S corporation) which is a service organization (within the meaning of section 414(m)(3) of such Code).

''(C) PUBLICLY TRADED SECURITIES.—The term 'publicly traded securities' means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

''(D) NONPUBLICLY TRADED STOCK.—The term 'nonpublicly traded stock' means any stock of a corporation which is not a publicly traded security.

''(E) THE SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.''

CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

For includibility of provisions comparable to section 2055(e)(3) of this title in this section, see section 514(b) of Pub. L. 95–600, set out as a note under section 2055 of this title.

DEDUCTION OF CONTRIBUTIONS TO CERTAIN ORGANIZATIONS FOR JUDICIAL REFORM

Section 29 of Pub. L. 87–834, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of section 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to deduction for charitable, etc., contributions and gifts), a contribution or gift made after December 31, 1961, with respect to a referendum occurring during the calendar year 1962 to or for the use of any nonprofit organization created and operated exclusively—

''(1) to consider proposals for the reorganization of the judicial branch of the government of any State of the United States or political subdivision of such State, and

''(2) to provide information, make recommendations, and seek public support or opposition as to such proposals,

shall be treated as a charitable contribution if no part of the net earnings of such organization inures to the benefit of any private shareholder or individual. The provisions of the preceding sentence shall not apply to any organization which participates in, or intervenes in, any political campaign on behalf of any candidate for public office.''

§ 171. Amortizable bond premium

(a) General rule

In the case of any bond, as defined in subsection (d), the following rules shall apply to the amortizable bond premium (determined under subsection (b)) on the bond:

(1) Taxable bonds

In the case of a bond (other than a bond the interest on which is excludable from gross income), the amount of the amortizable bond premium for the taxable year shall be allowed as a deduction.

(2) Tax-exempt bonds

In the case of any bond the interest on which is excludable from gross income, no deduction

shall be allowed for the amortizable bond premium for the taxable year.

(3) Cross reference

For adjustment to basis on account of amortizable bond premium, see section 1016(a)(5).

(b) Amortizable bond premium

(1) Amount of bond premium

For purposes of paragraph (2), the amount of bond premium, in the case of the holder of any bond, shall be determined—

(A) with reference to the amount of the basis (for determining loss on sale or exchange) of such bond,

(B)(i) with reference to the amount payable on maturity or on earlier call date, in the case of any bond other than a bond to which clause (ii) applies, or and[1]

(ii) with reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period to earlier call date, with reference to the amount payable on earlier call date), in the case of any bond described in subsection (a)(1) which is acquired after December 31, 1957, and

(C) with adjustments proper to reflect unamortized bond premium, with respect to the bond, for the period before the date as of which subsection (a) becomes applicable with respect to the taxpayer with respect to such bond.

In no case shall the amount of bond premium on a convertible bond include any amount attributable to the conversion features of the bond.

(2) Amount amortizable

The amortizable bond premium of the taxable year shall be the amount of the bond premium attributable to such year. In the case of a bond to which paragraph (1)(B)(ii) applies and which has a call date, the amount of bond premium attributable to the taxable year in which the bond is called shall include an amount equal to the excess of the amount of the adjusted basis (for determining loss on sale or exchange) of such bond as of the beginning of the taxable year over the amount received on redemption of the bond or (if greater) the amount payable on maturity.

(3) Method of determination

(A) In general

Except as provided in regulations prescribed by the Secretary, the determinations required under paragraphs (1) and (2) shall be made on the basis of the taxpayer's yield to maturity determined by—

(i) using the taxpayer's basis (for purposes of determining loss on sale or exchange) of the obligation, and

(ii) compounding at the close of each accrual period (as defined in section 1272(a)(5)).

(B) Special rule where earlier call date is used

For purposes of subparagraph (A), if the amount payable on an earlier call date is used under paragraph (1)(B)(ii) in determining the amortizable bond premium attributable to the period before the earlier call date, such bond shall be treated as maturing on such date for the amount so payable and then reissued on such date for the amount so payable.

(4) Treatment of certain bonds acquired in exchange for other property

(A) In general

If—

(i) a bond is acquired by any person in exchange for other property, and

(ii) the basis of such bond is determined (in whole or in part) by reference to the basis of such other property,

for purposes of applying this subsection to such bond while held by such person, the basis of such bond shall not exceed its fair market value immediately after the exchange. A similar rule shall apply in the case of such bond while held by any other person whose basis is determined (in whole or in part) by reference to the basis in the hands of the person referred to in clause (i).

(B) Special rule where bond exchanged in reorganization

Subparagraph (A) shall not apply to an exchange by the taxpayer of a bond for another bond if such exchange is a part of a reorganization (as defined in section 368). If any portion of the basis of the taxpayer in a bond transferred in such an exchange is not taken into account in determining bond premium by reason of this paragraph, such portion shall not be taken into account in determining the amount of bond premium on any bond received in the exchange.

(c) Election as to taxable bonds

(1) Eligibility to elect; bonds with respect to which election permitted

In the case of bonds the interest on which is not excludible from gross income, this section shall apply only if the taxpayer has so elected.

(2) Manner and effect of election

The election authorized under this subsection shall be made in accordance with such regulations as the Secretary shall prescribe. If such election is made with respect to any bond (described in paragraph (1)) of the taxpayer, it shall also apply to all such bonds held by the taxpayer at the beginning of the first taxable year to which the election applies and to all such bonds thereafter acquired by him and shall be binding for all subsequent taxable years with respect to all such bonds of the taxpayer, unless, on application by the taxpayer, the Secretary permits him, subject to such conditions as the Secretary deems necessary, to revoke such election. In the case of bonds held by a common trust fund, as defined in section 584(a), the election authorized under this subsection shall be exercisable with respect to such bonds only by the common trust fund. In case of bonds held by an estate or trust, the election authorized under this subsection shall be exercisable with respect to such bonds only by the fiduciary.

[1] So in original.

(d) Bond defined

For purposes of this section, the term ''bond'' means any bond, debenture, note, or certificate or other evidence of indebtedness, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(e) Treatment as offset to interest payments

Except as provided in regulations, in the case of any taxable bond—

(1) the amount of any bond premium shall be allocated among the interest payments on the bond under rules similar to the rules of subsection (b)(3), and

(2) in lieu of any deduction under subsection (a), the amount of any premium so allocated to any interest payment shall be applied against (and operate to reduce) the amount of such interest payment.

For purposes of the preceding sentence, the term ''taxable bond'' means any bond the interest of which is not excludable from gross income.

(f) Dealers in tax-exempt securities

For special rules applicable, in the case of dealers in securities, with respect to premium attributable to certain wholly tax-exempt securities, see section 75.

(Aug. 16, 1954, ch. 736, 68A Stat. 61; Pub. L. 85–866, title I, §13(a), Sept. 2, 1958, 72 Stat. 1610; Pub. L. 94–455, title XIX, §§1901(b)(1)(E), 1906(b)(13)(A), 1951(b)(5)(A), Oct. 4, 1976, 90 Stat. 1790, 1834, 1837; Pub. L. 99–514, title VI, §643(a), title XVIII, §1803(a)(11)(A), (B), (12)(A), Oct. 22, 1986, 100 Stat. 2285, 2795; Pub. L. 100–647, title I, §1006(j)(1)(A), Nov. 10, 1988, 102 Stat. 3411; Pub. L. 108–357, title IV, §413(c)(2), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–357, §413(c)(2)(B), which directed amendment of par. (2) by striking out '', or foreign personal holding company'', was executed by striking out ''or foreign personal holding company'' after ''the common trust fund'', to reflect the probable intent of Congress.

Pub. L. 108–357, §413(c)(2)(A), struck out '', or by a foreign personal holding company, as defined in section 552'' after ''section 584(a)''.

1988—Subsec. (e). Pub. L. 100–647 substituted ''Treatment as offset to interest payments'' for ''Treatment as interest'' in heading and amended text generally. Prior to amendment, text read as follows: ''Except as provided in regulations, the amount of any amortizable bond premium with respect to which a deduction is allowed under subsection (a)(1) for any taxable year shall be treated as interest for purposes of this title.''

1986—Subsec. (b)(3). Pub. L. 99–514, §1803(a)(11)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The determinations required under paragraphs (1) and (2) shall be made—

''(A) in accordance with the method of amortizing bond premium regularly employed by the holder of the bond, if such method is reasonable;

''(B) in all other cases, in accordance with regulations prescribing reasonable methods of amortizing bond premium prescribed by the Secretary.''

Subsec. (b)(4). Pub. L. 99–514, §1803(a)(12)(A), added par. (4).

Subsec. (d). Pub. L. 99–514, §1803(a)(11)(B), struck out ''issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof),'' after ''evidence of indebtedness,''.

Subsecs. (e), (f). Pub. L. 99–514, §643(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1976—Subsec. (a)(1). Pub. L. 94–455, §1901(b)(1)(E)(i), substituted ''Taxable bonds'' for ''Interest wholly or partially taxable'' after ''(1)''.

Subsec. (a)(2). Pub. L. 94–455, §1901(b)(1)(E)(ii), substituted ''Tax-exempt bonds'' for ''Interest wholly tax-exempt'' after ''(2)''.

Subsec. (a)(3). Pub. L. 94–455, §1901(b)(1)(E)(iii), redesignated par. (4) as (3). Former par. (3), relating to adjustment of credit or deduction for interest partially tax-exempt, was struck out.

Subsec. (a)(4). Pub. L. 94–455, §1901(b)(1)(E)(iii), redesignated par. (4) as par. (3).

Subsec. (b)(1)(B)(i). Pub. L. 94–455, §1951(b)(5)(A)(ii), substituted ''clause (ii) applies, or'' for ''clause (ii) or (iii) applies'' after ''bond to which'' and inserted ''and'' at the end.

Subsec. (b)(1)(B)(ii). Pub. L. 94–455, §§1901(b)(1)(E)(iv), 1951(b)(5)(A)(iii), substituted ''subsection (a)(1)'' for ''subsection (c)(1)(B)'' after ''bond described in'' and ''and'' for ''or'' after ''1957''.

Subsec. (b)(1)(B)(iii). Pub. L. 94–455, §1951(b)(5)(A)(i), struck out cl. (iii) relating to certain bonds acquired before 1958.

Subsec. (b)(2). Pub. L. 94–455, §1951(b)(5)(A)(iv), struck out ''or (iii)'' after ''paragraph (1)(B)(ii)''.

Subsec. (b)(3)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(1). Pub. L. 94–455, §1901(b)(1)(E)(v), substituted ''In the case of bonds the interest on which is not excludible from gross income, this section shall apply only if the taxpayer has so elected'' for ''This section shall apply with respect to the following classes of taxpayers with respect to the following classes of bonds only if the taxpayer has elected to have this section apply'' after ''election permitted'', and struck out subpars. (A) and (B) relating to partially tax-exempt, and wholly taxable, bonds.

Subsec. (c)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' in three places after ''Secretary''.

1958—Subsec. (b)(1)(B). Pub. L. 85–866, §13(a)(1), substituted '', in the case of any bond other than a bond to which clause (ii) or (iii) applies'' for ''(but in the case of bonds described in subsection (c)(1)(B) issued after January 22, 1951, and acquired after January 22, 1954, only if such earlier call date is a date more than 3 years after the date of such issue), and'', designated such provision as cl. (i), and added cl. (ii) and (iii).

Subsec. (b)(2). Pub. L. 85–866, §13(a)(2), substituted ''In the case of a bond to which paragraph (1)(B)(ii) or (iii) applies and which has a call date,'' for ''In the case of a bond described in subsection (c)(1)(B) issued after January 22, 1951, and acquired after January 22, 1954, which has a call date not more than 3 years after the date of such issue,'' in second sentence.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(j)(1)(C) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section and section 1016 of this title] shall apply in the case of obligations acquired after December 31, 1987; except that the taxpayer may elect to have such amendment apply to obligations acquired after October 22, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 643(b) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1006(j)(2), Nov. 10, 1988, 102 Stat. 3411, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to obligations acquired after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.

''(2) REVOCATION OF ELECTION.—In the case of a taxpayer with respect to whom an election is in effect on the date of enactment of this Act [Oct. 22, 1986], under section 171(c) of the Internal Revenue Code of 1986, such election shall apply to obligations acquired after the date of the enactment of this Act only if the taxpayer chooses (at such time and in such manner as may be prescribed by the Secretary of the Treasury or his delegate) to have such election apply with respect to such obligations.''

Section 1803(a)(11)(C) of Pub. L. 99–514 provided that:

''(i) The amendments made by this paragraph [amending this section] shall apply to obligations issued after September 27, 1985.

''(ii) In the case of a taxpayer with respect to whom an election is in effect on the date of the enactment of this Act [Oct. 22, 1986] under section 171(c) of the Internal Revenue Code of 1954 [now 1986], such election shall apply to obligations issued after September 27, 1985, only if the taxpayer chooses (at such time and in such manner as may be prescribed by the Secretary of the Treasury or his delegate) to have such election apply with respect to such obligations.''

Section 1803(a)(12)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to exchanges after May 6, 1986.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(1)(E)(iii)–(v) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(5)(A)(i) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 13(b) of Pub. L. 85–866 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957.''

SAVINGS PROVISION

Section 1951(b)(5)(B) of Pub. L. 94–455 provided that: ''Notwithstanding the amendments made by subparagraph (A) [amending this section], in the case of a bond the interest on which is not excludable from gross income—

''(i) which was issued after January 22, 1951, with a call date not more than 3 years after the date of such issue, and

''(ii) which was acquired by the taxpayer after January 22, 1954, and before January 1, 1958,

the bond premium for a taxable year beginning after December 31, 1975, shall not be determined under section 171(b)(1)(B)(i) but shall be determined with reference to the amount payable on maturity, and if the bond is called before its maturity, the bond premium for the year in which the bond is called shall be determined in accordance with the provisions of section 171(b)(2).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 172. Net operating loss deduction

(a) Deduction allowed

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term ''net operating loss deduction'' means the deduction allowed by this subsection.

(b) Net operating loss carrybacks and carryovers

(1) Years to which loss may be carried

(A) General rule

Except as otherwise provided in this paragraph, a net operating loss for any taxable year—

(i) shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of such loss, and

(ii) shall be a net operating loss carryover to each of the 20 taxable years following the taxable year of the loss.

(B) Special rules for REIT's

(i) In general

A net operating loss for a REIT year shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss.

(ii) Special rule

In the case of any net operating loss for a taxable year which is not a REIT year, such loss shall not be carried back to any taxable year which is a REIT year.

(iii) REIT year

For purposes of this subparagraph, the term ''REIT year'' means any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer.

(C) Specified liability losses

In the case of a taxpayer which has a specified liability loss (as defined in subsection (f)) for a taxable year, such specified liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss.

(D) Bad debt losses of commercial banks

In the case of any bank (as defined in section 585(a)(2)), the portion of the net operating loss for any taxable year beginning after December 31, 1986, and before January 1, 1994, which is attributable to the deduction allowed under section 166(a) shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of the loss and a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

(E) Excess interest loss

(i) In general

If—

(I) there is a corporate equity reduction transaction, and

(II) an applicable corporation has a corporate equity reduction interest loss for any loss limitation year ending after August 2, 1989,

then the corporate equity reduction interest loss shall be a net operating loss carryback and carryover to the taxable years described in subparagraph (A), except that such loss shall not be carried back to a taxable year preceding the taxable year in which the corporate equity reduction transaction occurs.

(ii) Loss limitation year

For purposes of clause (i) and subsection (h), the term ''loss limitation year'' means, with respect to any corporate equity reduction transaction, the taxable year in which such transaction occurs and each of the 2 succeeding taxable years.

(iii) Applicable corporation

For purposes of clause (i), the term ''applicable corporation'' means—

(I) a C corporation which acquires stock, or the stock of which is acquired in a major stock acquisition,

(II) a C corporation making distributions with respect to, or redeeming, its stock in connection with an excess distribution, or

(III) a C corporation which is a successor of a corporation described in subclause (I) or (II).

(iv) Other definitions

For definitions of terms used in this subparagraph, see subsection (h).

(F) Retention of 3-year carryback in certain cases

(i) In general

Subparagraph (A)(i) shall be applied by substituting ''3 taxable years'' for ''2 taxable years'' with respect to the portion of the net operating loss for the taxable year which is an eligible loss with respect to the taxpayer.

(ii) Eligible loss

For purposes of clause (i), the term ''eligible loss'' means—

(I) in the case of an individual, losses of property arising from fire, storm, shipwreck, or other casualty, or from theft,

(II) in the case of a taxpayer which is a small business, net operating losses attributable to federally declared disasters (as defined by subsection (h)(3)(C)(i)),[1] and

(III) in the case of a taxpayer engaged in the trade or business of farming (as defined in section 263A(e)(4)), net operating losses attributable to such federally declared disasters.

Such term shall not include any farming loss (as defined in subsection (i)) or qualified disaster loss (as defined in subsection (j)).

(iii) Small business

For purposes of this subparagraph, the term ''small business'' means a corporation or partnership which meets the gross receipts test of section 448(c) for the taxable year in which the loss arose (or, in the case of a sole proprietorship, which would meet such test if such proprietorship were a corporation).

(iv) Coordination with paragraph (2)

For purposes of applying paragraph (2), an eligible loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(G) Farming losses

In the case of a taxpayer which has a farming loss (as defined in subsection (i)) for a taxable year, such farming loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.

(H) Carryback for 2008 or 2009 net operating losses

(i) In general

In the case of an applicable net operating loss with respect to which the taxpayer has elected the application of this subparagraph—

(I) subparagraph (A)(i) shall be applied by substituting any whole number elected by the taxpayer which is more than 2 and less than 6 for ''2'',

(II) subparagraph (E)(ii) shall be applied by substituting the whole number which is one less than the whole number substituted under subclause (I) for ''2'', and

(III) subparagraph (F) shall not apply.

(ii) Applicable net operating loss

For purposes of this subparagraph, the term ''applicable net operating loss'' means the taxpayer's net operating loss for a taxable year ending after December 31, 2007, and beginning before January 1, 2010.

(iii) Election

(I) In general

Any election under this subparagraph may be made only with respect to 1 taxable year.

(II) Procedure

Any election under this subparagraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009. Any such election, once made, shall be irrevocable.

(iv) Limitation on amount of loss carryback to 5th preceding taxable year

(I) In general

The amount of any net operating loss which may be carried back to the 5th

[1] So in original. Probably means subsection (h)(3)(C)(i) of section 165 of this title.

taxable year preceding the taxable year of such loss under clause (i) shall not exceed 50 percent of the taxpayer's taxable income (computed without regard to the net operating loss for the loss year or any taxable year thereafter) for such preceding taxable year.

(II) Carrybacks and carryovers to other taxable years

Appropriate adjustments in the application of the second sentence of paragraph (2) shall be made to take into account the limitation of subclause (I).

(III) Exception for 2008 elections by small businesses

Subclause (I) shall not apply to any loss of an eligible small business with respect to any election made under this subparagraph as in effect on the day before the date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009.

(v) Special rules for small business

(I) In general

In the case of an eligible small business which made or makes an election under this subparagraph as in effect on the day before the date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009, clause (iii)(I) shall be applied by substituting ''2 taxable years'' for ''1 taxable year''.

(II) Eligible small business

For purposes of this subparagraph, the term ''eligible small business'' has the meaning given such term by subparagraph (F)(iii), except that in applying such subparagraph, section 448(c) shall be applied by substituting ''$15,000,000'' for ''$5,000,000'' each place it appears.

(I) Transmission property and pollution control investment

(i) In general

At the election of the taxpayer for any taxable year ending after December 31, 2005, and before January 1, 2009, in the case of a net operating loss for a taxable year ending after December 31, 2002, and before January 1, 2006, there shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss to the extent that such loss does not exceed 20 percent of the sum of the electric transmission property capital expenditures and the pollution control facility capital expenditures of the taxpayer for the taxable year preceding the taxable year for which such election is made.

(ii) Limitations

For purposes of this subsection—

(I) not more than one election may be made under clause (i) with respect to any net operating loss for a taxable year, and

(II) an election may not be made under clause (i) for more than 1 taxable year beginning in any calendar year.

(iii) Coordination with ordering rule

For purposes of applying subsection (b)(2), the portion of any loss which is carried back 5 years by reason of clause (i) shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(iv) Special rules relating to credit or refund

In the case of the portion of the loss which is carried back 5 years by reason of clause (i)—

(I) an application under section 6411(a) with respect to such portion shall not fail to be treated as timely filed if filed within 24 months after the due date specified under such section, and

(II) references in sections 6501(h), 6511(d)(2)(A), and 6611(f)(1) to the taxable year in which such net operating loss arises or results in a net operating loss carryback shall be treated as references to the taxable year for which such election is made.

(v) Definitions

For purposes of this subparagraph—

(I) Electric transmission property capital expenditures

The term ''electric transmission property capital expenditures'' means any expenditure, chargeable to capital account, made by the taxpayer which is attributable to electric transmission property used by the taxpayer in the transmission at 69 or more kilovolts of electricity for sale. Such term shall not include any expenditure which may be refunded or the purpose of which may be modified at the option of the taxpayer so as to cease to be treated as an expenditure within the meaning of such term.

(II) Pollution control facility capital expenditures

The term ''pollution control facility capital expenditures'' means any expenditure, chargeable to capital account, made by an electric utility company (as defined in section 2(3) of the Public Utility Holding Company Act[2] (15 U.S.C. 79b(3)), as in effect on the day before the date of the enactment of the Energy Tax Incentives Act of 2005) which is attributable to a facility which will qualify as a certified pollution control facility as determined under section 169(d)(1) by striking ''before January 1, 1976,'' and by substituting ''an identifiable'' for ''a new identifiable''. Such term shall not include any expenditure which may be refunded or the purpose of which may be modified at the option of the taxpayer so as to cease to be treated as an expenditure within the meaning of such term.

[2] So in original. Probably should be followed by ''of 1935''.

(J) Certain losses attributable[3] federally declared disasters

In the case of a taxpayer who has a qualified disaster loss (as defined in subsection (j)), such loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.

(2) Amount of carrybacks and carryovers

The entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the ''loss year'') shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (5) thereof, and

(B) by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

and the taxable income so computed shall not be considered to be less than zero.

(3) Election to waive carryback

Any taxpayer entitled to a carryback period under paragraph (1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year. Such election shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(c) Net operating loss defined

For purposes of this section, the term ''net operating loss'' means the excess of the deductions allowed by this chapter over the gross income. Such excess shall be computed with the modifications specified in subsection (d).

(d) Modifications

The modifications referred to in this section are as follows:

(1) Net operating loss deduction

No net operating loss deduction shall be allowed.

(2) Capital gains and losses of taxpayers other than corporations

In the case of a taxpayer other than a corporation—

(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

(B) the exclusion provided by section 1202 shall not be allowed.

(3) Deduction for personal exemptions

No deduction shall be allowed under section 151 (relating to personal exemptions). No deduction in lieu of any such deduction shall be allowed.

(4) Nonbusiness deductions of taxpayers other than corporations

In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

(A) any gain or loss from the sale or other disposition of—

(i) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or

(ii) real property used in the trade or business,

shall be treated as attributable to the trade or business;

(B) the modifications specified in paragraphs (1), (2)(B), and (3) shall be taken into account;

(C) any deduction for casualty or theft losses allowable under paragraph (2) or (3) of section 165(c) shall be treated as attributable to the trade or business; and

(D) any deduction allowed under section 404 to the extent attributable to contributions which are made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall not be treated as attributable to the trade or business of such individual.

(5) Computation of deduction for dividends received, etc.

The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions); and the deduction allowed by section 247 (relating to dividends paid on certain preferred stock of public utilities) shall be computed without regard to subsection (a)(1)(B) of such section.

(6) Modifications related to real estate investment trusts

In the case of any taxable year for which part II of subchapter M (relating to real estate investment trusts) applies to the taxpayer—

(A) the net operating loss for such taxable year shall be computed by taking into account the adjustments described in section 857(b)(2) (other than the deduction for dividends paid described in section 857(b)(2)(B)); and

(B) where such taxable year is a ''prior taxable year'' referred to in paragraph (2) of subsection (b), the term ''taxable income'' in

[3] So in original. Probably should be followed by ''to''.

such paragraph shall mean ''real estate investment trust taxable income'' (as defined in section 857(b)(2)).

(7) Manufacturing deduction

The deduction under section 199 shall not be allowed.

(e) Law applicable to computations

In determining the amount of any net operating loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year.

(f) Rules relating to specified liability loss

For purposes of this section—

(1) In general

The term ''specified liability loss'' means the sum of the following amounts to the extent taken into account in computing the net operating loss for the taxable year:

(A) Any amount allowable as a deduction under section 162 or 165 which is attributable to—

(i) product liability, or

(ii) expenses incurred in the investigation or settlement of, or opposition to, claims against the taxpayer on account of product liability.

(B)(i) Any amount allowable as a deduction under this chapter (other than section 468(a)(1) or 468A(a)) which is in satisfaction of a liability under a Federal or State law requiring—

(I) the reclamation of land,

(II) the decommissioning of a nuclear power plant (or any unit thereof),

(III) the dismantlement of a drilling platform,

(IV) the remediation of environmental contamination, or

(V) a payment under any workers compensation act (within the meaning of section 461(h)(2)(C)(i)).

(ii) A liability shall be taken into account under this subparagraph only if—

(I) the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, and

(II) the taxpayer used an accrual method of accounting throughout the period or periods during which such act (or failure to act) occurred.

(2) Limitation

The amount of the specified liability loss for any taxable year shall not exceed the amount of the net operating loss for such taxable year.

(3) Special rule for nuclear powerplants

Except as provided in regulations prescribed by the Secretary, that portion of a specified liability loss which is attributable to amounts incurred in the decommissioning of a nuclear powerplant (or any unit thereof) may, for purposes of subsection (b)(1)(C), be carried back to each of the taxable years during the period—

(A) beginning with the taxable year in which such plant (or unit thereof) was placed in service, and

(B) ending with the taxable year preceding the loss year.

(4) Product liability

The term ''product liability'' means—

(A) liability of the taxpayer for damages on account of physical injury or emotional harm to individuals, or damage to or loss of the use of property, on account of any defect in any product which is manufactured, leased, or sold by the taxpayer, but only if

(B) such injury, harm, or damage arises after the taxpayer has completed or terminated operations with respect to, and has relinquished possession of, such product.

(5) Coordination with subsection (b)(2)

For purposes of applying subsection (b)(2), a specified liability loss for any taxable year shall be treated as a separate net operating loss for such taxable year to be taken into account after the remaining portion of the net operating loss for such taxable year.

(6) Election

Any taxpayer entitled to a 10-year carryback under subsection (b)(1)(C) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(C). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for that taxable year.

(g) Rules relating to bad debt losses of commercial banks

For purposes of this section—

(1) Portion attributable to deduction for bad debts

The portion of the net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be the excess of—

(i) the net operating loss for such taxable year, over

(ii) the net operating loss for such taxable year determined without regard to the amount allowed as a deduction under section 166(a) for such taxable year.

(2) Coordination with subsection (b)(2)

For purposes of subsection (b)(2), the portion of a net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(h) Corporate equity reduction interest losses

For purposes of this section—

(1) In general

The term ''corporate equity reduction interest loss'' means, with respect to any loss limitation year, the excess (if any) of—

(A) the net operating loss for such taxable year, over

(B) the net operating loss for such taxable year determined without regard to any allo-

cable interest deductions otherwise taken into account in computing such loss.

(2) Allocable interest deductions

(A) In general

The term ''allocable interest deductions'' means deductions allowed under this chapter for interest on the portion of any indebtedness allocable to a corporate equity reduction transaction.

(B) Method of allocation

Except as provided in regulations and subparagraph (E), indebtedness shall be allocated to a corporate equity reduction transaction in the manner prescribed under clause (ii) of section 263A(f)(2)(A) (without regard to clause (i) thereof).

(C) Allocable deductions not to exceed interest increases

Allocable interest deductions for any loss limitation year shall not exceed the excess (if any) of—

(i) the amount allowable as a deduction for interest paid or accrued by the taxpayer during the loss limitation year, over

(ii) the average of such amounts for the 3 taxable years preceding the taxable year in which the corporate equity reduction transaction occurred.

(D) De minimis rule

A taxpayer shall be treated as having no allocable interest deductions for any taxable year if the amount of such deductions (without regard to this subparagraph) is less than $1,000,000.

(E) Special rule for certain unforeseeable events

If an unforeseeable extraordinary adverse event occurs during a loss limitation year but after the corporate equity reduction transaction—

(i) indebtedness shall be allocated in the manner described in subparagraph (B) to unreimbursed costs paid or incurred in connection with such event before being allocated to the corporate equity reduction transaction, and

(ii) the amount determined under subparagraph (C)(i) shall be reduced by the amount of interest on indebtedness described in clause (i).

(F) Transition rule

If any of the 3 taxable years described in subparagraph (C)(ii) end on or before August 2, 1989, the taxpayer may substitute for the amount determined under such subparagraph an amount equal to the interest paid or accrued (determined on an annualized basis) during the taxpayer's taxable year which includes August 3, 1989, on indebtedness of the taxpayer outstanding on August 2, 1989.

(3) Corporate equity reduction transaction

(A) In general

The term ''corporate equity reduction transaction'' means—

(i) a major stock acquisition, or

(ii) an excess distribution.

(B) Major stock acquisition

(i) In general

The term ''major stock acquisition'' means the acquisition by a corporation pursuant to a plan of such corporation (or any group of persons acting in concert with such corporation) of stock in another corporation representing 50 percent or more (by vote or value) of the stock in such other corporation.

(ii) Exception

The term ''major stock acquisition'' does not include a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies.

(C) Excess distribution

The term ''excess distribution'' means the excess (if any) of—

(i) the aggregate distributions (including redemptions) made during a taxable year by a corporation with respect to its stock, over

(ii) the greater of—

(I) 150 percent of the average of such distributions during the 3 taxable years immediately preceding such taxable year, or

(II) 10 percent of the fair market value of the stock of such corporation as of the beginning of such taxable year.

(D) Rules for applying subparagraph (B)

For purposes of subparagraph (B)—

(i) Plans to acquire stock

All plans referred to in subparagraph (B) by any corporation (or group of persons acting in concert with such corporation) with respect to another corporation shall be treated as 1 plan.

(ii) Acquisitions during 24-month period

All acquisitions during any 24-month period shall be treated as pursuant to 1 plan.

(E) Rules for applying subparagraph (C)

For purposes of subparagraph (C)—

(i) Certain preferred stock disregarded

Stock described in section 1504(a)(4), and distributions (including redemptions) with respect to such stock, shall be disregarded.

(ii) Issuance of stock

The amounts determined under clauses (i) and (ii)(I) of subparagraph (C) shall be reduced by the aggregate amount of stock issued by the corporation during the applicable period in exchange for money or property other than stock in the corporation.

(4) Other rules

(A) Ordering rule

For purposes of paragraph (1), in determining the allocable interest deductions taken into account in computing the net operating loss for any taxable year, taxable income for such taxable year shall be treated as having

been computed by taking allocable interest deductions into account after all other deductions.

(B) Coordination with subsection (b)(2)

For purposes of subsection (b)(2)—

(i) a corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a specified liability loss is treated, and

(ii) in determining the net operating loss deduction for any prior taxable year referred to in the 3rd sentence of subsection (b)(2), the portion of any net operating loss which may not be carried to such taxable year under subsection (b)(1)(E) shall not be taken into account.

(C) Members of affiliated groups

Except as provided by regulations, all members of an affiliated group filing a consolidated return under section 1501 shall be treated as 1 taxpayer for purposes of this subsection and subsection (b)(1)(E).

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

(A) for applying this subsection to successor corporations and in cases where a taxpayer becomes, or ceases to be, a member of an affiliated group filing a consolidated return under section 1501,

(B) to prevent the avoidance of this subsection through related parties, pass-through entities, and intermediaries, and

(C) for applying this subsection where more than 1 corporation is involved in a corporate equity reduction transaction.

(i) Rules relating to farming losses

For purposes of this section—

(1) In general

The term ''farming loss'' means the lesser of—

(A) the amount which would be the net operating loss for the taxable year if only income and deductions attributable to farming businesses (as defined in section 263A(e)(4)) are taken into account, or

(B) the amount of the net operating loss for such taxable year.

Such term shall not include any qualified disaster loss (as defined in subsection (j)).

(2) Coordination with subsection (b)(2)

For purposes of applying subsection (b)(2), a farming loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(3) Election

Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(G) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(G). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(j) Rules relating to qualified disaster losses

For purposes of this section—

(1) In general

The term ''qualified disaster loss'' means the lesser of—

(A) the sum of—

(i) the losses allowable under section 165 for the taxable year—

(I) attributable to a federally declared disaster (as defined in section 165(h)(3)(C)(i)) occurring before January 1, 2010, and

(II) occurring in a disaster area (as defined in section 165(h)(3)(C)(ii)), and

(ii) the deduction for the taxable year for qualified disaster expenses which is allowable under section 198A(a) or which would be so allowable if not otherwise treated as an expense, or

(B) the net operating loss for such taxable year.

(2) Coordination with subsection (b)(2)

For purposes of applying subsection (b)(2), a qualified disaster loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(3) Election

Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(J) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(J). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(4) Exclusion

The term ''qualified disaster loss'' shall not include any loss with respect to any property described in section 1400N(p)(3).

(k) Cross references

(1) For treatment of net operating loss carryovers in certain corporate acquisitions, see section 381.

(2) For special limitation on net operating loss carryovers in case of a corporate change of ownership, see section 382.

(Aug. 16, 1954, ch. 736, 68A Stat. 63; Pub. L. 85–866, title I, §§14(a), (b), 64(b), title II, §203(a), (b), Sept. 2, 1958, 72 Stat. 1611, 1656, 1678; Pub. L. 87–710, §1, Sept. 27, 1962, 76 Stat. 648; Pub. L. 87–792, §7(f), Oct. 10, 1962, 76 Stat. 829; Pub. L. 87–794, title III, §317(b), Oct. 11, 1962, 76 Stat. 889; Pub. L. 88–272, title II, §§210(a), (b), 234(b)(5), Feb. 26, 1964, 78 Stat. 47, 48, 115; Pub. L. 90–225, §3(a), Dec. 27, 1967, 81 Stat. 732; Pub. L. 91–172, title IV, §431(b), Dec. 30, 1969, 83 Stat. 619; Pub. L. 91–677, §2(a)–(c), Jan. 12, 1971, 84 Stat. 2061; Pub. L. 94–455, title VIII, §806(a)–(c), title X,

§ 1052(c)(3), title XVI, § 1606(b), (c), title XIX, §§ 1901(a)(29), 1906(b)(13)(A), title XXI, § 2126, Oct. 4, 1976, 90 Stat. 1598, 1648, 1755, 1756, 1769, 1834, 1920; Pub. L. 95–30, title I, § 102(b)(2), May 23, 1977, 91 Stat. 137; Pub. L. 95–600, title III, § 371(a), (b), title VI, § 601(b)(1), title VII, §§ 701(d)(1), 703(p)(1), Nov. 6, 1978, 92 Stat. 2859, 2896, 2900, 2943; Pub. L. 96–222, title I, §§ 103(a)(15), 106(a)(1), (6), (7), Apr. 1, 1980, 94 Stat. 214, 221; Pub. L. 96–595, § 1(a), Dec. 24, 1980, 94 Stat. 3464; Pub. L. 97–34, title II, § 207(a), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–354, § 5(a)(22), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97–362, title I, § 102(a)–(c), Oct. 25, 1982, 96 Stat. 1727, 1728; Pub. L. 98–369, div. A, title I, §§ 91(d), 177(c), title IV, § 491(d)(5), title VII, § 722(a)(4), July 18, 1984, 98 Stat. 606, 710, 849, 973; Pub. L. 99–514, title I, § 104(b)(4), title III, § 301(b)(3), title IX, §§ 901(d)(4)(B), 903(a), (b), title XIII, § 1303(b)(1), (2), title XVIII, § 1899A(6), Oct. 22, 1986, 100 Stat. 2105, 2217, 2380, 2383, 2658, 2958; Pub. L. 100–647, title I, §§ 1003(a)(1), 1009(c), Nov. 10, 1988, 102 Stat. 3382, 3449; Pub. L. 101–239, title VII, § 7211(a), (b), Dec. 19, 1989, 103 Stat. 2342, 2343; Pub. L. 101–508, title XI, §§ 11324(a), 11701(d), 11704(a)(2), 11811(a)–(b)(2)(A), (3), (4), Nov. 5, 1990, 104 Stat. 1388–465, 1388–507, 1388–518, 1388–530, 1388–532 to 1388–534; Pub. L. 103–66, title XIII, § 13113(d)(1), Aug. 10, 1993, 107 Stat. 429; Pub. L. 104–188, title I, §§ 1702(h)(2), (16), 1704(t)(5), (30), Aug. 20, 1996, 110 Stat. 1873, 1874, 1887, 1889; Pub. L. 105–34, title X, § 1082(a), (b), Aug. 5, 1997, 111 Stat. 950; Pub. L. 105–277, div. J, title II, § 2013(a)–(c), title III, § 3004(a), title IV, §§ 4003(h), 4004(a), Oct. 21, 1998, 112 Stat. 2681–902, 2681–905, 2681–910; Pub. L. 107–147, title I, § 102(a), (b), title IV, § 417(8), Mar. 9, 2002, 116 Stat. 25, 56; Pub. L. 108–311, title IV, § 403(b)(1), Oct. 4, 2004, 118 Stat. 1187; Pub. L. 109–58, title XIII, § 1311, Aug. 8, 2005, 119 Stat. 1009; Pub. L. 109–135, title IV, §§ 402(f), 403(a)(17), Dec. 21, 2005, 119 Stat. 2611, 2619; Pub. L. 110–343, div. C, title VII, §§ 706(a)(2)(D)(v), (vi), 708(a), (b), (d), Oct. 3, 2008, 122 Stat. 3922, 3924, 3925; Pub. L. 111–5, div. B, title I, § 1211(a), (b), Feb. 17, 2009, 123 Stat. 335, 336; Pub. L. 111–92, § 13(a), Nov. 6, 2009, 123 Stat. 2992.)

REFERENCES IN TEXT

The date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009, referred to in subsec. (b)(1)(H)(iv)(III), (v)(I), is the date of enactment of Pub. L. 111–92, which was approved Nov. 6, 2009.

The date of the enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (b)(1)(I)(v)(II), is the date of enactment of title XIII of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2009—Subsec. (b)(1)(H). Pub. L. 111–92 amended subpar. (H) generally. Prior to amendment, subpar. (H) provided for carryback for 2008 net operating losses of small businesses.

Pub. L. 111–5, § 1211(a), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: ''In the case of a net operating loss for any taxable year ending during 2001 or 2002, subparagraph (A)(i) shall be applied by substituting '5' for '2' and subparagraph (F) shall not apply.''

Subsecs. (k), (*l*). Pub. L. 111–5, § 1211(b), redesignated subsec. (*l*) as (k) and struck out former subsec. (k). Prior to amendment, text read as follows: ''Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(H) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(H). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.''

2008—Subsec. (b)(1)(F)(ii). Pub. L. 110–343, § 708(d)(1), inserted ''or qualified disaster loss (as defined in subsection (j))'' before period at end of concluding provisions.

Subsec. (b)(1)(F)(ii)(II). Pub. L. 110–343, § 706(a)(2)(D)(v), substituted ''federally declared disasters (as defined by subsection (h)(3)(C)(i))'' for ''Presidentially declared disasters (as defined in section 1033(h)(3))''.

Subsec. (b)(1)(F)(ii)(III). Pub. L. 110–343, § 706(a)(2)(D)(vi), substituted ''federally declared disasters'' for ''Presidentially declared disasters''.

Subsec. (b)(1)(J). Pub. L. 110–343, § 708(a), added subpar. (J).

Subsec. (i)(1). Pub. L. 110–343, § 708(d)(2), inserted concluding provisions.

Subsecs. (j) to (*l*). Pub. L. 110–343, § 708(b), added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (*l*), respectively.

2005—Subsec. (b)(1)(I). Pub. L. 109–58 added subpar. (I).

Subsec. (b)(1)(I)(i). Pub. L. 109–135, § 402(f)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''At the election of the taxpayer in any taxable year ending after December 31, 2005, and before January 1, 2009, in the case of a net operating loss in a taxable year ending after December 31, 2002, and before January 1, 2006, there shall be a net operating loss carryback to each of the 5 years preceding the taxable year of such loss to the extent that such loss does not exceed 20 percent of the sum of electric transmission property capital expenditures and pollution control facility capital expenditures of the taxpayer for the taxable year preceding the taxable year in which such election is made.''

Subsec. (b)(1)(I)(ii)(I). Pub. L. 109–135, § 402(f)(2), substituted ''for a taxable year'' for ''in a taxable year''.

Subsec. (b)(1)(I)(iv) to (vi). Pub. L. 109–135, § 402(f)(3), added cl. (iv), redesignated cl. (vi) as (v), and struck out former cls. (iv) and (v) which read as follows:

''(iv) APPLICATION FOR ADJUSTMENT.—In the case of any portion of a net operating loss to which an election under clause (i) applies, an application under section 6411(a) with respect to such loss shall not fail to be treated as timely filed if filed within 24 months after the due date specified under such section.

''(v) SPECIAL RULES RELATING TO REFUND.—For purposes of a net operating loss to which an election under clause (i) applies, references in sections 6501(h), 6511(d)(2)(A), and 6611(f)(1) to the taxable year in which such net operating loss arises or result in a net loss carryback shall be treated as references to the taxable year in which such election occurs.''

Subsec. (d)(7). Pub. L. 109–135, § 403(a)(17), added par. (7).

2004—Subsec. (b)(1)(H). Pub. L. 108–311 struck out ''a taxpayer which has'' after ''In the case of''.

2002—Subsec. (b)(1)(F)(i). Pub. L. 107–147, § 417(8), substituted ''3 taxable years'' for ''3 years'' and ''2 taxable years'' for '2 years''.

Subsec. (b)(1)(H). Pub. L. 107–147, § 102(a), added subpar. (H).

Subsecs. (j), (k). Pub. L. 107–147, § 102(b), added subsec. (j) and redesignated former subsec. (j) as (k).

1998—Subsec. (b)(1)(F)(ii). Pub. L. 105–277, § 2013(c), inserted concluding provisions.

Subsec. (b)(1)(F)(iv). Pub. L. 105–277, § 4003(h), added cl. (iv).

Subsec. (b)(1)(G). Pub. L. 105–277, § 2013(a), added subpar. (G).

Subsec. (d)(4)(C). Pub. L. 105–277, § 4004(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''any deduction allowable under section 165(c)(3) (relating to casualty losses) shall not be taken into account; and''.

Subsec. (f)(1)(B). Pub. L. 105–277, § 3004(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Any amount (not described in subparagraph (A)) allowable as a deduction under this chapter with respect to a liability which arises under a Federal or State law or out of any tort of the taxpayer if—

''(i) in the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, or

''(ii) in the case of a liability arising out of a tort, such liability arises out of a series of actions (or failures to act) over an extended period of time a substantial portion of which occurs at least 3 years before the beginning of the taxable year.

A liability shall not be taken into account under subparagraph (B) unless the taxpayer used an accrual method of accounting throughout the period or periods during which the acts or failures to act giving rise to such liability occurred.''

Subsecs. (i), (j). Pub. L. 105–277, § 2013(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1997—Subsec. (b)(1)(A)(i). Pub. L. 105–34, § 1082(a)(1), substituted ''2'' for ''3''.

Subsec. (b)(1)(A)(ii). Pub. L. 105–34, § 1082(a)(2), substituted ''20'' for ''15''.

Subsec. (b)(1)(F). Pub. L. 105–34, § 1082(b), added subpar. (F).

1996—Subsec. (b)(1)(E)(ii). Pub. L. 104–188, § 1702(h)(2), substituted ''subsection (h)'' for ''subsection (m)''.

Subsec. (h)(3)(B)(i). Pub. L. 104–188, § 1704(t)(5), substituted ''corporation.'' for ''corporation,'' at end.

Subsec. (h)(4)(B). Pub. L. 104–188, § 1704(t)(30), substituted ''For purposes of subsection (b)(2)—'' for ''For purposes of subsection (b)(2)'' in introductory provisions.

Subsec. (h)(4)(C). Pub. L. 104–188, § 1702(h)(16), substituted ''(b)(1)(E)'' for ''(b)(1)(M)''.

1993—Subsec. (d)(2). Pub. L. 103–66, § 13113(d)(1)(A), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In the case of a taxpayer other than a corporation, the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets.''

Subsec. (d)(4)(B). Pub. L. 103–66, § 13113(d)(1)(B), which directed the insertion of '', (2)(B),'' after ''paragraph (1)'', was executed by making the insertion after ''paragraphs (1)'' to reflect the probable intent of Congress.

1990—Subsec. (b). Pub. L. 101–508, § 11811(a), amended subsec. (b) generally, substituting present provisions for provisions delineating years to which loss may be carried, relating to amount of carrybacks and carryovers, and providing for special rules for foreign expropriation losses.

Subsec. (b)(1)(M)(iii). Pub. L. 101–508, § 11701(d), struck out ''a C corporation'' after ''means'' in introductory provisions, substituted ''a C corporation which acquires'' for ''which acquires'' in subcl. (I), ''a C corporation'' for ''a corporation'' in subcl. (II), and ''any C corporation which is a successor'' for ''any successor corporation'' in subcl. (III).

Subsec. (f). Pub. L. 101–508, § 11811(b)(1), (2)(A), redesignated subsec. (j) as (f), substituted heading for one which read: ''Rules relating to product liability losses'', and amended text generally, substituting present provisions for provisions defining terms ''product liability loss'' and ''product liability'', and providing for an election with respect to carrybacks of such losses.

Subsec. (g). Pub. L. 101–508, § 11811(b)(1), redesignated subsec. (*l*) as (g) and struck out former subsec. (g) which related to carryover of net operating losses for certain regulated transportation corporations.

Subsec. (g)(2). Pub. L. 101–508, § 11811(b)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In applying paragraph (2) of subsection (b), the portion of the net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated.''

Subsec. (h). Pub. L. 101–508, § 11811(b)(1), redesignated subsec. (m) as (h) and struck out former subsec. (h) which defined ''foreign expropriation loss''.

Subsec. (h)(3)(B)(ii). Pub. L. 101–508, § 11324(a), in par. (3)(B)(ii), formerly subsec. (m)(3)(B)(ii), substituted heading for one which read: ''Exceptions'' and amended text generally. Prior to amendment, text read as follows: ''The term 'major stock acquisition' shall not include—

''(I) a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies, or

''(II) except as provided in regulations, an acquisition in which a corporation acquires stock of another corporation which, immediately before the acquisition, was a member of an affiliated group (within the meaning of section 1504(a)) other than the common parent of such group.''

Subsec. (h)(4)(B). Pub. L. 101–508, § 11811(b)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''In applying paragraph (2) of subsection (b), the corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated.''

Pub. L. 101–508, § 11704(a)(2), substituted ''subsection (b)(2)'' for ''subsection (B)(2)'' in heading.

Subsec. (i). Pub. L. 101–508, § 11811(b)(1), redesignated subsec. (n) as (i) and struck out former subsec. (i) which provided for rules relating to mortgage disposition losses of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Subsec. (j). Pub. L. 101–508, § 11811(b)(1), redesignated subsec. (j) as (f).

Subsec. (k). Pub. L. 101–508, § 11811(b)(1), struck out subsec. (k) which related to definitions and special rules relating to deferred statutory or tort liability losses.

Subsecs. (*l*) to (n). Pub. L. 101–508, § 11811(b)(1), redesignated subsecs. (*l*) to (n) as (g) to (i), respectively.

1989—Subsec. (b)(1)(M). Pub. L. 101–239, § 7211(a), added subpar. (M).

Subsecs. (m), (n). Pub. L. 101–239, § 7211(b), added subsec. (m) and redesignated former subsec. (m) as (n).

1988—Subsec. (b)(1)(A). Pub. L. 100–647, § 1009(c)(2), substituted ''Except as otherwise provided in this paragraph, a net operating loss'' for ''Except as provided in subparagraphs (D), (E), (F), (G), (H), (I), (J), (K), (L), and (M), a net operating loss''.

Subsec. (b)(1)(B). Pub. L. 100–647, § 1009(c)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Except as provided in subparagraphs (C), (D), and (E), a net operating loss for any taxable year ending after December 31, 1955, shall be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss. Except as provided in subparagraphs (C), (D), (E), (F), (G), (H), (J), (L), and (M), a net operating loss for any taxable year ending after December 31, 1975, shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of such loss.''

Subsec. (b)(1)(K) to (M). Pub. L. 100–647, § 1009(c)(1), redesignated subpars. (L) and (M) as (K) and (L), respectively.

Subsec. (d)(4)(B). Pub. L. 100–647, § 1003(a)(1), substituted ''paragraphs (1) and (3)'' for ''paragraphs (1), (2)(B), and (3)''.

1986—Subsec. (b)(1)(A), (B). Pub. L. 99–514, § 903(b)(2)(A), (B), inserted reference to subpars. (L) and (M).

Subsec. (b)(1)(F). Pub. L. 99–514, § 903(a)(1), inserted ''and before January 1, 1987,''.

Pub. L. 99–514, § 901(d)(4)(B), substituted ''referred to in section 582(c)(5)'' for ''to which section 585, 586, or 593 applies''.

Subsec. (b)(1)(G). Pub. L. 99–514, § 903(a)(2), inserted ''and before January 1, 1987,''.

Subsec. (b)(1)(H). Pub. L. 99–514, § 903(a)(3)(A), struck out ''after December 31, 1981,'' and inserted ''after December 31, 1981, and before January 1, 1987,''.

Pub. L. 99–514, § 903(a)(3)(B), which directed that subpar. (H) be amended by striking out ''after December 31, 1984,'' and inserting ''after December 31, 1984, and before January 1, 1987,'', was executed by striking out ''after December 31, 1984'' and inserting ''after December 31, 1984, and before January 1, 1987'', to reflect the probable intent of Congress and the fact that no comma appeared after ''1984'' and was not necessary after ''1987''.

Subsec. (b)(1)(J), (K). Pub. L. 99–514, § 1303(b)(1), redesignated subpar. (K) as (J) and struck out former subpar. (J) which read as follows: ''In the case of an electing GSOC which has a net operating loss for any taxable year such loss shall not be a net operating loss carryback to any taxable year preceding the year of such loss, but shall be a net operating loss carryover to each of the 10 taxable years following the year of such loss.''

Subsec. (b)(1)(L), (M). Pub. L. 99–514, § 903(b)(1), added subpars. (L) and (M).

Subsec. (d)(2). Pub. L. 99–514, § 301(b)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In the case of a taxpayer other than a corporation—

''(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

''(B) the deduction for long-term capital gains provided by section 1202 shall not be allowed.''

Subsec. (d)(6). Pub. L. 99–514, § 1899A(6), added heading.

Subsec. (d)(7). Pub. L. 99–514, § 104(b)(4), struck out par. (7), zero bracket amount, which read as follows: ''In the case of a taxpayer other than a corporation, the zero bracket amount shall be treated as a deduction allowed by this chapter. For purposes of subsection (c)—

''(A) the deduction provided by the preceding sentence shall be in lieu of any itemized deductions of the taxpayer, and

''(B) such sentence shall not apply to an individual who elects to itemize deductions.''

Subsec. (k)(2), (4). Pub. L. 99–514, § 1303(b)(2), substituted ''subsection (b)(1)(J)'' for ''subsection (b)(1)(K)''.

Subsecs. (*l*), (m). Pub. L. 99–514, § 903(b)(2)(C), added subsec. (*l*) and redesignated former subsec. (*l*) as (m).

1984—Subsec. (b)(1)(A). Pub. L. 98–369, § 91(d)(3)(A), substituted ''(J), and (K)'' for ''and (J)''.

Subsec. (b)(1)(H). Pub. L. 98–369, § 177(c)(1)(A), inserted '', or a net operating loss of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984'' in introductory provisions.

Subsec. (b)(1)(H)(i), (ii). Pub. L. 98–369, § 177(c)(1)(B), (C), struck out ''FNMA'' before ''mortgage disposition loss''.

Subsec. (b)(1)(K). Pub. L. 98–369, § 91(d)(1), added subpar. (K).

Subsec. (b)(2)(A). Pub. L. 98–369, § 722(a)(4)(A), substituted ''and (5)'' for ''and (6)''.

Subsec. (d)(4)(D). Pub. L. 98–369, § 491(d)(5), struck out ''or section 405(c)'' after ''section 404''.

Subsec. (d)(6) to (8). Pub. L. 98–369, § 722(a)(4)(B), redesignated pars. (7) and (8) as (6) and (7), respectively.

Subsec. (h). Pub. L. 98–369, § 91(d)(3)(B), substituted ''this section'' for ''subsection (b)'' in introductory provisions.

Subsec. (i). Pub. L. 98–369, § 177(c)(2), substituted ''Mortgage disposition loss of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation'' for ''FNMA mortgage disposition loss'' in heading and struck out ''FNMA'' before ''mortgage disposition loss'' wherever appearing in text.

Subsec. (j). Pub. L. 98–369, § 91(d)(3)(B), substituted ''this section'' for ''subsection (b)'' in introductory provisions.

Subsecs. (k), (*l*). Pub. L. 98–369, § 91(d)(2), added subsec. (k) and redesignated former subsec. (k) as (*l*).

1982—Subsec. (b)(1)(A). Pub. L. 97–362, § 102(c)(1), substituted ''(H), (I), and (J)'' for ''(H), and (I)''.

Subsec. (b)(1)(B). Pub. L. 97–362, § 102(c)(2), substituted ''(H), and (J)'' for ''and (I)''.

Subsec. (b)(1)(H). Pub. L. 97–362, § 102(a), added subpar. (H). Former subpar. (H) redesignated (I).

Subsec. (b)(1)(I). Pub. L. 97–362, § 102(a), (c)(3), redesignated former subpar. (H) as (I) and substituted ''subsection (j)'' for ''subsection (i)''. Former subpar. (I) redesignated (J).

Subsec. (b)(1)(J). Pub. L. 97–362, § 102(a), redesignated former subpar. (I) as (J).

Subsec. (f). Pub. L. 97–354 struck out subsec. (f) relating to net operating loss of electing small business corporation.

Subsec. (i). Pub. L. 97–362, § 102(b), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 97–362, § 102(b), (c)(4), redesignated former subsec. (i) as (j) and, in par. (3) of subsec. (j) as so redesignated, substituted ''subsection (b)(1)(I)'' for ''subsection (b)(1)(H)'' wherever appearing. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 97–362, § 102(b), redesignated former subsec. (j) as (k).

1981—Subsec. (b)(1)(B). Pub. L. 97–34, § 207(a)(1), substituted ''15 taxable years'' for ''7 taxable years''.

Subsec. (b)(1)(C). Pub. L. 97–34, § 207(a)(2)(A), substituted ''ending after December 31, 1955, and before January 1, 1976, shall'' for ''ending after December 31, 1955, shall'' and struck out provision that, for any taxable year ending after Dec. 31, 1975, the preceding sentence was to be applied by substituting ''9 taxable years'' for ''7 taxable years''.

Subsec. (b)(1)(E)(i)(II). Pub. L. 97–34, § 207(a)(2)(B)(i), substituted ''15'' for ''8''.

Subsec. (b)(1)(E)(ii). Pub. L. 97–34, § 207(a)(2)(B)(ii), struck out designation subclause ''(I)'' for provisions prohibiting a loss carryback to any taxable year which is a REIT year and struck out provision formerly designated as subclause (II) directing that the number of taxable years to which a loss could be a net operating loss carryover under subparagraph (B) be increased (to a number not greater than 8) by the number of taxable years to which such loss could not be a net operating loss carryback by reason of subclause (I).

Subsec. (g)(3)(C). Pub. L. 97–34, § 207(a)(2)(C), struck out subpar. (C) which provided that, in the case of a net operating loss carryover from a loss year ending after Dec. 31, 1975, subpars. (A) and (B) were to be applied by substituting ''8th taxable year'' for ''6th taxable year'' and ''9th taxable year'' for ''7th taxable year''.

1980—Subsec. (b)(1)(A). Pub. L. 96–222, § 106(a)(6), substituted '', (H), and (I)'' for ''and (H)''.

Pub. L. 96–222, § 103(a)(15), amended directory language of Pub. L. 95–600, § 371(a)(2), to correct an error, and did not involve any change in text. See 1978 Amendment note for subsec. (b)(1)(A) below.

Subsec. (b)(1)(B). Pub. L. 96–222, § 106(a)(7), substituted ''(G), and (I)'' for ''and (G)''.

Subsec. (b)(1)(E). Pub. L. 96–595 generally revised subpar. (E) to permit a trust which was formerly a real estate investment trust an additional year of carryforward of net operating losses for each year it was denied a net operating loss carryback because of its status as a real estate investment trust, and removed the restriction that a net operating loss incurred before 1976 can be carried forward to the 6th, 7th, or 8th year only if it qualified as a real estate investment trust for all years from the loss year through the carryover year.

Subsec. (b)(1)(I). Pub. L. 96–222, § 106(a)(1), redesignated former subpar. (H), added by section 601(b) of Pub. L. 95–600 relating to an electing GSOC, as (I).

1978—Subsec. (b)(1)(A). Pub. L. 95–600, § 371(a)(2), as amended by Pub. L. 96–222, § 103(a)(15), substituted ''(G), and (H)'' for ''and (G)''.

Pub. L. 95–600, § 703(p)(1)(A), struck out provisions relating to net operating loss carryback with respect to a taxable year ending on or after Dec. 31, 1962, for which a certification has been issued under section 317 of the Trade Expansion Act of 1962.

Subsec. (b)(1)(B). Pub. L. 95–600, § 701(d)(1), inserted reference to subpar. (G).

Subsec. (b)(1)(H). Pub. L. 95–600, § 371(a)(1), added subpar. (H) relating to product liability losses.

Pub. L. 95–600, § 601(b)(1), added subpar. (H) relating to an electing GSOC.

Subsec. (b)(3)(A). Pub. L. 95–600, § 703(p)(1)(B), redesignated subpar. (C) as (A). Former subpar. (A), which related to conditions for application of paragraph (1)(A)(ii), was struck out.

Subsec. (b)(3)(B). Pub. L. 95–600, § 703(p)(1)(B), (C), redesignated subpar. (D) as (B) and substituted ''subparagraph (A)(iii)'' for ''subparagraph (C)(iii)''. Former subpar. (B), which related to the applicability of paragraph (1)(A)(ii) to partnerships and electing small business corporations, was struck out.

Subsec. (b)(3)(C). Pub. L. 95–600, § 703(p)(1)(B), redesignated subpar. (E) as (C). Former subpar. (C) redesignated (A).

Subsec. (b)(3)(D), (E). Pub. L. 95–600, § 703(p)(1)(B), redesignated subpars. (D) and (E) as (B) and (C), respectively.

Subsecs. (i), (j). Pub. L. 95–600, § 371(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1977—Subsec. (d)(8). Pub. L. 95–30 added par. (8).

1976—Subsec. (b)(1)(B). Pub. L. 94–455, § 806(a), inserted ''Except as provided in subparagraphs (C), (D), (E), and (F), a net operating loss for any taxable year ending after December 31, 1975, shall be a net operating loss carryover to each of the 7 taxable years following the taxable year of such loss'' after ''year of such loss''.

Subsec. (b)(1)(C). Pub. L. 94–455, §§ 806(b)(1), 1901(a)(29)(C)(ii), inserted ''For any taxable year ending after December 31, 1975, the preceding sentence shall be applied by substituting '9 taxable years' for '7 taxable years'' after ''year of such loss'', substituted ''subsection (g)(1)'' for ''subsection (j)(1)'' after ''as defined in'' and ''subsection (g)'' for ''subsection (j)'' after ''as provided in''.

Subsec. (b)(1)(D). Pub. L. 94–455, §§ 1901(a)(29)(C)(iii), 2126, substituted ''subsection (h)'' for ''subsection (k)'' after ''as defined in'' and ''20'' for ''15'' after ''expropriation loss, to each of the''.

Subsec. (b)(1)(E). Pub. L. 94–455, § 1606(b), added subpar. (E).

Subsec. (b)(2). Pub. L. 94–455, § 1901(a)(29)(C)(iv), substituted ''subsection (g)'' for ''subsections (i) and (j)'' after ''provided in''.

Subsec. (b)(3). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(3)(A)(i), (ii). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' in two places after ''Secretary''.

Subsec. (b)(3)(C)(i). Pub. L. 94–455, § 1901(a)(29)(C)(iii), substituted ''subsection (h)'' for ''subsection (k)'' after ''as defined in''.

Subsec. (b)(3)(C)(ii), (iii). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''Or his delegate'' in two places after ''Secretary''.

Subsec. (b)(3)(E). Pub. L. 94–455, §§ 806(c), 1901(a)(29)(A)(ii), added subpar. (E). Former subpar. (E), which related to applicability of special rules in computing taxpayer's net operating loss deduction, was struck out.

Subsec. (b)(3)(F). Pub. L. 94–455, § 1901(a)(29)(A)(ii), struck out subpar. (F) which defined ''class of products'' and provided for the use of information compiled or published by Secretary of Commerce or manufacturers as prima facie evidence of the total number of units of such class of products manufactured and produced in the United States in a calendar year.

Subsec. (c). Pub. L. 94–455, § 1901(a)(29)(B), struck out ''(for any taxable year ending after December 31, 1953)'' after ''means''.

Subsec. (d)(5), (6). Pub. L. 94–455, § 1052(c)(3), struck out par. (5) relating to special deductions for corporations concerning partially tax-exempt interest and Western Hemisphere corporations, and redesignated par. (6) as (5).

Subsec. (d)(7). Pub. L. 94–455, § 1606(c), added par. (7).

Subsec. (e). Pub. L. 94–455, § 1901(a)(29)(D), struck out ''The preceding sentence shall apply with respect to all taxable years, whether they begin before, on, or after January 1, 1954'' after ''applicable to such other taxable year''.

Subsec. (f). Pub. L. 94–455, § 1901(a)(29)(C)(i), redesignated subsec. (h) as (f). Former subsec. (f), relating to net operating loss deduction for taxable years beginning in 1953 and ending in 1954, was struck out.

Subsec. (g). Pub. L. 94–455, § 1901(a)(29)(C)(i), redesignated subsec. (j) as (g). Former subsec. (g), relating to special transitional rules to be applied to net operating loss deductions, was struck out.

Subsec. (g)(3)(C). Pub. L. 94–455, § 806(b)(2), added subpar. (C).

Subsec. (g)(4). Pub. L. 94–455, § 1901(a)(29)(E), struck out par. (4) relating to carryover of net operating loss for certain regulated transportation corporations for taxable years beginning in 1955 and ending in 1956.

Subsec. (h). Pub. L. 94–455, § 1901(a)(29)(C)(i), redesignated subsec. (k) as (h). Former subsec. (h) redesignated (f).

Subsec. (i). Pub. L. 94–455, § 1901(a)(29)(C)(i), redesignated subsec. (*l*) as (i). Former subsec. (i), relating to carryback of net operating loss for taxable years beginning in 1957 and ending in 1958, was struck out.

Subsecs. (j) to (*l*). Pub. L. 94–455, § 1901(a)(29)(C)(i), redesignated subsecs. (j) to (*l*) as (g) to (i), respectively.

1971—Subsec. (b)(1)(D). Pub. L. 91–677, § 2(a), inserted ''(or, with respect to that portion of the net operating loss for such year attributable to a Cuban expropriation loss, to each of the 15 taxable years following the taxable year of such loss)'' after ''the 10 taxable years following the taxable year of such loss''.

Subsec. (b)(2). Pub. L. 91–677, § 2(b), inserted provisions relating to treatment of Cuban expropriation losses.

Subsec. (k)(3). Pub. L. 91–677, § 2(c), added par. (3).

1969—Subsec. (b)(1). Pub. L. 91–172 substituted ''(E), (F), and (G)'', for ''and (E)'' in subpar. (A)(i) and added subpars. (F) and (G).

1967—Subsec. (b)(1). Pub. L. 90–225, § 3(a)(1)–(3), inserted reference to subpar. (E) in subpars. (A)(i) and (B), and added subpar. (E).

Subsec. (b)(3)(E), (F). Pub. L. 90–225, § 3(a)(4), added subpars. (E) and (F).

1964—Subsec. (b). Pub. L. 88–272, § 210(a)(1)–(4), (b), inserted subpar. (D) in par. (1), references to such subpar. (D) in par. (1)(A)(i) and (1)(B), subpars. (C) and (D) in par. (3), provided that the net operating loss deduction in par. (2)(B) be determined without regard to that portion of a net operating loss due to a foreign expropriation loss, if such portion may not, under par. (1)(D), be carried back to such prior taxable year, and that if a portion of the net operating loss is attributable to foreign expropriation to which par. (1)(D) applied, such portion shall be considered a separate loss for such year to be applied after the other portion of such net operating loss.

Subsec. (j)(1), (2), Pub. L. 88–272, § 234(b)(5), substituted references to section 7701(a)(33) for references to section 1503(c)(1) or (2), wherever appearing.

Subsecs. (k), (*l*). Pub. L. 88–272, § 210(a)(5), added subsec. (k) and redesignated former subsec. (k) as (*l*).

1962—Subsec. (b)(1). Pub. L. 87–794 designated existing provisions as cl. (A)(i) and struck out provisions therefrom which authorized a net operating loss for any taxable year ending after Dec. 31, 1957, to be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss, and added cls. (A)(ii), (B), and (C).

Subsec. (b)(2). Pub. L. 87–794 inserted reference to subsection (j), and substituted ''shall be carried to the earliest of the taxable years to which (by reason of paragraph (1))'' for ''shall be carried to the earliest of the 8 taxable years to which (by reason of subparagraphs (A) and (B) of paragraph (1))'', and ''each of the other taxable years'' for ''each of the other 7 taxable years''.

Subsec. (b)(3). Pub. L. 87–794 added par. (3).

Pub. L. 87–710, § 1(a), authorized a carryover of a net operating loss for any taxable year ending after Dec. 31, 1955, to each of the 5 taxable years following the taxable year of loss, or when such loss occurs in the case of regulated transportation corporation, except as pro-

vided in subsec. (j), then to each of the 7 taxable years following the taxable year of loss, and struck out provisions authorizing a net operating loss for any taxable years ending Dec. 31, 1957, to be carried over to each of the 5 taxable years following the taxable year of such loss, in par. (1), and inserted reference to subsec. (j) in par. (2).

Subsec. (d)(4)(D). Pub. L. 87–792 added subpar. (D).

Subsecs. (j), (k). Pub. L. 87–710, §1(b), added subsec. (j) and redesignated former subsec. (j) as (k).

1958—Subsec. (b). Pub. L. 85–866, §203(a), substituted ''1957'' for ''1953'', and ''3'' for ''2'' in par. (1), and substituted ''subsection (i)'' for ''subsection (f)'', ''8'' for ''7'', and ''7'' for ''6'' in par. (2).

Subsecs. (f)(3), (4). Pub. L. 85–866, §14(a), added pars. (3) and (4).

Subsec. (g)(3), (4). Pub. L. 85–866, §14(b), added par. (3) and redesignated former par. (3) as (4).

Subsecs. (h) to (j). Pub. L. 85–866, §§64(b), 203(b), added subsecs. (h) and (i) and redesignated former subsec. (h) as (j).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–92 applicable to net operating losses arising in taxable years ending after Dec. 31, 2007, with transition provisions and exception for TARP recipients, see section 13(e), (f) of Pub. L. 111–92, set out as a note under section 56 of this title.

Pub. L. 111–5, div. B, title I, §1211(d), Feb. 17, 2009, 123 Stat. 336, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to net operating losses arising in taxable years ending after December 31, 2007.

''(2) TRANSITIONAL RULE.—In the case of a net operating loss for a taxable year ending before the date of the enactment of this Act [Feb. 17, 2009]—

''(A) any election made under section 172(b)(3) of the Internal Revenue Code of 1986 with respect to such loss may (notwithstanding such section) be revoked before the applicable date,

''(B) any election made under section 172(b)(1)(H) of such Code with respect to such loss shall (notwithstanding such section) be treated as timely made if made before the applicable date, and

''(C) any application under section 6411(a) of such Code with respect to such loss shall be treated as timely filed if filed before the applicable date.

For purposes of this paragraph, the term 'applicable date' means the date which is 60 days after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 706(a)(2)(D)(v), (vi) of Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

Amendment by section 708(a), (b), (d) of Pub. L. 110–343 applicable to losses arising in taxable years beginning after Dec. 31, 2007, in connection with disasters declared after such date, see section 708(e) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by 402(f) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

Amendment by section 403(a)(17) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, to which such amendment relates, see section 403(f) of Pub. L. 108–311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title I, §102(d), Mar. 9, 2002, 116 Stat. 26, provided that: ''Except as provided in subsection (c) [amending section 56 of this title and enacting provisions set out as a note under section 56 of this title], the amendments made by this section [amending this section and section 56 of this title] shall apply to net operating losses for taxable years ending after December 31, 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title II, §2013(d), Oct. 21, 1998, 112 Stat. 2681–903, provided that: ''The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1997.''

Pub. L. 105–277, div. J, title III, §3004(b), Oct. 21, 1998, 112 Stat. 2681–906, provided that: ''The amendment made by this section [amending this section] shall apply to net operating losses arising in taxable years ending after the date of the enactment of this Act [Oct. 21, 1998].''

Amendment by section 4003(h) of Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Pub. L. 105–277, div. J, title IV, §4004(c)(1), Oct. 21, 1998, 112 Stat. 2681–911, provided that: ''The amendments made by subsections (a) and (b)(3) [amending this section and section 873 of this title] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1082(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(h)(2), (16) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11324(b) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to acquisitions after October 9, 1990.

''(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition.''

Amendment by section 11701(d) of Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

Section 11811(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7211(c) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to corporate equity reduction transactions occurring after August 2, 1989, in taxable years ending after August 2, 1989.

''(2) EXCEPTIONS.—In determining whether a corporate equity reduction transaction has occurred after August 2, 1989, there shall not be taken into account—

''(A) acquisitions or redemptions of stock, or distributions with respect to stock, occurring on or before August 2, 1989,

''(B) acquisitions or redemptions of stock after August 2, 1989, pursuant to a binding written contract (or tender offer filed with the Securities and Exchange Commission) in effect on August 2, 1989, and at all times thereafter before such acquisition or redemption, or

''(C) any distribution with respect to stock after August 2, 1989, which was declared on or before August 2, 1989.

Any distribution to which the preceding sentence applies shall be taken into account under section 172(m)(3)(C)(ii)(I) of the Internal Revenue Code of 1986 (relating to base period for distributions).''

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 301(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 901(d)(4)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

Section 903(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to losses incurred in taxable years beginning after December 31, 1986.

''(2) ADDITIONAL CARRYFORWARD PERIOD FOR LOSSES OF THRIFT INSTITUTIONS.—Subparagraph (M) of section 172(b)(1) of the Internal Revenue Code of 1986 (as added by this section) shall apply to losses incurred in taxable years beginning after December 31, 1981.''

Amendment by section 1303(b)(1), (2) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1311(f) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 91(d) of Pub. L. 98–369 applicable to losses for taxable years beginning after Dec. 31, 1983, see section 91(g)(6) of Pub. L. 98–369, as amended, set out as a note under section 461 of this title.

Section 177(d) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1812(d)(2), Oct. 22, 1986, 100 Stat. 2095, 2836, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 246 of this title and section 1452 of Title 12, Banks and Banking] shall take effect on January 1, 1985.

''(2) ADJUSTED BASIS OF ASSETS.—

''(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the adjusted basis of any asset of the Federal Home Loan Mortgage Corporation held on January 1, 1985, shall—

''(i) for purposes of determining any loss, be equal to the lesser of the adjusted basis of such asset or the fair market value of such asset as of such date, and

''(ii) for purposes of determining any gain, be equal to the higher of the adjusted basis of such asset or the fair market value of such asset as of such date.

''(B) SPECIAL RULE FOR TANGIBLE DEPRECIABLE PROPERTY.—In the case of any tangible property which—

''(i) is of a character subject to the allowance for depreciation provided by section 167 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and

''(ii) is held by the Federal Home Loan Mortgage Corporation on January 1, 1985,

the adjusted basis of such property shall be equal to the lesser of the basis of such property or the fair market value of such property as of such date.

''(3) TREATMENT OF PARTICIPATION CERTIFICATES.—

''(A) IN GENERAL.—Paragraph (2) shall not apply to any right to receive income with respect to any mortgage pool participation certificate or other similar interest in any mortgage (not including any mortgage).

''(B) TREATMENT OF CERTAIN SALES AFTER MARCH 15, 1984, AND BEFORE JANUARY 1, 1985.—If any gain is realized on the sale or exchange of any right described in subparagraph (A) after March 15, 1984, and before January 1, 1985, the gain shall not be recognized when realized but shall be recognized on January 1, 1985.

''(4) CLARIFICATION OF EARNINGS AND PROFITS OF FEDERAL HOME LOAN MORTGAGE CORPORATION.—

''(A) TREATMENT OF DISTRIBUTION OF PREFERRED STOCK, ETC.—For purposes of the Internal Revenue Code of 1986, the distribution of preferred stock by the Federal Home Loan Mortgage Corporation during December of 1984, and the other distributions of such stock by Federal Home Loan Banks during January of 1985, shall be treated as if they were distributions of money equal to the fair market value of the stock on the date of the distribution by the Federal Home Loan Banks (and such stock shall be treated as if it were purchased with the money treated as so distributed). No deduction shall be allowed under section 243 of the Internal Revenue Code of 1986 with respect to any dividend paid by the Federal Home Loan Mortgage Corporation out of earnings and profits accumulated before January 1, 1985.

''(B) SECTION 246(a) NOT TO APPLY TO DISTRIBUTIONS OUT OF EARNINGS AND PROFITS ACCUMULATED DURING 1985.—Subsection (a) of section 246 of the Internal Revenue Code of 1986 shall not apply to any dividend paid by the Federal Home Loan Mortgage Corporation during 1985 out of earnings and profits accumulated after December 31, 1984.

''(5) ADJUSTED BASIS.—For purposes of this subsection, the adjusted basis of any asset shall be determined under part II of subchapter O of the Internal Revenue Code of 1986.

''(6) NO CARRYBACKS FOR YEARS BEFORE 1985.—No net operating loss, capital loss, or excess credit of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984, shall be allowed as a carryback to any taxable year beginning before January 1, 1985.

''(7) NO DEDUCTION ALLOWED FOR INTEREST ON REPLACEMENT OBLIGATIONS.—

''(A) IN GENERAL.—The Federal Home Loan Mortgage Corporation shall not be allowed any deduction for interest accruing after December 31, 1984, on any replacement obligation.

''(B) REPLACEMENT OBLIGATION DEFINED.—For purposes of subparagraph (A), the term 'replacement obligation' means any obligation to any person created after March 15, 1984, which the Secretary of the Treasury or his delegate determines replaces any equity or debt interest of a Federal Home Loan Bank or any other person in the Federal Home Loan Mortgage Corporation existing on such date. The preceding sentence shall not apply to any obligation with respect

to which the Federal Home Loan Mortgage Corporation establishes that there is no tax avoidance effect.''

Amendment by section 491(d)(5) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Section 722(a)(6) of Pub. L. 98–369 provided that: ''Any amendment made by this subsection [amending this section and sections 57, 1256, and 5684 of this title, and provisions set out as a note under section 338 of this title] shall take effect as if included in the provisions of the Technical Corrections Act of 1982 [Pub. L. 97–448] to which such amendment relates.''

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 102(d) of Pub. L. 97–362 provided that: ''The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1981.''

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to net operating losses in taxable years ending after Dec. 31, 1975, with special effective date for the amendment by section 207(a)(2)(B)(i) of Pub. L. 97–34, and net operating loss for any taxable year ending on or before Dec. 31, 1975, which could be a net operating loss carryover to a taxable year ending in 1981 by reason of subsec. (b)(1)(E)(ii) (as in effect before the date of enactment of Pub. L. 97–34 and as modified by section 1(b) of Pub. L. 96–595), to be a net operating loss carryover under this section to each of the 15 taxable years following the taxable year of such loss, see section 209(c)(1) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 1(b) of Pub. L. 96–595, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the determination of the net operating loss deduction for taxable years ending after October 4, 1976. For purposes of applying the preceding sentence to any net operating loss for a taxable year which is not a REIT year and which ends on or before October 4, 1976, subclause (II) of section 172(b)(1)(E)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied by substituting ''the number of REIT years to which such loss was a net operating loss carryback'' for ''the number of taxable years to which such loss may not be a net operating loss carryback by reason of subclause (I)''. In the case of a net operating loss for a taxable year described in the preceding sentence, subclause (II) of section 172(b)(1)(E)(ii) of such Code shall not apply to any taxpayer which acted so as to cause it to cease to qualify as a ''real estate investment trust'' within the meaning of section 856 of such Code if the principal purpose for such action was to secure the benefit of the allowance of a net operating loss carryover under section 172(b)(1)(B) of such Code.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 371(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and section 537 of this title] shall apply with respect to taxable years beginning after September 30, 1979.''

Section 601(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [enacting sections 1391 to 1397 and 6039B of this title and amending this section and sections 1016 and 3402 of this title] shall apply with respect to corporations chartered after December 31, 1978, and before January 1, 1984.''

Section 701(d)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to losses incurred in taxable years ending after December 31, 1975.''

Section 703(p)(4) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 6501 and 6511 of this title] shall apply with respect to losses sustained in taxable years ending after the date of the enactment of this Act [Nov. 6, 1978].''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 806(g)(1) of Pub. L. 94–455 provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section and sections 812 and 825 of this title] shall apply to losses incurred in taxable years ending after December 31, 1975.''

Amendment by section 1052(c)(3) of Pub. L. 94–455 effective with respect to taxable years beginning after December 31, 1979, see section 1052(d) of Pub. L. 94–455, set out as a note under section 170 of this title.

Amendment by section 1606(b), (c) of Pub. L. 94–455 effective for taxable years ending after Oct. 4, 1976, see section 1608(c) of Pub. L. 94–455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(29) of Pub. L. 94–455 effective for taxable years ending after Oct. 4, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2(d) of Pub. L. 91–677 provided that: ''The amendments made by this section [amending this section] shall apply in respect of foreign expropriation losses sustained in taxable years ending after December 31, 1958.''

EFFECTIVE DATE OF 1967 AMENDMENT

Section 3(b) of Pub. L. 90–225 provided that: ''No interest shall be paid or allowed with respect to any overpayment of tax resulting from the application of the amendments made by subsection (a) [amending this section] for any period prior to the date of the enactment of this Act [Dec. 27, 1967].''

Section 3(c) of Pub. L. 90–225 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to net operating losses sustained in taxable years ending after December 31, 1966.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 210(c) of Pub. L. 88–272, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply in respect of foreign expropriation losses (as defined in section 172(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a)(5) of this section), sustained in taxable years ending after December 31, 1958.''

Amendment by section 234(b)(5) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 317(b) of Pub. L. 87–794 provided that the amendment made by that section is effective with respect to net operating losses for taxable years ending after Dec. 31, 1955.

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

Section 2 of Pub. L. 87–710 provided that: ''The amendments made by the first section of this Act [amending this section] shall apply only with respect to net operating losses for taxable years ending after December 31, 1955.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 203(c) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply in respect of net operating losses for taxable years ending after December 31, 1957.''

Amendment by section 14(a), (b) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 64(e) of Pub. L. 85–866 provided that: ''The amendments made by this section [enacting sections 1371 to 1377 and 6037 of this title, amending this section and sections 1016 and 1504, and renumbering former section 6037 as 6038 of this title] shall apply only with respect to taxable years beginning after December 31, 1957''.

ANTI-ABUSE RULES

Pub. L. 111–92, § 13(d), Nov. 6, 2009, 123 Stat. 2994, provided that: ''The Secretary of [the] Treasury or the Secretary's designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this section [amending this section and sections 56 and 810 of this title], including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules similar to the rules under section 1091 of the Internal Revenue Code of 1986 relating to losses from wash sales.''

Pub. L. 111–5, div. B, title I, § 1211(c), Feb. 17, 2009, 123 Stat. 336, provided that: ''The Secretary of [the] Treasury or the Secretary's designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this section [amending this section], including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules similar to the rules under section 1091 of the Internal Revenue Code of 1986 relating to losses from wash sales.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11811 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

NET OPERATING LOSS CARRYBACK FOR TAXABLE YEAR ENDING DURING 2001 OR 2002

Pub. L. 108–311, title IV, § 403(b)(2), Oct. 4, 2004, 118 Stat. 1187, provided that: ''In the case of a net operating loss for a taxable year ending during 2001 or 2002—

''(A) an application under section 6411(a) of the Internal Revenue Code of 1986 with respect to such loss shall not fail to be treated as timely filed if filed before November 1, 2002,

''(B) any election made under section 172(b)(3) of such Code may (notwithstanding such section) be revoked before November 1, 2002, and

''(C) any election made under section 172(j) [now 172(k)] of such Code shall (notwithstanding such section) be treated as timely made if made before November 1, 2002.''

AMTRAK REFORM LEGISLATION

Pub. L. 105–134, title III, § 301(b), Dec. 2, 1997, 111 Stat. 2585, provided that: ''This Act [see Short Title of 1997 Amendment note set out under section 20101 of Title 49, Transportation] constitutes Amtrak reform legislation within the meaning of section 977(f)(1) of the Taxpayer Relief Act of 1997 [Pub. L. 105–34, set out as a note below].''

ELECTIVE CARRYBACK OF EXISTING CARRYOVERS OF NATIONAL RAILROAD PASSENGER CORPORATION

Section 977 of Pub. L. 105–34, as amended by Pub. L. 105–178, title IX, § 9007(a), June 9, 1998, 112 Stat. 506; Pub. L. 105–206, title VI, § 6009(e), July 22, 1998, 112 Stat. 812, provided that:

''(a) ELECTIVE CARRYBACK.—

''(1) IN GENERAL.—If the National Railroad Passenger Corporation (in this section referred to as the 'Corporation')—

''(A) makes an election under this section for its first taxable year ending after September 30, 1997, and

''(B) agrees to the conditions specified in paragraph (2),

then the Corporation shall be treated as having made a payment of the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for such first taxable year and the succeeding taxable year in an amount (for each such taxable year) equal to 50 percent of the amount determined under paragraph (3). Each such payment shall be treated as having been made by the Corporation on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for the taxable year to which such payment relates.

''(2) CONDITIONS.—

''(A) IN GENERAL.—This section shall only apply to the Corporation if it agrees (in such manner as the Secretary of the Treasury or his delegate may prescribe) to—

''(i) except as provided in clause (ii), use any refund of the payment described in paragraph (1) (and any interest thereon) solely to finance qualified expenses of the Corporation, and

''(ii) make the payments to non-Amtrak States as described in subsection (c).

''(B) REPAYMENT.—

''(i) IN GENERAL.—The Corporation shall repay to the United States any amount not used in accordance with this paragraph and any amount remaining unused as of January 1, 2010.

''(ii) SPECIAL RULES.—For purposes of clause (i)—

''(I) no amount shall be treated as remaining unused as of January 1, 2010, if it is obligated as of such date for a qualified expense, and

''(II) the Corporation shall not be treated as failing to meet the requirements of clause (i) by reason of investing any amount for a temporary period.

''(3) AMOUNT.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The amount determined under this paragraph shall be the lesser of—

''(i) 35 percent of the Corporation's existing qualified carryovers, or

''(ii) the Corporation's net tax liability for the carryback period.

''(B) DOLLAR LIMIT.—Such amount shall not exceed $2,323,000,000.

''(b) EXISTING QUALIFIED CARRYOVERS; NET TAX LIABILITY.—For purposes of this section—

''(1) EXISTING QUALIFIED CARRYOVERS.—The term 'existing qualified carryovers' means the aggregate of the amounts which are net operating loss carryovers under section 172(b) of the Internal Revenue Code of 1986 to the Corporation's first taxable year ending after September 30, 1997.

''(2) NET TAX LIABILITY FOR CARRYBACK PERIOD.—

''(A) IN GENERAL.—The Corporation's net tax liability for the carryback period is the aggregate of the net tax liability of the Corporation's railroad predecessors for taxable years in the carryback period.

''(B) NET TAX LIABILITY.—The term 'net tax liability' means, with respect to any taxable year, the amount of the tax imposed by chapter 1 of the Internal Revenue Code of 1986 (or any corresponding provision of prior law) for such taxable year, reduced by the sum of the credits allowable against such tax under such Code (or any corresponding provision of prior law).

''(C) CARRYBACK PERIOD.—The term 'carryback period' means the period—

''(i) which begins with the first taxable year of any railroad predecessor beginning before January 1, 1971, for which there is a net tax liability, and

''(ii) which ends with the last taxable year of any railroad predecessor beginning before January 1, 1971.

''(3) RAILROAD PREDECESSOR.—

''(A) IN GENERAL.—The term 'railroad predecessor' means—

''(i) any railroad which entered into a contract under section 401 or 404(a) of the Rail Passenger Service Act of 1970 [former sections 561 and 564(a) of Title 45, Railroads] relieving the railroad of its entire responsibility for the provision of intercity rail passenger service, and

''(ii) any predecessor thereof.

''(B) CONSOLIDATED RETURNS.—If any railroad described in subparagraph (A) was a member of an affiliated group which filed a consolidated return for any taxable year in the carryback period, each member of such group shall be treated as a railroad predecessor for such year.

''(c) PAYMENTS TO NON-AMTRAK STATES.—

''(1) IN GENERAL.—Within 30 days after receipt of any refund of any payment described in subsection (a)(1), the Corporation shall pay to each non-Amtrak State an amount equal to 1 percent of the amount of such refund.

''(2) USE OF PAYMENT.—Each non-Amtrak State shall use the payment described in paragraph (1) (and any interest thereon) solely to finance qualified expenses of the State.

''(3) REPAYMENT.—A non-Amtrak State shall pay to the United States—

''(A) any portion of the payment received by the State under paragraph (1) (and any interest thereon) which is used for a purpose other than to finance qualified expenses of the State or which remains unused as of January 1, 2010, or

''(B) if such State ceases to be a non-Amtrak State, the portion of such payment (and any interest thereon) remaining as of the date of the cessation.

Rules similar to the rules of subsection (a)(2)(B) shall apply for purposes of this paragraph.

''(d) TAX CONSEQUENCES.—

''(1) REDUCTION IN CARRYOVERS.—If the Corporation elects the application of this section, the Corporation's existing qualified carryovers shall be reduced by an amount equal to the amount determined under subsection (a)(3) divided by 0.35.

''(2) REDUCTION IN TAX PAID BY RAILROAD PREDECESSORS.—

''(A) IN GENERAL.—The Secretary of the Treasury or his delegate shall appropriately adjust the tax account of each railroad predecessor to reduce the net tax liability of such predecessor for taxable years beginning in the carryback period which is offset by reason of the application of this section.

''(B) FIFO ORDERING RULE.—The Secretary shall make the adjustments under subparagraph (A) first for the earliest year in the carryback period and then for each subsequent year in such period.

''(C) NO EFFECT ON OTHER TAXPAYERS.—In no event shall any taxpayer other than the Corporation be allowed a refund or credit by reason of this section.

''(D) WAIVER OF LIMITATIONS.—If the adjustment under subparagraph (A) is barred by the operation of any law or rule of law, such law or rule of law shall be waived solely for purposes of making such adjustment.

''(3) TAX TREATMENT OF EXPENDITURES.—With respect to any payment by the Corporation of qualified expenses described in subsection (e)(1)(A) during any taxable year from the amount of any refund of the payment described in subsection (a)(1)—

''(A) no deduction shall be allowed to the Corporation with respect to any amount paid or incurred which is attributable to such amount, and

''(B) the basis of any property shall be reduced by the portion of the cost of such property which is attributable to such amount.

''(4) PAYMENTS TO A NON-AMTRAK STATE.—No deduction shall be allowed to the Corporation under chapter 1 of the Internal Revenue Code of 1986 for any payment to a non-Amtrak State required under subsection (a)(2)(A)(ii).

''(e) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED EXPENSES.—The term 'qualified expenses' means expenses incurred for—

''(A) in the case of the Corporation—

''(i) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger rail service, and

''(ii) the payment of interest and principal on obligations incurred for such acquisition, upgrading, and maintenance, and

''(B) in the case of a non-Amtrak State—

''(i) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger rail service,

''(ii) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity bus service,

''(iii) the purchase of intercity passenger rail services from the Corporation,

''(iv) capital expenditures related to State-owned rail operations in the State,

''(v) any project that is eligible to receive funding under section 5309, 5310, or 5311 of title 49, United States Code,

''(vi) any project that is eligible to receive funding under section 103, 130, 133, 144, 149, or 152 of title 23, United States Code,

''(vii) the upgrading and maintenance of intercity primary and rural air service facilities, and the purchase of intercity air service between primary and rural airports and regional hubs,

''(viii) the provision of passenger ferryboat service within the State,

''(ix) the provision of harbor improvements within the State, and

''(x) the payment of interest and principal on obligations incurred for such acquisition, upgrading, maintenance, purchase, expenditures, provision, and projects.

In the case of a non-Amtrak State which provides its own intercity passenger rail service on the date of the enactment of this paragraph [Aug. 5, 1997], subparagraph (B) shall be applied by only taking into account clauses (i) and (iv).

''(2) NON-AMTRAK STATE.—The term 'non-Amtrak State' means any State which is not receiving intercity passenger rail service from the Corporation as of the date of the enactment of this Act [Aug. 5, 1997].

''(f) AUTHORIZING REFORM REQUIRED.—

''(1) IN GENERAL.—The Secretary of the Treasury shall not make payment of any refund of any payment described in subsection (a)(1) earlier than the date of the enactment of Federal legislation, other than legislation included in this section, which is enacted after July 29, 1997, and which authorizes reforms of the National Railroad Passenger Corporation.

''(2) NO INTEREST.—Notwithstanding any other provision of law, if the payment of any refund is delayed by reason of paragraph (1), no interest shall accrue with respect to such payment prior to the 45th day following the date of the enactment of Federal legislation described in paragraph (1).

''(3) ESTIMATE OF REVENUE.—For purposes of estimating revenues under budget reconciliation, the impact of this section on Federal revenues shall be determined without regard to this subsection.''

[Pub. L. 105–178, title IX, §9007(b), June 9, 1998, 112 Stat. 506, provided that: ''The amendments made by this section [amending section 977 of Pub. L. 105–34, set out above] shall take effect as if included in the enactment of section 977 of the Taxpayer Relief Act of 1997 [Pub. L. 105–34].'']

DEDUCTION FOR SPECIAL ASSESSMENTS

Subsec. (f) of this section not applicable to deduction for special assessments, see section 2711(2) of Pub. L. 104–208, set out as a note under section 162 of this title.

CARRYBACK OF DEFERRED STATUTORY OR TORT LIABILITY LOSS TO TAXABLE YEAR BEGINNING BEFORE JANUARY 1, 1984

Section 11811(b)(2)(B) of Pub. L. 101–508 provided that: ''The portion of any loss which is attributable to a deferred statutory or tort liability loss (as defined in section 172(k) of the Internal Revenue Code of 1986 as in effect on the day before the date of the enactment of this Act [Nov. 5, 1990]) may not be carried back to any taxable year beginning before January 1, 1984, by reason of the amendment made by subparagraph (A) [amending this section].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REFUND OR CREDIT OF OVERPAYMENT; LIMITATIONS; INTEREST

Section 14 of Pub. L. 85–866 provided that if any refund or credit of any overpayment resulting from application of subsecs. (a) and (b) of Pub. L. 85–866, amending former subsecs. (f)(3), (4) and (g)(3), (4), was prevented on Sept. 2, 1958 or 6 months thereafter, by operation of any law or rule of law, refund was to be allowed if a claim was filed within six months of the date of such date but such refund was to be without interest.

INTEREST ATTRIBUTABLE TO NET OPERATING LOSS CARRYBACK FOR CERTAIN TAXABLE YEARS ENDING IN 1954

For payment of interest attributable to net operating loss carryback, see section 83(e) of Pub. L. 85–866, set out as a note under section 6601 of this title.

§ 173. Circulation expenditures

(a) General rule

Notwithstanding section 263, all expenditures (other than expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical) to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical shall be allowed as a deduction; except that the deduction shall not be allowed with respect to the portion of such expenditures as, under regulations prescribed by the Secretary, is chargeable to capital account if the taxpayer elects, in accordance with such regulations, to treat such portion as so chargeable. Such election, if made, must be for the total amount of such portion of the expenditures which is so chargeable to capital account, and shall be binding for all subsequent taxable years unless, upon application by the taxpayer, the Secretary permits a revocation of such election subject to such conditions as he deems necessary.

(b) Cross reference

For election of 3-year amortization of expenditures allowable as a deduction under subsection (a), see section 59(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 65; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title II, §201(d)(9)(A), formerly §201(c)(9)(A), Sept. 3, 1982, 96 Stat. 420, renumbered §201(d)(9)(A), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title VII, §711(a)(3)(C), July 18, 1984, 98 Stat. 942; Pub. L. 99–514, title VII, §701(e)(4)(D), Oct. 22, 1986, 100 Stat. 2343; Pub. L. 100–647, title I, §1007(g)(5), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 59(d)''.

1986—Subsec. (b). Pub. L. 99–514 substituted ''section 59(d)'' for ''section 58(i)''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''3-year'' for ''10-year''.

1982—Pub. L. 97–248, §201(d)(9)(A), designated existing provisions as subsec. (a), added subsec. (a) heading, and added subsec. (b).

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' in two places.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for

such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 174. Research and experimental expenditures

(a) Treatment as expenses

(1) In general

A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) When method may be adopted

(A) Without consent

A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year—

(i) which begins after December 31, 1953, and ends after August 16, 1954, and

(ii) for which expenditures described in paragraph (1) are paid or incurred.

(B) With consent

A taxpayer may, with the consent of the Secretary, adopt at any time the method provided in this subsection.

(3) Scope

The method adopted under this subsection shall apply to all expenditures described in paragraph (1). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method is authorized with respect to part or all of such expenditures.

(b) Amortization of certain research and experimental expenditures

(1) In general

At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary, research or experimental expenditures which are—

(A) paid or incurred by the taxpayer in connection with his trade or business,

(B) not treated as expenses under subsection (a), and

(C) chargeable to capital account but not chargeable to property of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion),

may be treated as deferred expenses. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the taxpayer first realizes benefits from such expenditures). Such deferred expenses are expenditures properly chargeable to capital account for purposes of section 1016(a)(1) (relating to adjustments to basis of property).

(2) Time for and scope of election

The election provided by paragraph (1) may be made for any taxable year beginning after December 31, 1953, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The method so elected, and the period selected by the taxpayer, shall be adhered to in computing taxable income for the taxable year for which the election is made and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method (or to a different period) is authorized with respect to part or all of such expenditures. The election shall not apply to any expenditure paid or incurred during any taxable year before the taxable year for which the taxpayer makes the election.

(c) Land and other property

This section shall not apply to any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of property to be used in connection with the research or experimentation and of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion); but for purposes of this section allowances under section 167, and allowances under section 611, shall be considered as expenditures.

(d) Exploration expenditures

This section shall not apply to any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) Only reasonable research expenditures eligible

This section shall apply to a research or experimental expenditure only to the extent that the amount thereof is reasonable under the circumstances.

(f) Cross references

(1) For adjustments to basis of property for amounts allowed as deductions as deferred expenses under subsection (b), see section 1016(a)(14).

(2) For election of 10-year amortization of expenditures allowable as a deduction under subsection (a), see section 59(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 66; Pub. L. 94–455, title XIX, §§1901(a)(30), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1769, 1834; Pub. L. 97–248, title II, §201(d)(9)(B) formerly §201(c)(9)(B), Sept. 3, 1982, 96 Stat. 420, renumbered §201(d)(9)(B), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; amended Pub. L. 99–514, title VII, §701(e)(4)(D), Oct. 22, 1986, 100 Stat. 2343; Pub. L. 100–647, title I, §1007(g)(5), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 101–239, title VII, §7110(d), Dec. 19, 1989, 103 Stat. 2325.)

AMENDMENTS

1989—Subsecs. (e), (f). Pub. L. 101–239 added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (e)(2). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 59(d)''.

1986—Subsec. (e)(2). Pub. L. 99–514 substituted ''section 59(d)'' for ''section 58(i)''.

1982—Subsec. (e). Pub. L. 97–248, §201(d)(9)(B), substituted ''Cross references'' for ''Cross reference'' in

heading, designated existing provisions as par. (1), and added par. (2).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2)(A)(i). Pub. L. 94–455, § 1901(a)(30), substituted ''August 16, 1954'' for ''the date on which this title is enacted'' after ''ends after''.

Subsecs. (a)(3), (b)(1), (2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7110(e) of Pub. L. 101–239, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

ALLOCATION OR APPORTIONMENT TO SOURCES WITHIN UNITED STATES OF RESEARCH AND EXPERIMENTAL EXPENDITURES PAID OR INCURRED FOR RESEARCH ACTIVITIES CONDUCTED IN UNITED STATES; 2-YEAR PROGRAM

Pub. L. 97–34, title II, § 223(a), Aug. 13, 1981, 95 Stat. 249, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of the taxpayer's first 2 taxable years beginning within 2 years after the date of the enactment of this Act [Aug. 13, 1981], all research and experimental expenditures (within the meaning of section 174 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which are paid or incurred in such year for research activities conducted in the United States shall be allocated or apportioned to sources within the United States.''

§ 175. Soil and water conservation expenditures; endangered species recovery expenditures

(a) In general

A taxpayer engaged in the business of farming may treat expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, or for endangered species recovery, as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(b) Limitation

The amount deductible under subsection (a) for any taxable year shall not exceed 25 percent of the gross income derived from farming during the taxable year. If for any taxable year the total of the expenditures treated as expenses which are not chargeable to capital account exceeds 25 percent of the gross income derived from farming during the taxable year, such excess shall be deductible for succeeding taxable years in order of time; but the amount deductible under this section for any one such succeeding taxable year (including the expenditures actually paid or incurred during the taxable year) shall not exceed 25 percent of the gross income derived from farming during the taxable year.

(c) Definitions

For purposes of subsection (a)—

(1) The term ''expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, or for endangered species recovery'' means expenditures paid or incurred for the treatment or moving of earth, including (but not limited to) leveling, grading and terracing, contour furrowing, the construction, control, and protection of diversion channels, drainage ditches, earthen dams, watercourses, outlets, and ponds, the eradication of brush, and the planting of windbreaks. Such term shall include expenditures paid or incurred for the purpose of achieving site-specific management actions recommended in recovery plans approved pursuant to the Endangered Species Act of 1973. Such term does not include—

(A) the purchase, construction, installation, or improvement of structures, appliances, or facilities which are of a character which is subject to the allowance for depreciation provided in section 167, or

(B) any amount paid or incurred which is allowable as a deduction without regard to this section.

Notwithstanding the preceding sentences, such term also includes any amount, not otherwise allowable as a deduction, paid or incurred to satisfy any part of an assessment levied by a soil or water conservation or drainage district to defray expenditures made by such district (i) which, if paid or incurred by the taxpayer, would without regard to this sentence constitute expenditures deductible under this section, or (ii) for property of a character subject to the allowance for depreciation provided in section 167 and used in the soil or water conservation or drainage district's business as such (to the extent that the taxpayer's share of the assessment levied on the members of the district for such property does not exceed 10 percent of such assessment).

(2) The term ''land used in farming'' means land used (before or simultaneously with the expenditures described in paragraph (1)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(3) ADDITIONAL LIMITATIONS.—

(A) EXPENDITURES MUST BE CONSISTENT WITH SOIL CONSERVATION PLAN OR ENDANGERED SPECIES RECOVERY PLAN.—Notwithstanding any other provision of this section, subsection (a) shall not apply to any expenditures unless such expenditures are consistent with—

(i) the plan (if any) approved by the Soil Conservation Service of the Department of Agriculture or the recovery plan approved pursuant to the Endangered Species Act of 1973 for the area in which the land is located, or

(ii) if there is no plan described in clause (i), any soil conservation plan of a comparable State agency.

(B) CERTAIN WETLAND, ETC., ACTIVITIES NOT QUALIFIED.—Subsection (a) shall not apply to any expenditures in connection with the draining or filling of wetlands or land preparation for center pivot irrigation systems.

(d) When method may be adopted

(1) Without consent

A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year—

(A) which begins after December 31, 1953, and ends after August 16, 1954, and

(B) for which expenditures described in subsection (a) are paid or incurred.

(2) With consent

A taxpayer may, with the consent of the Secretary, adopt at any time the method provided in this section.

(e) Scope

The method adopted under this section shall apply to all expenditures described in subsection (a). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method is authorized with respect to part or all of such expenditures.

(f) Rules applicable to assessments for depreciable property

(1) Amounts treated as paid or incurred over 9-year period

In the case of an assessment levied to defray expenditures for property described in clause (ii) of the last sentence of subsection (c)(1), if the amount of such assessment paid or incurred by the taxpayer during the taxable year (determined without the application of this paragraph) is in excess of an amount equal to 10 percent of the aggregate amounts which have been and will be assessed as the taxpayer's share of the expenditures by the district for such property, and if such excess is more than $500, the entire excess shall be treated as paid or incurred ratably over each of the 9 succeeding taxable years.

(2) Disposition of land during 9-year period

If paragraph (1) applies to an assessment and the land with respect to which such assessment was made is sold or otherwise disposed of by the taxpayer (other than by the reason of his death) during the 9 succeeding taxable years, any amount of the excess described in paragraph (1) which has not been treated as paid or incurred for a taxable year ending on or before the sale or other disposition shall be added to the adjusted basis of such land immediately prior to its sale or other disposition and shall not thereafter be treated as paid or incurred ratably under paragraph (1).

(3) Disposition by reason of death

If paragraph (1) applies to an assessment and the taxpayer dies during the 9 succeeding taxable years, any amount of the excess described in paragraph (1) which has not been treated as paid or incurred for a taxable year ending before his death shall be treated as paid or incurred in the taxable year in which he dies.

(Aug. 16, 1954, ch. 736, 68A Stat. 67; Pub. L. 90–630, §5(a), (b), Oct. 22, 1968, 82 Stat. 1329; Pub. L. 94–455, title XIX, §§1901(a)(30), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1769, 1834; Pub. L. 99–514, title IV, §401(a), Oct. 22, 1986, 100 Stat. 2221; Pub. L. 110–234, title XV, §15303(a)(1)–(2)(B), (b), May 22, 2008, 122 Stat. 1501, 1502; Pub. L. 110–246, §4(a), title XV, §15303(a)(1)–(2)(B), (b), June 18, 2008, 122 Stat. 1664, 2263, 2264.)

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (c)(1), (3)(A)(i), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Pub. L. 110–246, §15303(a)(2)(B), inserted ''; endangered species recovery expenditures'' after ''conservation expenditures'' in section catchline.

Subsec. (a). Pub. L. 110–246, §15303(a)(2)(A), inserted '', or for endangered species recovery'' after ''erosion of land used in farming''.

Subsec. (c)(1). Pub. L. 110–246, §15303(a)(1), (2)(A), in introductory provisions, inserted '', or for endangered species recovery'' after ''erosion of land used in farming'' and ''Such term shall include expenditures paid or incurred for the purpose of achieving site-specific management actions recommended in recovery plans approved pursuant to the Endangered Species Act of 1973.'' after first sentence.

Subsec. (c)(3)(A). Pub. L. 110–246, §15303(b)(1), inserted ''or endangered species recovery plan'' after ''conservation plan'' in heading.

Subsec. (c)(3)(A)(i). Pub. L. 110–246, §15303(b)(2), inserted ''or the recovery plan approved pursuant to the Endangered Species Act of 1973'' after ''Department of Agriculture''.

1986—Subsec. (c)(3). Pub. L. 99–514 added par. (3).

1976—Subsec. (d)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1)(A). Pub. L. 94–455, §1901(a)(30), substituted ''August 16, 1954'' for ''the date on which this title is enacted'' after ''and ends after''.

Subsecs. (d)(2), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1968—Subsec. (c)(1). Pub. L. 90–630, §5(a), in text following subpar. (B), designated as cl. (i) existing provisions covering amounts which, if paid or incurred by the taxpayer, would without regard to the exception constitute deductible expenditures, and added cl. (ii).

Subsec. (f). Pub. L. 90–630, § 5(b), added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15303(c), May 22, 2008, 122 Stat. 1502, and Pub. L. 110–246, § 4(a), title XV, § 15303(c), June 18, 2008, 122 Stat. 1664, 2264, provided that: ''The amendments made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2008.''

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

EFFECTIVE DATE OF 1986 AMENDMENT

Section 401(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(30) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 5(c) of Pub. L. 90–630 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to assessments levied after the date of the enactment of this Act [Oct. 22, 1968] in taxable years ending after such date.''

§ 176. Payments with respect to employees of certain foreign corporations

In the case of a domestic corporation, there shall be allowed as a deduction amounts (to the extent not compensated for) paid or incurred pursuant to an agreement entered into under section 3121(*l*) with respect to services performed by United States citizens employed by foreign subsidiary corporations. Any reimbursement of any amount previously allowed as a deduction under this section shall be included in gross income for the taxable year in which received.

(Added Sept. 1, 1954, ch. 1206, title II, § 210(a), 68 Stat. 1096.)

[§ 177. Repealed. Pub. L. 99–514, title II, § 241(a), Oct. 22, 1986, 100 Stat. 2181]

Section, added June 29, 1956, ch. 464, § 4(a), 70 Stat. 406; amended Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834, related to deductions for trademark and trade name expenditures.

EFFECTIVE DATE OF REPEAL

Section 241(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending sections 312 and 1016 of this title and repealing this section] shall apply to expenditures paid or incurred after December 31, 1986.

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to any expenditure incurred—

''(A) pursuant to a binding contract entered into before March 2, 1986, or

''(B) with respect to the development, protection, expansion, registration, or defense of a trademark or trade name commenced before March 2, 1986, but only if not less than the lesser of $1,000,000 or 5 percent of the aggregate cost of such development, protection, expansion, registration, or defense has been incurred or committed before such date.

The preceding sentence shall not apply to any expenditure with respect to a trademark or trade name placed in service after December 31, 1987.''

§ 178. Amortization of cost of acquiring a lease

(a) General rule

In determining the amount of the deduction allowable to a lessee for exhaustion, wear and tear, obsolescence, or amortization in respect of any cost of acquiring the lease, the term of the lease shall be treated as including all renewal options (and any other period for which the parties reasonably expect the lease to be renewed) if less than 75 percent of such cost is attributable to the period of the term of the lease remaining on the date of its acquisition.

(b) Certain periods excluded

For purposes of subsection (a), in determining the period of the term of the lease remaining on the date of acquisition, there shall not be taken into account any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee.

(Added Pub. L. 85–866, title I, § 15(a), Sept. 2, 1958, 72 Stat. 1612; amended Pub. L. 99–514, title II, § 201(d)(2)(A), title XVIII, § 1812(c)(4)(B), Oct. 22, 1986, 100 Stat. 2139, 2835; Pub. L. 100–647, title I, § 1002(a)(9), Nov. 10, 1988, 102 Stat. 3354.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted ''the deduction allowable to a lessee for exhaustion, wear and tear, obsolescence, or amortization'' for ''the deduction allowable to a lessee of a lease for any taxable year for amortization under section 167, 169, 179, 185, 190, 193, or 194''.

1986—Pub. L. 99–514, § 201(d)(2)(A), in amending section generally, substituted provision relating to amortization of cost of acquiring a lease, subsec. (a) setting out a general rule and subsec. (b) excluding certain periods, for former provision for depreciation or amortization of improvements made by lessee on lessor's property, subsec. (a) setting out a general rule, subsec. (b), in case of related lessee and lessor, setting out a general rule in par. (1) and defining related persons in par. (2), and subsec. (c) setting out a reasonable certainty test.

Subsec. (b)(2)(B). Pub. L. 99–514, § 1812(c)(4)(B), inserted before the period ''and subsection (f)(1)(A) of such section shall not apply''.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(2)(A) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(2)(A) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3)

of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1812(c)(4)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 15(c) of Pub. L. 85–866 provided that: ''The amendments made by this section [enacting this section and amending analysis preceding section 161 of this title] shall apply with respect to costs of acquiring a lease incurred, and improvements begun, after July 28, 1958 (other than improvements which, on July 28, 1958, and at all times thereafter, the lessee was under a binding legal obligation to make).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 179. Election to expense certain depreciable business assets

(a) Treatment as expenses

A taxpayer may elect to treat the cost of any section 179 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

(b) Limitations

(1) Dollar limitation

The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed—

(A) $250,000 in the case of taxable years beginning after 2007 and before 2010,

(B) $500,000 in the case of taxable years beginning in 2010 or 2011, and

(C) $25,000 in the case of taxable years beginning after 2011.

(2) Reduction in limitation

The limitation under paragraph (1) for any taxable year shall be reduced (but not below zero) by the amount by which the cost of section 179 property placed in service during such taxable year exceeds—

(A) $800,000 in the case of taxable years beginning after 2007 and before 2010,

(B) $2,000,000 in the case of taxable years beginning in 2010 or 2011, and

(C) $200,000 in the case of taxable years beginning after 2011.

(3) Limitation based on income from trade or business

(A) In general

The amount allowed as a deduction under subsection (a) for any taxable year (determined after the application of paragraphs (1) and (2)) shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

(B) Carryover of disallowed deduction

The amount allowable as a deduction under subsection (a) for any taxable year shall be increased by the lesser of—

(i) the aggregate amount disallowed under subparagraph (A) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this subparagraph), or

(ii) the excess (if any) of—

(I) the limitation of paragraphs (1) and (2) (or if lesser, the aggregate amount of taxable income referred to in subparagraph (A)), over

(II) the amount allowable as a deduction under subsection (a) for such taxable year without regard to this subparagraph.

(C) Computation of taxable income

For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the deduction allowable under this section.

(4) Married individuals filing separately

In the case of a husband and wife filing separate returns for the taxable year—

(A) such individuals shall be treated as 1 taxpayer for purposes of paragraphs (1) and (2), and

(B) unless such individuals elect otherwise, 50 percent of the cost which may be taken into account under subsection (a) for such taxable year (before application of paragraph (3)) shall be allocated to each such individual.

(5) Limitation on cost taken into account for certain passenger vehicles

(A) In general

The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed $25,000.

(B) Sport utility vehicle

For purposes of subparagraph (A)—

(i) In general

The term ''sport utility vehicle'' means any 4-wheeled vehicle—

(I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),

(II) which is not subject to section 280F, and

(III) which is rated at not more than 14,000 pounds gross vehicle weight.

(ii) Certain vehicles excluded

Such term does not include any vehicle which—

(I) is designed to have a seating capacity of more than 9 persons behind the driver's seat,

(II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

(c) Election

(1) In general

An election under this section for any taxable year shall—

(A) specify the items of section 179 property to which the election applies and the portion of the cost of each of such items which is to be taken into account under subsection (a), and

(B) be made on the taxpayer's return of the tax imposed by this chapter for the taxable year.

Such election shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section, and any specification contained in any such election, may not be revoked except with the consent of the Secretary. Any such election or specification with respect to any taxable year beginning after 2002 and before 2012 may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.

(d) Definitions and special rules

(1) Section 179 property

For purposes of this section, the term ''section 179 property'' means property—

(A) which is—

(i) tangible property (to which section 168 applies), or

(ii) computer software (as defined in section 197(e)(3)(B)) which is described in section 197(e)(3)(A)(i), to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2012,

(B) which is section 1245 property (as defined in section 1245(a)(3)), and

(C) which is acquired by purchase for use in the active conduct of a trade or business.

Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.

(2) Purchase defined

For purposes of paragraph (1), the term ''purchase'' means any acquisition of property, but only if—

(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants),

(B) the property is not acquired by one component member of a controlled group from another component member of the same controlled group, and

(C) the basis of the property in the hands of the person acquiring it is not determined—

(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) under section 1014(a) (relating to property acquired from a decedent).

(3) Cost

For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

(4) Section not to apply to estates and trusts

This section shall not apply to estates and trusts.

(5) Section not to apply to certain noncorporate lessors

This section shall not apply to any section 179 property which is purchased by a person who is not a corporation and with respect to which such person is the lessor unless—

(A) the property subject to the lease has been manufactured or produced by the lessor, or

(B) the term of the lease (taking into account options to renew) is less than 50 percent of the class life of the property (as defined in section 168(i)(1)), and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property.

(6) Dollar limitation of controlled group

For purposes of subsection (b) of this section—

(A) all component members of a controlled group shall be treated as one taxpayer, and

(B) the Secretary shall apportion the dollar limitation contained in subsection (b)(1) among the component members of such controlled group in such manner as he shall by regulations prescribe.

(7) Controlled group defined

For purposes of paragraphs (2) and (6), the term ''controlled group'' has the meaning assigned to it by section 1563(a), except that, for such purposes, the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in section 1563(a)(1).

(8) Treatment of partnerships and S corporations

In the case of a partnership, the limitations of subsection (b) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(9) Coordination with section 38

No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a).

(10) Recapture in certain cases

The Secretary shall, by regulations, provide for recapturing the benefit under any deduction allowable under subsection (a) with respect to any property which is not used predominantly in a trade or business at any time.

(e) Special rules for qualified disaster assistance property

(1) In general

For purposes of this section—

(A) the dollar amount in effect under subsection (b)(1) for the taxable year shall be increased by the lesser of—

(i) $100,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year, and

(B) the dollar amount in effect under subsection (b)(2) for the taxable year shall be increased by the lesser of—

(i) $600,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year.

(2) Qualified section 179 disaster assistance property

For purposes of this subsection, the term ''qualified section 179 disaster assistance property'' means section 179 property (as defined in subsection (d)) which is qualified disaster assistance property (as defined in section 168(n)(2)).

(3) Coordination with empowerment zones and renewal communities

For purposes of sections 1397A and 1400J, qualified section 179 disaster assistance property shall not be treated as qualified zone property or qualified renewal property, unless the taxpayer elects not to take such qualified section 179 disaster assistance property into account for purposes of this subsection.

(4) Recapture

For purposes of this subsection, rules similar to the rules under subsection (d)(10) shall apply with respect to any qualified section 179 disaster assistance property which ceases to be qualified section 179 disaster assistance property.

(f) Special rules for qualified real property

(1) In general

If a taxpayer elects the application of this subsection for any taxable year beginning in 2010 or 2011, the term ''section 179 property'' shall include any qualified real property which is—

(A) of a character subject to an allowance for depreciation,

(B) acquired by purchase for use in the active conduct of a trade or business, and

(C) not described in the last sentence of subsection (d)(1).

(2) Qualified real property

For purposes of this subsection, the term ''qualified real property'' means—

(A) qualified leasehold improvement property described in section 168(e)(6),

(B) qualified restaurant property described in section 168(e)(7), and

(C) qualified retail improvement property described in section 168(e)(8).

(3) Limitation

For purposes of applying the limitation under subsection (b)(1)(B), not more than $250,000 of the aggregate cost which is taken into account under subsection (a) for any taxable year may be attributable to qualified real property.

(4) Carryover limitation

(A) In general

Notwithstanding subsection (b)(3)(B), no amount attributable to qualified real property may be carried over to a taxable year beginning after 2011.

(B) Treatment of disallowed amounts

Except as provided in subparagraph (C), to the extent that any amount is not allowed to be carried over to a taxable year beginning after 2011 by reason of subparagraph (A), this title shall be applied as if no election under this section had been made with respect to such amount.

(C) Amounts carried over from 2010

If subparagraph (B) applies to any amount (or portion of an amount) which is carried over from a taxable year other than the taxpayer's last taxable year beginning in 2011, such amount (or portion of an amount) shall be treated for purposes of this title as attributable to property placed in service on the first day of the taxpayer's last taxable year beginning in 2011.

(D) Allocation of amounts

For purposes of applying this paragraph and subsection (b)(3)(B) to any taxable year, the amount which is disallowed under subsection (b)(3)(A) for such taxable year which is attributed to qualified real property shall be the amount which bears the same ratio to the total amount so disallowed as—

(i) the aggregate amount attributable to qualified real property placed in service during such taxable year, increased by the portion of any amount carried over to such taxable year from a prior taxable year which is attributable to such property, bears to

(ii) the total amount of section 179 property placed in service during such taxable year, increased by the aggregate amount carried over to such taxable year from any prior taxable year.

For purposes of the preceding sentence, only section 179 property with respect to which

an election was made under subsection (c)(1) (determined without regard to subparagraph (B) of this paragraph) shall be taken into account.

(Added Pub. L. 85–866, title II, § 204(a), Sept. 2, 1958, 72 Stat. 1679; amended Pub. L. 87–834, § 13(c)(2), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 91–172, title IV, § 401(f), Dec. 30, 1969, 83 Stat. 603; Pub. L. 94–455, title II, § 213(a), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1547, 1834; Pub. L. 97–34, title II, § 202(a), Aug. 13, 1981, 95 Stat. 219; Pub. L. 97–354, § 3(f), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 97–448, title I, § 102(aa), Jan. 12, 1983, 96 Stat. 2369; Pub. L. 98–369, div. A, title I, § 13, July 18, 1984, 98 Stat. 505; Pub. L. 99–514, title II, §§ 201(d)(3), 202, Oct. 22, 1986, 100 Stat. 2139, 2142; Pub. L. 100–647, title I, § 1002(a)(19), (b)(1), Nov. 10, 1988, 102 Stat. 3356, 3357; Pub. L. 101–508, title XI, § 11813(b)(11), Nov. 5, 1990, 104 Stat. 1388–554; Pub. L. 103–66, title XIII, § 13116(a), Aug. 10, 1993, 107 Stat. 432; Pub. L. 104–188, title I, §§ 1111(a), 1702(h)(10), (19), Aug. 20, 1996, 110 Stat. 1758, 1874; Pub. L. 108–27, title II, § 202(a)–(e), May 28, 2003, 117 Stat. 757, 758; Pub. L. 108–357, title II, § 201, title VIII, § 910(a), Oct. 22, 2004, 118 Stat. 1429, 1659; Pub. L. 109–222, title I, § 101, May 17, 2006, 120 Stat. 346; Pub. L. 110–28, title VIII, § 8212(a)–(c), May 25, 2007, 121 Stat. 192; Pub. L. 110–185, title I, § 102(a), Feb. 13, 2008, 122 Stat. 618; Pub. L. 110–343, div. C, title VII, § 711(a), Oct. 3, 2008, 122 Stat. 3928; Pub. L. 111–5, div. B, title I, § 1202(a), Feb. 17, 2009, 123 Stat. 335; Pub. L. 111–147, title II, § 201(a), Mar. 18, 2010, 124 Stat. 77; Pub. L. 111–240, title II, § 2021(a)–(d), Sept. 27, 2010, 124 Stat. 2556, 2558; Pub. L. 111–312, title IV, § 402(a)–(e), title VII, § 737(b)(3), Dec. 17, 2010, 124 Stat. 3306, 3307, 3318.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

Pub. L. 111–312, title IV, § 402, Dec. 17, 2010, 124 Stat. 3306, provided that, applicable to taxable years beginning after Dec. 31, 2011, this section is amended as follows:

(1) in subsection (b)—

(A) in paragraph (1), by striking ''and'' at the end of subparagraph (B) and by striking subparagraph (C) and inserting the following new subparagraphs:

''(C) $125,000 in the case of taxable years beginning in 2012, and

''(D) $25,000 in the case of taxable years beginning after 2012.'';

(B) in paragraph (2), by striking ''and'' at the end of subparagraph (B) and by striking subparagraph (C) and inserting the following new subparagraphs:

''(C) $500,000 in the case of taxable years beginning in 2012, and

''(D) $200,000 in the case of taxable years beginning after 2012.''; and

(C) by adding at the end the following new paragraph:

''(6) Inflation adjustment

''(A) In general

''In the case of any taxable year beginning in calendar year 2012, the $125,000 and $500,000 amounts in paragraphs (1)(C) and (2)(C) shall each be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 2006' for 'calendar year 1992' in subparagraph (B) thereof.

''(B) Rounding

''(i) Dollar limitation

''If the amount in paragraph (1) as increased under subparagraph (A) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

''(ii) Phaseout amount

''If the amount in paragraph (2) as increased under subparagraph (A) is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.'';

(2) in subsection (c)(2), by striking ''2012'' and inserting ''2013''; and

(3) in subsection (d)(1)(A)(ii), by striking ''2012'' and inserting ''2013''.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–240, § 2021(a)(1), substituted ''shall not exceed—'' for ''shall not exceed $25,000 ($250,000 in the case of taxable years beginning after 2007 and before 2011).'' and added subpars. (A) to (C).

Pub. L. 111–147, § 201(a)(1), substituted ''($250,000 in the case of taxable years beginning after 2007 and before 2011)'' for ''($125,000 in the case of taxable years beginning after 2006 and before 2011)''.

Subsec. (b)(2). Pub. L. 111–240, § 2021(a)(2), substituted ''exceeds—'' for ''exceeds $200,000 ($800,000 in the case of taxable years beginning after 2007 and before 2011).'' and added subpars. (A) to (C).

Pub. L. 111–147, § 201(a)(2), substituted ''($800,000 in the case of taxable years beginning after 2007 and before 2011)'' for ''($500,000 in the case of taxable years beginning after 2006 and before 2011)''.

Subsec. (b)(5), (6). Pub. L. 111–147, § 201(a)(3), (4), redesignated par. (6) as (5) and struck out former par. (5) which related to inflation adjustments.

Subsec. (b)(7). Pub. L. 111–147, § 201(a)(3), struck out par. (7) which related to increase in limitations for 2008 and 2009.

Subsec. (c)(2). Pub. L. 111–240, § 2021(c), substituted ''2012'' for ''2011''.

Subsec. (d)(1)(A)(ii). Pub. L. 111–240, § 2021(d), substituted ''2012'' for ''2011''.

Subsec. (f). Pub. L. 111–240, § 2021(b), added subsec. (f).

Subsec. (f)(2)(B). Pub. L. 111–312, § 737(b)(3)(A), struck out ''(without regard to the dates specified in subparagraph (A)(i) thereof)'' after ''section 168(e)(7)''.

Subsec. (f)(2)(C). Pub. L. 111–312, § 737(b)(3)(B), struck out ''(without regard to subparagraph (E) thereof)'' after ''section 168(e)(8)''.

2009—Subsec. (b)(7). Pub. L. 111–5 substituted ''2008, and 2009'' for ''2008'' in heading and ''2008, or 2009'' for ''2008'' in introductory provisions.

2008—Subsec. (b)(7). Pub. L. 110–185 added par. (7).

Subsec. (e). Pub. L. 110–343 added subsec. (e).

2007—Subsec. (b)(1). Pub. L. 110–28, § 8212(a), (b)(1), substituted ''$125,000 in the case of taxable years beginning after 2006'' for ''$100,000 in the case of taxable years beginning after 2002'' and ''2011'' for ''2010''.

Subsec. (b)(2). Pub. L. 110–28, § 8212(a), (b)(2), substituted ''$500,000 in the case of taxable years beginning after 2006'' for ''$400,000 in the case of taxable years beginning after 2002'' and ''2011'' for ''2010''.

Subsec. (b)(5)(A). Pub. L. 110–28, § 8212(a), (c)(1), (2), in introductory provisions, substituted ''2007'' for ''2003'',

''2011'' for ''2010'', and ''$125,000 and $500,000'' for ''$100,000 and $400,000''.

Subsec. (b)(5)(A)(ii). Pub. L. 110–28, §8212(c)(3), substituted ''2006'' for ''2002''.

Subsecs. (c)(2), (d)(1)(A)(ii). Pub. L. 110–28, §8212(a), substituted ''2011'' for ''2010''.

2006—Subsecs. (b)(1), (2), (5)(A), (c)(2), (d)(1)(A)(ii). Pub. L. 109–222 substituted ''2010'' for ''2008''.

2004—Subsec. (b)(1), (2), (5)(A). Pub. L. 108–357, §201, substituted ''2008'' for ''2006''.

Subsec. (b)(6). Pub. L. 108–357, §910(a), added par. (6).

Subsecs. (c)(2), (d)(1)(A)(ii). Pub. L. 108–357, §201, substituted ''2008'' for ''2006''.

2003—Subsec. (b)(1). Pub. L. 108–27, §202(a), reenacted heading without change and amended text generally. Prior to amendment, par. (1) contained a table specifying the maximum amounts for taxable years 1997 to 2003 and thereafter which could be taken into account as the aggregate costs under subsec. (a).

Subsec. (b)(2). Pub. L. 108–27, §202(b), inserted ''($400,000 in the case of taxable years beginning after 2002 and before 2006)'' after ''$200,000''.

Subsec. (b)(5). Pub. L. 108–27, §202(d), added par. (5).

Subsec. (c)(2). Pub. L. 108–27, §202(e), inserted at end ''Any such election or specification with respect to any taxable year beginning after 2002 and before 2006 may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.''

Subsec. (d)(1). Pub. L. 108–27, §202(c), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'section 179 property' means any tangible property (to which section 168 applies) which is section 1245 property (as defined in section 1245(a)(3)) and which is acquired by purchase for use in the active conduct of a trade or business. Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.''

1996—Subsec. (b)(1). Pub. L. 104–188, §1111(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $17,500.''

Subsec. (d)(1). Pub. L. 104–188, §1702(h)(10), struck out ''in'' before ''a trade or business''.

Pub. L. 104–188, §1702(h)(19), inserted at end ''Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.''

1993—Subsec. (b)(1). Pub. L. 103–66 substituted ''$17,500'' for ''$10,000''.

1990—Subsec. (d)(1). Pub. L. 101–508, §11813(b)(11)(A), substituted ''section 1245 property (as defined in section 1245(a)(3))'' for ''section 38 property''.

Subsec. (d)(5). Pub. L. 101–508, §11813(b)(11)(B), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''This section shall not apply to any section 179 property purchased by any person described in section 46(e)(3) unless the credit under section 38 is allowable with respect to such person for such property (determined without regard to this section).''

1988—Subsec. (b)(3). Pub. L. 100–647, §1002(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(A) IN GENERAL.—The aggregate cost of section 179 property taken into account under subsection (a) for any taxable year shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

''(B) CARRYOVER OF UNUSED COST.—The amount of any cost which (but for subparagraph (A)) would have been allowed as a deduction under subsection (a) for any taxable year shall be carried to the succeeding taxable year and added to the amount allowable as a deduction under subsection (a) for such succeeding taxable year.

''(C) COMPUTATION OF TAXABLE INCOME.—For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the cost of any section 179 property.''

Subsec. (d)(1). Pub. L. 100–647, §1002(a)(19), substituted ''tangible property (to which section 168 applies)'' for ''recovery property''.

1986—Subsec. (b). Pub. L. 99–514, §202(a), in amending subsec. (b) generally, substituted ''Limitations'' for ''Dollar limitation'' in heading, in par. (1) substituted as heading ''Dollar limitation'' for ''In general'' and in text ''shall not exceed $10,000'' for ''shall not exceed the following applicable amount:'' and a table specifying amounts for specific years, added pars. (2) to (4), and struck out former par. (2) which read as follows: ''In the case of a husband and wife filing separate returns for a taxable year, the applicable amount under paragraph (1) shall be equal to 50 percent of the amount otherwise determined under paragraph (1).''

Subsec. (d)(1). Pub. L. 99–514, §202(b), inserted ''in the active conduct of''.

Subsec. (d)(8). Pub. L. 99–514, §201(d)(3), substituted ''Treatment of'' for ''Dollar limitation in case of'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of a partnership, the dollar limitation contained in subsection (b)(1) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.''

Subsec. (d)(10). Pub. L. 99–514, §202(c), struck out ''before the close of the second taxable year following the taxable year in which it is placed in service by the taxpayer'' after ''at any time''.

1984—Subsec. (b)(1). Pub. L. 98–369 amended table by dropping items setting applicable amounts of $0 for 1981 and $5,000 for 1982, substituting an applicable amount of $5,000 for 1983, 1984, 1985, 1986, and 1987 for former table items which had set applicable amounts of $5,000 for 1983, $7,500 for 1984, $7,500 for 1985, and $10,000 for 1986 or thereafter, and added items setting applicable amounts of $7,500 for 1988 or 1989, and $10,000 for 1990 or thereafter.

1983—Subsec. (d)(10). Pub. L. 97–448 added par. (10).

1982—Subsec. (d)(8). Pub. L. 97–354 substituted ''partnerships and S corporations'' for ''partnerships'' in heading, and inserted ''A similar rule shall apply in the case of an S corporation and its shareholders.''

1981—Pub. L. 97–34 amended section generally, changing its content from provisions that formerly made available an additional first-year depreciation allowance for small businesses to provisions allowing a taxpayer to elect to treat the cost of section 179 property as an expense which is not chargeable to capital account, with any cost so treated to be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

1976—Subsecs. (c)(1), (2), (d)(6)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(8), (9). Pub. L. 94–455, §213(a), added par. (8) and redesignated former par. (8) as par. (9).

Subsec. (e). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1969—Subsec. (d). Pub. L. 91–172 substituted reference to component members of a controlled group for reference to members of an affiliated group in pars. (2)(B) and (b), and substituted definition of controlled group for definition of affiliated group in par. (7).

1962—Subsec. (d)(5). Pub. L. 87–834, §13(c)(2)(A), substituted ''section 167(h)'' for ''section 167(g)''.

Subsec. (d)(8). Pub. L. 87–834, §13(c)(2)(B), substituted ''section 167(g)'' for ''section 167(f)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title IV, §402(f), Dec. 17, 2010, 124 Stat. 3307, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011.''

Amendment by section 737(b)(3) of Pub. L. 111–312 applicable to property placed in service after Dec. 31, 2009, see section 737(c) of Pub. L. 111–312, set out as a note under section 168 of this title.

Pub. L. 111–240, title II, § 2021(e), Sept. 27, 2010, 124 Stat. 2558, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2009, in taxable years beginning after such date.

''(2) EXTENSIONS.—The amendments made by subsections (c) and (d) shall apply to taxable years beginning after December 31, 2010.''

Pub. L. 111–147, title II, § 201(b), Mar. 18, 2010, 124 Stat. 77, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1202(b), Feb. 17, 2009, 123 Stat. 335, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title VII, § 711(b), Oct. 3, 2008, 122 Stat. 3929, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007, with respect [to] disasters declared after such date.''

Pub. L. 110–185, title I, § 102(b), Feb. 13, 2008, 122 Stat. 618, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, § 8212(d), May 25, 2007, 121 Stat. 193, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 910(b), Oct. 22, 2004, 118 Stat. 1660, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–27, title II, § 202(f), May 28, 2003, 117 Stat. 758, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1111(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Amendment by section 1702(h)(10), (19) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13116(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(3) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(3) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(a) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE

Section 204(c) of Pub. L. 85–866 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to taxable years ending after June 30, 1958.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain

transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 179A. Deduction for clean-fuel vehicles and certain refueling property

(a) Allowance of deduction

(1) In general

There shall be allowed as a deduction an amount equal to the cost of—

(A) any qualified clean-fuel vehicle property, and

(B) any qualified clean-fuel vehicle refueling property.

The deduction under the preceding sentence with respect to any property shall be allowed for the taxable year in which such property is placed in service.

(2) Incremental cost for certain vehicles

If a vehicle may be propelled by both a clean-burning fuel and any other fuel, only the incremental cost of permitting the use of the clean-burning fuel shall be taken into account.

(b) Limitations

(1) Qualified clean-fuel vehicle property

(A) In general

The cost which may be taken into account under subsection (a)(1)(A) with respect to any motor vehicle shall not exceed—

(i) in the case of a motor vehicle not described in clause (ii) or (iii), $2,000,

(ii) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

(iii) $50,000 in the case of—

(I) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

(II) any bus which has a seating capacity of at least 20 adults (not including the driver).

(B) Phaseout

In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2005, the limit otherwise allowable under subparagraph (A) shall be reduced by 75 percent.

(2) Qualified clean-fuel vehicle refueling property

(A) In general

The aggregate cost which may be taken into account under subsection (a)(1)(B) with respect to qualified clean-fuel vehicle refueling property placed in service during the taxable year at a location shall not exceed the excess (if any) of—

(i) $100,000, over

(ii) the aggregate amount taken into account under subsection (a)(1)(B) by the taxpayer (or any related person or predecessor) with respect to property placed in service at such location for all preceding taxable years.

(B) Related person

For purposes of this paragraph, a person shall be treated as related to another person if such person bears a relationship to such other person described in section 267(b) or 707(b)(1).

(C) Election

If the limitation under subparagraph (A) applies for any taxable year, the taxpayer shall, on the return of tax for such taxable year, specify the items of property (and the portion of costs of such property) which are to be taken into account under subsection (a)(1)(B).

(c) Qualified clean-fuel vehicle property defined

For purposes of this section—

(1) In general

The term ''qualified clean-fuel vehicle property'' means property which is acquired for use by the taxpayer and not for resale, the original use of which commences with the taxpayer, with respect to which the environmental standards of paragraph (2) are met, and which is described in either of the following subparagraphs:

(A) Retrofit parts and components

Any property installed on a motor vehicle which is propelled by a fuel which is not a clean-burning fuel for purposes of permitting such vehicle to be propelled by a clean-burning fuel—

(i) if the property is an engine (or modification thereof) which may use a clean-burning fuel, or

(ii) to the extent the property is used in the storage or delivery to the engine of such fuel, or the exhaust of gases from combustion of such fuel.

(B) Original equipment manufacturer's vehicles

A motor vehicle produced by an original equipment manufacturer and designed so that the vehicle may be propelled by a clean-burning fuel, but only to the extent of the portion of the basis of such vehicle which is attributable to an engine which may use such fuel, to the storage or delivery to the engine of such fuel, or to the exhaust of gases from combustion of such fuel.

(2) Environmental standards

Property shall not be treated as qualified clean-fuel vehicle property unless—

(A) the motor vehicle of which it is a part meets any applicable Federal or State emissions standards with respect to each fuel by which such vehicle is designed to be propelled, or

(B) in the case of property described in paragraph (1)(A), such property meets applicable Federal and State emissions-related certification, testing, and warranty requirements.

(3) Exception for qualified electric vehicles

The term ''qualified clean-fuel vehicle property'' does not include any qualified electric vehicle (as defined in section 30(c)).

(d) Qualified clean-fuel vehicle refueling property defined

For purposes of this section, the term ''qualified clean-fuel vehicle refueling property'' means any property (not including a building and its structural components) if—

(1) such property is of a character subject to the allowance for depreciation,

(2) the original use of such property begins with the taxpayer, and

(3) such property is—

(A) for the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled by such fuel, but only if the storage or dispensing of the fuel is at the point where such fuel is delivered into the fuel tank of the motor vehicle, or

(B) for the recharging of motor vehicles propelled by electricity, but only if the property is located at the point where the motor vehicles are recharged.

(e) Other definitions and special rules

For purposes of this section—

(1) Clean-burning fuel

The term ''clean-burning fuel'' means—

(A) natural gas,

(B) liquefied natural gas,

(C) liquefied petroleum gas,

(D) hydrogen,

(E) electricity, and

(F) any other fuel at least 85 percent of which is 1 or more of the following: methanol, ethanol, any other alcohol, or ether.

(2) Motor vehicle

The term ''motor vehicle'' means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

(3) Cost of retrofit parts includes cost of installation

The cost of any qualified clean-fuel vehicle property referred to in subsection (c)(1)(A) shall include the cost of the original installation of such property.

(4) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any deduction allowable under subsection (a) with respect to any property which ceases to be property eligible for such deduction.

(5) Property used outside United States, etc., not qualified

No deduction shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

(6) Basis reduction

(A) In general

For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

(B) Ordinary income recapture

For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

(f) Termination

This section shall not apply to any property placed in service after December 31, 2005.

(Added Pub. L. 102–486, title XIX, § 1913(a)(1), Oct. 24, 1992, 106 Stat. 3016; amended Pub. L. 104–188, title I, § 1704(j)(2), Aug. 20, 1996, 110 Stat. 1881; Pub. L. 107–147, title VI, § 606(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, § 319(a), Oct. 4, 2004, 118 Stat. 1182; Pub. L. 109–58, title XIII, § 1348, Aug. 8, 2005, 119 Stat. 1056.)

AMENDMENTS

2005—Subsec. (f). Pub. L. 109–58 substituted ''December 31, 2005'' for ''December 31, 2006''.

2004—Subsec. (b)(1)(B). Pub. L. 108–311 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2003, the limit otherwise applicable under subparagraph (A) shall be reduced by—

''(i) 25 percent in the case of property placed in service in calendar year 2004,

''(ii) 50 percent in the case of property placed in service in calendar year 2005, and

''(iii) 75 percent in the case of property placed in service in calendar year 2006.''

2002—Subsec. (b)(1)(B). Pub. L. 107–147, § 606(a)(1)(A), substituted ''December 31, 2003,'' for ''December 31, 2001,'' in introductory provisions.

Subsec. (b)(1)(B)(i). Pub. L. 107–147, § 606(a)(1)(B), substituted ''2004'' for ''2002''

Subsec. (b)(1)(B)(ii). Pub. L. 107–147, § 606(a)(1)(B), substituted ''2005'' for ''2003''.

Subsec. (b)(1)(B)(iii). Pub. L. 107–147, § 606(a)(1)(B), substituted ''2006'' for ''2004''.

Subsec. (f). Pub. L. 107–147, § 606(a)(2), substituted ''December 31, 2006'' for ''December 31, 2004''.

1996—Subsecs. (f), (g). Pub. L. 104–188 redesignated subsec. (g) as (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, § 319(b), Oct. 4, 2004, 118 Stat. 1182, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, § 606(b), Mar. 9, 2002, 116 Stat. 60, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2001.''

EFFECTIVE DATE

Section applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102–486, set out as a note under section 30 of this title.

§ 179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations

(a) Allowance of deduction

In the case of a small business refiner (as defined in section 45H(c)(1)) which elects the application of this section, there shall be allowed as a deduction an amount equal to 75 percent of qualified costs (as defined in section 45H(c)(2)) which are paid or incurred by the taxpayer during the taxable year and which are properly chargeable to capital account.

(b) Reduced percentage

In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels.

(c) Basis reduction

(1) In general

For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

(2) Ordinary income recapture

For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

(d) Coordination with other provisions

Section 280B shall not apply to amounts which are treated as expenses under this section.

(e) Election to allocate deduction to cooperative owner

(1) In general

If—

(A) a small business refiner to which subsection (a) applies is an organization to which part I of subchapter T applies, and

(B) one or more persons directly holding an ownership interest in the refiner are organizations to which part I of subchapter T apply,

the refiner may elect to allocate all or a portion of the deduction allowable under subsection (a) to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the refiner shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

(2) Form and effect of election

An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) Written notice to owners

If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(Added Pub. L. 108–357, title III, §338(a), Oct. 22, 2004, 118 Stat. 1480; amended Pub. L. 109–58, title XIII, §1324(a), Aug. 8, 2005, 119 Stat. 1015; Pub. L. 110–172, §7(a)(3)(A), (C), Dec. 29, 2007, 121 Stat. 2482.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–172 substituted ''qualified costs'' for ''qualified capital costs'' and inserted ''and which are properly chargeable to capital account'' before period at end.

2005—Subsec. (e). Pub. L. 109–58 added subsec. (e).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1324(b), Aug. 8, 2005, 119 Stat. 1015, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 338(a) of the American Jobs Creation Act of 2004 [Pub. L. 108–357, enacting this section].''

EFFECTIVE DATE

Pub. L. 108–357, title III, §338(c), Oct. 22, 2004, 118 Stat. 1481, provided that: ''The amendment made by this section [enacting this section and amending sections 263, 263A, 312, 1016, and 1245 of this title] shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.''

§ 179C. Election to expense certain refineries

(a) Treatment as expenses

A taxpayer may elect to treat 50 percent of the cost of any qualified refinery property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified refinery property is placed in service.

(b) Election

(1) In general

An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section may not be revoked except with the consent of the Secretary.

(c) Qualified refinery property

(1) In general

The term ''qualified refinery property'' means any portion of a qualified refinery—

(A) the original use of which commences with the taxpayer,

(B) which is placed in service by the taxpayer after the date of the enactment of this section and before January 1, 2014,

(C) in the case any portion of a qualified refinery (other than a qualified refinery which is separate from any existing refinery), which meets the requirements of subsection (e),

(D) which meets all applicable environmental laws in effect on the date such portion was placed in service,

(E) no written binding contract for the construction of which was in effect on or before June 14, 2005, and

(F)(i) the construction of which is subject to a written binding construction contract entered into before January 1, 2010,

(ii) which is placed in service before January 1, 2010, or

(iii) in the case of self-constructed property, the construction of which began after June 14, 2005, and before January 1, 2010.

(2) Special rule for sale-leasebacks

For purposes of paragraph (1)(A), if property is—

(A) originally placed in service after the date of the enactment of this section by a person, and

(B) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subparagraph (B).

(3) Effect of waiver under Clean Air Act

A waiver under the Clean Air Act shall not be taken into account in determining whether the requirements of paragraph (1)(D) are met.

(d) Qualified refinery

For purposes of this section, the term ''qualified refinery'' means any refinery located in the United States which is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels (as defined in section 45K(c)), or directly from shale or tar sands.

(e) Production capacity

The requirements of this subsection are met if the portion of the qualified refinery—

(1) enables the existing qualified refinery to increase total volume output (determined without regard to asphalt or lube oil) by 5 percent or more on an average daily basis, or

(2) enables the existing qualified refinery to process shale, tar sands, or qualified fuels (as defined in section 45K(c)) at a rate which is equal to or greater than 25 percent of the total throughput of such qualified refinery on an average daily basis.

(f) Ineligible refinery property

No deduction shall be allowed under subsection (a) for any qualified refinery property—

(1) the primary purpose of which is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility, or

(2) which is built solely to comply with consent decrees or projects mandated by Federal, State, or local governments.

(g) Election to allocate deduction to cooperative owner

(1) In general

If—

(A) a taxpayer to which subsection (a) applies is an organization to which part I of subchapter T applies, and

(B) one or more persons directly holding an ownership interest in the taxpayer are organizations to which part I of subchapter T apply,

the taxpayer may elect to allocate all or a portion of the deduction allowable under subsection (a) to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the taxpayer shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

(2) Form and effect of election

An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) Written notice to owners

If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(h) Reporting

No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Secretary a report containing such information with respect to the operation of the refineries of the taxpayer as the Secretary shall require.

(Added Pub. L. 109–58, title XIII, § 1323(a), Aug. 8, 2005, 119 Stat. 1013; amended Pub. L. 110–343, div. B, title II, § 209(a), (b), Oct. 3, 2008, 122 Stat. 3840.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(1)(B), (2)(A), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The Clean Air Act, referred to in subsec. (c)(3), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (c)(1)(B). Pub. L. 110–343, § 209(a)(1), substituted ''January 1, 2014'' for ''January 1, 2012''.

Subsec. (c)(1)(F). Pub. L. 110–343, § 209(a)(2), substituted ''January 1, 2010'' for ''January 1, 2008'' wherever appearing.

Subsec. (d). Pub. L. 110–343, § 209(b)(1), inserted '', or directly from shale or tar sands'' after ''(as defined in section 45K(c))''.

Subsec. (e)(2). Pub. L. 110–343, § 209(b)(2), inserted ''shale, tar sands, or'' before ''qualified fuels''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, § 209(c), Oct. 3, 2008, 122 Stat. 3840, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE

Pub. L. 109–58, title XIII, § 1323(c), Aug. 8, 2005, 119 Stat. 1015, provided that: ''The amendments made by this section [enacting this section and amending sections 263, 312, and 1245 of this title] shall apply to properties placed in service after the date of the enactment of this Act [Aug. 8, 2005].''

§ 179D. Energy efficient commercial buildings deduction

(a) In general

There shall be allowed as a deduction an amount equal to the cost of energy efficient commercial building property placed in service during the taxable year.

(b) Maximum amount of deduction

The deduction under subsection (a) with respect to any building for any taxable year shall not exceed the excess (if any) of—

(1) the product of—

(A) $1.80, and

(B) the square footage of the building, over

(2) the aggregate amount of the deductions under subsection (a) with respect to the building for all prior taxable years.

(c) Definitions

For purposes of this section—

(1) Energy efficient commercial building property

The term ''energy efficient commercial building property'' means property—

(A) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

(B) which is installed on or in any building which is—

(i) located in the United States, and

(ii) within the scope of Standard 90.1–2001,

(C) which is installed as part of—

(i) the interior lighting systems,

(ii) the heating, cooling, ventilation, and hot water systems, or

(iii) the building envelope, and

(D) which is certified in accordance with subsection (d)(6) as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1–2001 using methods of calculation under subsection (d)(2).

(2) Standard 90.1–2001

The term ''Standard 90.1–2001'' means Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on April 2, 2003).

(d) Special rules

(1) Partial allowance

(A) In general

Except as provided in subsection (f), if—

(i) the requirement of subsection (c)(1)(D) is not met, but

(ii) there is a certification in accordance with paragraph (6) that any system referred to in subsection (c)(1)(C) satisfies the energy-savings targets established by the Secretary under subparagraph (B) with respect to such system,

then the requirement of subsection (c)(1)(D) shall be treated as met with respect to such system, and the deduction under subsection (a) shall be allowed with respect to energy efficient commercial building property installed as part of such system and as part of a plan to meet such targets, except that subsection (b) shall be applied to such property by substituting ''$.60'' for ''$1.80''.

(B) Regulations

The Secretary, after consultation with the Secretary of Energy, shall establish a target for each system described in subsection (c)(1)(C) which, if such targets were met for all such systems, the building[1] would meet the requirements of subsection (c)(1)(D).

(2) Methods of calculation

The Secretary, after consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power consumption and cost, based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual.

(3) Computer software

(A) In general

Any calculation under paragraph (2) shall be prepared by qualified computer software.

(B) Qualified computer software

For purposes of this paragraph, the term ''qualified computer software'' means software—

(i) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power consumption and costs as required by the Secretary,

(ii) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and

(iii) which provides a notice form which documents the energy efficiency features of the building and its projected annual energy costs.

(4) Allocation of deduction for public property

In the case of energy efficient commercial building property installed on or in property owned by a Federal, State, or local government or a political subdivision thereof, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the owner of such property. Such person shall be treated as the taxpayer for purposes of this section.

(5) Notice to owner

Each certification required under this section shall include an explanation to the building owner regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under paragraph (3)(B)(iii).

[1] So in original.

(6) Certification

(A) In general

The Secretary shall prescribe the manner and method for the making of certifications under this section.

(B) Procedures

The Secretary shall include as part of the certification process procedures for inspection and testing by qualified individuals described in subparagraph (C) to ensure compliance of buildings with energy-savings plans and targets. Such procedures shall be comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.

(C) Qualified individuals

Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes.

(e) Basis reduction

For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient commercial building property, the basis of such property shall be reduced by the amount of the deduction so allowed.

(f) Interim rules for lighting systems

Until such time as the Secretary issues final regulations under subsection (d)(1)(B) with respect to property which is part of a lighting system—

(1) In general

The lighting system target under subsection (d)(1)(A)(ii) shall be a reduction in lighting power density of 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1–2001.

(2) Reduction in deduction if reduction less than 40 percent

(A) In general

If, with respect to the lighting system of any building other than a warehouse, the reduction in lighting power density of the lighting system is not at least 40 percent, only the applicable percentage of the amount of deduction otherwise allowable under this section with respect to such property shall be allowed.

(B) Applicable percentage

For purposes of subparagraph (A), the applicable percentage is the number of percentage points (not greater than 100) equal to the sum of—

(i) 50, and

(ii) the amount which bears the same ratio to 50 as the excess of the reduction of lighting power density of the lighting system over 25 percentage points bears to 15.

(C) Exceptions

This subsection shall not apply to any system—

(i) the controls and circuiting of which do not comply fully with the mandatory and prescriptive requirements of Standard 90.1–2001 and which do not include provision for bilevel switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies, or

(ii) which does not meet the minimum requirements for calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000.

(g) Regulations

The Secretary shall promulgate such regulations as necessary—

(1) to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section, and

(2) to provide for a recapture of the deduction allowed under this section if the plan described in subsection (c)(1)(D) or (d)(1)(A) is not fully implemented.

(h) Termination

This section shall not apply with respect to property placed in service after December 31, 2013.

(Added Pub. L. 109–58, title XIII, § 1331(a), Aug. 8, 2005, 119 Stat. 1020; amended Pub. L. 109–432, div. A, title II, § 204, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–343, div. B, title III, § 303, Oct. 3, 2008, 122 Stat. 3845.)

AMENDMENTS

2008—Subsec. (h). Pub. L. 110–343 substituted ''December 31, 2013'' for ''December 31, 2008''.

2006—Subsec. (h). Pub. L. 109–432 substituted ''2008'' for ''2007''.

EFFECTIVE DATE

Pub. L. 109–58, title XIII, § 1331(d), Aug. 8, 2005, 119 Stat. 1024, provided that: ''The amendments made by this section [enacting this section and amending sections 263, 312, 1016, 1245, and 1250 of this title] shall apply to property placed in service after December 31, 2005.''

§ 179E. Election to expense advanced mine safety equipment

(a) Treatment as expenses

A taxpayer may elect to treat 50 percent of the cost of any qualified advanced mine safety equipment property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified advanced mine safety equipment property is placed in service.

(b) Election

(1) In general

An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall specify the advanced mine safety equipment property to which the election applies and shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section may not be revoked except with the consent of the Secretary.

(c) Qualified advanced mine safety equipment property

For purposes of this section, the term ''qualified advanced mine safety equipment property'' means any advanced mine safety equipment property for use in any underground mine located in the United States—

(1) the original use of which commences with the taxpayer, and

(2) which is placed in service by the taxpayer after the date of the enactment of this section.

(d) Advanced mine safety equipment property

For purposes of this section, the term ''advanced mine safety equipment property'' means any of the following:

(1) Emergency communication technology or device which is used to allow a miner to maintain constant communication with an individual who is not in the mine.

(2) Electronic identification and location device which allows an individual who is not in the mine to track at all times the movements and location of miners working in or at the mine.

(3) Emergency oxygen-generating, self-rescue device which provides oxygen for at least 90 minutes.

(4) Pre-positioned supplies of oxygen which (in combination with self-rescue devices) can be used to provide each miner on a shift, in the event of an accident or other event which traps the miner in the mine or otherwise necessitates the use of such a self-rescue device, the ability to survive for at least 48 hours.

(5) Comprehensive atmospheric monitoring system which monitors the levels of carbon monoxide, methane, and oxygen that are present in all areas of the mine and which can detect smoke in the case of a fire in a mine.

(e) Coordination with section 179

No expenditures shall be taken into account under subsection (a) with respect to the portion of the cost of any property specified in an election under section 179.

(f) Reporting

No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Secretary a report containing such information with respect to the operation of the mines of the taxpayer as the Secretary shall require.

(g) Termination

This section shall not apply to property placed in service after December 31, 2011.

(Added Pub. L. 109–432, div. A, title IV, §404(a), Dec. 20, 2006, 120 Stat. 2955; amended Pub. L. 110–343, div. C, title III, §311, Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111–312, title VII, §743(a), Dec. 17, 2010, 124 Stat. 3319.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (g). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2008''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §743(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009.''

EFFECTIVE DATE

Pub. L. 109–432, div. A, title IV, §404(c), Dec. 20, 2006, 120 Stat. 2957, provided that: ''The amendments made by this section [enacting this section and amending sections 263, 312, and 1245 of this title] shall apply to costs paid or incurred after the date of the enactment of this Act [Dec. 20, 2006].''

§ 180. Expenditures by farmers for fertilizer, etc.

(a) In general

A taxpayer engaged in the business of farming may elect to treat as expenses which are not chargeable to capital account expenditures (otherwise chargeable to capital account) which are paid or incurred by him during the taxable year for the purchase or acquisition of fertilizer, lime, ground limestone, marl, or other materials to enrich, neutralize, or condition land used in farming, or for the application of such materials to such land. The expenditures so treated shall be allowed as a deduction.

(b) Land used in farming

For purposes of subsection (a), the term ''land used in farming'' means land used (before or simultaneously with the expenditures described in subsection (a)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(c) Election

The election under subsection (a) for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. Such election shall be made in such manner as the Secretary may by regulations prescribe. Such election may not be revoked except with the consent of the Secretary.

(Added Pub. L. 86–779, §6(a), Sept. 14, 1960, 74 Stat. 1001; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE

Section 6(d) of Pub. L. 86–779 provided that: ''The amendments made by subsections (a), (b), and (c) [enacting this section and amending section 263 of this title] shall apply to taxable years beginning after December 31, 1959.''

§ 181. Treatment of certain qualified film and television productions

(a) Election to treat costs as expenses

(1) In general

A taxpayer may elect to treat the cost of any qualified film or television production as

an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction.

(2) Dollar limitation

(A) In general

Paragraph (1) shall not apply to so much of the aggregate cost of any qualified film or television production as exceeds $15,000,000.

(B) Higher dollar limitation for productions in certain areas

In the case of any qualified film or television production the aggregate cost of which is significantly incurred in an area eligible for designation as—

(i) a low-income community under section 45D, or

(ii) a distressed county or isolated area of distress by the Delta Regional Authority established under section 2009aa–1 of title 7, United States Code,

subparagraph (A) shall be applied by substituting ''$20,000,000'' for ''$15,000,000''.

(b) No other deduction or amortization deduction allowable

With respect to the basis of any qualified film or television production to which an election is made under subsection (a), no other depreciation or amortization deduction shall be allowable.

(c) Election

(1) In general

An election under this section with respect to any qualified film or television production shall be made in such manner as prescribed by the Secretary and by the due date (including extensions) for filing the taxpayer's return of tax under this chapter for the taxable year in which costs of the production are first incurred.

(2) Revocation of election

Any election made under this section may not be revoked without the consent of the Secretary.

(d) Qualified film or television production

For purposes of this section—

(1) In general

The term ''qualified film or television production'' means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation.

(2) Production

(A) In general

A production is described in this paragraph if such production is property described in section 168(f)(3).

(B) Special rules for television series

In the case of a television series—

(i) each episode of such series shall be treated as a separate production, and

(ii) only the first 44 episodes of such series shall be taken into account.

(C) Exception

A production is not described in this paragraph if records are required under section 2257 of title 18, United States Code, to be maintained with respect to any performer in such production.

(3) Qualified compensation

For purposes of paragraph (1)—

(A) In general

The term ''qualified compensation'' means compensation for services performed in the United States by actors, production personnel, directors, and producers.

(B) Participations and residuals excluded

The term ''compensation'' does not include participations and residuals (as defined in section 167(g)(7)(B)).

(e) Application of certain other rules

For purposes of this section, rules similar to the rules of subsections (b)(2) and (c)(4) of section 194 shall apply.

(f) Termination

This section shall not apply to qualified film and television productions commencing after December 31, 2011.

(Added Pub. L. 108–357, title II, § 244(a), Oct. 22, 2004, 118 Stat. 1445; amended Pub. L. 109–135, title IV, § 403(e)(1), Dec. 21, 2005, 119 Stat. 2623; Pub. L. 110–343, div. C, title V, § 502(a), (b), (d), Oct. 3, 2008, 122 Stat. 3876, 3877; Pub. L. 111–312, title VII, § 744(a), Dec. 17, 2010, 124 Stat. 3319.)

PRIOR PROVISIONS

A prior section 181, Pub. L. 87–834, § 2(c), Oct. 16, 1962, 76 Stat. 970, related to a deduction for unused investment credit, prior to repeal by Pub. L. 88–272, title II, § 203(a)(3)(B), (4), Feb. 26, 1964, 78 Stat. 34, applicable in case of property placed in service after Dec. 31, 1963, with respect to taxable years ending after such date, and in case of property placed in service before Jan. 1, 1964, with respect to taxable years beginning after Dec. 31, 1963.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (a)(2)(A). Pub. L. 110–343, § 502(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any qualified film or television production the aggregate cost of which exceeds $15,000,000.''

Subsec. (d)(3)(A). Pub. L. 110–343, § 502(d), substituted ''actors, production personnel, directors, and producers.'' for ''actors, directors, producers, and other relevant production personnel.''

Subsec. (f). Pub. L. 110–343, § 502(a), substituted ''December 31, 2009'' for ''December 31, 2008''.

2005—Subsec. (d)(2). Pub. L. 109–135 struck out ''For purposes of a television series, only the first 44 episodes of such series may be taken into account.'' at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 744(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to productions commencing after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title V, § 502(e), Oct. 3, 2008, 122 Stat. 3877, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section

[amending this section and section 199 of this title] shall apply to qualified film and television productions commencing after December 31, 2007.

''(2) DEDUCTION.—The amendments made by subsection (c) [amending section 199 of this title] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 108–357, title II, §244(c), Oct. 22, 2004, 118 Stat. 1447, provided that: ''The amendments made by this section [enacting this section] shall apply to qualified film and television productions (as defined in section 181(d)(1) of the Internal Revenue Code of 1986, as added by this section) commencing after the date of the enactment of this Act [Oct. 22, 2004].''

[§ 182. Repealed. Pub. L. 99–514, title IV, § 402(a), Oct. 22, 1986, 100 Stat. 2221]

Section, added Pub. L. 87–834, §21(a), Oct. 16, 1962, 76 Stat. 1063; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, authorized deduction of expenditures by farmers for clearing land.

EFFECTIVE DATE OF REPEAL

Section 402(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending sections 263 and 1252 of this title and repealing this section] shall apply to amounts paid or incurred after December 31, 1985, in taxable years ending after such date.''

§ 183. Activities not engaged in for profit

(a) General rule

In the case of an activity engaged in by an individual or an S corporation, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter except as provided in this section.

(b) Deductions allowable

In the case of an activity not engaged in for profit to which subsection (a) applies, there shall be allowed—

(1) the deductions which would be allowable under this chapter for the taxable year without regard to whether or not such activity is engaged in for profit, and

(2) a deduction equal to the amount of the deductions which would be allowable under this chapter for the taxable year only if such activity were engaged in for profit, but only to the extent that the gross income derived from such activity for the taxable year exceeds the deductions allowable by reason of paragraph (1).

(c) Activity not engaged in for profit defined

For purposes of this section, the term ''activity not engaged in for profit'' means any activity other than one with respect to which deductions are allowable for the taxable year under section 162 or under paragraph (1) or (2) of section 212.

(d) Presumption

If the gross income derived from an activity for 3 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity (determined without regard to whether or not such activity is engaged in for profit), then, unless the Secretary establishes to the contrary, such activity shall be presumed for purposes of this chapter for such taxable year to be an activity engaged in for profit. In the case of an activity which consists in major part of the breeding, training, showing, or racing of horses, the preceding sentence shall be applied by substituting ''2'' for ''3'' and ''7'' for ''5''.

(e) Special rule

(1) In general

A determination as to whether the presumption provided by subsection (d) applies with respect to any activity shall, if the taxpayer so elects, not be made before the close of the fourth taxable year (sixth taxable year, in the case of an activity described in the last sentence of such subsection) following the taxable year in which the taxpayer first engages in the activity. For purposes of the preceding sentence, a taxpayer shall be treated as not having engaged in an activity during any taxable year beginning before January 1, 1970.

(2) Initial period

If the taxpayer makes an election under paragraph (1), the presumption provided by subsection (d) shall apply to each taxable year in the 5-taxable year (or 7-taxable year) period beginning with the taxable year in which the taxpayer first engages in the activity, if the gross income derived from the activity for 3 (or 2 if applicable) or more of the taxable years in such period exceeds the deductions attributable to the activity (determined without regard to whether or not the activity is engaged in for profit).

(3) Election

An election under paragraph (1) shall be made at such time and manner, and subject to such terms and conditions, as the Secretary may prescribe.

(4) Time for assessing deficiency attributable to activity

If a taxpayer makes an election under paragraph (1) with respect to an activity, the statutory period for the assessment of any deficiency attributable to such activity shall not expire before the expiration of 2 years after the date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 for the last taxable year in the period of 5 taxable years (or 7 taxable years) to which the election relates. Such deficiency may be assessed notwithstanding the provisions of any law or rule of law which would otherwise prevent such an assessment.

(Added Pub. L. 91–172, title II, §213(a), Dec. 30, 1969, 83 Stat. 571; amended Pub. L. 92–178, title III, §311(a), Dec. 10, 1971, 85 Stat. 525; Pub. L. 94–455, title II, §214(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1549, 1834; Pub. L. 97–354, §5(a)(23), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 99–514, title I, §143(a), Oct. 22, 1986, 100 Stat. 2120; Pub. L. 100–647, title I, §1001(h)(3), Nov. 10, 1988, 102 Stat. 3352.)

AMENDMENTS

1988—Subsec. (e)(2). Pub. L. 100–647 substituted ''activity for 3 (or 2 if applicable)'' for ''activity for 2''.

1986—Subsec. (d). Pub. L. 99–514 substituted ''3'' for ''2'' before ''or more'' in first sentence and '' '2' for '3' and '7' for '5' '' for ''the period of 7 consecutive taxable years for the period of 5 consecutive taxable years'' in second sentence.

1982—Subsec. (a). Pub. L. 97–354 substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

1976—Subsecs. (d), (e)(3). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4). Pub. L. 94–455, § 214(a), added par. (4).

1971—Subsec. (e). Pub. L. 92–178 added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 214(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 6212 of this title] shall apply with respect to taxable years beginning after December 31, 1969; except that such amendments shall not apply to any taxable year ending before the date of the enactment of this Act [Oct. 4, 1976] with respect to which the period for assessing a deficiency has expired before such date of enactment.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 311(b) of Pub. L. 92–178 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE

Section 213(d) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this section, amending section 6504 of this title, and repealing section 270 of this title] shall apply to taxable years beginning after December 31, 1969.''

[§ 184. Repealed. Pub. L. 101–508, title XI, § 11801(a)(12), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 91–172, title VII, § 705(a), Dec. 30, 1969, 83 Stat. 670; amended Pub. L. 93–625, § 3(b), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to amortization of certain railroad rolling stock.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 185. Repealed. Pub. L. 99–514, title II, § 242(a), Oct. 22, 1986, 100 Stat. 2181]

Section, added Pub. L. 91–172, title VII, § 705(a), Dec. 30, 1969, 83 Stat. 672; amended Pub. L. 94–455, title XVII, § 1702, title XIX, § 1906(b) (13)(A), Oct. 4, 1976, 90 Stat. 1760, 1834; Pub. L. 95–473, § 2(a)(2)(B), Oct. 17, 1978, 92 Stat. 1464, related to amortization of railroad grading and tunnel bores.

EFFECTIVE DATE OF REPEAL

Section 242(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending sections 1082 and 1250 of this title and repealing this section] shall apply to that portion of the basis of any property which is attributable to expenditures paid or incurred after December 31, 1986.

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to any expenditure incurred—

''(A) pursuant to a binding contract entered into before March 2, 1986, or

''(B) with respect to any improvement commenced before March 2, 1986, but only if not less than the lesser of $1,000,000 or 5 percent of the aggregate cost of such improvement has been incurred or committed before such date.

The preceding sentence shall not apply to any expenditure with respect to an improvement placed in service after December 31, 1987.''

§ 186. Recoveries of damages for antitrust violations, etc.

(a) Allowance of deduction

If a compensatory amount which is included in gross income is received or accrued during the taxable year for a compensable injury, there shall be allowed as a deduction for the taxable year an amount equal to the lesser of—

(1) the amount of such compensatory amount, or

(2) the amount of the unrecovered losses sustained as a result of such compensable injury.

(b) Compensable injury

For purposes of this section, the term ''compensable injury'' means—

(1) injuries sustained as a result of an infringement of a patent issued by the United States,

(2) injuries sustained as a result of a breach of contract or a breach of fiduciary duty or relationship, or

(3) injuries sustained in business, or to property, by reason of any conduct forbidden in the antitrust laws for which a civil action may be brought under section 4 of the Act entitled ''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'', approved October 15, 1914 (commonly known as the Clayton Act).

(c) Compensatory amount

For purposes of this section, the term ''compensatory amount'' means the amount received or accrued during the taxable year as damages as a result of an award in, or in settlement of, a civil action for recovery for a compensable injury, reduced by any amounts paid or incurred in the taxable year in securing such award or settlement.

(d) Unrecovered losses

(1) In general

For purposes of this section, the amount of any unrecovered loss sustained as a result of any compensable injury is—

(A) the sum of the amount of the net operating losses (as determined under section 172) for each taxable year in whole or in part within the injury period, to the extent that such net operating losses are attributable to such compensable injury, reduced by

(B) the sum of—

(i) the amount of the net operating losses described in subparagraph (A) which were allowed for any prior taxable year as a deduction under section 172 as a net operating loss carryback or carryover to such taxable year, and

(ii) the amounts allowed as a deduction under subsection (a) for any prior taxable year for prior recoveries of compensatory amounts for such compensable injury.

(2) Injury period

For purposes of paragraph (1), the injury period is—

(A) with respect to any infringement of a patent, the period in which such infringement occurred,

(B) with respect to a breach of contract or breach of fiduciary duty or relationship, the period during which amounts would have been received or accrued but for the breach of contract or breach of fiduciary duty or relationship, and

(C) with respect to injuries sustained by reason of any conduct forbidden in the antitrust laws, the period in which such injuries were sustained.

(3) Net operating losses attributable to compensable injuries

For purposes of paragraph (1)—

(A) a net operating loss for any taxable year shall be treated as attributable to a compensable injury to the extent of the compensable injury sustained during such taxable year, and

(B) if only a portion of a net operating loss for any taxable year is attributable to a compensable injury, such portion shall (in applying section 172 for purposes of this section) be considered to be a separate net operating loss for such year to be applied after the other portion of such net operating loss.

(e) Effect on net operating loss carryovers

If for the taxable year in which a compensatory amount is received or accrued any portion of a net operating loss carryover to such year is attributable to the compensable injury for which such amount is received or accrued, such portion of such net operating loss carryover shall be reduced by an amount equal to—

(1) the deduction allowed under subsection (a) with respect to such compensatory amount, reduced by

(2) any portion of the unrecovered losses sustained as a result of the compensable injury with respect to which the period for carryover under section 172 has expired.

(Added Pub. L. 91–172, title IX, §904(a), Dec. 30, 1969, 83 Stat. 711.)

REFERENCES IN TEXT

Section 4 of the Clayton Act, referred to in subsec. (b)(3), is classified to section 15 of Title 15.

EFFECTIVE DATE

Section 904(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1968.''

[§ 187. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(31), Oct. 4, 1976, 90 Stat. 1769]

Section, added Pub. L. 91–172, title VII, §707(a), Dec. 30, 1969, 83 Stat. 674; amended Pub. L. 93–625, §3(d), Jan. 3, 1975, 88 Stat. 2109, provided for an allowance of an amortization deduction for certain coal mine safety equipment, the method of election and termination of such deduction, the definition of term ''certified coal mine safety equipment'', and special rules applicable to the amortization deduction.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

[§ 188. Repealed. Pub. L. 101–508, title XI, § 11801(a)(13), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 92–178, title III, §303(a), Dec. 10, 1971, 85 Stat. 521; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–30, title IV, §402(a)(1)–(3), May 23, 1977, 91 Stat. 155, related to amortization of certain expenditures for child care facilities.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 189. Repealed. Pub. L. 99–514, title VIII, § 803(b)(1), Oct. 22, 1986, 100 Stat. 2355]

Section, added Pub. L. 94–455, title II, §201(a), Oct. 4, 1976, 90 Stat. 1525; amended Pub. L. 95–600, title VII, §701(m)(1), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97–34, title II, §262(a), (b), Aug. 13, 1981, 95 Stat. 264; Pub. L. 97–248, title II, §207(a)–(d), Sept. 3, 1982, 96 Stat. 431, 432; Pub. L. 97–354, §5(a)(24), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 98–369, div. A, title I, §93(a), title VII, §712(c), July 18, 1984, 98 Stat. 614, 947, related to amortization of real property construction period interest and taxes.

EFFECTIVE DATE OF REPEAL

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the repeal of this section is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying this section (as in effect before its repeal) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as

otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

§ 190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly

(a) Treatment as expenses

(1) In general

A taxpayer may elect to treat qualified architectural and transportation barrier removal expenses which are paid or incurred by him during the taxable year as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) Election

An election under paragraph (1) shall be made at such time and in such manner as the Secretary prescribes by regulations.

(b) Definitions

For purposes of this section—

(1) Architectural and transportation barrier removal expenses

The term ''architectural and transportation barrier removal expenses'' means an expenditure for the purpose of making any facility or public transportation vehicle owned or leased by the taxpayer for use in connection with his trade or business more accessible to, and usable by, handicapped and elderly individuals.

(2) Qualified architectural and transportation barrier removal expenses

The term ''qualified architectural and transportation barrier removal expense'' means, with respect to any such facility or public transportation vehicle, an architectural or transportation barrier removal expense with respect to which the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any such barrier meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

(3) Handicapped individual

The term ''handicapped individual'' means any individual who has a physical or mental disability (including, but not limited to, blindness or deafness) which for such individual constitutes or results in a functional limitation to employment, or who has any physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more major life activities of such individual.

(c) Limitation

The deduction allowed by subsection (a) for any taxable year shall not exceed $15,000.

(Added Pub. L. 94–455, title XXI, § 2122(a), Oct. 4, 1976, 90 Stat. 1914; amended Pub. L. 98–369, div. A, title X, § 1062(a)(1), (b), July 18, 1984, 98 Stat. 1047; Pub. L. 99–514, title II, § 244, Oct. 22, 1986, 100 Stat. 2183; Pub. L. 101–508, title XI, §§ 11611(c), 11801(a)(14), Nov. 5, 1990, 104 Stat. 1388–503, 1388–520.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–508, § 11611(c), substituted ''$15,000'' for ''$35,000''.

Subsec. (d). Pub. L. 101–508, § 11801(a)(14), struck out subsec. (d) which related to application of section to taxable years beginning after Dec. 31, 1976, and before Jan. 1, 1983, and to taxable years beginning after Dec. 31, 1983.

1986—Subsec. (d)(2). Pub. L. 99–514 substituted ''1983'' for ''1983, and before January 1, 1986''.

1984—Subsec. (c). Pub. L. 98–369, § 1062(b), substituted ''$35,000'' for ''$25,000''.

Subsec. (d). Pub. L. 98–369, § 1062(a)(1), amended subsec. (d) generally, substituting provisions that this section shall apply to taxable years beginning after December 31, 1976, and before January 1, 1983, and to taxable years beginning after December 31, 1983, and before January 1, 1986 for provisions which had required the Secretary to prescribe such regulations as might be necessary to carry out this section within 180 days after October 4, 1976.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11611(c) of Pub. L. 101–508 applicable to taxable years beginning after Nov. 5, 1990, see section 11611(e)(2) of Pub. L. 101–508, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1062(c) of Pub. L. 98–369 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE

Section 2122(c) of Pub. L. 94–455, as amended by Pub. L. 96–167, § 9(c), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 98–369, div. A, title X, § 1062(a)(2), July 18, 1984, 98 Stat. 1047, provided that: ''The amendments made by this section [enacting this section and amending sections 263, 1245, and 1250 of this title] shall apply to taxable years beginning after December 31, 1976.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(14) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 191. Repealed. Pub. L. 97–34, title II, § 212(d)(1), Aug. 13, 1981, 95 Stat. 239]

Section, added Pub. L. 94–455, title XXI, § 2124(a)(1), Oct. 4, 1976, 90 Stat. 1916; amended Pub. L. 95–600, title VII, § 701(f)(1), (2), (7), Nov. 6, 1978, 92 Stat. 2900–2902; Pub. L. 96–222, title I, § 107(a)(1)(E)(ii), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96–541, § 2(a), Dec. 17, 1980, 94 Stat. 3204, related to amortization of certain rehabilitation expenditures for certified historic structures.

EFFECTIVE DATE OF REPEAL

Repeal applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, with exceptions, see section 212(e) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 46 of this title.

§ 192. Contributions to black lung benefit trust

(a) Allowance of deduction

There is allowed as a deduction for the taxable year an amount equal to the sum of the amounts contributed by the taxpayer during the taxable year to or under a trust or trusts described in section 501(c)(21).

(b) Limitation

The maximum amount of the deduction allowed by subsection (a) for any taxpayer for any taxable year shall not exceed the greater of—

(1) the amount necessary to fund (with level funding) the remaining unfunded liability of the taxpayer for black lung claims filed (or expected to be filed) by (or with respect to) past or present employees of the taxpayer, or

(2) the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year.

(c) Special rules

(1) Method of determining amounts referred to in subsection (b)

(A) In general

The amounts described in subsection (b) shall be determined by using reasonable actuarial methods and assumptions which are not inconsistent with regulations prescribed by the Secretary.

(B) Funding period

Except as provided in subparagraph (C), the funding period for purposes of subsection (b)(1) shall be the greater of—

(i) the average remaining working life of miners who are present employees of the taxpayer, or

(ii) 10 taxable years.

For purposes of the preceding sentence, the term ''miner'' has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

(C) Different funding periods

To the extent that—

(i) regulations prescribed by the Secretary provide for a different period, or

(ii) the Secretary consents to a different period proposed by the taxpayer,

such different period shall be substituted for the funding period provided in subparagraph (B).

(2) Benefit payments taken into account

In determining the amounts described in subsection (b), only those black lung benefit claims the payment of which is expected to be made from the trust shall be taken into account.

(3) Time when contributions deemed made

For purposes of this section, a taxpayer shall be deemed to have made a payment of a contribution on the last day of a taxable year if the payment is on account of that taxable year and is made not later than the time prescribed by law for filing the return for that taxable year (including extensions thereof).

(4) Contributions to be in cash or certain other items

No deduction shall be allowed under subsection (a) with respect to any contribution to a trust described in section 501(c)(21) other than a contribution in cash or in items in which such trust may invest under subclause (II) of section 501(c)(21)(A)(ii).

(5) Denial of section 162 deduction with respect to liability

No deduction shall be allowed under section 162(a) with respect to any liability taken into account in determining the deduction under subsection (a) of this section of the taxpayer (or a predecessor).

(d) Carryover of excess contributions

If the amount of the deduction determined under subsection (a) for the taxable year (without regard to the limitation imposed by subsection (b)) with respect to a trust exceeds the limitation imposed by subsection (b) for the taxable year, the excess shall be carried over to the succeeding taxable year and treated as contributed to the trust during that year.

(e) Definition of black lung benefit claim

For purposes of this section, the term ''black lung benefit claim'' means a claim for compensation for disability or death due to pneumoconiosis under part C of title IV of the Federal Mine Safety and Health Act of 1977 or under any State law providing for such compensation.

(Added Pub. L. 95–227, §4(b)(1), Feb. 10, 1978, 92 Stat. 16; amended Pub. L. 95–488, §1(a)–(c), Oct. 20, 1978, 92 Stat. 1637; Pub. L. 96–222, title I, §108(b)(2)(B), Apr. 1, 1980, 94 Stat. 226; Pub. L. 102–486, title XIX, §1940(c), Oct. 24, 1992, 106 Stat. 3035.)

REFERENCES IN TEXT

The Federal Mine Safety and Health Act of 1977, referred to in subsec. (e), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended by Pub. L. 95–164, Nov. 9, 1977, 91 Stat. 1290. Part C of title IV of the Federal Mine Safety and Health Act of 1977 is classified generally to part C of subchapter IV of chapter 22 (§931 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

AMENDMENTS

1992—Subsec. (c)(4). Pub. L. 102–486 substituted ''subclause (II) of section 501(c)(21)(A)(ii)'' for ''clause (ii) of section 501(c)(21)(B)''.

1980—Subsec. (e). Pub. L. 96–222 substituted ''Federal Mine Safety and Health Act of 1977'' for ''Federal Coal Mine Health and Safety Act of 1969''.

1978—Subsec. (b). Pub. L. 95–488, §1(a), substituted provision limiting the allowable deduction to the greater of the amount necessary to fund the remaining unfunded liability of the taxpayer for the black lung claims filed or expected to be filed by past or present employees of the taxpayer or the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year for provision limiting the allowable deduction to the amount necessary, when added to the fair market value of trust assets at the beginning of the taxable year, to fund the greater of current year obligations or certain future obligations.

Subsec. (c)(1). Pub. L. 95–488, §1(b), substituted ''Method of determining amounts referred to in subsection (b)'' for ''Determination of expected future payments'' in heading and in text inserted provisions establishing the funding period as the greater of the average remaining working life of miners who are present employees of the taxpayer or 10 taxable years and permitting a different funding period if prescribed or consented to by the Secretary.

Subsec. (c)(5). Pub. L. 95–488, §1(c), added par. (5).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1940(d) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this sec-

tion and sections 501 and 4951 of this title] shall apply to taxable years beginning after December 31, 1991.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 108(b)(4) of Pub. L. 96–222 provided that: ''Any amendment made by this subsection [amending this section, sections 6503, 6511, 6862, 7422, and 7454 of this title, and sections 934 and 934a of Title 30, Mineral Lands and Mining] shall take effect as if included in the provision of the Black Lung Benefits Revenue Act of 1977 [see Short Title of 1978 Amendments note set out under section 1 of this title] to which such amendment relates.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1(e) of Pub. L. 95–488, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and section 6104 of this title] shall apply to taxable years beginning after December 31, 1977. Nothing in the amendments made by subsection (d) to section 6104 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be construed to permit the disclosure under such section 6104 of confidential business information of contributors to any trust described in section 501(c)(21) of such Code.''

EFFECTIVE DATE

Section 4(f) of Pub. L. 95–227 provided that: ''The amendments made by this section [enacting this section and sections 4951 to 4953 and amending sections 501, 4946, 6104, 6213, 6405, 6501, 6503, and 7451 of this title] shall apply with respect to contributions, acts, and expenditures made after December 31, 1977, in and for taxable years beginning after such date.''

§ 193. Tertiary injectants

(a) Allowance of deduction

There shall be allowed as a deduction for the taxable year an amount equal to the qualified tertiary injectant expenses of the taxpayer for tertiary injectants injected during such taxable year.

(b) Qualified tertiary injectant expenses

For purposes of this section—

(1) In general

The term ''qualified tertiary injectant expenses'' means any cost paid or incurred (whether or not chargeable to capital account) for any tertiary injectant (other than a hydrocarbon injectant which is recoverable) which is used as a part of a tertiary recovery method.

(2) Hydrocarbon injectant

The term ''hydrocarbon injectant'' includes natural gas, crude oil, and any other injectant which is comprised of more than an insignificant amount of natural gas or crude oil. The term does not include any tertiary injectant which is hydrocarbon-based, or a hydrocarbon-derivative, and which is comprised of no more than an insignificant amount of natural gas or crude oil. For purposes of this paragraph, that portion of a hydrocarbon injectant which is not a hydrocarbon shall not be treated as a hydrocarbon injectant.

(3) Tertiary recovery method

The term ''tertiary recovery method'' means—

(A) any method which is described in subparagraphs (1) through (9) of section 212.78(c) of the June 1979 energy regulations (as defined by section 4996(b)(8)(C) as in effect before its repeal), or

(B) any other method to provide tertiary enhanced recovery which is approved by the Secretary for purposes of this section.

(c) Application with other deductions

No deduction shall be allowed under subsection (a) with respect to any expenditure—

(1) with respect to which the taxpayer has made an election under section 263(c), or

(2) with respect to which a deduction is allowed or allowable to the taxpayer under any other provision of this chapter.

(Added Pub. L. 96–223, title II, § 251(a)(1), Apr. 2, 1980, 94 Stat. 286; amended Pub. L. 97–448, title II, § 202(b), Jan. 12, 1983, 96 Stat. 2396; Pub. L. 100–418, title I, § 1941(b)(7), Aug. 23, 1988, 102 Stat. 1324.)

REFERENCES IN TEXT

Section 4996(b)(8)(C), referred to in subsec. (b)(3)(A), was repealed by Pub. L. 100–418, title I, § 1941(a), Aug. 23, 1988, 102 Stat. 1322.

AMENDMENTS

1988—Subsec. (b)(3)(A). Pub. L. 100–418 substituted ''section 4996(b)(8)(C) as in effect before its repeal'' for ''section 4996(b)(8)(C)''.

1983—Subsec. (b)(1). Pub. L. 97–448 struck out ''during the taxable year'' after ''any cost paid or incurred''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223, to which such amendment relates, see section 203(a) of Pub. L. 97–448, set out as a note under section 6652 of this title.

EFFECTIVE DATE

Section 251(b) of Pub. L. 96–223 provided that: ''The amendments made by this section [enacting this section and amending sections 263, 1245, and 1250 of this title] shall apply to taxable years beginning after December 31, 1979.''

§ 194. Treatment of reforestation expenditures

(a) Allowance of deduction

In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall be entitled to a deduction with respect to the amortization of the amortizable basis of qualified timber property based on a period of 84 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The 84-month period shall begin on the

first day of the first month of the second half of the taxable year in which the amortizable basis is acquired.

(b) Treatment as expenses

(1) Election to treat certain reforestation expenditures as expenses

(A) In general

In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall treat reforestation expenditures which are paid or incurred during the taxable year with respect to such property as an expense which is not chargeable to capital account. The reforestation expenditures so treated shall be allowed as a deduction.

(B) Dollar limitation

The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed—

(i) except as provided in clause (ii) or (iii), $10,000,

(ii) in the case of a separate return by a married individual (as defined in section 7703), $5,000, and

(iii) in the case of a trust, zero.

(2) Allocation of dollar limit

(A) Controlled group

For purposes of applying the dollar limitation under paragraph (1)(B)—

(i) all component members of a controlled group shall be treated as one taxpayer, and

(ii) the Secretary shall, under regulations prescribed by him, apportion such dollar limitation among the component members of such controlled group.

For purposes of the preceding sentence, the term ''controlled group'' has the meaning assigned to it by section 1563(a), except that the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in section 1563(a)(1).

(B) Partnerships and S corporations

In the case of a partnership, the dollar limitation contained in paragraph (1)(B) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(c) Definitions and special rule

For purposes of this section—

(1) Qualified timber property

The term ''qualified timber property'' means a woodlot or other site located in the United States which will contain trees in significant commercial quantities and which is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.

(2) Amortizable basis

The term ''amortizable basis'' means that portion of the basis of the qualified timber property attributable to reforestation expenditures which have not been taken into account under subsection (b).

(3) Reforestation expenditures

(A) In general

The term ''reforestation expenditures'' means direct costs incurred in connection with forestation or reforestation by planting or artificial or natural seeding, including costs—

(i) for the preparation of the site;

(ii) of seeds or seedlings; and

(iii) for labor and tools, including depreciation of equipment such as tractors, trucks, tree planters, and similar machines used in planting or seeding.

(B) Cost-sharing programs

Reforestation expenditures shall not include any expenditures for which the taxpayer has been reimbursed under any governmental reforestation cost-sharing program unless the amounts reimbursed have been included in the gross income of the taxpayer.

(4) Treatment of trusts and estates

The aggregate amount of reforestation expenditures incurred by any trust or estate shall be apportioned between the income beneficiaries and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account as expenditures incurred by such beneficiary in applying this section to such beneficiary.

(5) Application with other deductions

No deduction shall be allowed under any other provision of this chapter with respect to any expenditure with respect to which a deduction is allowed or allowable under this section to the taxpayer.

(d) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.

(Added Pub. L. 96–451, title III, § 301(a), Oct. 14, 1980, 94 Stat. 1989; amended Pub. L. 97–354, § 3(g), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 99–514, title XIII, § 1301(j)(8), Oct. 22, 1986, 100 Stat. 2658; Pub. L. 108–357, title III, § 322(a)–(c)(4), Oct. 22, 2004, 118 Stat. 1474, 1475; Pub. L. 109–135, title IV, § 403(i)(1), Dec. 21, 2005, 119 Stat. 2624.)

PRIOR PROVISIONS

A prior section 194 was renumbered section 194A of this title.

AMENDMENTS

2005—Subsec. (b)(1)(B). Pub. L. 109–135, § 403(i)(1)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 7703)).''

Subsec. (c)(4). Pub. L. 109–135, § 403(i)(1)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in subparagraph (B), this section shall not apply to trusts and estates.

''(B) AMORTIZATION DEDUCTION ALLOWED TO ESTATES.—The benefit of the deduction for amortization provided by subsection (a) shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under subsection (a) to such beneficiary.''

2004—Pub. L. 108–357, § 322(c)(4), substituted ''Treatment'' for ''Amortization'' in section catchline.

Subsec. (b). Pub. L. 108–357, § 322(a), substituted ''Treatment as expenses'' for ''Limitations'' in heading.

Subsec. (b)(1). Pub. L. 108–357, § 322(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The aggregate amount of amortizable basis acquired during the taxable year which may be taken into account under subsection (a) for such taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 7703)).''

Subsec. (b)(2). Pub. L. 108–357, § 322(c)(2), substituted ''paragraph (1)(B)'' for ''paragraph (1)'' in introductory provisions of subpar. (A) and in subpar. (B).

Subsec. (b)(3), (4). Pub. L. 108–357, § 322(c)(1), struck out pars. (3) and (4) which related to inapplicability of section to trusts and applicability of section to estates, respectively.

Subsec. (c)(2). Pub. L. 108–357, § 322(b), inserted ''which have not been taken into account under subsection (b)'' after ''expenditures''.

Subsec. (c)(4), (5). Pub. L. 108–357, § 322(c)(3), added pars. (4) and (5) and struck out former par. (4) which related to basis allocation if the amount of the amortizable basis acquired during the taxable year of all qualified timber property with respect to which the taxpayer had made an election under subsec. (a) exceeded the amount of the limitation under subsec. (b)(1).

1986—Subsec. (b)(1). Pub. L. 99–514 substituted ''section 7703'' for ''section 143''.

1982—Subsec. (b)(2)(B). Pub. L. 97–354 substituted ''Partnerships and S corporations'' for ''Partnerships'' in heading, and inserted ''A similar rule shall apply in the case of an S corporation and its shareholders.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable with respect to expenditures paid or incurred after Oct. 22, 2004, see section 322(e) of Pub. L. 108–357, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Section 301(d) of Pub. L. 96–451 provided that: ''The amendments made by this section [enacting this section and amending sections 62 and 1245 of this title] shall apply with respect to additions to capital account made after December 31, 1979.''

§ 194A. Contributions to employer liability trusts

(a) Allowance of deduction

There shall be allowed as a deduction for the taxable year an amount equal to the amount—

(1) which is contributed by an employer to a trust described in section 501(c)(22) (relating to withdrawal liability payment fund) which meets the requirements of section 4223(h) of the Employee Retirement Income Security Act of 1974, and

(2) which is properly allocable to such taxable year.

(b) Allocation to taxable year

In the case of a contribution described in subsection (a) which relates to any specified period of time which includes more than one taxable year, the amount properly allocable to any taxable year in such period shall be determined by prorating such amounts to such taxable years under regulations prescribed by the Secretary.

(c) Disallowance of deduction

No deduction shall be allowed under subsection (a) with respect to any contribution described in subsection (a) which does not relate to any specified period of time.

(Added Pub. L. 96–364, title II, § 209(c)(1), Sept. 26, 1980, 94 Stat. 1290, § 194; renumbered § 194A, Pub. L. 97–448, title III, § 305(b)(1), Jan. 12, 1983, 96 Stat. 2399.)

REFERENCES IN TEXT

Section 4223(h) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a), is classified to section 1403(h) of Title 29, Labor.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 311(c)(2) of Pub. L. 97–448 provided that: ''The amendments made by subsection (b) of section 305 [redesignating section 194 of this title, relating to contributions to employer liability trusts, as this section] shall take effect on October 14, 1980.''

EFFECTIVE DATE

Section applicable to taxable years ending after Sept. 26, 1980, see section 210(c) of Pub. L. 96–364, set out as a note under section 418 of this title.

§ 195. Start-up expenditures

(a) Capitalization of expenditures

Except as otherwise provided in this section, no deduction shall be allowed for start-up expenditures.

(b) Election to deduct

(1) Allowance of deduction

If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

(i) the amount of start-up expenditures with respect to the active trade or business, or

(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.

(2) Dispositions before close of amortization period

In any case in which a trade or business is completely disposed of by the taxpayer before the end of the period to which paragraph (1) applies, any deferred expenses attributable to such trade or business which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

(3) Special rule for taxable years beginning in 2010

In the case of a taxable year beginning in 2010, paragraph (1)(A)(ii) shall be applied—

(A) by substituting ''$10,000'' for ''$5,000'', and

(B) by substituting ''$60,000'' for ''$50,000''.

(c) Definitions

For purposes of this section—

(1) Start-up expenditures

The term ''start-up expenditure'' means any amount—

(A) paid or incurred in connection with—

(i) investigating the creation or acquisition of an active trade or business, or

(ii) creating an active trade or business, or

(iii) any activity engaged in for profit and for the production of income before the day on which the active trade or business begins, in anticipation of such activity becoming an active trade or business, and

(B) which, if paid or incurred in connection with the operation of an existing active trade or business (in the same field as the trade or business referred to in subparagraph (A)), would be allowable as a deduction for the taxable year in which paid or incurred.

The term ''start-up expenditure'' does not include any amount with respect to which a deduction is allowable under section 163(a), 164, or 174.

(2) Beginning of trade or business

(A) In general

Except as provided in subparagraph (B), the determination of when an active trade or business begins shall be made in accordance with such regulations as the Secretary may prescribe.

(B) Acquired trade or business

An acquired active trade or business shall be treated as beginning when the taxpayer acquires it.

(d) Election

(1) Time for making election

An election under subsection (b) shall be made not later than the time prescribed by law for filing the return for the taxable year in which the trade or business begins (including extensions thereof).

(2) Scope of election

The period selected under subsection (b) shall be adhered to in computing taxable income for the taxable year for which the election is made and all subsequent taxable years.

(Added Pub. L. 96–605, title I, §102(a), Dec. 28, 1980, 94 Stat. 3522; amended Pub. L. 98–369, div. A, title I, §94(a), July 18, 1984, 98 Stat. 614; Pub. L. 108–357, title VIII, §902(a), Oct. 22, 2004, 118 Stat. 1651; Pub. L. 111–240, title II, §2031(a), Sept. 27, 2010, 124 Stat. 2559.)

AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111–240 added par. (3).

2004—Subsec. (b). Pub. L. 108–357, §902(a)(2), substituted ''deduct'' for ''amortize'' in heading.

Subsec. (b)(1). Pub. L. 108–357, §902(a)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''Start-up expenditures may, at the election of the taxpayer, be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction prorated equally over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the active trade or business begins).''

1984—Subsec. (a). Pub. L. 98–369 amended subsec. (a) generally, substituting provisions dealing with capitalization of expenditures for provisions dealing with election to amortize.

Subsec. (b). Pub. L. 98–369 amended subsec. (b) generally, substituting provisions dealing with election to amortize for provisions dealing with start-up expenditures.

Subsec. (c). Pub. L. 98–369 amended subsec. (c) generally, substituting provisions setting forth definitions for provisions dealing with election.

Subsec. (d). Pub. L. 98–369 amended subsec. (d) generally, substituting provisions dealing with election for provisions dealing with business beginning.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2031(b), Sept. 27, 2010, 124 Stat. 2559, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred in taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §902(d), Oct. 22, 2004, 118 Stat. 1652, provided that: ''The amendments made by this section [amending this section and sections 248 and 709 of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 94(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after June 30, 1984.''

EFFECTIVE DATE

Section 102(c) of Pub. L. 96–605 provided that: ''The amendments made by this section [enacting this section] shall apply to amounts paid or incurred after July 29, 1980, in taxable years ending after such date.''

§196. Deduction for certain unused business credits

(a) Allowance of deduction

If any portion of the qualified business credits determined for any taxable year has not, after

the application of section 38(c), been allowed to the taxpayer as a credit under section 38 for any taxable year, an amount equal to the credit not so allowed shall be allowed to the taxpayer as a deduction for the first taxable year following the last taxable year for which such credit could, under section 39, have been allowed as a credit.

(b) Taxpayer's dying or ceasing to exist

If a taxpayer dies or ceases to exist before the first taxable year following the last taxable year for which the qualified business credits could, under section 39, have been allowed as a credit, the amount described in subsection (a) (or the proper portion thereof) shall, under regulations prescribed by the Secretary, be allowed to the taxpayer as a deduction for the taxable year in which such death or cessation occurs.

(c) Qualified business credits

For purposes of this section, the term ''qualified business credits'' means—

(1) the investment credit determined under section 46 (but only to the extent attributable to property the basis of which is reduced by section 50(c)),

(2) the work opportunity credit determined under section 51(a),

(3) the alcohol fuels credit determined under section 40(a),

(4) the research credit determined under section 41(a) (other than such credit determined under section 280C(c)(3)) for taxable years beginning after December 31, 1988,

(5) the enhanced oil recovery credit determined under section 43(a),

(6) the empowerment zone employment credit determined under section 1396(a),

(7) the Indian employment credit determined under section 45A(a),

(8) the employer Social Security credit determined under section 45B(a),

(9) the new markets tax credit determined under section 45D(a),

(10) the small employer pension plan startup cost credit determined under section 45E(a),

(11) the biodiesel fuels credit determined under section 40A(a),

(12) the low sulfur diesel fuel production credit determined under section 45H(a),

(13) the new energy efficient home credit determined under section 45L(a), and

(14) the small employer health insurance credit determined under section 45R(a).

(d) Special rule for investment tax credit and research credit

Subsection (a) shall be applied by substituting ''an amount equal to 50 percent of'' for ''an amount equal to'' in the case of—

(1) the investment credit determined under section 46 (other than the rehabilitation credit), and

(2) the research credit determined under section 41(a) for a taxable year beginning before January 1, 1990.

(Added Pub. L. 97–248, title II, § 205(a)(2), Sept. 3, 1982, 96 Stat. 428; amended Pub. L. 98–369, div. A, title IV, § 474(r)(8)(A), July 18, 1984, 98 Stat. 840; Pub. L. 100–647, title IV, § 4008(b)(2), Nov. 10, 1988, 102 Stat. 3653; Pub. L. 101–239, title VII, §§ 7110(c)(2), 7814(e)(1), (2)(D), Dec. 19, 1989, 103 Stat. 2325, 2413, 2414; Pub. L. 101–508, title XI, §§ 11511(b)(3), 11813(b)(12), Nov. 5, 1990, 104 Stat. 1388–485, 1388–554; Pub. L. 103–66, title XIII, §§ 13302(b)(2), 13322(c)(2), Aug. 10, 1993, 107 Stat. 555, 563; Pub. L. 104–188, title I, § 1201(e)(1), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105–206, title VI, § 6020(a), July 22, 1998, 112 Stat. 823; Pub. L. 106–554, § 1(a)(7) [title I, § 121(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610; Pub. L. 107–16, title VI, § 619(c)(2), June 7, 2001, 115 Stat. 110; Pub. L. 108–357, title III, §§ 302(c)(2), 339(e), Oct. 22, 2004, 118 Stat. 1465, 1484; Pub. L. 109–58, title XIII, § 1332(d), Aug. 8, 2005, 119 Stat. 1026; Pub. L. 111–148, title I, § 1421(d)(2), Mar. 23, 2010, 124 Stat. 242.)

CODIFICATION

Another section 339(e) of Pub. L. 108–357 amended the table of sections for subpart D of part IV of subchapter A of this chapter.

AMENDMENTS

2010—Subsec. (c)(14). Pub. L. 111–148 added par. (14).

2005—Subsec. (c)(13). Pub. L. 109–58 added par. (13).

2004—Subsec. (c)(11). Pub. L. 108–357, § 302(c)(2), added par. (11).

Subsec. (c)(12). Pub. L. 108–357, § 339(e), added par. (12).

2001—Subsec. (c)(10). Pub. L. 107–16 added par. (10).

2000—Subsec. (c)(9). Pub. L. 106–554 added par. (9).

1998—Subsec. (c)(8). Pub. L. 105–206 added par. (8).

1996—Subsec. (c)(2). Pub. L. 104–188 substituted ''work opportunity credit'' for ''targeted jobs credit''.

1993—Subsec. (c)(6). Pub. L. 103–66, § 13302(b)(2), added par. (6).

Subsec. (c)(7). Pub. L. 103–66, § 13322(c)(2), added par. (7).

1990—Subsec. (c)(1). Pub. L. 101–508, § 11813(b)(12)(A), substituted ''section 46'' for ''section 46(a)'' and ''section 50(c)'' for ''section 48(q)''.

Subsec. (c)(5). Pub. L. 101–508, § 11511(b)(3), added par. (5).

Subsec. (d)(1). Pub. L. 101–508, § 11813(b)(12)(B), substituted ''section 46'' for ''section 46(a)'' and ''other than the rehabilitation credit'' for ''other than a credit to which section 48(q)(3) applies''.

1989—Subsec. (c)(4). Pub. L. 101–239, § 7814(e)(2)(D), inserted ''(other than such credit determined under section 280C(c)(3))'' after ''section 41(a)''.

Subsec. (d). Pub. L. 101–239, § 7814(e)(1), substituted ''substituting 'an amount equal to 50 percent of' for 'an amount equal to' in the case of'' for ''substituting an amount equal to 50 percent of for an amount equal to in the case of'' in introductory provisions.

Subsec. (d)(2). Pub. L. 101–239, § 7110(c)(2), inserted ''for a taxable year beginning before January 1, 1990'' after ''under section 41(a)''.

1988—Subsec. (c)(4). Pub. L. 100–647, § 4008(b)(2)(A), added par. (4).

Subsec. (d). Pub. L. 100–647, § 4008(b)(2)(B), inserted ''and research credit'' after ''tax credit'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of the investment credit determined under section 46(a) (other than a credit to which section 48(q)(3) applies), subsection (a) shall be applied by substituting 'an amount equal to 50 percent of' for 'an amount equal to'.''

1984—Pub. L. 98–369 amended section generally, substituting provisions relating to deduction for certain unused business credits for provisions relating to deduction for certain unused investment credits.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2009, see section 1421(f)(1) of Pub. L. 111–148, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to qualified new energy efficient homes acquired after Dec. 31, 2005, in taxable years ending after such date, see section 1332(f) of Pub. L. 109–58, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 302(c)(2) of Pub. L. 108–357 applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 339(e) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 38 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to investments made after Dec. 31, 2000, see §1(a)(7) [title I, §121(e)] of Pub. L. 106–554, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6020(b), July 22, 1998, 112 Stat. 823, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 13443 of the Revenue Reconciliation Act of 1993 [see section 13443(d) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 38 of this title].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13322(c)(2) of Pub. L. 103–66 applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11511(b)(3) of Pub. L. 101–508 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1990, see section 11511(d)(1) of Pub. L. 101–508, set out as an Effective Date note under section 43 of this title.

Amendment by section 11813(b)(12) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7110(c)(2) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7110(e) of Pub. L. 101–239, set out as a note under section 41 of this title.

Amendment by section 7814(e)(1), (2)(D) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub. L. 100–647, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE

Section 205(c)(1) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) GENERAL RULE.—Except as otherwise provided in this paragraph, the amendments made by subsection (a) [enacting this section and amending sections 48, 312, and 1016 of this title] shall apply to periods after December 31, 1982, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(B) EXCEPTION.—The amendments made by subsection (a) shall not apply to any property which—

''(i) is constructed, reconstructed, erected, or acquired pursuant to a contract which was entered into after August 13, 1981, and was, on July 1, 1982, and at all times thereafter, binding on the taxpayer,

''(ii) is placed in service after December 31, 1982, and before January 1, 1986,

''(iii) with respect to which an election under section 168(f)(8)(A) of such Code is not in effect at any time, and

''(iv) is not described in section 167(*l*)(3)(A) of such Code.

''(C) SPECIAL RULE FOR INTEGRATED MANUFACTURING FACILITIES.—

''(i) IN GENERAL.—In the case of any integrated manufacturing facility, the requirements of clause (i) of subparagraph (B) shall be treated as met if—

''(I) the on-site construction of the facility began before July 1, 1982, and

''(II) during the period beginning after August 13, 1981, and ending on July 1, 1982, the taxpayer constructed (or entered into binding contracts for the construction of) more than 20 percent of the cost of such facility.

''(ii) INTEGRATED MANUFACTURING FACILITY.—For purposes of clause (i), the term 'integrated manufacturing facility' means 1 or more facilities—

''(I) located on a single site,

''(II) for the manufacture of 1 or more manufactured products from raw materials by the application of 2 or more integrated manufacturing processes.

''(D) SPECIAL RULE FOR HISTORIC STRUCTURES.—In the case of any certified historic structure (as defined in section 48(g)(3) of the Internal Revenue Code of 1986), clause (i) of subparagraph (B) shall be applied by substituting 'December 31, 1980' for 'August 13, 1981.'

''(E) CERTAIN PROJECTS WITH RESPECT TO HISTORIC STRUCTURES.—In the case of any certified historic structure (as so defined), the requirements of clause (i) of subparagraph (B) shall be treated as met with respect to such property—

''(i) if the rehabilitation begins after December 31, 1980, and before July 1, 1982, or

''(ii) if—

''(I) before July 1, 1982, a public offering with respect to interests in such property was registered with the Securities and Exchange Commission,

''(II) before such date an application with respect to such property was filed under section 8 of the United States Housing Act of 1937 [section 1437f of Title 42, The Public Health and Welfare], and

''(III) such property is placed in service before July 1, 1984.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(b)(12) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 197. Amortization of goodwill and certain other intangibles

(a) General rule

A taxpayer shall be entitled to an amortization deduction with respect to any amortizable section 197 intangible. The amount of such deduction shall be determined by amortizing the adjusted basis (for purposes of determining gain) of such intangible ratably over the 15-year period beginning with the month in which such intangible was acquired.

(b) No other depreciation or amortization deduction allowable

Except as provided in subsection (a), no depreciation or amortization deduction shall be allowable with respect to any amortizable section 197 intangible.

(c) Amortizable section 197 intangible

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the term ''amortizable section 197 intangible'' means any section 197 intangible—

(A) which is acquired by the taxpayer after the date of the enactment of this section, and

(B) which is held in connection with the conduct of a trade or business or an activity described in section 212.

(2) Exclusion of self-created intangibles, etc.

The term ''amortizable section 197 intangible'' shall not include any section 197 intangible—

(A) which is not described in subparagraph (D), (E), or (F) of subsection (d)(1), and

(B) which is created by the taxpayer.

This paragraph shall not apply if the intangible is created in connection with a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

(3) Anti-churning rules

For exclusion of intangibles acquired in certain transactions, see subsection (f)(9).

(d) Section 197 intangible

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the term ''section 197 intangible'' means—

(A) goodwill,

(B) going concern value,

(C) any of the following intangible items:

(i) workforce in place including its composition and terms and conditions (contractual or otherwise) of its employment,

(ii) business books and records, operating systems, or any other information base (including lists or other information with respect to current or prospective customers),

(iii) any patent, copyright, formula, process, design, pattern, knowhow, format, or other similar item,

(iv) any customer-based intangible,

(v) any supplier-based intangible, and

(vi) any other similar item,

(D) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof,

(E) any covenant not to compete (or other arrangement to the extent such arrangement has substantially the same effect as a covenant not to compete) entered into in connection with an acquisition (directly or indirectly) of an interest in a trade or business or substantial portion thereof, and

(F) any franchise, trademark, or trade name.

(2) Customer-based intangible

(A) In general

The term ''customer-based intangible'' means—

(i) composition of market,

(ii) market share, and

(iii) any other value resulting from future provision of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with customers.

(B) Special rule for financial institutions

In the case of a financial institution, the term ''customer-based intangible'' includes deposit base and similar items.

(3) Supplier-based intangible

The term ''supplier-based intangible'' means any value resulting from future acquisitions of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with suppliers of goods or services to be used or sold by the taxpayer.

(e) Exceptions

For purposes of this section, the term ''section 197 intangible'' shall not include any of the following:

(1) Financial interests

Any interest—

(A) in a corporation, partnership, trust, or estate, or

(B) under an existing futures contract, foreign currency contract, notional principal contract, or other similar financial contract.

(2) Land

Any interest in land.

(3) Computer software

(A) In general

Any—

(i) computer software which is readily available for purchase by the general public, is subject to a nonexclusive license, and has not been substantially modified, and

(ii) other computer software which is not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

(B) Computer software defined

For purposes of subparagraph (A), the term ''computer software'' means any program designed to cause a computer to perform a desired function. Such term shall not include any data base or similar item unless the data base or item is in the public domain and is incidental to the operation of otherwise qualifying computer software.

(4) Certain interests or rights acquired separately

Any of the following not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade business or substantial portion thereof:

(A) Any interest in a film, sound recording, video tape, book, or similar property.

(B) Any right to receive tangible property or services under a contract or granted by a governmental unit or agency or instrumentality thereof.

(C) Any interest in a patent or copyright.

(D) To the extent provided in regulations, any right under a contract (or granted by a governmental unit or an agency or instrumentality thereof) if such right—

(i) has a fixed duration of less than 15 years, or

(ii) is fixed as to amount and, without regard to this section, would be recoverable under a method similar to the unit-of-production method.

(5) Interests under leases and debt instruments

Any interest under—

(A) an existing lease of tangible property, or

(B) except as provided in subsection (d)(2)(B), any existing indebtedness.

(6) Mortgage servicing

Any right to service indebtedness which is secured by residential real property unless such right is acquired in a transaction (or series of related transactions) involving the acquisition of assets (other than rights described in this paragraph) constituting a trade or business or substantial portion thereof.

(7) Certain transaction costs

Any fees for professional services, and any transaction costs, incurred by parties to a transaction with respect to which any portion of the gain or loss is not recognized under part III of subchapter C.

(f) Special rules

(1) Treatment of certain dispositions, etc.

(A) In general

If there is a disposition of any amortizable section 197 intangible acquired in a transaction or series of related transactions (or any such intangible becomes worthless) and one or more other amortizable section 197 intangibles acquired in such transaction or series of related transactions are retained—

(i) no loss shall be recognized by reason of such disposition (or such worthlessness), and

(ii) appropriate adjustments to the adjusted bases of such retained intangibles shall be made for any loss not recognized under clause (i).

(B) Special rule for covenants not to compete

In the case of any section 197 intangible which is a covenant not to compete (or other arrangement) described in subsection (d)(1)(E), in no event shall such covenant or other arrangement be treated as disposed of (or becoming worthless) before the disposition of the entire interest described in such subsection in connection with which such covenant (or other arrangement) was entered into.

(C) Special rule

All persons treated as a single taxpayer under section 41(f)(1) shall be so treated for purposes of this paragraph.

(2) Treatment of certain transfers

(A) In general

In the case of any section 197 intangible transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of applying this section with respect to so much of the adjusted basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor.

(B) Transactions covered

The transactions described in this subparagraph are—

(i) any transaction described in section 332, 351, 361, 721, 731, 1031, or 1033, and

(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

(3) Treatment of amounts paid pursuant to covenants not to compete, etc.

Any amount paid or incurred pursuant to a covenant or arrangement referred to in subsection (d)(1)(E) shall be treated as an amount chargeable to capital account.

(4) Treatment of franchises, etc.

(A) Franchise

The term ''franchise'' has the meaning given to such term by section 1253(b)(1).

(B) Treatment of renewals

Any renewal of a franchise, trademark, or trade name (or of a license, a permit, or other right referred to in subsection (d)(1)(D)) shall be treated as an acquisition. The preceding sentence shall only apply with respect to costs incurred in connection with such renewal.

(C) Certain amounts not taken into account

Any amount to which section 1253(d)(1) applies shall not be taken into account under this section.

(5) Treatment of certain reinsurance transactions

In the case of any amortizable section 197 intangible resulting from an assumption reinsurance transaction, the amount taken into account as the adjusted basis of such intangible under this section shall be the excess of—

(A) the amount paid or incurred by the acquirer under the assumption reinsurance transaction, over

(B) the amount required to be capitalized under section 848 in connection with such transaction.

Subsection (b) shall not apply to any amount required to be capitalized under section 848.

(6) Treatment of certain subleases

For purposes of this section, a sublease shall be treated in the same manner as a lease of the underlying property involved.

(7) Treatment as depreciable

For purposes of this chapter, any amortizable section 197 intangible shall be treated as property which is of a character subject to the allowance for depreciation provided in section 167.

(8) Treatment of certain increments in value

This section shall not apply to any increment in value if, without regard to this section, such increment is properly taken into account in determining the cost of property which is not a section 197 intangible.

(9) Anti-churning rules

For purposes of this section—

(A) In general

The term ''amortizable section 197 intangible'' shall not include any section 197 intangible which is described in subparagraph (A) or (B) of subsection (d)(1) (or for which depreciation or amortization would not have been allowable but for this section) and which is acquired by the taxpayer after the date of the enactment of this section, if—

(i) the intangible was held or used at any time on or after July 25, 1991, and on or before such date of enactment by the taxpayer or a related person,

(ii) the intangible was acquired from a person who held such intangible at any time on or after July 25, 1991, and on or before such date of enactment, and, as part of the transaction, the user of such intangible does not change, or

(iii) the taxpayer grants the right to use such intangible to a person (or a person related to such person) who held or used such intangible at any time on or after July 25, 1991, and on or before such date of enactment.

For purposes of this subparagraph, the determination of whether the user of property changes as part of a transaction shall be determined in accordance with regulations prescribed by the Secretary. For purposes of this subparagraph, deductions allowable under section 1253(d) shall be treated as deductions allowable for amortization.

(B) Exception where gain recognized

If—

(i) subparagraph (A) would not apply to an intangible acquired by the taxpayer but for the last sentence of subparagraph (C)(i), and

(ii) the person from whom the taxpayer acquired the intangible elects, notwithstanding any other provision of this title—

(I) to recognize gain on the disposition of the intangible, and

(II) to pay a tax on such gain which, when added to any other income tax on such gain under this title, equals such gain multiplied by the highest rate of income tax applicable to such person under this title,

then subparagraph (A) shall apply to the intangible only to the extent that the taxpayer's adjusted basis in the intangible exceeds the gain recognized under clause (ii)(I).

(C) Related person defined

For purposes of this paragraph—

(i) Related person

A person (hereinafter in this paragraph referred to as the ''related person'') is related to any person if—

(I) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(II) the related person and such person are engaged in trades or businesses under common control (within the meaning of subparagraphs (A) and (B) of section 41(f)(1)).

For purposes of subclause (I), in applying section 267(b) or 707(b)(1), ''20 percent'' shall be substituted for ''50 percent''.

(ii) Time for making determination

A person shall be treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

(D) Acquisitions by reason of death

Subparagraph (A) shall not apply to the acquisition of any property by the taxpayer if the basis of the property in the hands of the taxpayer is determined under section 1014(a).

(E) Special rule for partnerships

With respect to any increase in the basis of partnership property under section 732, 734, or 743, determinations under this paragraph shall be made at the partner level and each partner shall be treated as having owned and used such partner's proportionate share of the partnership assets.

(F) Anti-abuse rules

The term ''amortizable section 197 intangible'' does not include any section 197 intangible acquired in a transaction, one of the principal purposes of which is to avoid the requirement of subsection (c)(1) that the intangible be acquired after the date of the enactment of this section or to avoid the provisions of subparagraph (A).

(10) Tax-exempt use property subject to lease

In the case of any section 197 intangible which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such intangible, the amortization period under this section shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).

(g) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including such regulations as may be appropriate to prevent avoidance of the purposes of this section through related persons or otherwise.

(Added Pub. L. 103–66, title XIII, §13261(a), Aug. 10, 1993, 107 Stat. 532; amended Pub. L. 108–357, title VIII, §§847(b)(3), 886(a), Oct. 22, 2004, 118 Stat. 1602, 1641.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (c)(1)(A) and (f)(9)(A), (F), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

2004—Subsec. (e)(6) to (8). Pub. L. 108–357, §886(a), redesignated pars. (7) and (8) as (6) and (7), respectively, and struck out heading and text of former par. (6). Text read as follows: ''A franchise to engage in professional football, basketball, baseball, or other professional sport, and any item acquired in connection with such a franchise.''

Subsec. (f)(10). Pub. L. 108–357, §847(b)(3), added par. (10).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 847(b)(3) of Pub. L. 108–357 applicable to leases entered into after Oct. 3, 2004, see section 849(b)(4) of Pub. L. 108–357, set out as an Effective Date note under section 470 of this title.

Pub. L. 108–357, title VIII, §886(c), Oct. 22, 2004, 118 Stat. 1641, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1245 and 1253 of this title and repealing section 1056 of this title] shall apply to property acquired after the date of the enactment of this Act [Oct. 22, 2004].

''(2) SECTION 1245.—The amendment made by subsection (b)(2) [amending section 1245 of this title] shall apply to franchises acquired after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE

Section 13261(g) of Pub. L. 103–66, as amended by Pub. L. 104–188, title I, §1703(*l*), Aug. 20, 1996, 110 Stat. 1877, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 167, 642, 848, 1016, 1060, 1245, and 1253 of this title] shall apply with respect to property acquired after the date of the enactment of this Act [Aug. 10, 1993].

''(2) ELECTION TO HAVE AMENDMENTS APPLY TO PROPERTY ACQUIRED AFTER JULY 25, 1991.—

''(A) IN GENERAL.—If an election under this paragraph applies to the taxpayer—

''(i) the amendments made by this section shall apply to property acquired by the taxpayer after July 25, 1991,

''(ii) subsection (c)(1)(A) of section 197 of the Internal Revenue Code of 1986 (as added by this section) (and so much of subsection (f)(9)(A) of such section 197 as precedes clause (i) thereof) shall be applied with respect to the taxpayer by treating July 25, 1991, as the date of the enactment of such section, and

''(iii) in applying subsection (f)(9) of such section, with respect to any property acquired by the taxpayer or a related person on or before the date of the enactment of this Act, only holding or use on July 25, 1991, shall be taken into account.

''(B) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe. Such an election by any taxpayer, once made—

''(i) may be revoked only with the consent of the Secretary, and

''(ii) shall apply to the taxpayer making such election and any other taxpayer under common control with the taxpayer (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of such Code) at any time after August 2, 1993, and on or before the date on which such election is made.

''(3) ELECTIVE BINDING CONTRACT EXCEPTION.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to any acquisition of property by the taxpayer if—

''(i) such acquisition is pursuant to a written binding contract in effect on the date of the enactment of this Act and at all times thereafter before such acquisition,

''(ii) an election under paragraph (2) does not apply to the taxpayer, and

''(iii) the taxpayer makes an election under this paragraph with respect to such contract.

''(B) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made—

''(i) may be revoked only with the consent of the Secretary, and

''(ii) shall apply to all property acquired pursuant to the contract with respect to which such election was made.''

§ 198. Expensing of environmental remediation costs

(a) In general

A taxpayer may elect to treat any qualified environmental remediation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

(b) Qualified environmental remediation expenditure

For purposes of this section—

(1) In general

The term ''qualified environmental remediation expenditure'' means any expenditure—

(A) which is otherwise chargeable to capital account, and

(B) which is paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

(2) Special rule for expenditures for depreciable property

Such term shall not include any expenditure for the acquisition of property of a character subject to the allowance for depreciation which is used in connection with the abatement or control of hazardous substances at a qualified contaminated site; except that the

portion of the allowance under section 167 for such property which is otherwise allocated to such site shall be treated as a qualified environmental remediation expenditure.

(c) Qualified contaminated site

For purposes of this section—

(1) In general

The term ''qualified contaminated site'' means any area—

(A) which is held by the taxpayer for use in a trade or business or for the production of income, or which is property described in section 1221(a)(1) in the hands of the taxpayer, and

(B) at or on which there has been a release (or threat of release) or disposal of any hazardous substance.

(2) National priorities listed sites not included

Such term shall not include any site which is on, or proposed for, the national priorities list under section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this section).

(3) Taxpayer must receive statement from State environmental agency

An area shall be treated as a qualified contaminated site with respect to expenditures paid or incurred during any taxable year only if the taxpayer receives a statement from the appropriate agency of the State in which such area is located that such area meets the requirement of paragraph (1)(B).

(4) Appropriate State agency

For purposes of paragraph (3), the chief executive officer of each State may, in consultation with the Administrator of the Environmental Protection Agency, designate the appropriate State environmental agency within 60 days of the date of the enactment of this section. If the chief executive officer of a State has not designated an appropriate environmental agency within such 60-day period, the appropriate environmental agency for such State shall be designated by the Administrator of the Environmental Protection Agency.

(d) Hazardous substance

For purposes of this section—

(1) In general

The term ''hazardous substance'' means—

(A) any substance which is a hazardous substance as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

(B) any substance which is designated as a hazardous substance under section 102 of such Act, and

(C) any petroleum product (as defined in section 4612(a)(3)).

(2) Exception

Such term shall not include any substance with respect to which a removal or remedial action is not permitted under section 104 of such Act by reason of subsection (a)(3) thereof.

(e) Deduction recaptured as ordinary income on sale, etc.

Solely for purposes of section 1245, in the case of property to which a qualified environmental remediation expenditure would have been capitalized but for this section—

(1) the deduction allowed by this section for such expenditure shall be treated as a deduction for depreciation, and

(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

(f) Coordination with other provisions

Sections 280B and 468 shall not apply to amounts which are treated as expenses under this section.

(g) Regulations

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

(h) Termination

This section shall not apply to expenditures paid or incurred after December 31, 2011.

(Added Pub. L. 105–34, title IX, § 941(a), Aug. 5, 1997, 111 Stat. 882; amended Pub. L. 106–170, title V, §§ 511, 532(c)(2)(A), Dec. 17, 1999, 113 Stat. 1924, 1930; Pub. L. 106–554, § 1(a)(7) [title I, § 162(a), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–625; Pub. L. 108–311, title III, § 308(a), Oct. 4, 2004, 118 Stat. 1179; Pub. L. 109–432, div. A, title I, § 109(a), (b), Dec. 20, 2006, 120 Stat. 2939; Pub. L. 110–343, div. C, title III, § 318(a), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111–312, title VII, § 745(a), Dec. 17, 2010, 124 Stat. 3319.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2), (4), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

Sections 101(14), 102, 104, and 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsecs. (c)(2) and (d), are classified to sections 9601(14), 9602, 9604, and 9605(a)(8)(B), respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (h). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (h). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (d)(1)(C). Pub. L. 109–432, § 109(b), added subpar. (C).

Subsec. (h). Pub. L. 109–432, § 109(a), substituted ''2007'' for ''2005''.

2004—Subsec. (h). Pub. L. 108–311 substituted ''2005'' for ''2003''.

2000—Subsec. (c). Pub. L. 106–554, § 1(a)(7) [title I, § 162(a)], amended subsec. (c) generally. Prior to amendment, subsec. (c) defined the term ''qualified contaminated site'' to include certain property described in section 1221(a)(1) of this title, within a targeted area, and at which there had been a release or disposal of any hazardous substance, provided that an area could be treated as a qualified contaminated site only if the taxpayer received a certain statement from an appropriate State agency, provided for designation of appropriate State agencies, and defined targeted area.

Subsec. (h). Pub. L. 106–554, § 1(a)(7) [title I, § 162(b)], substituted ''2003'' for ''2001''.

1999—Subsec. (c)(1)(A)(i). Pub. L. 106–170, § 532(c)(2)(A), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (h). Pub. L. 106–170, § 511, substituted ''2001'' for ''2000''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 745(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 318(b), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendment made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 109(c), Dec. 20, 2006, 120 Stat. 2939, provided that: ''The amendments made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, § 308(b), Oct. 4, 2004, 118 Stat. 1179, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenditures paid or incurred after December 31, 2003.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title I, § 162(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–625, provided that: ''The amendments made by this section [amending this section] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(A) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE

Section 941(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this section] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Aug. 5, 1997], in taxable years ending after such date.''

§ 198A. Expensing of qualified disaster expenses

(a) In general

A taxpayer may elect to treat any qualified disaster expenses which are paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expense which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

(b) Qualified disaster expense

For purposes of this section, the term ''qualified disaster expense'' means any expenditure—

(1) which is paid or incurred in connection with a trade or business or with business-related property,

(2) which is—

(A) for the abatement or control of hazardous substances that were released on account of a federally declared disaster occurring before January 1, 2010,

(B) for the removal of debris from, or the demolition of structures on, real property which is business-related property damaged or destroyed as a result of a federally declared disaster occurring before such date, or

(C) for the repair of business-related property damaged as a result of a federally declared disaster occurring before such date, and

(3) which is otherwise chargeable to capital account.

(c) Other definitions

For purposes of this section—

(1) Business-related property

The term ''business-related property'' means property—

(A) held by the taxpayer for use in a trade or business or for the production of income, or

(B) described in section 1221(a)(1) in the hands of the taxpayer.

(2) Federally declared disaster

The term ''federally declared disaster'' has the meaning given such term by section 165(h)(3)(C)(i).

(d) Deduction recaptured as ordinary income on sale, etc.

Solely for purposes of section 1245, in the case of property to which a qualified disaster expense would have been capitalized but for this section—

(1) the deduction allowed by this section for such expense shall be treated as a deduction for depreciation, and

(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

(e) Coordination with other provisions

Sections 198, 280B, and 468 shall not apply to amounts which are treated as expenses under this section.

(f) Regulations

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

(Added Pub. L. 110–343, div. C, title VII, § 707(a), Oct. 3, 2008, 122 Stat. 3923.)

EFFECTIVE DATE

Pub. L. 110–343, div. C, title VII, § 707(c), Oct. 3, 2008, 122 Stat. 3924, provided that: ''The amendments made by this section [enacting this section] shall apply to amounts paid or incurred after December 31, 2007[,] in connection with disaster[s] declared after such date.''

§ 199. Income attributable to domestic production activities

(a) Allowance of deduction

(1) In general

There shall be allowed as a deduction an amount equal to 9 percent of the lesser of—

(A) the qualified production activities income of the taxpayer for the taxable year, or

(B) taxable income (determined without regard to this section) for the taxable year.

(2) Phasein

In the case of any taxable year beginning after 2004 and before 2010, paragraph (1) shall be applied by substituting for the percentage

contained therein the transition percentage determined under the following table:

For taxable years beginning in:	The transition percentage is:
2005 or 2006	3
2007, 2008, or 2009	6.

(b) Deduction limited to wages paid

(1) In general

The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W–2 wages of the taxpayer for the taxable year.

(2) W–2 wages

For purposes of this section—

(A) In general

The term ''W–2 wages'' means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.

(B) Limitation to wages attributable to domestic production

Such term shall not include any amount which is not properly allocable to domestic production gross receipts for purposes of subsection (c)(1).

(C) Return requirement

Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.

(D) Special rule for qualified film

In the case of a qualified film, such term shall include compensation for services performed in the United States by actors, production personnel, directors, and producers.

(3) Acquisitions and dispositions

The Secretary shall provide for the application of this subsection in cases where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

(c) Qualified production activities income

For purposes of this section—

(1) In general

The term ''qualified production activities income'' for any taxable year means an amount equal to the excess (if any) of—

(A) the taxpayer's domestic production gross receipts for such taxable year, over

(B) the sum of—

(i) the cost of goods sold that are allocable to such receipts, and

(ii) other expenses, losses, or deductions (other than the deduction allowed under this section), which are properly allocable to such receipts.

(2) Allocation method

The Secretary shall prescribe rules for the proper allocation of items described in paragraph (1) for purposes of determining qualified production activities income. Such rules shall provide for the proper allocation of items whether or not such items are directly allocable to domestic production gross receipts.

(3) Special rules for determining costs

(A) In general

For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

(B) Exports for further manufacture

In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

(4) Domestic production gross receipts

(A) In general

The term ''domestic production gross receipts'' means the gross receipts of the taxpayer which are derived from—

(i) any lease, rental, license, sale, exchange, or other disposition of—

(I) qualifying production property which was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States,

(II) any qualified film produced by the taxpayer, or

(III) electricity, natural gas, or potable water produced by the taxpayer in the United States,

(ii) in the case of a taxpayer engaged in the active conduct of a construction trade or business, construction of real property performed in the United States by the taxpayer in the ordinary course of such trade or business, or

(iii) in the case of a taxpayer engaged in the active conduct of an engineering or architectural services trade or business, engineering or architectural services performed in the United States by the taxpayer in the ordinary course of such trade or business with respect to the construction of real property in the United States.

(B) Exceptions

Such term shall not include gross receipts of the taxpayer which are derived from—

(i) the sale of food and beverages prepared by the taxpayer at a retail establishment,

(ii) the transmission or distribution of electricity, natural gas, or potable water, or

(iii) the lease, rental, license, sale, exchange, or other disposition of land.

(C) Special rule for certain Government contracts

Gross receipts derived from the manufacture or production of any property described in subparagraph (A)(i)(I) shall be treated as meeting the requirements of subparagraph (A)(i) if—

(i) such property is manufactured or produced by the taxpayer pursuant to a contract with the Federal Government, and

(ii) the Federal Acquisition Regulation requires that title or risk of loss with respect to such property be transferred to the Federal Government before the manufacture or production of such property is complete.

(D) Partnerships owned by expanded affiliated groups

For purposes of this paragraph, if all of the interests in the capital and profits of a partnership are owned by members of a single expanded affiliated group at all times during the taxable year of such partnership, the partnership and all members of such group shall be treated as a single taxpayer during such period.

(5) Qualifying production property

The term ''qualifying production property'' means—

(A) tangible personal property,

(B) any computer software, and

(C) any property described in section 168(f)(4).

(6) Qualified film

The term ''qualified film'' means any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to the production of such property is compensation for services performed in the United States by actors, production personnel, directors, and producers. Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code. A qualified film shall include any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film shall not affect the availability of the deduction under this section.

(7) Related persons

(A) In general

The term ''domestic production gross receipts'' shall not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person.

(B) Related person

For purposes of subparagraph (A), a person shall be treated as related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (*o*) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).

(d) Definitions and special rules

(1) Application of section to pass-thru entities

(A) Partnerships and S corporations

In the case of a partnership or S corporation—

(i) this section shall be applied at the partner or shareholder level,

(ii) each partner or shareholder shall take into account such person's allocable share of each item described in subparagraph (A) or (B) of subsection (c)(1) (determined without regard to whether the items described in such subparagraph (A) exceed the items described in such subparagraph (B)),

(iii) each partner or shareholder shall be treated for purposes of subsection (b) as having W-2 wages for the taxable year in an amount equal to such person's allocable share of the W-2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary), and

(iv) in the case of each partner of a partnership, or shareholder of an S corporation, who owns (directly or indirectly) at least 20 percent of the capital interests in such partnership or of the stock of such S corporation—

(I) such partner or shareholder shall be treated as having engaged directly in any film produced by such partnership or S corporation, and

(II) such partnership or S corporation shall be treated as having engaged directly in any film produced by such partner or shareholder.

(B) Trusts and estates

In the case of a trust or estate—

(i) the items referred to in subparagraph (A)(ii) (as determined therein) and the W–2 wages of the trust or estate for the taxable year, shall be apportioned between the beneficiaries and the fiduciary (and among the beneficiaries) under regulations prescribed by the Secretary, and

(ii) for purposes of paragraph (2), adjusted gross income of the trust or estate shall be determined as provided in section 67(e) with the adjustments described in such paragraph.

(C) Regulations

The Secretary may prescribe rules requiring or restricting the allocation of items and wages under this paragraph and may prescribe such reporting requirements as the Secretary determines appropriate.

(2) Application to individuals

In the case of an individual, subsections (a)(1)(B) and (d)(9)(A)(iii) shall be applied by substituting ''adjusted gross income'' for ''taxable income''. For purposes of the preceding sentence, adjusted gross income shall be determined—

(A) after application of sections 86, 135, 137, 219, 221, 222, and 469, and

(B) without regard to this section.

(3) Agricultural and horticultural cooperatives

(A) Deduction allowed to patrons

Any person who receives a qualified payment from a specified agricultural or horticultural cooperative shall be allowed for the taxable year in which such payment is received a deduction under subsection (a) equal to the portion of the deduction allowed under subsection (a) to such cooperative which is—

(i) allowed with respect to the portion of the qualified production activities income to which such payment is attributable, and

(ii) identified by such cooperative in a written notice mailed to such person during the payment period described in section 1382(d).

(B) Cooperative denied deduction for portion of qualified payments

The taxable income of a specified agricultural or horticultural cooperative shall not be reduced under section 1382 by reason of that portion of any qualified payment as does not exceed the deduction allowable under subparagraph (A) with respect to such payment.

(C) Taxable income of cooperatives determined without regard to certain deductions

For purposes of this section, the taxable income of a specified agricultural or horticultural cooperative shall be computed without regard to any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

(D) Special rule for marketing cooperatives

For purposes of this section, a specified agricultural or horticultural cooperative described in subparagraph (F)(ii) shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

(E) Qualified payment

For purposes of this paragraph, the term ''qualified payment'' means, with respect to any person, any amount which—

(i) is described in paragraph (1) or (3) of section 1385(a),

(ii) is received by such person from a specified agricultural or horticultural cooperative, and

(iii) is attributable to qualified production activities income with respect to which a deduction is allowed to such cooperative under subsection (a).

(F) Specified agricultural or horticultural cooperative

For purposes of this paragraph, the term ''specified agricultural or horticultural cooperative'' means an organization to which part I of subchapter T applies which is engaged—

(i) in the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, or

(ii) in the marketing of agricultural or horticultural products.

(4) Special rule for affiliated groups

(A) In general

All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

(B) Expanded affiliated group

For purposes of this section, the term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a), determined—

(i) by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears, and

(ii) without regard to paragraphs (2) and (4) of section 1504(b).

(C) Allocation of deduction

Except as provided in regulations, the deduction under subsection (a) shall be allocated among the members of the expanded affiliated group in proportion to each member's respective amount (if any) of qualified production activities income.

(5) Trade or business requirement

This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

(6) Coordination with minimum tax

For purposes of determining alternative minimum taxable income under section 55—

(A) qualified production activities income shall be determined without regard to any adjustments under sections 56 through 59, and

(B) in the case of a corporation, subsection (a)(1)(B) shall be applied by substituting ''alternative minimum taxable income'' for ''taxable income''.

(7) Unrelated business taxable income

For purposes of determining the tax imposed by section 511, subsection (a)(1)(B) shall be applied by substituting ''unrelated business taxable income'' for ''taxable income''.

(8) Treatment of activities in Puerto Rico

(A) In general

In the case of any taxpayer with gross receipts for any taxable year from sources within the Commonwealth of Puerto Rico, if all of such receipts are taxable under section 1 or 11 for such taxable year, then for purposes of determining the domestic production gross receipts of such taxpayer for such taxable year under subsection (c)(4), the term ''United States'' shall include the Commonwealth of Puerto Rico.

(B) Special rule for applying wage limitation

In the case of any taxpayer described in subparagraph (A), for purposes of applying the limitation under subsection (b) for any taxable year, the determination of W–2 wages of such taxpayer shall be made without regard to any exclusion under section

3401(a)(8) for remuneration paid for services performed in Puerto Rico.

(C) Termination

This paragraph shall apply only with respect to the first 6 taxable years of the taxpayer beginning after December 31, 2005, and before January 1, 2012.

(9) Special rule for taxpayers with oil related qualified production activities income

(A) In general

If a taxpayer has oil related qualified production activities income for any taxable year beginning after 2009, the amount otherwise allowable as a deduction under subsection (a) shall be reduced by 3 percent of the least of—

(i) the oil related qualified production activities income of the taxpayer for the taxable year,

(ii) the qualified production activities income of the taxpayer for the taxable year, or

(iii) taxable income (determined without regard to this section).

(B) Oil related qualified production activities income

For purposes of this paragraph, the term ''oil related qualified production activities income'' means for any taxable year the qualified production activities income which is attributable to the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during such taxable year.

(C) Primary product

For purposes of this paragraph, the term ''primary product'' has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.

(10) Regulations

The Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section, including regulations which prevent more than 1 taxpayer from being allowed a deduction under this section with respect to any activity described in subsection (c)(4)(A)(i).

(Added Pub. L. 108–357, title I, §102(a), Oct. 22, 2004, 118 Stat. 1424; amended Pub. L. 109–135, title IV, §403(a)(1)–(13), Dec. 21, 2005, 119 Stat. 2615–2619; Pub. L. 109–222, title V, §514(a), (b), May 17, 2006, 120 Stat. 366; Pub. L. 109–432, div. A, title IV, §401(a), Dec. 20, 2006, 120 Stat. 2953; Pub. L. 110–343, div. B, title IV, §401(a), (b), div. C, title III, §312(a), title V, §502(c), Oct. 3, 2008, 122 Stat. 3851, 3869, 3876; Pub. L. 111–312, title VII, §746(a), Dec. 17, 2010, 124 Stat. 3319.)

REFERENCES IN TEXT

Section 927(a)(2)(C) of this title, referred to in subsec. (d)(9)(C), was repealed by Pub. L. 106–519, §2, Nov. 15, 2000, 114 Stat. 2423.

AMENDMENTS

2010—Subsec. (d)(8)(C). Pub. L. 111–312 substituted ''first 6 taxable years'' for ''first 4 taxable years'' and ''January 1, 2012'' for ''January 1, 2010''.

2008—Subsec. (b)(2)(D). Pub. L. 110–343, §502(c)(1), added subpar. (D).

Subsec. (c)(6). Pub. L. 110–343, §502(c)(2), inserted at end ''A qualified film shall include any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film shall not affect the availability of the deduction under this section.''

Subsec. (d)(1)(A)(iv). Pub. L. 110–343, §502(c)(3), added cl. (iv).

Subsec. (d)(2). Pub. L. 110–343, §401(b), substituted ''subsections (a)(1)(B) and (d)(9)(A)(iii)'' for ''subsection (a)(1)(B)'' in introductory provisions.

Subsec. (d)(8)(C). Pub. L. 110–343, §312(a), substituted ''first 4 taxable years'' for ''first 2 taxable years'' and ''January 1, 2010'' for ''January 1, 2008''.

Subsec. (d)(9), (10). Pub. L. 110–343, §401(a), added par. (9) and redesignated former par. (9) as (10).

2006—Subsec. (a)(2). Pub. L. 109–222, §514(b)(2), struck out ''and subsection (d)(1)'' after ''paragraph (1)''.

Subsec. (b)(2). Pub. L. 109–222, §514(a), amended par. (2) generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'W–2 wages' means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.''

Subsec. (d)(1)(A)(iii). Pub. L. 109–222, §514(b)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''each partner or shareholder shall be treated for purposes of subsection (b) as having W–2 wages for the taxable year in an amount equal to the lesser of—

''(I) such person's allocable share of the W–2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary), or

''(II) 2 times 9 percent of so much of such person's qualified production activities income as is attributable to items allocated under clause (ii) for the taxable year.''

Subsec. (d)(8), (9). Pub. L. 109–432 added par. (8) and redesignated former par. (8) as (9).

2005—Subsec. (a)(2). Pub. L. 109–135, §403(a)(11)(B), substituted ''subsection (d)(1)'' for ''subsections (d)(1) and (d)(6)''.

Subsec. (b)(1). Pub. L. 109–135, §403(a)(1), substituted ''the taxpayer'' for ''the employer''.

Subsec. (b)(2). Pub. L. 109–135, §403(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of paragraph (1), the term 'W–2 wages' means the sum of the aggregate amounts the taxpayer is required to include on statements under paragraphs (3) and (8) of section 6051(a) with respect to employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year.''

Subsec. (c)(1)(B). Pub. L. 109–135, §403(a)(3), inserted ''and'' at end of cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which read as follows:

''(ii) other deductions, expenses, or losses directly allocable to such receipts, and

''(iii) a ratable portion of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.''

Subsec. (c)(2). Pub. L. 109–135, §403(a)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.''

Subsec. (c)(4)(A)(ii), (iii). Pub. L. 109–135, §403(a)(5), added cls. (ii) and (iii) and struck out former cls. (ii) and (iii) which read as follows:

''(ii) construction performed in the United States, or

''(iii) engineering or architectural services performed in the United States for construction projects in the United States.''

Subsec. (c)(4)(B)(iii). Pub. L. 109–135, § 403(a)(6), added cl. (iii).

Subsec. (c)(4)(C), (D). Pub. L. 109–135, § 403(a)(7), added subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 109–135, § 403(a)(8), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) and (B) relating to general application of section to pass-thru entities and application of wage limitation.

Subsec. (d)(3). Pub. L. 109–135, § 403(a)(9), amended heading and text of par. (3) generally. Prior to amendment, text related to deductions allowed to patrons of agricultural and horticultural cooperatives.

Subsec. (d)(4)(B)(i). Pub. L. 109–135, § 403(a)(10), substituted ''more than 50 percent'' for ''50 percent'' and ''at least 80 percent'' for ''80 percent''.

Subsec. (d)(6). Pub. L. 109–135, § 403(a)(11)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, the deduction under subsection (a) shall be 9 percent of the lesser of—

''(A) qualified production activities income (determined without regard to part IV of subchapter A), or

''(B) alternative minimum taxable income (determined without regard to this section) for the taxable year.

In the case of an individual, subparagraph (B) shall be applied by substituting 'adjusted gross income' for 'alternative minimum taxable income'. For purposes of the preceding sentence, adjusted gross income shall be determined in the same manner as provided in paragraph (2).''

Subsec. (d)(7). Pub. L. 109–135, § 403(a)(12), added par. (7). Former par. (7) redesignated (8).

Subsec. (d)(8). Pub. L. 109–135, § 403(a)(12), (13), redesignated par. (7) as (8) and inserted before period at end '', including regulations which prevent more than 1 taxpayer from being allowed a deduction under this section with respect to any activity described in subsection (c)(4)(A)(i)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 746(b), Dec. 17, 2010, 124 Stat. 3320, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, § 401(c), Oct. 3, 2008, 122 Stat. 3851, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Pub. L. 110–343, div. C, title III, § 312(b), Oct. 3, 2008, 122 Stat. 3869, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

Amendment by section 502(c) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, see section 502(e)(2) of Pub. L. 110–343, set out as a note under section 181 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, § 401(b), Dec. 20, 2006, 120 Stat. 2953, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.''

Pub. L. 109–222, title V, § 514(c), May 17, 2006, 120 Stat. 367, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2004, subject to transition rule, see section 102(e) of Pub. L. 108–357, as amended, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

Sec.
211. Allowance of deductions.
212. Expenses for production of income.
213. Medical, dental, etc., expenses.
[214. Repealed.]
215. Alimony, etc., payments.
216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder.
217. Moving expenses.
[218. Repealed.]
219. Retirement savings.
220. Archer MSAs.
221. Interest on education loans.
222. Qualified tuition and related expenses.
223. Health savings accounts.
224. Cross reference.

AMENDMENT OF ANALYSIS

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note set out under section 1 of this title.

AMENDMENTS

2003—Pub. L. 108–173, title XII, § 1201(j), Dec. 8, 2003, 117 Stat. 2479, added items 223 and 224 and struck out former item 223 ''Cross reference''.

2001—Pub. L. 107–16, title IV, § 431(c)(4), title IX, § 901, June 7, 2001, 115 Stat. 68, 150, temporarily added items 222 and 223 and struck out former item 222 ''Cross reference''.

2000—Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(9)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629, substituted ''Archer MSAs'' for ''Medical savings accounts'' in item 220.

1997—Pub. L. 105–34, title II, § 202(d), Aug. 5, 1997, 111 Stat. 809, added items 221 and 222 and struck out former item 221 ''Cross reference''.

1996—Pub. L. 104–191, title III, § 301(i), Aug. 21, 1996, 110 Stat. 2052, added items 220 and 221 and struck out former item 220 ''Cross reference''.

1990—Pub. L. 101–508, title XI, § 11802(e)(3), Nov. 5, 1990, 104 Stat. 1388–530, added item 220 and struck out former items 220 ''Jury duty pay remitted to employer'' and 221 ''Cross references''.

1988—Pub. L. 100–647, title VI, § 6007(c), Nov. 10, 1988, 102 Stat. 3687, added item 220 and redesignated former item 220 as 221.

1986—Pub. L. 99–514, title I, §§ 131(b)(3), 135(b)(2), title III, § 301(b)(5)(B), Oct. 22, 1986, 100 Stat. 2113, 2116, 2217, added item 220, struck out items 221 ''Deduction for two-earner married couples'' and 222 ''Adoption expenses'', substituted ''reference'' for ''references'' in item 223, and struck out item 223 ''Cross reference''.

1981—Pub. L. 97–34, title I, §§ 103(c)(3), 125(b), title III, § 311(h)(11), Aug. 13, 1981, 95 Stat. 188, 201, 282, repealed item 220 ''Retirement savings for certain married individuals'', added items 221 and 222 and redesignated former item 221 as 223.

1978—Pub. L. 95–600, title I, § 113(a)(2)(A), Nov. 6, 1978, 92 Stat. 2778, struck out item 218 ''Contributions to candidates for public office''.

1976—Pub. L. 94–455, title V, § 504(b)(2), Oct. 4, 1976, 90 Stat. 1565, struck out item 214 ''Expenses for household and dependent care services necessary for gainful employment''.

Pub. L. 94–455, title XV, §1501(c), Oct. 4, 1976, 90 Stat. 1737, added item 220 and redesignated former item 220 as 221.

1974—Pub. L. 93–406, title II, §2002(h)(1), Sept. 2, 1974, 88 Stat. 970, added item 219 and redesignated former item 219 as 220.

1971—Pub. L. 92–178, title II, §210(b), title VII, §702(c), Dec. 10, 1971, 85 Stat. 520, 562, substituted ''Expenses for household and dependent care services necessary for gainful employment'' for ''expenses for care of certain dependents'' in item 214, added item 218, and redesignated former item 218 as 219.

1964—Pub. L. 88–272, title II, §213(a)(2), Feb. 26, 1964, 78 Stat. 52, added item 217 and redesignated former item 217 as 218.

1962—Pub. L. 87–834, §28(b), Oct. 16, 1962, 76 Stat. 1068, substituted ''Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder'' for ''Amounts representing taxes and interest paid to cooperative housing corporation'' in item 216.

§ 211. Allowance of deductions

In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (section 261 and following, relating to items not deductible).

(Aug. 16, 1954, ch. 736, 68A Stat. 69; Pub. L. 95–30, title I, §102(b)(3), May 23, 1977, 91 Stat. 137.)

AMENDMENTS

1977—Pub. L. 95–30 substituted ''section 63'' for ''section 63(a)''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

§ 212. Expenses for production of income

In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year—

(1) for the production or collection of income;

(2) for the management, conservation, or maintenance of property held for the production of income; or

(3) in connection with the determination, collection, or refund of any tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 69.)

DENIAL OF DEDUCTION FOR AMOUNTS PAID OR INCURRED ON JUDGMENTS IN SUITS BROUGHT TO RECOVER PRICE INCREASES IN PURCHASE OF NEW PRINCIPAL RESIDENCE

No deductions to be allowed in computing taxable income for two-thirds of any amount paid or incurred on a judgment entered against any person in a suit brought under section 208(b) of Pub. L. 94–12, see section 208(c) of Pub. L. 94–12, set out as a note under section 44 of this title.

§ 213. Medical, dental, etc., expenses

(a) Allowance of deduction

There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), to the extent that such expenses exceed 7.5 percent of adjusted gross income.

(b) Limitation with respect to medicine and drugs

An amount paid during the taxable year for medicine or a drug shall be taken into account under subsection (a) only if such medicine or drug is a prescribed drug or is insulin.

(c) Special rule for decedents

(1) Treatment of expenses paid after death

For purposes of subsection (a), expenses for the medical care of the taxpayer which are paid out of his estate during the 1-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time incurred.

(2) Limitation

Paragraph (1) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this paragraph shall not apply if (within the time and in the manner and form prescribed by the Secretary) there is filed—

(A) a statement that such amount has not been allowed as a deduction under section 2053, and

(B) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

(d) Definitions

For purposes of this section—

(1) The term ''medical care'' means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A),

(C) for qualified long-term care services (as defined in section 7702B(c)), or

(D) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B) or for any qualified long-term care insurance contract (as defined in section 7702B(b)).

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D).

(2) AMOUNTS PAID FOR CERTAIN LODGING AWAY FROM HOME TREATED AS PAID FOR MEDICAL CARE.—Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facil-

ity which is related to, or the equivalent of, a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed $50 for each night for each individual.

(3) PRESCRIBED DRUG.—The term ''prescribed drug'' means a drug or biological which requires a prescription of a physician for its use by an individual.

(4) PHYSICIAN.—The term ''physician'' has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(5) SPECIAL RULE IN THE CASE OF CHILD OF DIVORCED PARENTS, ETC.—Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this section.

(6) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A), (B), and (C) of paragraph (1)—

(A) no amount shall be treated as paid for insurance to which paragraph (1)(D) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

(7) Subject to the limitations of paragraph (6), premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A), (B), and (C) of paragraph (1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

(8) The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).

(9) COSMETIC SURGERY.—

(A) IN GENERAL.—The term ''medical care'' does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

(B) COSMETIC SURGERY DEFINED.—For purposes of this paragraph, the term ''cosmetic surgery'' means any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

(10) ELIGIBLE LONG-TERM CARE PREMIUMS.—

(A) IN GENERAL.—For purposes of this section, the term ''eligible long-term care premiums'' means the amount paid during a taxable year for any qualified long-term care insurance contract (as defined in section 7702B(b)) covering an individual, to the extent such amount does not exceed the limitation determined under the following table:

In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	$ 200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	2,000
More than 70	2,500 .

(B) INDEXING.—

(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1997, each dollar amount contained in subparagraph (A) shall be increased by the medical care cost adjustment of such amount for such calendar year. If any increase determined under the preceding sentence is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10.

(ii) MEDICAL CARE COST ADJUSTMENT.—For purposes of clause (i), the medical care cost adjustment for any calendar year is the percentage (if any) by which—

(I) the medical care component of the Consumer Price Index (as defined in section 1(f)(5)) for August of the preceding calendar year, exceeds

(II) such component for August of 1996.

The Secretary shall, in consultation with the Secretary of Health and Human Services, prescribe an adjustment which the Secretary determines is more appropriate for purposes of this paragraph than the adjustment described in the preceding sentence, and the adjustment so prescribed shall apply in lieu of the adjustment described in the preceding sentence.

(11) CERTAIN PAYMENTS TO RELATIVES TREATED AS NOT PAID FOR MEDICAL CARE.—An amount paid for a qualified long-term care service (as defined in section 7702B(c)) provided to an individual shall be treated as not paid for medical care if such service is provided—

(A) by the spouse of the individual or by a relative (directly or through a partnership, corporation, or other entity) unless the service is provided by a licensed professional with respect to such service, or

(B) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual.

For purposes of this paragraph, the term ''relative'' means an individual bearing a relation-

ship to the individual which is described in any of subparagraphs (A) through (G) of section 152(d)(2). This paragraph shall not apply for purposes of section 105(b) with respect to reimbursements through insurance.

(e) Exclusion of amounts allowed for care of certain dependents

Any expense allowed as a credit under section 21 shall not be treated as an expense paid for medical care.

(Aug. 16, 1954, ch. 736, 68A Stat. 69; Pub. L. 85–866, title I, §§16, 17(a), (b), Sept. 2, 1958, 72 Stat. 1613, 1614; Pub. L. 86–470, §3(a), May 14, 1960, 74 Stat. 133; Pub. L. 87–863, §1(a), (b), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 88–272, title II, §211(a), Feb. 26, 1964, 78 Stat. 49; Pub. L. 89–97, title I, §106(a)–(d)(1), July 30, 1965, 79 Stat. 336, 337; Pub. L. 94–455, title V, §504(c)(1), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1565, 1834; Pub. L. 97–248, title II, §202(a)–(b)(3)(B), Sept. 3, 1982, 96 Stat. 421; Pub. L. 98–369, div. A, title IV, §§423(b)(1), (3), 474(r)(9), 482(a), (b)(1), title VII, §711(b), July 18, 1984, 98 Stat. 800, 841, 847, 848, 943; Pub. L. 99–514, title I, §133, Oct. 22, 1986, 100 Stat. 2116; Pub. L. 101–508, title XI, §§11111(d)(1), 11342(a), Nov. 5, 1990, 104 Stat. 1388–412, 1388–471; Pub. L. 103–66, title XIII, §13131(d)(3), Aug. 10, 1993, 107 Stat. 435; Pub. L. 104–191, title III, §322(a)–(b)(2)(A), (C), (3), (4), Aug. 21, 1996, 110 Stat. 2060–2062; Pub. L. 108–311, title II, §207(17), (18), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 111–148, title IX, §9013(a), (b), Mar. 23, 2010, 124 Stat. 868.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

Pub. L. 111–148, title IX, §9013(a), (b), (d), Mar. 23, 2010, 124 Stat. 868, provided that, applicable to taxable years beginning after Dec. 31, 2012, this section is amended (1) in subsection (a), by striking ''7.5 percent'' and inserting ''10 percent''; and (2) by adding at the end the following new subsection:

(f) Special rule for 2013, 2014, 2015, and 2016

In the case of any taxable year beginning after December 31, 2012, and ending before January 1, 2017, subsection (a) shall be applied with respect to a taxpayer by substituting ''7.5 percent'' for ''10 percent'' if such taxpayer or such taxpayer's spouse has attained age 65 before the close of such taxable year.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(1)(D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part B of title XVIII of the Social Security Act is classified generally to part B (§1395j et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–311, §207(17), inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

Subsec. (d)(11). Pub. L. 108–311, §207(18), substituted ''subparagraphs (A) through (G) of section 152(d)(2)'' for ''paragraphs (1) through (8) of section 152(a)'' in concluding provisions.

1996—Subsec. (d)(1). Pub. L. 104–191, §322(b)(2)(A), inserted concluding provisions ''In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D).''

Subsec. (d)(1)(B). Pub. L. 104–191, §322(a), struck out ''or'' at end.

Subsec. (d)(1)(C). Pub. L. 104–191, §322(a), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(1)(D). Pub. L. 104–191, §322(b)(1), inserted before period ''or for any qualified long-term care insurance contract (as defined in section 7702B(b))''.

Pub. L. 104–191, §322(a), redesignated subpar. (C) as (D).

Subsec. (d)(6). Pub. L. 104–191, §322(b)(3)(A), substituted ''subparagraphs (A), (B), and (C)'' for ''subparagraphs (A) and (B)'' in introductory provisions.

Subsec. (d)(6)(A). Pub. L. 104–191, §322(b)(3)(B), substituted ''paragraph (1)(D)'' for ''paragraph (1)(C)''.

Subsec. (d)(7). Pub. L. 104–191, §322(b)(4), substituted ''subparagraphs (A), (B), and (C)'' for ''subparagraphs (A) and (B)''.

Subsec. (d)(10), (11). Pub. L. 104–191, §322(b)(2)(C), added pars. (10) and (11).

1993—Subsec. (f). Pub. L. 103–66 struck out heading and text of subsec. (f). Text read as follows: ''The amount otherwise taken into account under subsection (a) as expenses paid for medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32.''

1990—Subsec. (d)(9). Pub. L. 101–508, §11342(a), added par. (9).

Subsec. (f). Pub. L. 101–508, §11111(d)(1), added subsec. (f).

1986—Subsec. (a). Pub. L. 99–514 substituted ''7.5 percent'' for ''5 percent''.

1984—Subsec. (d)(2), (3). Pub. L. 98–369, §482(a), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 98–369, §482(a), redesignated par. (3) as (4). Former par. (4), as added by Pub. L. 98–369, §423(b)(1), redesignated (5).

Pub. L. 98–369, §423(b)(1), added par. (4). Former par. (4) redesignated (5).

Subsec. (d)(5). Pub. L. 98–369, §482(a), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 98–369, §423(b)(1), redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 98–369, §711(b), substituted ''paragraph (4)'' for ''paragraph (2)''.

Subsec. (d)(6). Pub. L. 98–369, §482(a), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 98–369, §423(b)(1), (3), redesignated former par. (5) as (6) and substituted therein ''limitations of paragraph (5)'' for ''limitations of paragraph (4)''. Former par. (6) redesignated (7).

Subsec. (d)(7). Pub. L. 98–369, §482(a), (b)(1), redesignated par. (6) as (7) and substituted therein ''paragraph (6)'' for ''paragraph (5)''. Former par. (7) redesignated (8).

Pub. L. 98–369, §423(b)(1), redesignated former par. (6) as (7).

Subsec. (d)(8). Pub. L. 98–369, §482(a), redesignated par. (7) as (8).

Subsec. (e). Pub. L. 98–369, §474(r)(9), substituted ''section 21'' for ''section 44A''.

1982—Subsec. (a). Pub. L. 97–248, §202(a), substituted provisions that there shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152), to the extent that such expenses exceed 5 percent of adjusted gross income, for provision allowing as deductions the amount by which the amount of the expenses paid during the taxable year (reduced by any amount deductible under paragraph (2)) for medical care of the taxpayer, his spouse, and dependents (as defined in section 152) exceeded 3 percent

of the adjusted gross income, and an amount (not in excess of $150) equal to one-half of the expenses paid during the taxable year for insurance which constituted medical care for the taxpayer, his spouse, and dependents.

Subsec. (b). Pub. L. 97–248, § 202(b)(1), amended subsec. (b) generally, substituting provision that an amount paid during the taxable year for medicine or a drug shall be taken into account under subsec. (a) only if such medicine or drug is a prescribed drug or is insulin for former provision that amounts paid during the taxable year for medicine and drugs which (but for this subsection) would have been taken into account in computing the deduction under subsec. (a) would be taken into account only to the extent that the aggregate of such amounts exceeded 1 percent of the adjusted gross income.

Subsec. (c). Pub. L. 97–248, § 202(b)(3)(B), redesignated subsec. (d) as (c). Former subsec. (c) was repealed by Pub. L. 89–97.

Subsec. (d). Pub. L. 97–248, § 202(b)(2), (3)(A), (B), redesignated subsec. (e) as (d), added pars. (2) and (3), and redesignated former pars. (2), (3), and (4) as (4), (5), and (6), respectively. Former subsec. (d) redesignated (c).

Subsecs. (e), (f). Pub. L. 97–248, § 202(b)(3)(B), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1976—Subsec. (d)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, § 504(c)(1), substituted ''a credit under section 44A'' for ''a deduction under section 214'' after ''allowed as''.

1965—Subsec. (a). Pub. L. 89–97, § 106(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There shall be allowed as a deduction the following amounts of the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152):

''(1) If neither the taxpayer nor his spouse has attained the age of 65 before the close of the taxable year—

''(A) the amount of such expenses for the care of any dependent who—

''(i) is the mother or father of the taxpayer or of his spouse, and

''(ii) has attained the age of 65 before the close of the taxable year, and

''(B) the amount by which such expenses for the care of the taxpayer, his spouse, and such dependents (other than any dependent described in subparagraph (A)) exceed 3 percent of the adjusted gross income.

''(2) If either the taxpayer or his spouse has attained the age of 65 before the close of the taxable year—

''(A) the amount of such expenses for the care of the taxpayer and his spouse.

''(B) the amount of such expenses for the care of any dependent described in paragraph (1)(A), and

''(C) the amount by which such expenses for the care of such dependents (other than any dependent described in paragraph (1)(A)) exceed 3 percent of the adjusted gross income.''

Subsec. (b). Pub. L. 89–97, § 106(b), struck out second sentence which read: ''The preceding sentence shall not apply to amounts paid for the care of—

''(1) the taxpayer and his spouse, if either of them has attained the age of 65 before the close of the taxable year, or

''(2) any dependent described in subsection (a)(1)(A).''

Subsec. (c). Pub. L. 89–97, § 106(d)(1), struck out subsec. (c) relating to maximum limitations on medical and dental expenses under this section.

Subsec. (e). Pub. L. 89–97, § 106(c), struck out from par. (1)(A) ''including amounts paid for accident or health insurance'' after ''function of the body'', added pars. (1)(C), (2), and (3), and renumbered former par. (2) as (4).

Subsec. (g). Pub. L. 89–97, § 106(d)(1), struck out provisions relating to maximum limitation if taxpayer or spouse has attained age 65 and is disabled, special rule, amounts taken into account, meaning of disabled, and determination of status.

1964—Subsec. (b). Pub. L. 88–272 excluded persons attaining age 65 before the close of the taxable year from the limitation, whether they are the taxpayer and his spouse, or the mother or father of the taxpayer and his spouse.

1962—Subsec. (c). Pub. L. 87–863, § 1(a), substituted ''$5,000'' for ''$2,500'', ''$10,000'' for ''$5,000'', and ''$20,000'' for ''$10,000''.

Subsec. (g). Pub. L. 87–863, § 1(b), substituted ''$20,000'' for ''$15,000'' in three places, and ''$40,000'' for ''$30,000''.

1960—Subsec. (a). Pub. L. 86–470 authorized a taxpayer to deduct medical care expenses for dependent parents of the taxpayer or his spouse who have attained the age of 65 before the close of the taxable year without applying the three percent limitation.

1958—Subsec. (c). Pub. L. 85–866, § 17(b), substituted ''Except as provided in subsection (g), the'' for ''The''.

Subsec. (d)(2)(A). Pub. L. 85–866, § 16, struck out ''claimed or'' before ''allowed''.

Subsec. (g). Pub. L. 85–866, § 17(A), added subsec. (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2012, see section 9013(d) of Pub. L. 111–148, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 322(c) of Pub. L. 104–191, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13131(e) of Pub. L. 103–66, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11111(d)(1) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11111(f) of Pub. L. 101–508, set out as a note under section 32 of this title.

Section 11342(b) of Pub. L. 101–508 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(b) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

Amendment by section 474(r)(9) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 482(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 152 of this title] shall apply to taxable years beginning after December 31, 1983.''

Amendment by section 711(b) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 202(c) of Pub. L. 97–248 provided that:

''(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1982.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and section 105 of this title] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 504(c)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 106(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 72, 79, 401, and 405 of this title] shall apply to taxable years beginning after December 31, 1966.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 211(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 1(c) of Pub. L. 87–863 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1961.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3(b) of Pub. L. 86–470 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1959.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 16 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 17(c) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1957.''

[§ 214. Repealed. Pub. L. 94–455, title V, § 504(b)(1), Oct. 4, 1976, 90 Stat. 1565]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 70; Apr. 2, 1963, Pub. L. 88–4, § 1, 77 Stat. 4; Feb. 26, 1964, Pub. L. 88–272, title II, § 212(a), 78 Stat. 49; Dec. 10, 1971, Pub. L. 92–178, title II, § 210(a), 85 Stat. 518; Mar. 29, 1975, Pub. L. 94–12, title II, § 206, 89 Stat. 32, provided for allowance of deduction for household and dependent care services necessary for gainful employment; defined ''qualifying individual'', ''employment-related expenses'', ''maintaining a household''; limitation on deductible amount; income limitation; and special rules and regulations applicable in the determination and allowance of deduction.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 3 of this title.

§ 215. Alimony, etc., payments

(a) General rule

In the case of an individual, there shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual's taxable year.

(b) Alimony or separate maintenance payments defined

For purposes of this section, the term ''alimony or separate maintenance payment'' means any alimony or separate maintenance payment (as defined in section 71(b)) which is includible in the gross income of the recipient under section 71.

(c) Requirement of identification number

The Secretary may prescribe regulations under which—

(1) any individual receiving alimony or separate maintenance payments is required to furnish such individual's taxpayer identification number to the individual making such payments, and

(2) the individual making such payments is required to include such taxpayer identification number on such individual's return for the taxable year in which such payments are made.

(d) Coordination with section 682

No deduction shall be allowed under this section with respect to any payment if, by reason of section 682 (relating to income of alimony trusts), the amount thereof is not includible in such individual's gross income.

(Aug. 16, 1954, ch. 736, 68A Stat. 71; Pub. L. 98–369, div. A, title IV, § 422(b), July 18, 1984, 98 Stat. 797.)

AMENDMENTS

1984—Pub. L. 98–369 amended section generally, substituting present provisions for provisions which had declared in: subsec. (a) a general rule as to allowance of deduction for amounts includible under section 71 in the gross income of the wife, payment of which was made within husband's taxable year, and prohibited any deduction with respect to any payment where by reason of section 71(d) or 682 the amount thereof was not includible in husband's gross income; and subsec. (b) cross reference to definitions of husband and wife in section 7701(a)(17).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification; and amendment of subsec. (c) by Pub. L. 98–369 applicable to payments made after Dec. 31, 1984, see section 422(e) of Pub. L. 98–369, set out as a note under section 71 of this title.

§ 216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder

(a) Allowance of deduction

In the case of a tenant-stockholder (as defined in subsection (b)(2)), there shall be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to

the extent that such amounts represent the tenant-stockholder's proportionate share of—

(1) the real estate taxes allowable as a deduction to the corporation under section 164 which are paid or incurred by the corporation on the houses or apartment building and on the land on which such houses (or building) are situated, or

(2) the interest allowable as a deduction to the corporation under section 163 which is paid or incurred by the corporation on its indebtedness contracted—

(A) in the acquisition, construction, alteration, rehabilitation, or maintenance of the houses or apartment building, or

(B) in the acquisition of the land on which the houses (or apartment building) are situated.

(b) Definitions

For purposes of this section—

(1) Cooperative housing corporation

The term ''cooperative housing corporation'' means a corporation—

(A) having one and only one class of stock outstanding,

(B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation,

(C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and

(D) meeting 1 or more of the following requirements for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred:

(i) 80 percent or more of the corporation's gross income for such taxable year is derived from tenant-stockholders.

(ii) At all times during such taxable year, 80 percent or more of the total square footage of the corporation's property is used or available for use by the tenant-stockholders for residential purposes or purposes ancillary to such residential use.

(iii) 90 percent or more of the expenditures of the corporation paid or incurred during such taxable year are paid or incurred for the acquisition, construction, management, maintenance, or care of the corporation's property for the benefit of the tenant-stockholders.

(2) Tenant-stockholder

The term ''tenant-stockholder'' means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

(3) Tenant-stockholder's proportionate share

(A) In general

Except as provided in subparagraph (B), the term ''tenant-stockholder's proportionate share'' means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).

(B) Special rule where allocation of taxes or interest reflect cost to corporation of stockholder's unit

(i) In general

If, for any taxable year—

(I) each dwelling unit owned or leased by a cooperative housing corporation is separately allocated a share of such corporation's real estate taxes described in subsection (a)(1) or a share of such corporation's interest described in subsection (a)(2), and

(II) such allocations reasonably reflect the cost to such corporation of such taxes, or of such interest, attributable to the tenant-stockholder's dwelling unit (and such unit's share of the common areas),

then the term ''tenant-stockholder's proportionate share'' means the shares determined in accordance with the allocations described in subclause (II).

(ii) Election by corporation required

Clause (i) shall apply with respect to any cooperative housing corporation only if such corporation elects its application. Such an election, once made, may be revoked only with the consent of the Secretary.

(4) Stock owned by governmental units

For purposes of this subsection, in determining whether a corporation is a cooperative housing corporation, stock owned and apartments leased by the United States or any of its possessions, a State or any political subdivision thereof, or any agency or instrumentality of the foregoing empowered to acquire shares in a cooperative housing corporation for the purpose of providing housing facilities, shall not be taken into account.

(5) Prior approval of occupancy

For purposes of this section, in the following cases there shall not be taken into account the fact that (by agreement with the cooperative housing corporation) the person or his nominee may not occupy the house or apartment without the prior approval of such corporation:

(A) In any case where a person acquires stock of a cooperative housing corporation by operation of law.

(B) In any case where a person other than an individual acquires stock of a cooperative housing corporation.

(C) In any case where the original seller acquires any stock of the cooperative housing corporation from the corporation not

later than 1 year after the date on which the apartments or houses (or leaseholds therein) are transferred by the original seller to the corporation.

(6) Original seller defined

For purposes of paragraph (5), the term ''original seller'' means the person from whom the corporation has acquired the apartments or houses (or leaseholds therein).

(c) Treatment as property subject to depreciation

(1) In general

So much of the stock of a tenant-stockholder in a cooperative housing corporation as is allocable, under regulations prescribed by the Secretary, to a proprietary lease or right of tenancy in property subject to the allowance for depreciation under section 167(a) shall, to the extent such proprietary lease or right of tenancy is used by such tenant-stockholder in a trade or business or for the production of income, be treated as property subject to the allowance for depreciation under section 167(a). The preceding sentence shall not be construed to limit or deny a deduction for depreciation under section 167(a) by a cooperative housing corporation with respect to property owned by such a corporation and leased to tenant-stockholders.

(2) Deduction limited to adjusted basis in stock

(A) In general

The amount of any deduction for depreciation allowable under section 167(a) to a tenant-stockholder with respect to any stock for any taxable year by reason of paragraph (1) shall not exceed the adjusted basis of such stock as of the close of the taxable year of the tenant-stockholder in which such deduction was incurred.

(B) Carryforward of disallowed amount

The amount of any deduction which is not allowed by reason of subparagraph (A) shall, subject to the provisions of subparagraph (A), be treated as a deduction allowable under section 167(a) in the succeeding taxable year.

(d) Disallowance of deduction for certain payments to the corporation

No deduction shall be allowed to a stockholder in a cooperative housing corporation for any amount paid or accrued to such corporation during any taxable year (in excess of the stockholder's proportionate share of the items described in subsections (a)(1) and (a)(2)) to the extent that, under regulations prescribed by the Secretary, such amount is properly allocable to amounts paid or incurred at any time by the corporation which are chargeable to the corporation's capital account. The stockholder's adjusted basis in the stock in the corporation shall be increased by the amount of such disallowance.

(e) Distributions by cooperative housing corporations

Except as provided in regulations no gain or loss shall be recognized on the distribution by a cooperative housing corporation of a dwelling unit to a stockholder in such corporation if such distribution is in exchange for the stockholder's stock in such corporation and such dwelling unit is used as his principal residence (within the meaning of section 121).

(Aug. 16, 1954, ch. 736, 68A Stat. 71; Pub. L. 87–834, §28(a), Oct. 16, 1962, 76 Stat. 1068; Pub. L. 91–172, title IX, §913(a), Dec. 30, 1969, 83 Stat. 723; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2101(b), (f)(1), Oct. 4, 1976, 90 Stat. 1834, 1899; Pub. L. 95–600, title V, §531(a), Nov. 6, 1978, 92 Stat. 2886; Pub. L. 96–222, title I, §105(a)(6), Apr. 1, 1980, 94 Stat. 219; Pub. L. 99–514, title VI, §644(a)–(d), Oct. 22, 1986, 100 Stat. 2285, 2286; Pub. L. 100–647, title VI, §6282(a), Nov. 10, 1988, 102 Stat. 3755; Pub. L. 101–508, title XI, §11702(i), Nov. 5, 1990, 104 Stat. 1388–516; Pub. L. 105–34, title III, §312(d)(4), Aug. 5, 1997, 111 Stat. 840; Pub. L. 110–142, §4(a), Dec. 20, 2007, 121 Stat. 1804.)

AMENDMENTS

2007—Subsec. (b)(1)(D). Pub. L. 110–142 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred is derived from tenant-stockholders.''

1997—Subsec. (e). Pub. L. 105–34 substituted ''such dwelling unit is used as his principal residence (within the meaning of section 121)'' for ''such exchange qualifies for nonrecognition of gain under section 1034(f)''.

1990—Subsec. (e). Pub. L. 101–508 substituted ''corporations'' for ''associations'' in heading and ''corporation'' for ''association'' after ''housing'' in text.

1988—Subsec. (e). Pub. L. 100–647 added subsec. (e).

1986—Subsec. (b)(2). Pub. L. 99–514, §644(a)(1), substituted ''a person'' and ''such person'' for ''an individual'' and ''such individual'', respectively.

Subsec. (b)(3). Pub. L. 99–514, §644(d), added heading and amended text generally. Prior to amendment, text read as follows: ''The term 'tenant-stockholder's proportionate share' means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).''

Subsec. (b)(5). Pub. L. 99–514, §644(a)(2), substituted ''Prior approval of occupancy'' for ''Stock acquired through foreclosure by lending institution'' in heading and amended text generally. Prior to amendment, text read as follows: ''If a bank or other lending institution acquires by foreclosure (or by instrument in lieu of foreclosure) the stock of a tenant-stockholder, and a lease or the right to occupy an apartment or house to which such stock is appurtenant, such bank or other lending institution shall be treated as a tenant-stockholder for a period not to exceed three years from the date of acquisition. The preceding sentence shall apply even though, by agreement with the cooperative housing corporation, the bank (or other lending institution) or its nominee may not occupy the house or apartment without the prior approval of such corporation.''

Subsec. (b)(6). Pub. L. 99–514, §644(a)(2), amended par. (6) generally, substituting provisions defining ''original seller'' for purposes of par. (5) for provisions relating to stock owned by person from whom corporation acquired its property, subpar. (A) thereof providing for general rule, subpar. (B) providing that stock acquisition must take place not later than 1 year after transfer of dwelling units, subpar. (C) providing that original seller must have right to occupy apartment or house, and subpar. (D) defining ''original seller'' for purposes of former par. (6).

Subsec. (c). Pub. L. 99–514, §644(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as

follows: ''So much of the stock of a tenant-stockholder in a cooperative housing corporation as is allocable, under regulations prescribed by the Secretary, to a proprietary lease or right of tenancy in property subject to the allowance for depreciation under section 167(a) shall, to the extent such proprietary lease or right of tenancy is used by such tenant-stockholder in a trade or business or for the production of income, be treated as property subject to the allowance for depreciation under section 167(a). The preceding sentence shall not be construed to limit or deny a deduction for depreciation under 167(a) by a cooperative housing corporation with respect to property owned by such a corporation and leased to tenant-stockholders.''

Subsec. (d). Pub. L. 99–514, § 644(c), added subsec. (d).

1980—Subsec. (b)(6)(A). Pub. L. 96–222, § 105(a)(6)(A), added subpar. (A). Former subpar. (A), which required the original seller who acquired stock of the corporation from the corporation by purchase or foreclosure to be treated as a tenant-stockholder for a period not to exceed 3 years from the date of acquisition, was struck out.

Subsec. (b)(6)(B) to (D). Pub. L. 96–222, § 105(a)(6)(A), (B), added subpar. (B), redesignated former subpars. (B) and (C) as (C) and (D), and, in subpar. (D) as so redesignated, inserted provisions requiring that the estate of the original seller succeed to, and take into account, the tax treatment of the original seller under this paragraph.

1978—Subsec. (b)(6). Pub. L. 95–600, added par. (6).

1976—Subsec. (b)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(5). Pub. L. 94–455, § 2101(f), added par. (5).

Subsec. (c). Pub. L. 94–455, §§ 1906(b)(13)(A), 2101(b), struck out ''or his delegate'' after ''Secretary'' and inserted at end ''The preceding sentence shall not be construed to limit or deny a deduction for depreciation under 167(a) by a cooperative housing corporation with respect to property owned by such corporation and leased to tenant-stockholders.''

1969—Subsec. (b)(4). Pub. L. 91–172 added par. (4).

1962—Pub. L. 87–834 substituted ''Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholders'' for ''Amounts representing taxes and interest paid to cooperative housing corporation'' in section catchline, and added subsec. (c).

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, § 4(b), Dec. 20, 2007, 121 Stat. 1804, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 20, 2007].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d)[(e)] of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6282(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 631 of the Tax Reform Act of 1986 [section 631 of Pub. L. 99–514, see Tables for classification].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 644(f) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) SUBSECTION (e).—

''(A) Except as provided in subparagraph (B), subsection (e) [set out below] shall apply to taxable years beginning before January 1, 1986.

''(B) Subsection (e)(7) [set out below] shall apply to amounts paid or incurred, and property acquired, in taxable years beginning, after December 31, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 531(b) of Pub. L. 95–600 provided that: ''The amendment made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Nov. 6, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2101(f)(2) of Pub. L. 94–455 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to stock acquired by banks or other lending institutions after the date of the enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 913(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 28(c) of Pub. L. 87–834 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to taxable years beginning after December 31, 1961.''

TREATMENT OF AMOUNTS RECEIVED IN CONNECTION WITH REFINANCING OF INDEBTEDNESS OF CERTAIN COOPERATIVE HOUSING CORPORATIONS; TREATMENT OF AMOUNTS PAID FROM QUALIFIED REFINANCING-RELATED RESERVE

Section 644(e) of Pub. L. 99–514 provided that:

''(1) PAYMENT OF CLOSING COSTS AND CREATION OF RESERVE EXCLUDED FROM GROSS INCOME.—For purposes of the Internal Revenue Code of 1954 [now 1986], no amount shall be included in the gross income of a qualified cooperative housing corporation by reason of the payment or reimbursement by a city housing development agency or corporation of amounts for—

''(A) closing costs, or

''(B) the creation of reserves for the qualified cooperative housing corporation,

in connection with a qualified refinancing.

''(2) INCOME FROM RESERVE FUND TREATED AS MEMBER INCOME.—

''(A) IN GENERAL.—Income from a qualified refinancing-related reserve shall be treated as derived from its members for purposes of—

''(i) section 216 of the Internal Revenue Code of 1954 [now 1986] (relating to deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder), and

''(ii) section 277 of such Code (relating to deductions incurred by certain membership organizations in transactions with members).

''(B) NO INFERENCE.—Nothing in the provisions of this paragraph shall be construed to infer that a change in law is intended with respect to the treatment of deductions under section 277 of the Internal Revenue Code of 1954 [now 1986] with respect to cooperative housing corporations, and any determination of such issue shall be made as if such provisions had not been enacted.

''(3) TREATMENT OF CERTAIN INTEREST CLAIMED AS DEDUCTION.—Any amount—

''(A) claimed (on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1954 [now 1986]) as a deduction by a qualified cooperative housing corporation for interest for any taxable year beginning before January 1, 1986, on a second mortgage loan made by a city housing development agency or corporation in connection with a qualified refinancing, and

''(B) reported (before April 16, 1986) by the qualified cooperative housing corporation to its tenant-stockholders as interest described in section 216(a)(2) of such Code,

shall be treated for purposes of such Code as if such amount were paid by such qualified cooperative housing corporation during such taxable year.

''(4) QUALIFIED COOPERATIVE HOUSING CORPORATION.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'qualified cooperative housing corporation' means any corporation if—

''(i) such corporation is, after the application of paragraphs (1) and (2), a cooperative housing corporation (as defined in section 216(b) of the Internal Revenue Code of 1954 [now 1986]),

''(ii) such corporation is subject to a qualified limited-profit housing companies law, and

''(iii) such corporation either—

''(I) filed for incorporation on July 22, 1965, or

''(II) filed for incorporation on March 5, 1964.

''(B) QUALIFIED LIMITED-PROFIT HOUSING COMPANIES LAW.—For purposes of subparagraph (A), the term 'qualified limited-profit housing companies law' means any limited-profit housing companies law which limits the resale price for a tenant-stockholder's stock in a cooperative housing corporation to the sum of his basis for such stock plus his proportionate share of part or all of the amortization of any mortgage on the building owned by such corporation.

''(5) QUALIFIED REFINANCING.—For purposes of this subsection, the term 'qualified refinancing' means any refinancing—

''(A) which occurred—

''(i) with respect to a qualified cooperative housing corporation described in paragraph (4)(A)(iii)(I) on September 20, 1978, or

''(ii) with respect to a qualified cooperative housing corporation described in paragraph (4)(A)(iii)(II) on November 21, 1978, and

''(B) in which a qualified cooperative housing corporation refinanced a first mortgage loan made to such corporation by a city housing development agency with a first mortgage loan made by a city housing development corporation and insured by an agency of the Federal Government and a second mortgage loan made by such city housing development agency, in the process of which a reserve was created (as required by such Federal agency) and closing costs were paid or reimbursed by such city housing development agency or corporation.

''(6) QUALIFIED REFINANCING-RELATED RESERVE.—For purposes of this subsection, the term 'qualified refinancing-related reserve' means any reserve of a qualified cooperative housing corporation with respect to the creation of which no amount was included in the gross income of such corporation by reason of paragraph (a).

''(7) TREATMENT OF AMOUNTS PAID FROM QUALIFIED REFINANCING-RELATED RESERVE.—

''(A) IN GENERAL.—With respect to any payment from a qualified refinancing-related reserve out of amounts excluded from gross income by reason of paragraph (1)—

''(i) no deduction shall be allowed under chapter 1 of such Code, and

''(ii) the basis of any property acquired with such payment (determined without regard to this subparagraph) shall be reduced by the amount of such payment.

''(B) ORDERING RULES.—For purposes of subparagraph (A), payments from a reserve shall be treated as being made—

''(i) first from amounts excluded from gross income by reason of paragraph (1) to the extent thereof, and

''(ii) then from other amounts in the reserve.''

§ 217. Moving expenses

(a) Deduction allowed

There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work.

(b) Definition of moving expenses

(1) In general

For purposes of this section, the term ''moving expenses'' means only the reasonable expenses—

(A) of moving household goods and personal effects from the former residence to the new residence, and

(B) of traveling (including lodging) from the former residence to the new place of residence.

Such term shall not include any expenses for meals.

(2) Individuals other than taxpayer

In the case of any individual other than the taxpayer, expenses referred to in paragraph (1) shall be taken into account only if such individual has both the former residence and the new residence as his principal place of abode and is a member of the taxpayer's household.

(c) Conditions for allowance

No deduction shall be allowed under this section unless—

(1) the taxpayer's new principal place of work—

(A) is at least 50 miles farther from his former residence than was his former principal place of work, or

(B) if he had no former principal place of work, is at least 50 miles from his former residence, and

(2) either—

(A) during the 12-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee, in such general location, during at least 39 weeks, or

(B) during the 24-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee or performs services as a self-employed individual on a full-time basis, in such general location, during at least 78 weeks, of which not less than 39 weeks are during the 12-month period referred to in subparagraph (A).

For purposes of paragraph (1), the distance between two points shall be the shortest of the more commonly traveled routes between such two points.

(d) Rules for application of subsection (c)(2)

(1) The condition of subsection (c)(2) shall not apply if the taxpayer is unable to satisfy such condition by reason of—

(A) death or disability, or

(B) involuntary separation (other than for willful misconduct) from the service of, or transfer for the benefit of, an employer after obtaining full-time employment in which the taxpayer could reasonably have been expected to satisfy such condition.

(2) If a taxpayer has not satisfied the condition of subsection (c)(2) before the time prescribed by law (including extensions thereof) for filing the return for the taxable year during which he paid or incurred moving expenses which would otherwise be deductible under this section, but may still satisfy such condition, then such expenses may (at the election of the taxpayer) be deducted for such taxable year notwithstanding subsection (c)(2).

(3) If—

(A) for any taxable year moving expenses have been deducted in accordance with the rule provided in paragraph (2), and

(B) the condition of subsection (c)(2) cannot be satisfied at the close of a subsequent taxable year,

then an amount equal to the expenses which were so deducted shall be included in gross income for the first such subsequent taxable year.

[(e) Repealed. Pub. L. 103–66, title XIII, § 13213(a)(2)(A), Aug. 10, 1993, 107 Stat. 473]

(f) Self-employed individual

For purposes of this section, the term ''self-employed individual'' means an individual who performs personal services—

(1) as the owner of the entire interest in an unincorporated trade or business, or

(2) as a partner in a partnership carrying on a trade or business.

(g) Rules for members of the Armed Forces of the United States

In the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station—

(1) the limitations under subsection (c) shall not apply;

(2) any moving and storage expenses which are furnished in kind (or for which reimbursement or an allowance is provided, but only to the extent of the expenses paid or incurred) to such member, his spouse, or his dependents, shall not be includible in gross income, and no reporting with respect to such expenses shall be required by the Secretary of Defense or the Secretary of Transportation, as the case may be; and

(3) if moving and storage expenses are furnished in kind (or if reimbursement or an allowance for such expenses is provided) to such member's spouse and his dependents with regard to moving to a location other than the one to which such member moves (or from a location other than the one from which such member moves), this section shall apply with respect to the moving expenses of his spouse and dependents—

(A) as if his spouse commenced work as an employee at a new principal place of work at such location; and

(B) without regard to the limitations under subsection (c).

(h) Special rules for foreign moves

(1) Allowance of certain storage fees

In the case of a foreign move, for purposes of this section, the moving expenses described in subsection (b)(1)(A) include the reasonable expenses—

(A) of moving household goods and personal effects to and from storage, and

(B) of storing such goods and effects for part or all of the period during which the new place of work continues to be the taxpayer's principal place of work.

(2) Foreign move

For purposes of this subsection, the term ''foreign move'' means the commencement of work by the taxpayer at a new principal place of work located outside the United States.

(3) United States defined

For purposes of this subsection and subsection (i), the term ''United States'' includes the possessions of the United States.

(i) Allowance of deductions in case of retirees or decedents who were working abroad

(1) In general

In the case of any qualified retiree moving expenses or qualified survivor moving expenses—

(A) this section (other than subsection (h)) shall be applied with respect to such expenses as if they were incurred in connection with the commencement of work by the taxpayer as an employee at a new principal place of work located within the United States, and

(B) the limitations of subsection (c)(2) shall not apply.

(2) Qualified retiree moving expenses

For purposes of paragraph (1), the term ''qualified retiree moving expenses'' means any moving expenses—

(A) which are incurred by an individual whose former principal place of work and former residence were outside the United States, and

(B) which are incurred for a move to a new residence in the United States in connection with the bona fide retirement of the individual.

(3) Qualified survivor moving expenses

For purposes of paragraph (1), the term ''qualified survivor moving expenses'' means moving expenses—

(A) which are paid or incurred by the spouse or any dependent of any decedent who (as of the time of his death) had a principal place of work outside the United States, and

(B) which are incurred for a move which begins within 6 months after the death of such decedent and which is to a residence in the United States from a former residence outside the United States which (as of the time of the decedent's death) was the residence of such decedent and the individual paying or incurring the expense.

(j) Regulations

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

(Added Pub. L. 88–272, title II, § 213(a)(1), Feb. 26, 1964, 78 Stat. 50; amended Pub. L. 91–172, title II, § 231(a), Dec. 30, 1969, 83 Stat. 577; Pub. L. 94–455, title V, § 506 (a)–(c), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1568, 1834; Pub. L. 95–615, title II, § 204, Nov. 8, 1978, 92 Stat. 3106; Pub. L. 103–66, title XIII, § 13213(a)(1)–(2)(D), (b), Aug. 10, 1993, 107 Stat. 473, 474.)

PRIOR PROVISIONS

A prior section 217 was renumbered section 224 of this title.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–66, § 13213(a)(1), amended subsec. (b) generally, restating former par. (1)(A) and (B) as par. (1) and former par. (3)(C) as par. (2) and striking out former par. (1)(C) to (E) which included certain traveling, meals, lodging, and residence sale, purchase, and lease expenses in the term ''moving expenses'', par. (2) which defined ''qualified residence sale, purchase, or lease expenses'', and par. (3)(A) and (B) which placed dollar limits on the amount allowed to be deducted as moving expenses.

Subsec. (c)(1). Pub. L. 103–66, § 13213(b), substituted ''50 miles'' for ''35 miles'' in subpars. (A) and (B).

Subsec. (e). Pub. L. 103–66, § 13213(a)(2)(A), struck out heading and text of subsec. (e). Text read as follows: ''The amount realized on the sale of the residence described in subparagraph (A) of subsection (b)(2) shall not be decreased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a), and the basis of a residence described in subparagraph (B) of subsection (b)(2) shall not be increased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a). This subsection shall not apply to any expenses with respect to which an amount is included in gross income under subsection (d)(3).''

Subsec. (f). Pub. L. 103–66, § 13213(a)(2)(B), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows:

''(1) DEFINITION.—For purposes of this section, the term 'self-employed individual' means an individual who performs personal services—

''(A) as the owner of the entire interest in an unincorporated trade or business, or

''(B) as a partner in a partnership carrying on a trade or business.

''(2) RULE FOR APPLICATION OF SUBSECTIONS (b)(1)(C) AND (D).—For purposes of subparagraphs (C) and (D) of subsection (b)(1), an individual who commences work at a new principal place of work as a self-employed individual shall be treated as having obtained employment when he has made substantial arrangements to commence such work.''

Subsec. (g)(3). Pub. L. 103–66, § 13213(a)(2)(C), inserted ''and'' at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''for purposes of subsection (b)(3), as if such place of work was within the same general location as the member's new principal place of work, and''.

Subsec. (h). Pub. L. 103–66, § 13213(a)(2)(D), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out heading and text of former par. (1). Text read as follows: ''In the case of a foreign move—

''(A) subsection (b)(1)(D) shall be applied by substituting '90 consecutive days' for '30 consecutive days',

''(B) subsection (b)(3)(A) shall be applied by substituting '$4,500' for '$1,500' and by substituting '$6,000' for '$3,000', and

''(C) subsection (b)(3)(B) shall be applied as if the last sentence of such subsection read as follows: 'In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting ''$2,250'' for ''$4,500'', and by substituting ''$3,000'' for ''$6,000''.' ''

1978—Subsecs. (h) to (j). Pub. L. 95–615 added subsecs. (h) and (i) and redesignated former subsec. (h) as (j).

1976—Subsec. (b)(3)(A). Pub. L. 94–455, § 506(b)(1), (2), substituted ''$1,500'' for ''$1,000'' after ''(1) shall not exceed'' and ''$3,000'' for ''$2,500'' after ''lease expenses shall not exceed''.

Subsec. (b)(3)(B). Pub. L. 94–455, § 506(b)(3), substituted '' '$750' for '$1,500' '' for '' '$500' for '$1,000' '' after ''applied by substituting'' and '' '$1,500' for '$3,000' '' for '' '$1,250' for '$2,500' '' after ''and by substituting''.

Subsec. (c)(1)(A), (B). Pub. L. 94–455, § 506(a), substituted ''35'' for ''50'' after ''at least''.

Subsecs. (g), (h). Pub. L. 94–455, §§ 506(c), 1906(b)(13)(A), added subsec. (g), redesignated former subsec. (g) as (h) and struck out ''or his delegate'' after ''Secretary''.

1969—Pub. L. 91–172 substantially reenacted existing provisions and extended the coverage to self-employed persons working at the new location for 78 weeks, made it a requirement that the new principal place of work be located 50 miles from the former residence, and redefined the deduction to include costs of house-hunting trips, temporary living expenses prior to locating a new home, and expenses of selling an old home or buying a new one.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 506(d) of Pub. L. 94–455 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 231(d) of Pub. L. 91–172, as amended by Pub. L. 91–642, § 2, Dec. 31, 1970, 84 Stat. 1880; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting section 82 of this title and amending this section and sections 1001 and 1016 of this title] shall apply to taxable years beginning after December 31, 1969, except that—

''(1) section 217 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not apply to any item to the extent that the taxpayer received or accrued reimbursement or other expense allowance for such item in a taxable year beginning on or before December 31, 1969, which was not included in his gross income; and

''(2) the amendments made by this section shall not apply (at the election of the taxpayer made at such time and manner as the Secretary of the Treasury or his delegate prescribes) with respect to moving expenses paid or incurred before January 1, 1971, in connection with the commencement of work by the taxpayer as an employee at a new principal place of work of which the taxpayer had been notified by his employer on or before December 19, 1969.''

EFFECTIVE DATE

Section applicable to expenses incurred after Dec. 31, 1963, in taxable years ending after such date, see section 213(d) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 62 of this title.

MOVING EXPENSES OF MEMBERS OF THE UNIFORMED SERVICES

Pub. L. 93–490, § 2, Oct. 26, 1974, 88 Stat. 1466, authorized the Secretary of the Treasury, applicable with respect to taxable years ending before January 1, 1976, to:

(1) enter into an agreement with the Secretary concerned under which the Secretary concerned would not be required to withhold tax on, or to report, moving expense reimbursements made to members of the armed forces;

(2) permit any taxpayer who was a member of the armed forces not to include in adjusted gross income the amount of any reimbursement in kind of moving expenses made by the Secretary concerned; and

(3) permit any taxpayer who was a member of the armed forces to deduct any amount paid by him as moving expenses in connection with any move required by the Secretary concerned, in excess of any reimbursement received for such expenses, without regard to the provisions of subsec. (c) of this section, to the extent it was otherwise deductible under this section.

[§ 218. Repealed. Pub. L. 95–600, title I, § 113(a)(1), Nov. 6, 1978, 92 Stat. 2778]

Section, added Pub. L. 92–178, title VII, § 702(a), Dec. 10, 1971, 85 Stat. 561; amended Pub. L. 93–625, §§ 11(d), 12(b), Jan. 3, 1975, 88 Stat. 2120; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to contributions to candidates for public office.

A prior section 218 was renumbered section 224 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to contributions the payment of which is made after Dec. 31, 1978, in taxable years beginning after such date, see section 113(d) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 24 of this title.

§ 219. Retirement savings

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year.

(b) Maximum amount of deduction

(1) In general

The amount allowable as a deduction under subsection (a) to any individual for any taxable year shall not exceed the lesser of—

(A) the deductible amount, or

(B) an amount equal to the compensation includible in the individual's gross income for such taxable year.

(2) Special rule for employer contributions under simplified employee pensions

This section shall not apply with respect to an employer contribution to a simplified employee pension.

(3) Plans under section 501(c)(18)

Notwithstanding paragraph (1), the amount allowable as a deduction under subsection (a) with respect to any contributions on behalf of an employee to a plan described in section 501(c)(18) shall not exceed the lesser of—

(A) $7,000, or

(B) an amount equal to 25 percent of the compensation (as defined in section 415(c)(3)) includible in the individual's gross income for such taxable year.

(4) Special rule for simple retirement accounts

This section shall not apply with respect to any amount contributed to a simple retirement account established under section 408(p).

(5) Deductible amount

For purposes of paragraph (1)(A)—

(A) In general

The deductible amount shall be determined in accordance with the following table:

For taxable years beginning in:	The deductible amount is:
2002 through 2004	$3,000
2005 through 2007	$4,000
2008 and thereafter	$5,000.

(B) Catch-up contributions for individuals 50 or older

(i) In general

In the case of an individual who has attained the age of 50 before the close of the taxable year, the deductible amount for such taxable year shall be increased by the applicable amount.

(ii) Applicable amount

For purposes of clause (i), the applicable amount shall be the amount determined in accordance with the following table:

For taxable years beginning in:	The applicable amount is:
2002 through 2005	$500
2006 and thereafter	$1,000.

(C) Catchup contributions for certain individuals

(i) In general

In the case of an applicable individual who elects to make a qualified retirement contribution in addition to the deductible amount determined under subparagraph (A)—

(I) the deductible amount for any taxable year shall be increased by an amount equal to 3 times the applicable amount determined under subparagraph (B) for such taxable year, and

(II) subparagraph (B) shall not apply.

(ii) Applicable individual

For purposes of this subparagraph, the term ''applicable individual'' means, with respect to any taxable year, any individual who was a qualified participant in a qualified cash or deferred arrangement (as defined in section 401(k)) of an employer described in clause (iii) under which the employer matched at least 50 percent of the employee's contributions to such arrangement with stock of such employer.

(iii) Employer described

An employer is described in this clause if, in any taxable year preceding the taxable year described in clause (ii)—

(I) such employer (or any controlling corporation of such employer) was a debtor in a case under title 11 of the United States Code, or similar Federal or State law, and

(II) such employer (or any other person) was subject to an indictment or conviction resulting from business transactions related to such case.

(iv) Qualified participant

For purposes of clause (ii), the term ''qualified participant'' means any applicable individual who was a participant in the cash or deferred arrangement described in such clause on the date that is 6 months before the filing of the case described in clause (iii).

(v) Termination

This subparagraph shall not apply to taxable years beginning after December 31, 2009.

(D) Cost-of-living adjustment

(i) In general

In the case of any taxable year beginning in a calendar year after 2008, the $5,000 amount under subparagraph (A) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2007'' for ''calendar year 1992'' in subparagraph (B) thereof.

(ii) Rounding rules

If any amount after adjustment under clause (i) is not a multiple of $500, such amount shall be rounded to the next lower multiple of $500.

(c) Special rules for certain married individuals

(1) In general

In the case of an individual to whom this paragraph applies for the taxable year, the limitation of paragraph (1) of subsection (b) shall be equal to the lesser of—

(A) the dollar amount in effect under subsection (b)(1)(A) for the taxable year, or

(B) the sum of—

(i) the compensation includible in such individual's gross income for the taxable year, plus

(ii) the compensation includible in the gross income of such individual's spouse for the taxable year reduced by—

(I) the amount allowed as a deduction under subsection (a) to such spouse for such taxable year,

(II) the amount of any designated nondeductible contribution (as defined in section 408(*o*)) on behalf of such spouse for such taxable year, and

(III) the amount of any contribution on behalf of such spouse to a Roth IRA under section 408A for such taxable year.

(2) Individuals to whom paragraph (1) applies

Paragraph (1) shall apply to any individual if—

(A) such individual files a joint return for the taxable year, and

(B) the amount of compensation (if any) includible in such individual's gross income for the taxable year is less than the compensation includible in the gross income of such individual's spouse for the taxable year.

(d) Other limitations and restrictions

(1) Beneficiary must be under age 70½

No deduction shall be allowed under this section with respect to any qualified retirement contribution for the benefit of an individual if such individual has attained age 70½ before the close of such individual's taxable year for which the contribution was made.

(2) Recontributed amounts

No deduction shall be allowed under this section with respect to a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16).

(3) Amounts contributed under endowment contract

In the case of an endowment contract described in section 408(b), no deduction shall be allowed under this section for that portion of the amounts paid under the contract for the taxable year which is properly allocable, under regulations prescribed by the Secretary, to the cost of life insurance.

(4) Denial of deduction for amount contributed to inherited annuities or accounts

No deduction shall be allowed under this section with respect to any amount paid to an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)(ii)).

(e) Qualified retirement contribution

For purposes of this section, the term ''qualified retirement contribution'' means—

(1) any amount paid in cash for the taxable year by or on behalf of an individual to an individual retirement plan for such individual's benefit, and

(2) any amount contributed on behalf of any individual to a plan described in section 501(c)(18).

(f) Other definitions and special rules

(1) Compensation

For purposes of this section, the term ''compensation'' includes earned income (as defined in section 401(c)(2)). The term ''compensation'' does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation. The term ''compensation'' shall include any amount includible in the individual's gross income under section 71 with respect to a divorce or separation instrument described in subparagraph (A) of section 71(b)(2). For purposes of this paragraph, section 401(c)(2) shall be applied as if the term trade or business for purposes of section 1402 included service described in subsection (c)(6). The term compensation[1] includes any differential wage payment (as defined in section 3401(h)(2)).

(2) Married individuals

The maximum deduction under subsection (b) shall be computed separately for each indi-

[1] So in original. Probably should be set off by quotation marks.

vidual, and this section shall be applied without regard to any community property laws.

(3) Time when contributions deemed made

For purposes of this section, a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

(4) Reports

The Secretary shall prescribe regulations which prescribe the time and the manner in which reports to the Secretary and plan participants shall be made by the plan administrator of a qualified employer or government plan receiving qualified voluntary employee contributions.

(5) Employer payments

For purposes of this title, any amount paid by an employer to an individual retirement plan shall be treated as payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401(c)(1)) includible in his gross income in the taxable year for which the amount was contributed, whether or not a deduction for such payment is allowable under this section to the employee.

(6) Excess contributions treated as contribution made during subsequent year for which there is an unused limitation

(A) In general

If for the taxable year the maximum amount allowable as a deduction under this section for contributions to an individual retirement plan exceeds the amount contributed, then the taxpayer shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of—

(i) the amount of such excess, or

(ii) the amount of the excess contributions for such taxable year (determined under section 4973(b)(2) without regard to subparagraph (C) thereof).

(B) Amount contributed

For purposes of this paragraph, the amount contributed—

(i) shall be determined without regard to this paragraph, and

(ii) shall not include any rollover contribution.

(C) Special rule where excess deduction was allowed for closed year

Proper reduction shall be made in the amount allowable as a deduction by reason of this paragraph for any amount allowed as a deduction under this section for a prior taxable year for which the period for assessing deficiency has expired if the amount so allowed exceeds the amount which should have been allowed for such prior taxable year.

(7) Special rule for compensation earned by members of the Armed Forces for service in a combat zone.

For purposes of subsections (b)(1)(B) and (c), the amount of compensation includible in an individual's gross income shall be determined without regard to section 112.

(8) Election not to deduct contributions

For election not to deduct contributions to individual retirement plans, see section 408(*o*)(2)(B)(ii).

(g) Limitation on deduction for active participants in certain pension plans

(1) In general

If (for any part of any plan year ending with or within a taxable year) an individual or the individual's spouse is an active participant, each of the dollar limitations contained in subsections (b)(1)(A) and (c)(1)(A) for such taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

(2) Amount of reduction

(A) In general

The amount determined under this paragraph with respect to any dollar limitation shall be the amount which bears the same ratio to such limitation as—

(i) the excess of—

(I) the taxpayer's adjusted gross income for such taxable year, over

(II) the applicable dollar amount, bears to

(ii) $10,000 ($20,000 in the case of a joint return for a taxable year beginning after December 31, 2006).

(B) No reduction below $200 until complete phase-out

No dollar limitation shall be reduced below $200 under paragraph (1) unless (without regard to this subparagraph) such limitation is reduced to zero.

(C) Rounding

Any amount determined under this paragraph which is not a multiple of $10 shall be rounded to the next lowest $10.

(3) Adjusted gross income; applicable dollar amount

For purposes of this subsection—

(A) Adjusted gross income

Adjusted gross income of any taxpayer shall be determined—

(i) after application of sections 86 and 469, and

(ii) without regard to sections 135, 137, 199, 221, 222, and 911 or the deduction allowable under this section.

(B) Applicable dollar amount

The term ''applicable dollar amount'' means the following:

(i) In the case of a taxpayer filing a joint return:

For taxable years beginning in:	The applicable dollar amount

	is:
1998	$50,000
1999	$51,000
2000	$52,000
2001	$53,000
2002	$54,000
2003	$60,000
2004	$65,000
2005	$70,000
2006	$75,000
2007 and thereafter	$80,000.

(ii) In the case of any other taxpayer (other than a married individual filing a separate return):

For taxable years beginning in:	The applicable dollar amount is:
1998	$30,000
1999	$31,000
2000	$32,000
2001	$33,000
2002	$34,000
2003	$40,000
2004	$45,000
2005 and thereafter	$50,000.

(iii) In the case of a married individual filing a separate return, zero.

(4) Special rule for married individuals filing separately and living apart

A husband and wife who—

(A) file separate returns for any taxable year, and

(B) live apart at all times during such taxable year,

shall not be treated as married individuals for purposes of this subsection.

(5) Active participant

For purposes of this subsection, the term ''active participant'' means, with respect to any plan year, an individual—

(A) who is an active participant in—

(i) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(ii) an annuity plan described in section 403(a),

(iii) a plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing,

(iv) an annuity contract described in section 403(b),

(v) a simplified employee pension (within the meaning of section 408(k)), or

(vi) any simple retirement account (within the meaning of section 408(p)), or

(B) who makes deductible contributions to a trust described in section 501(c)(18).

The determination of whether an individual is an active participant shall be made without regard to whether or not such individual's rights under a plan, trust, or contract are nonforfeitable. An eligible deferred compensation plan (within the meaning of section 457(b)) shall not be treated as a plan described in subparagraph (A)(iii).

(6) Certain individuals not treated as active participants

For purposes of this subsection, any individual described in any of the following subparagraphs shall not be treated as an active participant for any taxable year solely because of any participation so described:

(A) Members of reserve components

Participation in a plan described in subparagraph (A)(iii) of paragraph (5) by reason of service as a member of a reserve component of the Armed Forces (as defined in section 10101 of title 10), unless such individual has served in excess of 90 days on active duty (other than active duty for training) during the year.

(B) Volunteer firefighters

A volunteer firefighter—

(i) who is a participant in a plan described in subparagraph (A)(iii) of paragraph (5) based on his activity as a volunteer firefighter, and

(ii) whose accrued benefit as of the beginning of the taxable year is not more than an annual benefit of $1,800 (when expressed as a single life annuity commencing at age 65).

(7) Special rule for spouses who are not active participants

If this subsection applies to an individual for any taxable year solely because their spouse is an active participant, then, in applying this subsection to the individual (but not their spouse)—

(A) the applicable dollar amount under paragraph (3)(B)(i) shall be $150,000; and

(B) the amount applicable under paragraph (2)(A)(ii) shall be $10,000.

(8) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, the dollar amount in the last row of the table contained in paragraph (3)(B)(i), the dollar amount in the last row of the table contained in paragraph (3)(B)(ii), and the dollar amount contained in paragraph (7)(A), shall each be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2005'' for ''calendar year 1992'' in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(h) Cross reference

For failure to provide required reports, see section 6652(g).

(Added Pub. L. 93–406, title II, §2002(a)(1), Sept. 2, 1974, 88 Stat. 958; amended Pub. L. 94–455, title XV, §§1501(b)(4), 1503(a), title XIX, §§ 1901(a)(32), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1736, 1738, 1769, 1834; Pub. L. 95–600, title I, §§152(c), 156(c)(3), 157(a)(1), (b)(1), title VII, §703(c)(1), Nov. 6, 1978, 92 Stat. 2798, 2803, 2939; Pub. L. 96–222, title I,

§ 101(a)(10)(D), (14)(B), Apr. 1, 1980, 94 Stat. 202, 204; Pub. L. 97–34, title III, §§ 311(a), 312(c)(1), 313(b)(2), Aug. 13, 1981, 95 Stat. 274, 284, 286; Pub. L. 97–248, title II, § 243(b)(2), Sept. 3, 1982, 96 Stat. 523; Pub. L. 97–448, title I, § 103(c)(1), (2), (3)(A), (4), (5), (12)(A), Jan. 12, 1983, 96 Stat. 2375–2377; Pub. L. 98–369, div. A, title I, § 147(c), title IV, §§ 422(d)(1), 491(d)(6)–(8), title V, § 529(a), (b), title VII, § 713(d)(2), July 18, 1984, 98 Stat. 687, 798, 849, 877, 957; Pub. L. 99–514, title III, § 301(b)(4), title XI, §§ 1101(a), (b)(1), (2)(A), 1102(f), 1103(a), 1108(g)(2), (3), 1109(b), title XV, § 1501(d)(1)(B), title XVIII, § 1875(c)(4), (6)(B), Oct. 22, 1986, 100 Stat. 2217, 2411, 2413, 2417, 2434, 2435, 2740, 2894, 2895; Pub. L. 100–647, title I, § 1011(a)(1), title VI, § 6009(c)(2), Nov. 10, 1988, 102 Stat. 3456, 3690; Pub. L. 101–239, title VII, §§ 7816(c)(1), 7841(c)(1), Dec. 19, 1989, 103 Stat. 2420, 2428; Pub. L. 102–318, title V, § 521(b)(4), July 3, 1992, 106 Stat. 310; Pub. L. 103–337, div. A, title XVI, § 1677(c), Oct. 5, 1994, 108 Stat. 3020; Pub. L. 104–188, title I, §§ 1421(b)(1), 1427(a)–(b)(2), 1807(c)(3), Aug. 20, 1996, 110 Stat. 1795, 1802, 1902; Pub. L. 105–34, title III, §§ 301(a), (b), 302(c), Aug. 5, 1997, 111 Stat. 824, 825, 829; Pub. L. 105–206, title VI, §§ 6005(a), 6018(f)(2), July 22, 1998, 112 Stat. 796, 823; Pub. L. 105–277, div. J, title IV, § 4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 106–554, § 1(a)(7) [title III, § 316(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644; Pub. L. 107–16, title IV, § 431(c)(1), title VI, §§ 601(a), 641(e)(2), June 7, 2001, 115 Stat. 68, 94, 120; Pub. L. 108–357, title I, § 102(d)(1), Oct. 22, 2004, 118 Stat. 1428; Pub. L. 109–227, § 2(a), May 29, 2006, 120 Stat. 385; Pub. L. 109–280, title VIII, §§ 831(a), 833(b), Aug. 17, 2006, 120 Stat. 1002, 1004; Pub. L. 110–245, title I, § 105(b)(2), June 17, 2008, 122 Stat. 1629.)

Inflation Adjusted Items for Certain Years

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Internal Revenue Notices listed in a table under section 401 of this title.

Amendment of Section

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

Prior Provisions

A prior section 219 was renumbered section 224 of this title.

Amendments

2008—Subsec. (f)(1). Pub. L. 110–245 inserted at end ''The term compensation includes any differential wage payment (as defined in section 3401(h)(2)).''

2006—Subsec. (b)(5)(C), (D). Pub. L. 109–280, § 831(a), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (f)(7), (8). Pub. L. 109–227 added par. (7) and redesignated former par. (7) as (8).

Subsec. (g)(8). Pub. L. 109–280, § 833(b), added par. (8).

2004—Subsec. (g)(3)(A)(ii). Pub. L. 108–357 inserted ''199,'' before ''221''.

2001—Subsec. (b)(1)(A). Pub. L. 107–16, § 601(a)(1), substituted ''the deductible amount'' for ''$2,000''.

Subsec. (b)(5). Pub. L. 107–16, § 601(a)(2), added par. (5).

Subsec. (d)(2). Pub. L. 107–16, § 641(e)(2), substituted ''408(d)(3), or 457(e)(16)'' for ''or 408(d)(3)''.

Subsec. (g)(3)(A)(ii). Pub. L. 107–16, §§ 431(c)(1), 901, temporarily inserted ''222,'' after ''221,''. See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (c)(1)(B)(ii)(II), (III). Pub. L. 106–554 added subcl. (II) and redesignated former subcl. (II) as (III).

1998—Subsec. (g)(1). Pub. L. 105–206, § 6005(a)(1)(A), inserted ''or the individual's spouse'' after ''individual''.

Subsec. (g)(2)(A)(ii). Pub. L. 105–206, § 6005(a)(2), made technical amendment to directory language of Pub. L. 105–34, § 301(a)(2). See 1997 Amendment note below.

Subsec. (g)(3)(A)(ii). Pub. L. 105–277 inserted ''221,'' after ''137,''.

Pub. L. 105–206, § 6018(f)(2), made technical amendment to directory language of Pub. L. 104–188, § 1807(c)(3). See 1996 Amendment note below.

Subsec. (g)(7). Pub. L. 105–206, § 6005(a)(1)(B), added par. (7) and struck out heading and text of former par. (7). Text read as follows: ''In the case of an individual who is an active participant at no time during any plan year ending with or within the taxable year but whose spouse is an active participant for any part of any such plan year—

''(A) the applicable dollar amount under paragraph (3)(B)(i) with respect to the taxpayer shall be $150,000, and

''(B) the amount applicable under paragraph (2)(A)(ii) shall be $10,000.''

1997—Subsec. (c)(1)(B)(ii). Pub. L. 105–34, § 302(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the compensation includible in the gross income of such individual's spouse for the taxable year reduced by the amount allowed as a deduction under subsection (a) to such spouse for such taxable year.''

Subsec. (g)(1). Pub. L. 105–34, § 301(b)(1), struck out ''or the individual's spouse'' after ''an individual''.

Subsec. (g)(2)(A)(ii). Pub. L. 105–34, § 301(a)(2), as amended by Pub. L. 105–206, § 6005(a)(2), inserted ''($20,000 in the case of a joint return for a taxable year beginning after December 31, 2006)'' after ''$10,000''.

Subsec. (g)(3)(B). Pub. L. 105–34, § 301(a)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The term 'applicable dollar amount' means—

''(i) in the case of a taxpayer filing a joint return, $40,000,

''(ii) in the case of any other taxpayer (other than a married individual filing a separate return), $25,000, and

''(iii) in the case of a married individual filing a separate return, zero.''

Subsec. (g)(7). Pub. L. 105–34, § 301(b)(2), added par. (7).

1996—Subsec. (b)(4). Pub. L. 104–188, § 1421(b)(1)(A), added par. (4).

Subsec. (c). Pub. L. 104–188, § 1427(a), amended subsec. (c) generally, substituting present provisions for former provisions relating to special rules for certain married individuals which set out general provisions in par. (1) and a limitation in par. (2).

Subsec. (f)(2). Pub. L. 104–188, § 1427(b)(1), substituted ''subsection (b)'' for ''subsections (b) and (c)''.

Subsec. (g)(1). Pub. L. 104–188, § 1427(b)(2), substituted ''(c)(1)(A)'' for ''(c)(2)''.

Subsec. (g)(3)(A)(ii). Pub. L. 104–188, § 1807(c)(3), as amended by Pub. L. 105–206, § 6018(f)(2), inserted '', 137,'' before ''and 911''.

Subsec. (g)(5)(A)(vi). Pub. L. 104–188, § 1421(b)(1)(B), added cl. (vi).

1994—Subsec. (g)(6)(A). Pub. L. 103–337 substituted ''section 10101 of title 10'' for ''section 261(a) of title 10''.

1992—Subsec. (d)(2). Pub. L. 102–318 substituted ''402(c)'' for ''402(a)(5), 402(a)(7)''.

1989—Subsec. (f)(1). Pub. L. 101–239, § 7841(c)(1), inserted at end ''For purposes of this paragraph, section 401(c)(2) shall be applied as if the term trade or business for purposes of section 1402 included service described in subsection (c)(6).''

Subsec. (g)(3)(A)(ii). Pub. L. 101–239, § 7816(c)(1), made technical correction to directory language of Pub. L. 100–647, § 6009(c)(2), see 1988 Amendment note below.

1988—Subsec. (g)(3)(A)(ii). Pub. L. 100–647, § 6009(c)(2), as amended by Pub. L. 101–239, § 7816(c)(1), substituted ''sections 135 and 911'' for ''section 911''.

Subsec. (g)(4). Pub. L. 100–647, §1011(a)(1), inserted ''and living apart'' after ''filing separately'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of a married individual filing a separate return for any taxable year, paragraph (1) shall be applied without regard to whether such individual's spouse is an active participant for any plan year ending with or within such taxable year.''

1986—Subsec. (b)(2). Pub. L. 99–514, §1108(g)(2), amended par. (2) generally, substituting provision that this section shall not apply with respect to an employer contribution to a simplified employee pension for former provisions consisting of subpars. (A), (B), and (C) which set out detailed limits on deductibility of employer contributions.

Subsec. (b)(2)(C). Pub. L. 99–514, §1875(c)(6)(B), substituted ''the dollar limitation in effect under section 415(c)(1)(A)'' for ''the $15,000 amount specified in subparagraph (A)(ii)''.

Subsec. (b)(3). Pub. L. 99–514, §1109(b), added par. (3).

Pub. L. 99–514, §1101(b)(2)(A), struck out par. (3), special rule for individual retirement plans, which read as follows: ''If the individual has paid any qualified voluntary employee contributions for the taxable year, the amount of the qualified retirement contributions (other than employer contributions to a simplified employee pension) which are paid for the taxable year to an individual retirement plan and which are allowable as a deduction under subsection (a) for such taxable year shall not exceed—

''(A) the amount determined under paragraph (1) for such taxable year, reduced by

''(B) the amount of the qualified voluntary employee contributions for the taxable year.''

Subsec. (c)(1)(B). Pub. L. 99–514, §1103(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''whose spouse has no compensation (determined without regard to section 911) for such taxable year,''.

Subsec. (c)(2)(B). Pub. L. 99–514, §1108(g)(3), struck out ''(determined without regard to so much of the employer contributions to a simplified employee pension as is allowable by reason of paragraph (2) of subsection (b))'' after ''for the taxable year''.

Subsec. (e). Pub. L. 99–514, §1101(b)(1), amended subsec. (e) generally, revising the definition of ''qualified retirement contribution''.

Subsec. (f)(1). Pub. L. 99–514, §301(b)(4), which directed that par. (1) be amended by substituting ''paragraph (6)'' for ''paragraph (7)'', could not be executed because prior amendment by Pub. L. 99–514, §1875(c)(4), see below, struck out language which included phrase ''paragraph (7)''.

Pub. L. 99–514, §1875(c)(4), struck out ''reduced by any amount allowable as a deduction to the individual in computing adjusted gross income under paragraph (7) of section 62'' after ''(as defined in section 401(c)(2))''.

Subsec. (f)(3). Pub. L. 99–514, §1101(a)(2), in amending par. (3) generally, reenacted existing provision without its subpar. ''(A) Individual retirement plans'' designation, and struck out subpar. (B) relating to time when contributions deemed made with respect to qualified employer or government plans.

Subsec. (f)(7). Pub. L. 99–514, §1102(f), added par. (7).

Subsec. (g). Pub. L. 99–514, §1101(a)(1), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 99–514, §1501(d)(1)(B), which directed that subsec. (g) be amended by substituting ''6652(g)'' for ''6652(h)'', was executed by making the substitution in subsec. (h) to reflect the probable intent of Congress and the prior redesignation of former subsec. (g) as (h) by Pub. L. 99–514, §1101(a)(1).

Pub. L. 99–514, §1101(a)(1), redesignated former subsec. (g) as (h).

1984—Subsec. (b)(2)(A)(ii). Pub. L. 98–369, §713(d)(2), substituted ''not in excess of the limitation in effect under section 415(c)(1)(A)'' for ''not in excess of $15,000''.

Subsec. (b)(4). Pub. L. 98–369, §529(b), struck out par. (4) which related to a deduction for qualified retirement savings of certain divorced individuals.

Subsec. (b)(4)(B). Pub. L. 98–369, §422(d)(1), substituted ''gross income under section 71 (relating to alimony and separate maintenance payments) by reason of a payment under a decree of divorce or separate maintenance or a written agreement incident to such a decree'' for ''gross income under paragraph (1) of section 71(a) (relating to decree of divorce or separate maintenance)''.

Subsec. (d)(2). Pub. L. 98–369, §491(d)(6), substituted ''or 408(d)(3)'' for ''405(d)(3), 408(d)(3), or 409(b)(3)(C)''.

Subsec. (e)(1). Pub. L. 98–369, §491(d)(7), struck out concluding provision that for the purposes of the preceding sentence, the term ''individual retirement plan'' includes retirement bonds described in section 409 only if the bond was not redeemed within 12 months of its issuance.

Subsec. (e)(3). Pub. L. 98–369, §491(d)(8), struck out subpar. (C) which included a qualified bond purchase plan described in section 405(a) within term ''qualified employer plan'', and redesignated subpar. (D) as (C).

Subsec. (f)(1). Pub. L. 98–369, §529(a), inserted provision that ''compensation'' shall include any amount includible in the individual's gross income under section 71 with respect to a divorce or separation instrument described in subparagraph (A) of section 71(b)(2).

Subsec. (f)(3)(A). Pub. L. 98–369, §147(c), substituted ''not including'' for ''including''.

1983—Subsec. (b)(2)(A). Pub. L. 97–448, §103(c)(12)(A), inserted a close parenthesis after ''allowable under paragraph (1)'' in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 97–448, §103(c)(1), substituted ''the amount allowable as a deduction under subsection (a) for the taxable year (determined without regard to so much of the employer contributions to a simplified employee pension as is allowable by reason of paragraph (2) of subsection (b))'' for ''the amount allowed as a deduction under subsection (a) for the taxable year''.

Subsec. (d)(1). Pub. L. 97–448, §103(c)(2), substituted ''Beneficiary must be under age 70½'' for ''Individuals who have attained age 70½'' as par. (1) heading and, in text, substituted ''qualified retirement contribution for the benefit of an individual if such individual has attained age 70½ before the close of such individual's taxable year for which the contribution was made'' for ''qualified retirement contribution which is made for a taxable year of an individual if such individual has attained age 70½ before the close of such taxable year''.

Subsec. (e)(3)(D), (E). Pub. L. 97–448, §103(c)(3)(A), redesignated subpar. (E) as (D). Former subpar. (D), which related to simplified employee pension (within the meaning of section 408(k)), was struck out.

Subsec. (f)(1). Pub. L. 97–448, §103(c)(4), substituted ''earned income (as defined in section 401(c)(2)) reduced by any amount allowable as a deduction to the individual in computing adjusted gross income under paragraph (7) of section 62'' for ''earned income as defined in section 401(c)(2)'' and inserted provision that ''compensation'' does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation.

Subsec. (f)(3)(B). Pub. L. 97–448, §103(c)(5), substituted ''if the contribution is made on account of the taxable year which includes such last day and by April 15 of the calendar year'' for ''if the contribution is made by April 15 of the calendar year''.

1982—Subsec. (d)(4). Pub. L. 97–248 added par. (4).

1981—Subsec. (a). Pub. L. 97–34, §311(a), amended subsec. (a) generally, substituting in heading ''Allowance of deduction'' for ''Deduction allowed'' and in text ''shall be allowed'' for ''is allowed'', allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year, eliminated part of first sentence for allowance as a deduction amounts paid in cash for the taxable year by or on behalf of the individual for his benefit—(1) to an individual retirement annuity described in section 408(a), (2) for an individual retirement annuity described in section 408(b), or (3) for a retirement bond described in section 409 (but only if the bond is not redeemed within 12 months of the date of its issuance), covered in sub-

sec. (e)(1) and (5) of this section, and eliminated second sentence respecting employer payments, covered in subsec. (f)(5) of this section.

Subsec. (b). Pub. L. 97–34, §311(a), in heading substituted ''Maximum amount of deduction'' for ''Limitations and restrictions''.

Subsec. (b)(1). Pub. L. 97–34, §311(a), amended par. (1) generally, substituting ''In general'' for ''Maximum deduction'' in heading and in text provision for allowance of a deduction not to exceed the lesser of (A) $2,000, or (B) an amount equal to the compensation includible in the individual's gross income for such taxable year, for provision for an amount not to exceed amount equal to 15 percent of the compensation includible in gross income for the taxable year, or $1,500, whichever is less.

Subsec. (b)(2)(A)(ii), (C). Pub. L. 97–34, §312(c)(1), substituted ''$15,000'' for ''$7,500''.

Pub. L. 97–34, §311(a), redesignated par. (7) as (2), substituted in heading ''rules for employer contributions under'' for ''rules in case of'', substituted in subpar. (A) introductory text ''an employee shall be allowed as a deduction under subsection (a) (in addition to the amount allowable under paragraph (1) an amount equal to the lesser of'' for ''the limitation under paragraph (1) shall be the lesser of'', inserted in subpar. (A)(i) ''from such employer'' before ''includible'' and substituted therein ''without regard'' for ''with regard'', substituted in subpar. (A)(ii) ''the amount contributed by such employer to the simplified employee pension and included in gross income (but not in excess of $7,500'' for ''the sum of—(I) the amount contributed by the employer to the simplified employee pension and included in gross income (but not in excess of $7,500), and (II) $1,500, reduced (but not below zero) by the amount described in subclause (I)'', and substituted in subpar. (B) ''Paragraph (1) of this subsection and paragraph (1) of subsection (d)'' for ''Paragraphs (2) and (3)''. Former subsec. (b)(2) provisions which disallowed any deduction under subsec. (a) for an individual for the taxable year if for any part of such year (A) he was an active participant in (i) a plan described in section 401(a), (ii) an annuity plan described in section 403(a), (iii) a qualified bond purchase plan described in section 405(a), or (iv) a plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing, or (B) amounts were contributed by his employer for an annuity contract described in section 403(b), are now covered by subsec. (e)(3) and (4) of this section.

Subsec. (b)(3) to (5). Pub. L. 97–34, §311(a), added pars. (3) and (4). Former pars. (3) to (5) redesignated subsec. (d)(1) to (3).

Subsec. (b)(6). Pub. L. 97–34, §311(a), struck out par. (6) which set forth alternative deduction provisions which disallowed a deduction for the taxable year if the individual claimed the deduction allowed by section 220 for the taxable year.

Subsec. (b)(7). Pub. L. 97–34, §311(a), redesignated par. (7) as (2).

Subsec. (c). Pub. L. 97–34, §311(a), added subsec. (c). Former subsec. (c)(1) to (3) and (5) redesignated subsec. (f)(1), (2), (3)(A), and (6). Former subsec. (c)(4), which provided for participation in governmental plans by certain individuals, with subpars. (A) and (B) covering members of reserve components and volunteer firefighters, was struck out.

Subsec. (d). Pub. L. 97–34, §311(a), in heading redesignated former subsec. (b) heading as subsec. (d) heading and inserted ''Other'' before ''limitations''.

Subsec. (d)(1). Pub. L. 97–34, §311(a), redesignated former subsec. (b)(3) as par. (1), substituted as heading ''Individuals who have attained age 70½'' for ''Contributions after age 70½'' and in text ''shall be allowed under this section'' for ''is allowed under subsection (a)'', ''qualified retirement contribution'' for ''payment described in subsection (a)'', and ''made for a taxable year of an individual if such individual has attained'' for ''made during the taxable year of an individual who has attained''.

Subsec. (d)(2). Pub. L. 97–34, §313(b)(2), inserted reference to section 405(d)(3).

Pub. L. 97–34, §311(a), redesignated former subsec. (b)(4) as par. (2) and substituted ''shall be allowed'' for ''is allowed''.

Subsec. (d)(3). Pub. L. 97–34, §311(a), redesignated former subsec. (b)(5) as par. (3) and, as so redesignated, substituted ''shall be allowed under this section'' for ''is allowed under subsection (a)'' and ''year which is properly allocable'' for ''year properly allocable''.

Subsec. (e). Pub. L. 97–34, §311(a), added subsec. (e) incorporating former provisions of subsecs. (a) and (b)(2) as pars. (1), and (3) and (4) and, among other changes, inserted provisions relating to a qualified employee pension.

Subsec. (f)(1). Pub. L. 97–34, §311(a), redesignated former subsec. (c)(1) as par. (1).

Subsec. (f)(2). Pub. L. 97–34, §311(a), redesignated former subsec. (c)(2) as par. (2) and, as so redesignated, substituted ''deduction under subsections (b) and (c)'' for ''deduction under subsection (b)(1)'', and struck out provision that for purposes of this section, the determination of whether an individual is married shall be made in accordance with the provisions of section 143(a).

Subsec. (f)(3). Pub. L. 97–34, §311(a), redesignated former subsec. (c)(3) as subpar. (A) and, as so redesignated, added subpar. (A) heading ''Individual retirement plans'', and ''to an individual retirement plan'' before ''on the last day'' in text, and added subpar. (B).

Subsec. (f)(4). Pub. L. 97–34, §311(a), added par. (4).

Subsec. (f)(5). Pub. L. 97–34, §311(a), redesignated former provisions of subsec. (a) as par. (5), added par. (5) heading ''Employer payments'', substituted ''to an individual retirement plan shall be treated as payment of compensation to the employee'' for ''to such a retirement account, or for such a retirement annuity or retirement bond constitutes payment of compensation to the employee'', and ''in the taxable year for which the amount was contributed'' after ''gross income'', and struck out ''after the application of subsection (b)'' after ''under this section to the employee''.

Subsec. (f)(6). Pub. L. 97–34, §311(a), redesignated former subsec. (c)(5) as par. (6), inserted ''for contributions to an individual retirement plan'' after ''under this section'' in subpar. (A), and struck out in subpar. (C) ''or section 220'' after ''under this section''.

Subsec. (g). Pub. L. 97–34, §311(a), added subsec. (g).

1980—Subsec. (b)(4). Pub. L. 96–222, §101(a)(14)(B), inserted ''402(a)(7),'' after ''section 402(a)(5)''.

Subsec. (b)(7). Pub. L. 96–222, §101(a)(10)(D), amended par. (7) generally, including provision requiring that paragraph (3) not apply with respect to employer contribution to a simplified employee pension.

1978—Subsec. (b)(4). Pub. L. 95–600, §156(c)(3), inserted ''403(b)(8)'' after ''403(a)(4)''.

Subsec. (b)(7). Pub. L. 95–600, §152(c), added par. (7).

Subsec. (c)(3). Pub. L. 95–600, §157(a)(1), substituted ''not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)'' for ''not later than 45 days after the end of such taxable year''.

Subsec. (c)(4). Pub. L. 95–600, §703(c)(1), substituted ''subsection (b)(2)(A)(iv)'' for ''subsection (b)(3)(A)(iv)'' wherever appearing.

Subsec. (c)(5). Pub. L. 95–600, §157(b)(1), added par. (5).

1976—Subsec. (a). Pub. L. 94–455, §1501(b)(4)(B), substituted ''for'' for ''during'' after ''paid in cash''.

Subsec. (b)(2)(A)(iv). Pub. L. 94–455, §1901(a)(32), substituted ''subdivision'' for ''division'' after ''State or political''.

Subsec. (b)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(6). Pub. L. 94–455, §1501(b)(4)(B), added par. (6).

Subsec. (c)(2). Pub. L. 94–455, §1501(b)(4)(C), inserted ''For purposes of this section, the determination of whether an individual is married shall be made in accordance with the provisions of section 143(a)'' after ''community property laws''.

Subsec. (c)(3). Pub. L. 94–455, §1501(b)(4)(D), added par. (3).

Subsec. (c)(4). Pub. L. 94–455, §1503(a), added par. (4).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, §105(b)(3), June 17, 2008, 122 Stat. 1629, provided that: ''The amendments made by this subsection [amending this section and section 414 of this title] shall apply to years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §831(b), Aug. 17, 2006, 120 Stat. 1003, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Amendment by section 833(b) of Pub. L. 109–280 applicable to taxable years beginning after 2006, see section 833(d) of Pub. L. 109–280, set out as a note under section 25B of this title.

Pub. L. 109–227, §2(b), May 29, 2006, 120 Stat. 385, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by section 431(c)(1) of Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Pub. L. 107–16, title VI, §601(c), June 7, 2001, 115 Stat. 95, provided that: ''The amendments made by this section [amending this section and section 408 of this title] shall apply to taxable years beginning after December 31, 2001.''

Amendment by section 641(e)(2) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 402 of this title.

Amendment by section 431(c)(1) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section §1(a)(7) [title III, §316(e)] of Pub. L. 106–554, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by section 6018(f)(2) of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 36C of this title.

Amendment by section 6005(a) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 301(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 302(f) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting section 408A of this title and amending this section and sections 408 and 4973 of this title] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(1) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Section 1427(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and section 408 of this title] shall apply to taxable years beginning after December 31, 1996.''

Amendment by section 1807(c)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 36C of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7816(c)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 7841(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contributions after the date of the enactment of this Act [Dec. 19, 1989] in taxable years ending after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011(a)(2) of Pub. L. 100–647 provided that:

''(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1987.

''(B) A taxpayer may elect to have the amendment made by paragraph (1) apply to any taxable year beginning in 1987.''

Amendment by section 6009(c)(2) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1989, see section 6009(d) of Pub. L. 100–647, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1101(a), (b)(1), (2)(A) of Pub. L. 99–514 applicable to contributions for taxable years beginning after Dec. 31, 1986, see section 1101(c) of Pub. L. 99–514, set out as a note under section 72 of this title.

Section 1102(g) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 408, 3405, 4973, and 6693 of this title] shall apply to contributions and distributions for taxable years beginning after December 31, 1986.''

Section 1103(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning before, on, or after December 31, 1985.''

Section 1108(h) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011(f)(7), Nov. 10, 1988, 102 Stat. 3463, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402, 404, 408, 415, 3121, and 3306 of this title] shall apply to years beginning after December 31, 1986.

''(2) INTEGRATION RULES.—Subparagraphs (D) and (E) of section 408(k)(3) of the Internal Revenue Code of 1954 (as in effect before the amendments made by this section) shall continue to apply for years beginning after December 31, 1986, and before January 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by this section) may not be integrated under such subparagraphs.''

Section 1109(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 501 of this title] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1501(d)(1)(B) of Pub. L. 99–514, applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

Amendment by section 1875(c)(4), (6)(B) of Pub. L. 99–514 effective as if included in the amendments made by section 238 of Pub. L. 97–248, which amended sections 401, 404, 408, 415, and 1379 of this title, see section 1875(c)(12) of Pub. L. 99–514, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 147(d) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 408 of this title] shall apply to contributions made after December 31, 1984.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending section 6693 of this title] shall apply to failures occurring after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 422(d)(1) of Pub. L. 98–369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification, see section 422(e)(1), (2) of Pub. L. 98–369, set out as a note under section 71 of this title.

Amendment by section 491(d)(6)–(8) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Section 529(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Amendment by section 713(d)(2) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to with respect to individuals dying after Dec. 31, 1983, see section 243(c) of Pub. L. 97–248, as amended, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 311(i) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 103(c)(11), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 62, 72, 402, 403, 408, 409, 415, 2039, 2503, 2517, 3401, 4973, 6047, and 6652 of this title and repealing section 220 of this title] shall apply to taxable years beginning after December 31, 1981.

''(2) TRANSITIONAL RULE.—For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any amount allowed as a deduction under section 220 of such Code (as in effect before its repeal by this Act) shall be treated as if it were allowed by section 219 of such Code.

''(3) CERTAIN BOND ROLLOVER PROVISIONS.—The amendment made by subsection (g)(3) [amending section 409 of this title] shall apply to taxable years beginning after December 31, 1974.

''(4) SECTION 415 AMENDMENTS.—The amendments made by subsections (g)(4) and (h)(3) [amending section 415 of this title] shall apply to years after December 31, 1981.

''(5) ESTATE AND GIFT TAX PROVISIONS.—

''(A) ESTATE TAX.—The amendments made by subsections (d)(1) and (h)(4) [amending section 2039 of this title] shall apply to the estates of decedents dying after December 31, 1981.

''(B) GIFT TAX.—The amendments made by subsections (d)(2) and (h)(5) [amending sections 2503 and 2517 of this title] shall apply to transfers after December 31, 1981.''

Amendment by section 312(c)(1) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) of this title with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97–34, set out as a note under section 72 of this title.

Section 313(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 405, 408, 2039, and 4973 of this title] shall apply to redemptions after the date of the enactment of this Act [Aug. 13, 1981] in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600 to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 152(c) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

Amendment by section 156(c)(3) of Pub. L. 95–600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600 set out as a note under section 403 of this title.

Section 157(a)(3) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and section 220 of this title] shall apply to taxable years beginning after December 31, 1977.''

Section 157(b)(4)(A) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 220 and 4973 of this title] shall apply to the determination of deductions for taxable years beginning after December 31, 1975.''

Section 703(c)(5) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 220 and 408 of this title] shall apply to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(4) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as an Effective Date note under section 62 of this title.

Section 1503(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Amendment by section 1901(a)(32) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

EFFECTIVE DATE

Section 2002(i)(1) of Pub. L. 93–406 provided that: ''The amendments made by subsections (a), (b), and (c) [of section 2002 of Pub. L. 93–406, enacting this section and sections 408 and 409 of this title and amending section 62 of this title] apply to taxable years beginning after December 31, 1974.''

CONTRIBUTIONS FOR TAXABLE YEARS ENDING BEFORE MAY 29, 2006

Pub. L. 109–227, §2(c), May 29, 2006, 120 Stat. 385, provided that:

''(1) IN GENERAL.—In the case of any taxpayer with respect to whom compensation was excluded from gross income under section 112 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 2003, and ending before the date of the enactment of this Act [May 29, 2006], any contribution to an individual retirement plan made on account of such taxable year and not later than the last day of the 3-year period beginning on the date of the enactment of this Act shall be treated, for purposes of such Code, as having been made on the last day of such taxable year.

''(2) WAIVER OF LIMITATIONS.—

''(A) CREDIT OR REFUND.—If the credit or refund of any overpayment of tax resulting from a contribution to which paragraph (1) applies is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date that such contribution is made (determined without regard to paragraph (1)).

''(B) ASSESSMENT OF DEFICIENCY.—The period for assessing a deficiency attributable to a contribution to which paragraph (1) applies shall not expire before the close of the 3-year period beginning on the date that such contribution is made. Such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(3) INDIVIDUAL RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term 'individual retirement plan' has the meaning given such term by section 7701(a)(37) of such Code.''

CLARIFICATION OF TREATMENT OF FEDERAL JUDGES

Pub. L. 100–203, title X, §10103, Dec. 22, 1987, 101 Stat. 1330–386, as amended by Pub. L. 100–647, title II, §2004(c), Nov. 10, 1988, 102 Stat. 3599, provided that:

''(a) GENERAL RULE.—A Federal judge—

''(1) shall be treated as an active participant in a plan established for its employees by the United States for purposes of section 219(g) of the Internal Revenue Code of 1986, and

''(2) shall be treated as an employee for purposes of chapter 1 of such Code.

''(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to taxable years beginning after December 31, 1987.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULES FOR ALLOWABLE DEDUCTIONS FOR FIRST TAXABLE YEAR BEGINNING IN 1978

Section 157(b)(4)(B) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, but for this subparagraph, an amount would be allowable as a deduction by reason of section 219(c)(5) or 220(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning before January 1, 1978, such amount shall be allowable only for the taxpayer's first taxable year beginning in 1978.''

§ 220. Archer MSAs

(a) Deduction allowed

In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by such individual to an Archer MSA of such individual.

(b) Limitations

(1) In general

The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the sum of the monthly limitations for months during such taxable year that the individual is an eligible individual.

(2) Monthly limitation

The monthly limitation for any month is the amount equal to 1/12 of—

(A) in the case of an individual who has self-only coverage under the high deductible health plan as of the first day of such month, 65 percent of the annual deductible under such coverage, and

(B) in the case of an individual who has family coverage under the high deductible health plan as of the first day of such month, 75 percent of the annual deductible under such coverage.

(3) Special rule for married individuals

In the case of individuals who are married to each other, if either spouse has family coverage—

(A) both spouses shall be treated as having only such family coverage (and if such

spouses each have family coverage under different plans, as having the family coverage with the lowest annual deductible), and

(B) the limitation under paragraph (1) (after the application of subparagraph (A) of this paragraph) shall be divided equally between them unless they agree on a different division.

(4) Deduction not to exceed compensation

(A) Employees

The deduction allowed under subsection (a) for contributions as an eligible individual described in subclause (I) of subsection (c)(1)(A)(iii) shall not exceed such individual's wages, salaries, tips, and other employee compensation which are attributable to such individual's employment by the employer referred to in such subclause.

(B) Self-employed individuals

The deduction allowed under subsection (a) for contributions as an eligible individual described in subclause (II) of subsection (c)(1)(A)(iii) shall not exceed such individual's earned income (as defined in section 401(c)(1)) derived by the taxpayer from the trade or business with respect to which the high deductible health plan is established.

(C) Community property laws not to apply

The limitations under this paragraph shall be determined without regard to community property laws.

(5) Coordination with exclusion for employer contributions

No deduction shall be allowed under this section for any amount paid for any taxable year to an Archer MSA of an individual if—

(A) any amount is contributed to any Archer MSA of such individual for such year which is excludable from gross income under section 106(b), or

(B) if such individual's spouse is covered under the high deductible health plan covering such individual, any amount is contributed for such year to any Archer MSA of such spouse which is so excludable.

(6) Denial of deduction to dependents

No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(7) Medicare eligible individuals

The limitation under this subsection for any month with respect to an individual shall be zero for the first month such individual is entitled to benefits under title XVIII of the Social Security Act and for each month thereafter.

(c) Definitions

For purposes of this section—

(1) Eligible individual

(A) In general

The term ''eligible individual'' means, with respect to any month, any individual if—

(i) such individual is covered under a high deductible health plan as of the 1st day of such month,

(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan—

(I) which is not a high deductible health plan, and

(II) which provides coverage for any benefit which is covered under the high deductible health plan, and

(iii)(I) the high deductible health plan covering such individual is established and maintained by the employer of such individual or of the spouse of such individual and such employer is a small employer, or

(II) such individual is an employee (within the meaning of section 401(c)(1)) or the spouse of such an employee and the high deductible health plan covering such individual is not established or maintained by any employer of such individual or spouse.

(B) Certain coverage disregarded

Subparagraph (A)(ii) shall be applied without regard to—

(i) coverage for any benefit provided by permitted insurance, and

(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

(C) Continued eligibility of employee and spouse establishing Archer MSAs

If, while an employer is a small employer—

(i) any amount is contributed to an Archer MSA of an individual who is an employee of such employer or the spouse of such an employee, and

(ii) such amount is excludable from gross income under section 106(b) or allowable as a deduction under this section,

such individual shall not cease to meet the requirement of subparagraph (A)(iii)(I) by reason of such employer ceasing to be a small employer so long as such employee continues to be an employee of such employer.

(D) Limitations on eligibility

For limitations on number of taxpayers who are eligible to have Archer MSAs, see subsection (i).

(2) High deductible health plan

(A) In general

The term ''high deductible health plan'' means a health plan—

(i) in the case of self-only coverage, which has an annual deductible which is not less than $1,500 and not more than $2,250,

(ii) in the case of family coverage, which has an annual deductible which is not less than $3,000 and not more than $4,500, and

(iii) the annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed—

(I) $3,000 for self-only coverage, and

(II) $5,500 for family coverage.

(B) Special rules

(i) Exclusion of certain plans

Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

(ii) Safe harbor for absence of preventive care deductible

A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care if the absence of a deductible for such care is required by State law.

(3) Permitted insurance

The term ''permitted insurance'' means—

(A) insurance if substantially all of the coverage provided under such insurance relates to—

(i) liabilities incurred under workers' compensation laws,

(ii) tort liabilities,

(iii) liabilities relating to ownership or use of property, or

(iv) such other similar liabilities as the Secretary may specify by regulations,

(B) insurance for a specified disease or illness, and

(C) insurance paying a fixed amount per day (or other period) of hospitalization.

(4) Small employer

(A) In general

The term ''small employer'' means, with respect to any calendar year, any employer if such employer employed an average of 50 or fewer employees on business days during either of the 2 preceding calendar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

(B) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) Certain growing employers retain treatment as small employer

The term ''small employer'' includes, with respect to any calendar year, any employer if—

(i) such employer met the requirement of subparagraph (A) (determined without regard to subparagraph (B)) for any preceding calendar year after 1996,

(ii) any amount was contributed to the Archer MSA of any employee of such employer with respect to coverage of such employee under a high deductible health plan of such employer during such preceding calendar year and such amount was excludable from gross income under section 106(b) or allowable as a deduction under this section, and

(iii) such employer employed an average of 200 or fewer employees on business days during each preceding calendar year after 1996.

(D) Special rules

(i) Controlled groups

For purposes of this paragraph, all persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as 1 employer.

(ii) Predecessors

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(5) Family coverage

The term ''family coverage'' means any coverage other than self-only coverage.

(d) Archer MSA

For purposes of this section—

(1) Archer MSA

The term ''Archer MSA'' means a trust created or organized in the United States as a medical savings account exclusively for the purpose of paying the qualified medical expenses of the account holder, but only if the written governing instrument creating the trust meets the following requirements:

(A) Except in the case of a rollover contribution described in subsection (f)(5), no contribution will be accepted—

(i) unless it is in cash, or

(ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds 75 percent of the highest annual limit deductible permitted under subsection (c)(2)(A)(ii) for such calendar year.

(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(E) The interest of an individual in the balance in his account is nonforfeitable.

(2) Qualified medical expenses

(A) In general

The term ''qualified medical expenses'' means, with respect to an account holder, amounts paid by such holder for medical care (as defined in section 213(d)) for such individual, the spouse of such individual, and any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise. Such term shall include an amount paid for medicine or a drug only

if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.

(B) Health insurance may not be purchased from account

(i) In general

Subparagraph (A) shall not apply to any payment for insurance.

(ii) Exceptions

Clause (i) shall not apply to any expense for coverage under—

(I) a health plan during any period of continuation coverage required under any Federal law,

(II) a qualified long-term care insurance contract (as defined in section 7702B(b)), or

(III) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law.

(C) Medical expenses of individuals who are not eligible individuals

Subparagraph (A) shall apply to an amount paid by an account holder for medical care of an individual who is not described in clauses (i) and (ii) of subsection (c)(1)(A) for the month in which the expense for such care is incurred only if no amount is contributed (other than a rollover contribution) to any Archer MSA of such account holder for the taxable year which includes such month. This subparagraph shall not apply to any expense for coverage described in subclause (I) or (III) of subparagraph (B)(ii).

(3) Account holder

The term ''account holder'' means the individual on whose behalf the Archer MSA was established.

(4) Certain rules to apply

Rules similar to the following rules shall apply for purposes of this section:

(A) Section 219(d)(2) (relating to no deduction for rollovers).

(B) Section 219(f)(3) (relating to time when contributions deemed made).

(C) Except as provided in section 106(b), section 219(f)(5) (relating to employer payments).

(D) Section 408(g) (relating to community property laws).

(E) Section 408(h) (relating to custodial accounts).

(e) Tax treatment of accounts

(1) In general

An Archer MSA is exempt from taxation under this subtitle unless such account has ceased to be an Archer MSA. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Account terminations

Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to Archer MSAs, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

(f) Tax treatment of distributions

(1) Amounts used for qualified medical expenses

Any amount paid or distributed out of an Archer MSA which is used exclusively to pay qualified medical expenses of any account holder shall not be includible in gross income.

(2) Inclusion of amounts not used for qualified medical expenses

Any amount paid or distributed out of an Archer MSA which is not used exclusively to pay the qualified medical expenses of the account holder shall be included in the gross income of such holder.

(3) Excess contributions returned before due date of return

(A) In general

If any excess contribution is contributed for a taxable year to any Archer MSA of an individual, paragraph (2) shall not apply to distributions from the Archer MSAs of such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if—

(i) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the individual for the taxable year in which it is received.

(B) Excess contribution

For purposes of subparagraph (A), the term ''excess contribution'' means any contribution (other than a rollover contribution) which is neither excludable from gross income under section 106(b) nor deductible under this section.

(4) Additional tax on distributions not used for qualified medical expenses

(A) In general

The tax imposed by this chapter on the account holder for any taxable year in which there is a payment or distribution from an Archer MSA of such holder which is includible in gross income under paragraph (2) shall be increased by 20 percent of the amount which is so includible.

(B) Exception for disability or death

Subparagraph (A) shall not apply if the payment or distribution is made after the account holder becomes disabled within the meaning of section 72(m)(7) or dies.

(C) Exception for distributions after medicare eligibility

Subparagraph (A) shall not apply to any payment or distribution after the date on

which the account holder attains the age specified in section 1811 of the Social Security Act.

(5) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (2) shall not apply to any amount paid or distributed from an Archer MSA to the account holder to the extent the amount received is paid into an Archer MSA or a health savings account (as defined in section 223(d)) for the benefit of such holder not later than the 60th day after the day on which the holder receives the payment or distribution.

(B) Limitation

This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from an Archer MSA if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from an Archer MSA which was not includible in the individual's gross income because of the application of this paragraph.

(6) Coordination with medical expense deduction

For purposes of determining the amount of the deduction under section 213, any payment or distribution out of an Archer MSA for qualified medical expenses shall not be treated as an expense paid for medical care.

(7) Transfer of account incident to divorce

The transfer of an individual's interest in an Archer MSA to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest shall, after such transfer, be treated as an Archer MSA with respect to which such spouse is the account holder.

(8) Treatment after death of account holder

(A) Treatment if designated beneficiary is spouse

If the account holder's surviving spouse acquires such holder's interest in an Archer MSA by reason of being the designated beneficiary of such account at the death of the account holder, such Archer MSA shall be treated as if the spouse were the account holder.

(B) Other cases

(i) In general

If, by reason of the death of the account holder, any person acquires the account holder's interest in an Archer MSA in a case to which subparagraph (A) does not apply—

(I) such account shall cease to be an Archer MSA as of the date of death, and

(II) an amount equal to the fair market value of the assets in such account on such date shall be includible if such person is not the estate of such holder, in such person's gross income for the taxable year which includes such date, or if such person is the estate of such holder, in such holder's gross income for the last taxable year of such holder.

(ii) Special rules

(I) Reduction of inclusion for pre-death expenses

The amount includible in gross income under clause (i) by any person (other than the estate) shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within 1 year after such date.

(II) Deduction for estate taxes

An appropriate deduction shall be allowed under section 691(c) to any person (other than the decedent or the decedent's spouse) with respect to amounts included in gross income under clause (i) by such person.

(g) Cost-of-living adjustment

In the case of any taxable year beginning in a calendar year after 1998, each dollar amount in subsection (c)(2) shall be increased by an amount equal to—

(1) such dollar amount, multiplied by

(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins by substituting ''calendar year 1997'' for ''calendar year 1992'' in subparagraph (B) thereof.

If any increase under the preceding sentence is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

(h) Reports

The Secretary may require the trustee of an Archer MSA to make such reports regarding such account to the Secretary and to the account holder with respect to contributions, distributions, and such other matters as the Secretary determines appropriate. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(i) Limitation on number of taxpayers having Archer MSAs

(1) In general

Except as provided in paragraph (5), no individual shall be treated as an eligible individual for any taxable year beginning after the cut-off year unless—

(A) such individual was an active MSA participant for any taxable year ending on or before the close of the cut-off year, or

(B) such individual first became an active MSA participant for a taxable year ending after the cut-off year by reason of coverage under a high deductible health plan of an MSA-participating employer.

(2) Cut-off year

For purposes of paragraph (1), the term ''cut-off year'' means the earlier of—

(A) calendar year 2007, or

(B) the first calendar year before 2007 for which the Secretary determines under subsection (j) that the numerical limitation for such year has been exceeded.

(3) Active MSA participant

For purposes of this subsection—

(A) In general

The term ''active MSA participant'' means, with respect to any taxable year, any individual who is the account holder of any Archer MSA into which any contribution was made which was excludable from gross income under section 106(b), or allowable as a deduction under this section, for such taxable year.

(B) Special rule for cut-off years before 2007

In the case of a cut-off year before 2007—

(i) an individual shall not be treated as an eligible individual for any month of such year or an active MSA participant under paragraph (1)(A) unless such individual is, on or before the cut-off date, covered under a high deductible health plan, and

(ii) an employer shall not be treated as an MSA-participating employer unless the employer, on or before the cut-off date, offered coverage under a high deductible health plan to any employee.

(C) Cut-off date

For purposes of subparagraph (B)—

(i) In general

Except as otherwise provided in this subparagraph, the cut-off date is October 1 of the cut-off year.

(ii) Employees with enrollment periods after October 1

In the case of an individual described in subclause (I) of subsection (c)(1)(A)(iii), if the regularly scheduled enrollment period for health plans of the individual's employer occurs during the last 3 months of the cut-off year, the cut-off date is December 31 of the cut-off year.

(iii) Self-employed individuals

In the case of an individual described in subclause (II) of subsection (c)(1)(A)(iii), the cut-off date is November 1 of the cut-off year.

(iv) Special rules for 1997

If 1997 is a cut-off year by reason of subsection (j)(1)(A)—

(I) each of the cut-off dates under clauses (i) and (iii) shall be 1 month earlier than the date determined without regard to this clause, and

(II) clause (ii) shall be applied by substituting ''4 months'' for ''3 months''.

(4) MSA-participating employer

For purposes of this subsection, the term ''MSA-participating employer'' means any small employer if—

(A) such employer made any contribution to the Archer MSA of any employee during the cut-off year or any preceding calendar year which was excludable from gross income under section 106(b), or

(B) at least 20 percent of the employees of such employer who are eligible individuals for any month of the cut-off year by reason of coverage under a high deductible health plan of such employer each made a contribution of at least $100 to their Archer MSAs for any taxable year ending with or within the cut-off year which was allowable as a deduction under this section.

(5) Additional eligibility after cut-off year

If the Secretary determines under subsection (j)(2)(A) that the numerical limit for the calendar year following a cut-off year described in paragraph (2)(B) has not been exceeded—

(A) this subsection shall not apply to any otherwise eligible individual who is covered under a high deductible health plan during the first 6 months of the second calendar year following the cut-off year (and such individual shall be treated as an active MSA participant for purposes of this subsection if a contribution is made to any Archer MSA with respect to such coverage), and

(B) any employer who offers coverage under a high deductible health plan to any employee during such 6-month period shall be treated as an MSA-participating employer for purposes of this subsection if the requirements of paragraph (4) are met with respect to such coverage.

For purposes of this paragraph, subsection (j)(2)(A) shall be applied for 1998 by substituting ''750,000'' for ''600,000''.

(j) Determination of whether numerical limits are exceeded

(1) Determination of whether limit exceeded for 1997

The numerical limitation for 1997 is exceeded if, based on the reports required under paragraph (4), the number of Archer MSAs established as of—

(A) April 30, 1997, exceeds 375,000, or

(B) June 30, 1997, exceeds 525,000.

(2) Determination of whether limit exceeded for 1998, 1999, 2001, 2002, 2004, 2005, or 2006

(A) In general

The numerical limitation for 1998, 1999, 2001, 2002, 2004, 2005, or 2006 is exceeded if the sum of—

(i) the number of MSA returns filed on or before April 15 of such calendar year for taxable years ending with or within the preceding calendar year, plus

(ii) the Secretary's estimate (determined on the basis of the returns described in clause (i)) of the number of MSA returns for such taxable years which will be filed after such date,

exceeds 750,000 (600,000 in the case of 1998). For purposes of the preceding sentence, the term ''MSA return'' means any return on which any exclusion is claimed under sec-

tion 106(b) or any deduction is claimed under this section.

(B) Alternative computation of limitation

The numerical limitation for 1998, 1999, 2001, 2002, 2004, 2005, or 2006 is also exceeded if the sum of—

(i) 90 percent of the sum determined under subparagraph (A) for such calendar year, plus

(ii) the product of 2.5 and the number of Archer MSAs established during the portion of such year preceding July 1 (based on the reports required under paragraph (4)) for taxable years beginning in such year,

exceeds 750,000.

(C) No limitation for 2000 or 2003

The numerical limitation shall not apply for 2000 or 2003.

(3) Previously uninsured individuals not included in determination

(A) In general

The determination of whether any calendar year is a cut-off year shall be made by not counting the Archer MSA of any previously uninsured individual.

(B) Previously uninsured individual

For purposes of this subsection, the term ''previously uninsured individual'' means, with respect to any Archer MSA, any individual who had no health plan coverage (other than coverage referred to in subsection (c)(1)(B)) at any time during the 6-month period before the date such individual's coverage under the high deductible health plan commences.

(4) Reporting by MSA trustees

(A) In general

Not later than August 1 of 1997, 1998, 1999, 2001, 2002, 2004, 2005, and 2006, each person who is the trustee of an Archer MSA established before July 1 of such calendar year shall make a report to the Secretary (in such form and manner as the Secretary shall specify) which specifies—

(i) the number of Archer MSAs established before such July 1 (for taxable years beginning in such calendar year) of which such person is the trustee,

(ii) the name and TIN of the account holder of each such account, and

(iii) the number of such accounts which are accounts of previously uninsured individuals.

(B) Additional report for 1997

Not later than June 1, 1997, each person who is the trustee of an Archer MSA established before May 1, 1997, shall make an additional report described in subparagraph (A) but only with respect to accounts established before May 1, 1997.

(C) Penalty for failure to file report

The penalty provided in section 6693(a) shall apply to any report required by this paragraph, except that—

(i) such section shall be applied by substituting ''$25'' for ''$50'', and

(ii) the maximum penalty imposed on any trustee shall not exceed $5,000.

(D) Aggregation of accounts

To the extent practicable, in determining the number of Archer MSAs on the basis of the reports under this paragraph, all Archer MSAs of an individual shall be treated as 1 account and all accounts of individuals who are married to each other shall be treated as 1 account.

(5) Date of making determinations

Any determination under this subsection that a calendar year is a cut-off year shall be made by the Secretary and shall be published not later than October 1 of such year.

(Added Pub. L. 104–191, title III, §301(a), Aug. 21, 1996, 110 Stat. 2037; amended Pub. L. 105–33, title IV, §4006(b)(2), Aug. 5, 1997, 111 Stat. 333; Pub. L. 105–34, title XVI, §1602(a)(2), (3), Aug. 5, 1997, 111 Stat. 1093, 1094; Pub. L. 106–554, §1(a)(7) [title II, §§201(a), (b), 202(a)(4), (b)(2)(B), (3)–(8), (10), (11)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 107–147, title VI, §612(a), (b), Mar. 9, 2002, 116 Stat. 61; Pub. L. 108–173, title XII, §1201(c), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 108–311, title II, §207(19), title III, §322(a), (b), Oct. 4, 2004, 118 Stat. 1178, 1183; Pub. L. 109–432, div. A, title I, §117(a), (b), Dec. 20, 2006, 120 Stat. 2941; Pub. L. 111–148, title IX, §§9003(b), 9004(b), Mar. 23, 2010, 124 Stat. 854.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(7) and (f)(4)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Section 1811 of the Act is classified to section 1395c of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 220 was renumbered 224 of this title.

Another prior section 220, added Pub. L. 100–647, title VI, §6007(a), Nov. 10, 1988, 102 Stat. 3687, related to jury duty pay remitted to employer, prior to repeal by Pub. L. 101–508, title XI, §11802(e)(2), Nov. 5, 1990, 104 Stat. 1388–530.

Another prior section 220, added Pub. L. 94–455, title XV, §1501(a), Oct. 4, 1976, 90 Stat. 1734; amended Pub. L. 95–600, title I, §§156(c)(3), 157(a)(2), (b)(2), title VII, §703(c)(2), (3), Nov. 6, 1978, 92 Stat. 2803, 2804, 2939; Pub. L. 96–222, title I, §101(a)(14)(B), Apr. 1, 1980, 94 Stat. 204, related to retirement savings for certain married individuals, prior to repeal by Pub. L. 97–34, title III, §311(e), Aug. 13, 1981, 95 Stat. 280, applicable to taxable years beginning after Dec. 31, 1981, and deductions allowed under section 220 of this title, as in effect prior to its repeal, treated as deductions under section 219 of this title.

AMENDMENTS

2010—Subsec. (d)(2)(A). Pub. L. 111–148, §9003(b), inserted at end ''Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to wheth-

er such drug is available without a prescription) or is insulin.''

Subsec. (f)(4)(A). Pub. L. 111–148, § 9004(b), substituted ''20 percent'' for ''15 percent''.

2006—Subsec. (i)(2), (3)(B). Pub. L. 109–432, § 117(a), substituted ''2007'' for ''2005'' wherever appearing in headings and text.

Subsec. (j)(2). Pub. L. 109–432, § 117(b)(1), substituted ''2004, 2005, or 2006'' for ''or 2004'' in heading and in introductory provisions of subpars. (A) and (B).

Subsec. (j)(4)(A). Pub. L. 109–432, § 117(b)(2), substituted ''2004, 2005, and 2006'' for ''and 2004'' in introductory provisions.

2004—Subsec. (d)(2)(A). Pub. L. 108–311, § 207(19), inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

Subsec. (i)(2), (3)(B). Pub. L. 108–311, § 322(a), substituted ''2005'' for ''2003'' wherever appearing in headings and text.

Subsec. (j)(2). Pub. L. 108–311, § 322(b)(1)(B), substituted ''2002, or 2004'' for ''or 2002'' in heading.

Subsec. (j)(2)(A), (B). Pub. L. 108–311, § 322(b)(1)(A), substituted ''2002, or 2004'' for ''or 2002'' in introductory provisions.

Subsec. (j)(2)(C). Pub. L. 108–311, § 322(b)(3), amended heading and text of subpar. (C) generally. Prior to amendment text read as follows: ''The numerical limitation shall not apply for 2000.''

Subsec. (j)(4)(A). Pub. L. 108–311, § 322(b)(2), substituted ''2002, and 2004'' for ''and 2002'' in introductory provisions.

2003—Subsec. (f)(5)(A). Pub. L. 108–173 inserted ''or a health savings account (as defined in section 223(d))'' after ''paid into an Archer MSA''.

2002—Subsec. (i)(2). Pub. L. 107–147, § 612(a), substituted ''2003'' for ''2002'' in subpars. (A) and (B).

Subsec. (i)(3)(B). Pub. L. 107–147, § 612(a), substituted ''2003'' for ''2002'' in heading and introductory provisions.

Subsec. (j)(2). Pub. L. 107–147, § 612(b)(1), substituted ''1998, 1999, 2001, or 2002'' for ''1998, 1999, or 2001'' wherever appearing in heading and text.

Subsec. (j)(4)(A). Pub. L. 107–147, § 612(b)(2), substituted ''2001, and 2002'' for ''and 2001''.

2000—Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(8)], substituted ''Archer MSAs'' for ''Medical savings accounts'' in section catchline.

Subsecs. (a), (b)(5). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account'' wherever appearing.

Subsec. (c)(1)(C). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(7)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading.

Subsec. (c)(1)(C)(i). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (c)(1)(D). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (c)(4)(C)(ii). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (d). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(4)], substituted ''Archer MSA'' for ''Medical savings account'' in heading.

Subsec. (d)(1). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(5)], substituted ''Archer MSA'' for ''Medical savings account'' in heading.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4), (b)(3)], in introductory provisions, substituted ''Archer MSA'' for ''medical savings account'' and inserted ''as a medical savings account'' after ''United States''.

Subsec. (d)(2)(C), (3). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (e)(1). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10), (11)], substituted ''An Archer MSA is exempt'' for ''A Archer MSA is exempt'' and ''ceased to be an Archer MSA'' for ''ceased to be a Archer MSA''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account'' in two places.

Subsec. (e)(2). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (f). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA'' wherever appearing.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4), (b)(2)(B)], substituted ''Archer MSA'' for ''medical savings account'' wherever appearing and ''Archer MSAs'' for ''medical savings accounts'' in introductory provisions of par. (3)(A).

Subsec. (h). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (i). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(6)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading.

Subsec. (i)(2)(A), (B). Pub. L. 106–554, § 1(a)(7) [title II, § 201(a)], substituted ''2002'' for ''2000''.

Subsec. (i)(3)(A). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (i)(3)(B). Pub. L. 106–554, § 1(a)(7) [title II, § 201(a)], substituted ''2002'' for ''2000'' in heading and introductory provisions.

Subsec. (i)(4)(A). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (i)(4)(B). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (i)(5)(A). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (j)(1). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts'' in introductory provisions.

Subsec. (j)(2). Pub. L. 106–554, § 1(a)(7) [title II, § 201(b)(1)(A)], substituted ''1998, 1999, or 2001'' for ''1998 or 1999'' in heading and in introductory provisions of subpars. (A) and (B).

Subsec. (j)(2)(A). Pub. L. 106–554, § 1(a)(7) [title II, § 201(b)(1)(B)], substituted ''750,000 (600,000 in the case of 1998)'' for ''600,000 (750,000 in the case of 1999)'' in concluding provisions.

Subsec. (j)(2)(B)(ii). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (j)(2)(C). Pub. L. 106–554, § 1(a)(7) [title II, § 201(b)(1)(C)], added subpar. (C).

Subsec. (j)(3)(A), (B). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (j)(4)(A). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA'' in introductory provisions.

Pub. L. 106–554, § 1(a)(7) [title II, §§ 201(b)(2), 202(a)(4)], in introductory provisions, substituted ''1999, and 2001'' for ''and 1999'' and ''Archer MSA'' for ''medical savings account''.

Subsec. (j)(4)(A)(i). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (j)(4)(B). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (j)(4)(D). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts'' in two places.

1997—Subsec. (b)(7). Pub. L. 105–33 added par. (7).

Subsec. (c)(3). Pub. L. 105–34, §1602(a)(2), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: ''Medicare supplemental insurance,''.

Subsec. (d)(2)(C). Pub. L. 105–34, §1602(a)(3), substituted ''described in clauses (i) and (ii) of subsection (c)(1)(A)'' for ''an eligible individual''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, §9003(d)(1), Mar. 23, 2010, 124 Stat. 854, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 223 of this title] shall apply to amounts paid with respect to taxable years beginning after December 31, 2010.''

Pub. L. 111–148, title IX, §9004(c), Mar. 23, 2010, 124 Stat. 854, provided that: ''The amendments made by this section [amending this section and section 223 of this title] shall apply to distributions made after December 31, 2010.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(19) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Pub. L. 108–311, title III, §322(c), Oct. 4, 2004, 118 Stat. 1183, provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 2004.''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §612(c), Mar. 9, 2002, 116 Stat. 61, provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 2002.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title II, §201(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

Amendment by Pub. L. 105–33 applicable to taxable years beginning after Dec. 31, 1998, see section 4006(c) of Pub. L. 105–33, set out as an Effective Date note under section 138 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as an Effective Date of 1996 Amendment note under section 62 of this title.

TIME FOR FILING REPORTS, ETC.

Pub. L. 109–432, div. A, title I, §117(c), Dec. 20, 2006, 120 Stat. 2942, provided that:

''(1) The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2005, or August 1, 2006, as the case may be, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act [Dec. 20, 2006].

''(2) The determination and publication required by section 220(j)(5) of such Code with respect to calendar year 2005 or calendar year 2006, as the case may be, shall be treated as timely if made before the close of the 120-day period beginning on the date of the enactment of this Act. If the determination under the preceding sentence is that 2005 or 2006 is a cut-off year under section 220(i) of such Code, the cut-off date under such section 220(i) shall be the last day of such 120-day period.''

Pub. L. 108–311, title III, §322(d), Oct. 4, 2004, 118 Stat. 1183, provided that:

''(1) The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2004, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act [Oct. 4, 2004].

''(2) The determination and publication required by section 220(j)(5) of such Code with respect to calendar year 2004 shall be treated as timely if made before the close of the 120-day period beginning on the date of the enactment of this Act. If the determination under the preceding sentence is that 2004 is a cut-off year under section 220(i) of such Code, the cut-off date under such section 220(i) shall be the last day of such 120-day period.''

MONITORING OF PARTICIPATION IN MEDICAL SAVINGS ACCOUNTS

Section 301(k) of Pub. L. 104–191 provided that: ''The Secretary of the Treasury or his delegate shall—

''(1) during 1997, 1998, 1999, and 2000, regularly evaluate the number of individuals who are maintaining medical savings accounts and the reduction in revenues to the United States by reason of such accounts, and

''(2) provide such reports of such evaluations to Congress as such Secretary determines appropriate.''

STUDY OF EFFECTS OF MEDICAL SAVINGS ACCOUNTS ON SMALL GROUP MARKET

Section 301(*l*) of Pub. L. 104–191 provided that: ''The Comptroller General of the United States shall enter into a contract with an organization with expertise in health economics, health insurance markets, and actuarial science to conduct a comprehensive study regarding the effects of medical savings accounts in the small group market on—

''(1) selection, including adverse selection,

''(2) health costs, including any impact on premiums of individuals with comprehensive coverage,

''(3) use of preventive care,

''(4) consumer choice,

''(5) the scope of coverage of high deductible plans purchased in conjunction with such accounts, and

''(6) other relevant items.

A report on the results of the study conducted under this subsection shall be submitted to the Congress no later than January 1, 1999.''

§ 221. Interest on education loans

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

(b) Maximum deduction

(1) In general

Except as provided in paragraph (2), the deduction allowed by subsection (a) for the taxable year shall not exceed the amount determined in accordance with the following table:

In the case of taxable years beginning in:	The dollar amount is:

1998	$1,000
1999	$1,500
2000	$2,000
2001 or thereafter	$2,500.

(2) Limitation based on modified adjusted gross income

(A) In general

The amount which would (but for this paragraph) be allowable as a deduction under this section shall be reduced (but not below zero) by the amount determined under subparagraph (B).

(B) Amount of reduction

The amount determined under this subparagraph is the amount which bears the same ratio to the amount which would be so taken into account as—

(i) the excess of—

(I) the taxpayer's modified adjusted gross income for such taxable year, over

(II) $50,000 ($100,000 in the case of a joint return), bears to

(ii) $15,000 ($30,000 in the case of a joint return).

(C) Modified adjusted gross income

The term ''modified adjusted gross income'' means adjusted gross income determined—

(i) without regard to this section and sections 199, 222, 911, 931, and 933, and

(ii) after application of sections 86, 135, 137, 219, and 469.

(c) Dependents not eligible for deduction

No deduction shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual's taxable year begins.

(d) Definitions

For purposes of this section—

(1) Qualified education loan

The term ''qualified education loan'' means any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses—

(A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,

(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

(C) which are attributable to education furnished during a period during which the recipient was an eligible student.

Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term ''qualified education loan'' shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5).

(2) Qualified higher education expenses

The term ''qualified higher education expenses'' means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087*ll*, as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) at an eligible educational institution, reduced by the sum of—

(A) the amount excluded from gross income under section 127, 135, 529, or 530 by reason of such expenses, and

(B) the amount of any scholarship, allowance, or payment described in section 25A(g)(2).

For purposes of the preceding sentence, the term ''eligible educational institution'' has the same meaning given such term by section 25A(f)(2), except that such term shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training.

(3) Eligible student

The term ''eligible student'' has the meaning given such term by section 25A(b)(3).

(4) Dependent

The term ''dependent'' has the meaning given such term by section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(e) Special rules

(1) Denial of double benefit

No deduction shall be allowed under this section for any amount for which a deduction is allowable under any other provision of this chapter.

(2) Married couples must file joint return

If the taxpayer is married at the close of the taxable year, the deduction shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(3) Marital status

Marital status shall be determined in accordance with section 7703.

(f) Inflation adjustments

(1) In general

In the case of a taxable year beginning after 2002, the $50,000 and $100,000 amounts in subsection (b)(2) shall each be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2001'' for ''calendar year 1992'' in subparagraph (B) thereof.

(2) Rounding

If any amount as adjusted under paragraph (1) is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

(Added Pub. L. 105–34, title II, § 202(a), Aug. 5, 1997, 111 Stat. 806; amended Pub. L. 105–206, title

VI, § 6004(b), July 22, 1998, 112 Stat. 792; Pub. L. 105–277, div. J, title IV, § 4003(a)(2)(A), (3), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title IV, §§ 402(b)(2)(B), 412(a)(1), (b)(1), (2), 431(c)(2), June 7, 2001, 115 Stat. 62–64, 68; Pub. L. 108–311, title II, § 207(20), title IV, § 408(b)(5), Oct. 4, 2004, 118 Stat. 1178, 1192; Pub. L. 108–357, title I, § 102(d)(2), Oct. 22, 2004, 118 Stat. 1428; Pub. L. 109–135, title IV, § 412(t), Dec. 21, 2005, 119 Stat. 2638.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

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

REFERENCES IN TEXT

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

PRIOR PROVISIONS

A prior section 221 was renumbered section 224 of this title.

Another prior section 221, added Pub. L. 97–34, title I, § 103(a), Aug. 13, 1981, 95 Stat. 187; amended Pub. L. 97–448, title III, § 305(d)(4), Jan. 12, 1983, 96 Stat. 2400, related to deduction for two-earner married couples, prior to repeal by Pub. L. 99–514, title I, § 131(a), Oct. 22, 1986, 100 Stat. 2113, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2005—Subsec. (d)(2). Pub. L. 109–135 substituted ''the Taxpayer Relief Act of 1997'' for ''this Act''.

2004—Subsec. (b)(2)(C)(i). Pub. L. 108–357 inserted ''199,'' before ''222''.

Subsec. (d)(4). Pub. L. 108–311, § 207(20), inserted ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152''.

Subsec. (f)(1). Pub. L. 108–311, § 408(b)(5), amended directory language of Pub. L. 107–16, § 412(b)(2). See 2001 Amendment note below.

2001—Subsec. (b)(2)(B)(i), (ii). Pub. L. 107–16, §§ 412(b)(1), 901, temporarily amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

''(i) the excess of—

''(I) the taxpayer's modified adjusted gross income for such taxable year, over

''(II) $40,000 ($60,000 in the case of a joint return), bears to

''(ii) $15,000.''

See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2)(C)(i). Pub. L. 107–16, §§ 431(c)(2), 901, temporarily inserted ''222,'' before ''911''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d). Pub. L. 107–16, §§ 412(a)(1), 901, temporarily redesignated subsec. (e) as (d), and struck out heading and text of former subsec. (d). Text read as follows: ''A deduction shall be allowed under this section only with respect to interest paid on any qualified education loan during the first 60 months (whether or not consecutive) in which interest payments are required. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan. Such 60 months shall be determined in the manner prescribed by the Secretary in the case of multiple loans which are refinanced by, or serviced as, a single loan and in the case of loans incurred before the date of the enactment of this section.'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (e). Pub. L. 107–16, §§ 412(a)(1), 901, temporarily redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (e)(2)(A). Pub. L. 107–16, § 402(b)(2)(B), inserted ''529,'' after ''135,''.

Subsec. (f). Pub. L. 107–16, §§ 412(a)(1), 901, temporarily redesignated former subsec. (g) as (f). Former subsec. (f) redesignated (e). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (f)(1). Pub. L. 107–16, §§ 412(b)(2), 901, as amended by Pub. L. 108–311, § 408(b)(5), temporarily substituted ''$50,000 and $100,000 amounts'' for ''$40,000 and $60,000 amounts''. See above and Effective and Termination Dates of 2001 Amendment note below.

Subsec. (g). Pub. L. 107–16, §§ 412(a)(1), 901, temporarily redesignated former subsec. (g) as (f). See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(2)(C). Pub. L. 105–277, § 4003(a)(2)(A)(iii), struck out concluding provisions which read as follows: ''For purposes of sections 86, 135, 137, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.''

Subsec. (b)(2)(C)(i). Pub. L. 105–277, § 4003(a)(2)(A)(i), struck out ''135, 137,'' after ''sections''.

Subsec. (b)(2)(C)(ii). Pub. L. 105–277, § 4003(a)(2)(A)(ii), inserted ''135, 137,'' after ''sections 86,''.

Subsec. (d). Pub. L. 105–206, § 6004(b)(2), inserted at end ''Such 60 months shall be determined in the manner prescribed by the Secretary in the case of multiple loans which are refinanced by, or serviced as, a single loan and in the case of loans incurred before the date of the enactment of this section.''

Subsec. (e)(1). Pub. L. 105–277, § 4003(a)(3), inserted before period at end ''or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5)''.

Pub. L. 105–206, § 6004(b)(1), inserted ''by the taxpayer solely'' after ''incurred'' in introductory provisions.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

Amendment by section 207(20) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by section 402(b)(2)(B) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 72 of this title.

Pub. L. 107–16, title IV, § 412(a)(3), June 7, 2001, 115 Stat. 64, provided that: ''The amendments made by this subsection [amending this section and section 6050S of this title] shall apply with respect to any loan interest paid after December 31, 2001, in taxable years ending after such date.''

Pub. L. 107–16, title IV, § 412(b)(3), June 7, 2001, 115 Stat. 64, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2001.''

Amendment by section 431(c)(2) of Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Amendment by sections 412(a)(1), (b)(1), (2) and 431(c)(2) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had

never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to any qualified education loan (as defined in subsec. (e)(1) of this section) incurred on, before, or after Aug. 5, 1997, but only with respect to any loan interest payment due and paid after Dec. 31, 1997, and to the portion of the 60-month period referred to in subsec. (d) of this section after Dec. 31, 1997, see section 202(e) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 62 of this title.

§ 222. Qualified tuition and related expenses

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified tuition and related expenses paid by the taxpayer during the taxable year.

(b) Dollar limitations

(1) In general

The amount allowed as a deduction under subsection (a) with respect to the taxpayer for any taxable year shall not exceed the applicable dollar limit.

(2) Applicable dollar limit

(A) 2002 and 2003

In the case of a taxable year beginning in 2002 or 2003, the applicable dollar limit shall be equal to—

(i) in the case of a taxpayer whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), $3,000, and—

(ii) in the case of any other taxpayer, zero.

(B) After 2003

In the case of any taxable year beginning after 2003, the applicable dollar amount shall be equal to—

(i) in the case of a taxpayer whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), $4,000,

(ii) in the case of a taxpayer not described in clause (i) whose adjusted gross income for the taxable year does not exceed $80,000 ($160,000 in the case of a joint return), $2,000, and

(iii) in the case of any other taxpayer, zero.

(C) Adjusted gross income

For purposes of this paragraph, adjusted gross income shall be determined—

(i) without regard to this section and sections 199, 911, 931, and 933, and

(ii) after application of sections 86, 135, 137, 219, 221, and 469.

(c) No double benefit

(1) In general

No deduction shall be allowed under subsection (a) for any expense for which a deduction is allowed to the taxpayer under any other provision of this chapter.

(2) Coordination with other education incentives

(A) Denial of deduction if credit elected

No deduction shall be allowed under subsection (a) for a taxable year with respect to the qualified tuition and related expenses with respect to an individual if the taxpayer or any other person elects to have section 25A apply with respect to such individual for such year.

(B) Coordination with exclusions

The total amount of qualified tuition and related expenses shall be reduced by the amount of such expenses taken into account in determining any amount excluded under section 135, 529(c)(1), or 530(d)(2). For purposes of the preceding sentence, the amount taken into account in determining the amount excluded under section 529(c)(1) shall not include that portion of the distribution which represents a return of any contributions to the plan.

(3) Dependents

No deduction shall be allowed under subsection (a) to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(d) Definitions and special rules

For purposes of this section—

(1) Qualified tuition and related expenses

The term ''qualified tuition and related expenses'' has the meaning given such term by section 25A(f). Such expenses shall be reduced in the same manner as under section 25A(g)(2).

(2) Identification requirement

No deduction shall be allowed under subsection (a) to a taxpayer with respect to the qualified tuition and related expenses of an individual unless the taxpayer includes the name and taxpayer identification number of the individual on the return of tax for the taxable year.

(3) Limitation on taxable year of deduction

(A) In general

A deduction shall be allowed under subsection (a) for qualified tuition and related expenses for any taxable year only to the extent such expenses are in connection with enrollment at an institution of higher education during the taxable year.

(B) Certain prepayments allowed

Subparagraph (A) shall not apply to qualified tuition and related expenses paid during a taxable year if such expenses are in connection with an academic term beginning during such taxable year or during the first 3 months of the next taxable year.

(4) No deduction for married individuals filing separate returns

If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(5) Nonresident aliens

If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(6) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring recordkeeping and information reporting.

(e) Termination

This section shall not apply to taxable years beginning after December 31, 2011.

(Added Pub. L. 107–16, title IV, § 431(a), June 7, 2001, 115 Stat. 66; amended Pub. L. 108–357, title I, § 102(d)(3), Oct. 22, 2004, 118 Stat. 1429; Pub. L. 109–432, div. A, title I, § 101(a), (b), Dec. 20, 2006, 120 Stat. 2933; Pub. L. 110–343, div. C, title II, § 202(a), Oct. 3, 2008, 122 Stat. 3864; Pub. L. 111–312, title VII, § 724(a), Dec. 17, 2010, 124 Stat. 3316.)

TERMINATION OF SECTION

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

PRIOR PROVISIONS

A prior section 222 was renumbered section 224 of this title.

Another prior section 222, added Pub. L. 97–34, title I, § 125(a), Aug. 13, 1981, 95 Stat. 201; amended Pub. L. 97–448, title I, § 101(f), Jan. 12, 1983, 96 Stat. 2367, related to deduction of adoption expenses, prior to repeal by Pub. L. 99–514, title I, §§ 135(a), 151(a), Oct. 22, 1986, 100 Stat. 2116, 2121, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (e). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (b)(2)(B). Pub. L. 109–432, § 101(b), substituted ''After 2003'' for ''2004 and 2005'' in heading and ''any taxable year beginning after 2003'' for ''a taxable year beginning in 2004 or 2005'' in introductory provisions.

Subsec. (e). Pub. L. 109–432, § 101(a), substituted ''2007'' for ''2005''.

2004—Subsec. (b)(2)(C)(i). Pub. L. 108–357 inserted ''199,'' before ''911''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 724(b), Dec. 17, 2010, 124 Stat. 3316, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, § 202(b), Oct. 3, 2008, 122 Stat. 3864, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 101(c), Dec. 20, 2006, 120 Stat. 2933, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE AND TERMINATION DATES

Section applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 62 of this title.

Section inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if it had never been enacted, see section 901 of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

§ 223. Health savings accounts

(a) Deduction allowed

In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by or on behalf of such individual to a health savings account of such individual.

(b) Limitations

(1) In general

The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the sum of the monthly limitations for months during such taxable year that the individual is an eligible individual.

(2) Monthly limitation

The monthly limitation for any month is 1/12 of—

(A) in the case of an eligible individual who has self-only coverage under a high deductible health plan as of the first day of such month, $2,250.

(B) in the case of an eligible individual who has family coverage under a high deductible health plan as of the first day of such month, $4,500.

(3) Additional contributions for individuals 55 or older

(A) In general

In the case of an individual who has attained age 55 before the close of the taxable year, the applicable limitation under subparagraphs (A) and (B) of paragraph (2) shall be increased by the additional contribution amount.

(B) Additional contribution amount

For purposes of this section, the additional contribution amount is the amount deter-

mined in accordance with the following table:

For taxable years beginning in:	The additional contribution amount is:
2004	$500
2005	$600
2006	$700
2007	$800
2008	$900
2009 and thereafter	$1,000.

(4) Coordination with other contributions

The limitation which would (but for this paragraph) apply under this subsection to an individual for any taxable year shall be reduced (but not below zero) by the sum of—

(A) the aggregate amount paid for such taxable year to Archer MSAs of such individual,

(B) the aggregate amount contributed to health savings accounts of such individual which is excludable from the taxpayer's gross income for such taxable year under section 106(d) (and such amount shall not be allowed as a deduction under subsection (a)), and

(C) the aggregate amount contributed to health savings accounts of such individual for such taxable year under section 408(d)(9) (and such amount shall not be allowed as a deduction under subsection (a)).

Subparagraph (A) shall not apply with respect to any individual to whom paragraph (5) applies.

(5) Special rule for married individuals

In the case of individuals who are married to each other, if either spouse has family coverage—

(A) both spouses shall be treated as having only such family coverage (and if such spouses each have family coverage under different plans, as having the family coverage with the lowest annual deductible), and

(B) the limitation under paragraph (1) (after the application of subparagraph (A) and without regard to any additional contribution amount under paragraph (3))—

(i) shall be reduced by the aggregate amount paid to Archer MSAs of such spouses for the taxable year, and

(ii) after such reduction, shall be divided equally between them unless they agree on a different division.

(6) Denial of deduction to dependents

No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(7) Medicare eligible individuals

The limitation under this subsection for any month with respect to an individual shall be zero for the first month such individual is entitled to benefits under title XVIII of the Social Security Act and for each month thereafter.

(8) Increase in limit for individuals becoming eligible individuals after the beginning of the year

(A) In general

For purposes of computing the limitation under paragraph (1) for any taxable year, an individual who is an eligible individual during the last month of such taxable year shall be treated—

(i) as having been an eligible individual during each of the months in such taxable year, and

(ii) as having been enrolled, during each of the months such individual is treated as an eligible individual solely by reason of clause (i), in the same high deductible health plan in which the individual was enrolled for the last month of such taxable year.

(B) Failure to maintain high deductible health plan coverage

(i) In general

If, at any time during the testing period, the individual is not an eligible individual, then—

(I) gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual is increased by the aggregate amount of all contributions to the health savings account of the individual which could not have been made but for subparagraph (A), and

(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount of such increase.

(ii) Exception for disability or death

Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

(iii) Testing period

The term ''testing period'' means the period beginning with the last month of the taxable year referred to in subparagraph (A) and ending on the last day of the 12th month following such month.

(c) Definitions and special rules

For purposes of this section—

(1) Eligible individual

(A) In general

The term ''eligible individual'' means, with respect to any month, any individual if—

(i) such individual is covered under a high deductible health plan as of the 1st day of such month, and

(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan—

(I) which is not a high deductible health plan, and

(II) which provides coverage for any benefit which is covered under the high deductible health plan.

(B) Certain coverage disregarded

Subparagraph (A)(ii) shall be applied without regard to—

(i) coverage for any benefit provided by permitted insurance,

(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care, and

(iii) for taxable years beginning after December 31, 2006, coverage under a health flexible spending arrangement during any period immediately following the end of a plan year of such arrangement during which unused benefits or contributions remaining at the end of such plan year may be paid or reimbursed to plan participants for qualified benefit expenses incurred during such period if—

(I) the balance in such arrangement at the end of such plan year is zero, or

(II) the individual is making a qualified HSA distribution (as defined in section 106(e)) in an amount equal to the remaining balance in such arrangement as of the end of such plan year, in accordance with rules prescribed by the Secretary.

(2) High deductible health plan

(A) In general

The term ''high deductible health plan'' means a health plan—

(i) which has an annual deductible which is not less than—

(I) $1,000 for self-only coverage, and

(II) twice the dollar amount in subclause (I) for family coverage, and

(ii) the sum of the annual deductible and the other annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed—

(I) $5,000 for self-only coverage, and

(II) twice the dollar amount in subclause (I) for family coverage.

(B) Exclusion of certain plans

Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

(C) Safe harbor for absence of preventive care deductible

A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of section 1871 of the Social Security Act, except as otherwise provided by the Secretary).

(D) Special rules for network plans

In the case of a plan using a network of providers—

(i) Annual out-of-pocket limitation

Such plan shall not fail to be treated as a high deductible health plan by reason of having an out-of-pocket limitation for services provided outside of such network which exceeds the applicable limitation under subparagraph (A)(ii).

(ii) Annual deductible

Such plan's annual deductible for services provided outside of such network shall not be taken into account for purposes of subsection (b)(2).

(3) Permitted insurance

The term ''permitted insurance'' means—

(A) insurance if substantially all of the coverage provided under such insurance relates to—

(i) liabilities incurred under workers' compensation laws,

(ii) tort liabilities,

(iii) liabilities relating to ownership or use of property, or

(iv) such other similar liabilities as the Secretary may specify by regulations,

(B) insurance for a specified disease or illness, and

(C) insurance paying a fixed amount per day (or other period) of hospitalization.

(4) Family coverage

The term ''family coverage'' means any coverage other than self-only coverage.

(5) Archer MSA

The term ''Archer MSA'' has the meaning given such term in section 220(d).

(d) Health savings account

For purposes of this section—

(1) In general

The term ''health savings account'' means a trust created or organized in the United States as a health savings account exclusively for the purpose of paying the qualified medical expenses of the account beneficiary, but only if the written governing instrument creating the trust meets the following requirements:

(A) Except in the case of a rollover contribution described in subsection (f)(5) or section 220(f)(5), no contribution will be accepted—

(i) unless it is in cash, or

(ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds the sum of—

(I) the dollar amount in effect under subsection (b)(2)(B), and

(II) the dollar amount in effect under subsection (b)(3)(B).

(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(E) The interest of an individual in the balance in his account is nonforfeitable.

(2) Qualified medical expenses

(A) In general

The term ''qualified medical expenses'' means, with respect to an account beneficiary, amounts paid by such beneficiary for medical care (as defined in section 213(d)[1] for such individual, the spouse of such individual, and any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise. Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.

(B) Health insurance may not be purchased from account

Subparagraph (A) shall not apply to any payment for insurance.

(C) Exceptions

Subparagraph (B) shall not apply to any expense for coverage under—

(i) a health plan during any period of continuation coverage required under any Federal law,

(ii) a qualified long-term care insurance contract (as defined in section 7702B(b)),

(iii) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law, or

(iv) in the case of an account beneficiary who has attained the age specified in section 1811 of the Social Security Act, any health insurance other than a medicare supplemental policy (as defined in section 1882 of the Social Security Act).

(3) Account beneficiary

The term ''account beneficiary'' means the individual on whose behalf the health savings account was established.

(4) Certain rules to apply

Rules similar to the following rules shall apply for purposes of this section:

(A) Section 219(d)(2) (relating to no deduction for rollovers).

(B) Section 219(f)(3) (relating to time when contributions deemed made).

(C) Except as provided in section 106(d), section 219(f)(5) (relating to employer payments).

(D) Section 408(g) (relating to community property laws).

(E) Section 408(h) (relating to custodial accounts).

(e) Tax treatment of accounts

(1) In general

A health savings account is exempt from taxation under this subtitle unless such account has ceased to be a health savings account. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Account terminations

Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to health savings accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

(f) Tax treatment of distributions

(1) Amounts used for qualified medical expenses

Any amount paid or distributed out of a health savings account which is used exclusively to pay qualified medical expenses of any account beneficiary shall not be includible in gross income.

(2) Inclusion of amounts not used for qualified medical expenses

Any amount paid or distributed out of a health savings account which is not used exclusively to pay the qualified medical expenses of the account beneficiary shall be included in the gross income of such beneficiary.

(3) Excess contributions returned before due date of return

(A) In general

If any excess contribution is contributed for a taxable year to any health savings account of an individual, paragraph (2) shall not apply to distributions from the health savings accounts of such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if—

(i) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the individual for the taxable year in which it is received.

(B) Excess contribution

For purposes of subparagraph (A), the term ''excess contribution'' means any contribution (other than a rollover contribution described in paragraph (5) or section 220(f)(5)) which is neither excludable from gross income under section 106(d) nor deductible under this section.

(4) Additional tax on distributions not used for qualified medical expenses

(A) In general

The tax imposed by this chapter on the account beneficiary for any taxable year in which there is a payment or distribution from a health savings account of such bene-

[1] So in original. Probably should be followed by a second closing parenthesis.

ficiary which is includible in gross income under paragraph (2) shall be increased by 20 percent of the amount which is so includible.

(B) Exception for disability or death

Subparagraph (A) shall not apply if the payment or distribution is made after the account beneficiary becomes disabled within the meaning of section 72(m)(7) or dies.

(C) Exception for distributions after medicare eligibility

Subparagraph (A) shall not apply to any payment or distribution after the date on which the account beneficiary attains the age specified in section 1811 of the Social Security Act.

(5) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (2) shall not apply to any amount paid or distributed from a health savings account to the account beneficiary to the extent the amount received is paid into a health savings account for the benefit of such beneficiary not later than the 60th day after the day on which the beneficiary receives the payment or distribution.

(B) Limitation

This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from a health savings account if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from a health savings account which was not includible in the individual's gross income because of the application of this paragraph.

(6) Coordination with medical expense deduction

For purposes of determining the amount of the deduction under section 213, any payment or distribution out of a health savings account for qualified medical expenses shall not be treated as an expense paid for medical care.

(7) Transfer of account incident to divorce

The transfer of an individual's interest in a health savings account to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest shall, after such transfer, be treated as a health savings account with respect to which such spouse is the account beneficiary.

(8) Treatment after death of account beneficiary

(A) Treatment if designated beneficiary is spouse

If the account beneficiary's surviving spouse acquires such beneficiary's interest in a health savings account by reason of being the designated beneficiary of such account at the death of the account beneficiary, such health savings account shall be treated as if the spouse were the account beneficiary.

(B) Other cases

(i) In general

If, by reason of the death of the account beneficiary, any person acquires the account beneficiary's interest in a health savings account in a case to which subparagraph (A) does not apply—

(I) such account shall cease to be a health savings account as of the date of death, and

(II) an amount equal to the fair market value of the assets in such account on such date shall be includible if such person is not the estate of such beneficiary, in such person's gross income for the taxable year which includes such date, or if such person is the estate of such beneficiary, in such beneficiary's gross income for the last taxable year of such beneficiary.

(ii) Special rules

(I) Reduction of inclusion for predeath expenses

The amount includible in gross income under clause (i) by any person (other than the estate) shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within 1 year after such date.

(II) Deduction for estate taxes

An appropriate deduction shall be allowed under section 691(c) to any person (other than the decedent or the decedent's spouse) with respect to amounts included in gross income under clause (i) by such person.

(g) Cost-of-living adjustment

(1) In general

Each dollar amount in subsections (b)(2) and (c)(2)(A) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins determined by substituting for ''calendar year 1992'' in subparagraph (B) thereof—

(i) except as provided in clause (ii), ''calendar year 1997'', and

(ii) in the case of each dollar amount in subsection (c)(2)(A), ''calendar year 2003''.

In the case of adjustments made for any taxable year beginning after 2007, section 1(f)(4) shall be applied for purposes of this paragraph by substituting ''March 31'' for ''August 31'', and the Secretary shall publish the adjusted amounts under subsections (b)(2) and (c)(2)(A) for taxable years beginning in any calendar year no later than June 1 of the preceding calendar year.

(2) Rounding

If any increase under paragraph (1) is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

(h) Reports

The Secretary may require—

(1) the trustee of a health savings account to make such reports regarding such account to the Secretary and to the account beneficiary with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary determines appropriate, and

(2) any person who provides an individual with a high deductible health plan to make such reports to the Secretary and to the account beneficiary with respect to such plan as the Secretary determines appropriate.

The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(Added Pub. L. 108–173, title XII, § 1201(a), Dec. 8, 2003, 117 Stat. 2469; amended Pub. L. 109–135, title IV, § 404(c), Dec. 21, 2005, 119 Stat. 2634; Pub. L. 109–432, div. A, title III, §§ 302(b), 303(a), (b), 304, 305(a), 307(b), Dec. 20, 2006, 120 Stat. 2949, 2950, 2953; Pub. L. 111–148, title IX, §§ 9003(a), 9004(a), Mar. 23, 2010, 124 Stat. 854.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table below and under section 1 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(7), (c)(2)(C), (d)(2)(C)(iv), (f)(4)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 1811, 1871, and 1882 of the Act are classified to sections 1395c, 1395hh, and 1395ss, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 223 was renumbered section 224 of this title.

AMENDMENTS

2010—Subsec. (d)(2)(A). Pub. L. 111–148, § 9003(a), inserted at end ''Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.''

Subsec. (f)(4)(A). Pub. L. 111–148, § 9004(a), substituted ''20 percent'' for ''10 percent''.

2006—Subsec. (b)(2)(A). Pub. L. 109–432, § 303(a)(1), substituted ''$2,250.'' for ''the lesser of—

''(i) the annual deductible under such coverage, or

''(ii) $2,250, or''.

Subsec. (b)(2)(B). Pub. L. 109–432, § 303(a)(2), substituted ''$4,500.'' for ''the lesser of—

''(i) the annual deductible under such coverage, or

''(ii) $4,500.''

Subsec. (b)(4)(C). Pub. L. 109–432, § 307(b), added subpar. (C).

Subsec. (b)(8). Pub. L. 109–432, § 305(a), added par. (8).

Subsec. (c)(1)(B)(iii). Pub. L. 109–432, § 302(b), added cl. (iii).

Subsec. (d)(1)(A)(ii)(I). Pub. L. 109–432, § 303(b), substituted ''subsection (b)(2)(B)'' for ''subsection (b)(2)(B)(ii)''.

Subsec. (g)(1). Pub. L. 109–432, § 304, inserted concluding provisions.

2005—Subsec. (d)(2)(A). Pub. L. 109–135 inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 9003(a) of Pub. L. 111–148 applicable to amounts paid with respect to taxable years beginning after Dec. 31, 2010, see section 9003(d)(1) of Pub. L. 111–148, set out as a note under section 220 of this title.

Amendment by section 9004(a) of Pub. L. 111–148 applicable to distributions made after Dec. 31, 2010, see section 9004(c) of Pub. L. 111–148, set out as a note under section 220 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title III, § 302(c)(2), Dec. 20, 2006, 120 Stat. 2949, provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2006].''

Pub. L. 109–432, div. A, title III, § 303(c), Dec. 20, 2006, 120 Stat. 2950, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–432, div. A, title III, § 305(b), Dec. 20, 2006, 120 Stat. 2951, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–432, div. A, title III, § 307(c), Dec. 20, 2006, 120 Stat. 2953, provided that: ''The amendments made by this section [amending this section and section 408 of this title] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Working Families Tax Relief Act of 2004, Pub. L. 108–311, to which such amendment relates, see section 404(d) of Pub. L. 109–135, set out as a note under section 21 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 62 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2011—Revenue Procedure 2010–22.
2010—Revenue Procedure 2009–29.
2009—Revenue Procedure 2008–29.
2008—Revenue Procedure 2007–36.

§ 224. Cross reference

For deductions in respect of a decedent, see section 691.

(Aug. 16, 1954, ch. 736, 68A Stat. 72, § 217; renumbered § 218, Pub. L. 88–272, title II, § 213(a)(1), Feb. 26, 1964, 78 Stat. 50; renumbered § 219, Pub. L. 92–178, title VII, § 702(a), Dec. 10, 1971, 85 Stat. 561; renumbered § 220, Pub. L. 93–406, title II, § 2002(a)(1), Sept. 2, 1974, 88 Stat. 958; renumbered § 221, Pub. L. 94–455, title XV, § 1501(a), Oct. 4, 1976, 90 Stat. 1734; renumbered § 222, renumbered § 223, Pub. L. 97–34, title I, §§ 103(a), 125(a), Aug. 13, 1981, 95 Stat. 187, 201; renumbered § 220 and amended Pub. L. 99–514, title I, § 135(b)(1), title

III, § 301(b)(5)(A), Oct. 22, 1986, 100 Stat. 2116, 2217; renumbered § 221, Pub. L. 100–647, title VI, § 6007(a), Nov. 10, 1988, 102 Stat. 3687; renumbered § 220, Pub. L. 101–508, title XI, § 11802(e)(2), Nov. 5, 1990, 104 Stat. 1388–530; renumbered § 221, Pub. L. 104–191, title III, § 301(a), Aug. 21, 1996, 110 Stat. 2037; renumbered § 222, Pub. L. 105–34, title II, § 202(a), Aug. 5, 1997, 111 Stat. 806; renumbered § 223, Pub. L. 107–16, title IV, § 431(a), June 7, 2001, 115 Stat. 66; renumbered § 224, Pub. L. 108–173, title XII, § 1201(a), Dec. 8, 2003, 117 Stat. 2469.)

AMENDMENT OF SECTION

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

AMENDMENTS

2003—Pub. L. 108–173 renumbered section 223 of this title as this section.

2001—Pub. L. 107–16, §§ 431(a), 901, temporarily renumbered section 222 as this section. See Effective and Termination Dates of 2001 Amendment note below.

1997—Pub. L. 105–34 renumbered section 221 of this title as this section.

1996—Pub. L. 104–191 renumbered section 220 of this title as this section.

1990—Pub. L. 101–508 renumbered section 221 of this title as this section.

1986—Pub. L. 99–514, § 135(b)(1), renumbered section 223 of this title as this section.

Pub. L. 99–514, § 301(b)(5)(A), amended section generally, substituting ''reference'' for ''references'' in section catchline, striking out par. (1) which referred to section 1202 for deduction for long-term capital gains in the case of a taxpayer other than a corporation, and striking out par. (2) designation.

1981—Pub. L. 97–34 successively renumbered sections 221 and 222 of this title as this section.

1976—Pub. L. 94–455 renumbered section 220 of this title as this section.

1974—Pub. L. 93–406 renumbered section 219 of this title as this section.

1971—Pub. L. 92–178 renumbered section 218 of this title as this section.

1964—Pub. L. 88–272 renumbered section 217 of this title as this section.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(5)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11802(e)(2) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART VIII—SPECIAL DEDUCTIONS FOR CORPORATIONS

Sec.
241. Allowance of special deductions.
[242. Repealed.]
243. Dividends received by corporations.
244. Dividends received on certain preferred stock.
245. Dividends received from certain foreign corporations.
246. Rules applying to deductions for dividends received.
246A. Dividends received deduction reduced where portfolio stock is debt financed.
247. Dividends paid on certain preferred stock of public utilities.
248. Organizational expenditures.
249. Limitation on deduction of bond premium on repurchase.
[250. Repealed.]

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11801(b)(4), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 250 ''Certain payments to the National Railroad Passenger Corporation''.

1984—Pub. L. 98–369, div. A, title I, § 51(b), July 18, 1984, 98 Stat. 564, added item 246A.

1976—Pub. L. 94–455, title XIX, § 1901(b)(1)(AA), Oct. 4, 1976, 90 Stat. 1792, struck out item 242 ''Partially tax-exempt interest''.

1970—Pub. L. 91–518, title IX, § 901(b), Oct. 30, 1970, 84 Stat. 1342, added item 250.

1969—Pub. L. 91–172, title IV, § 414(b), Dec. 30, 1969, 83 Stat. 613, added item 249.

§ 241. Allowance of special deductions

In addition to the deductions provided in part VI (sec. 161 and following), there shall be allowed as deductions in computing taxable income the items specified in this part.

(Aug. 16, 1954, ch. 736, 68A Stat. 72.)

[§ 242. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(33), Oct. 4, 1976, 90 Stat. 1769]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 72; Feb. 26, 1964, Pub. L. 88–272, title I, § 123(c), 78 Stat. 30, allowed to corporations as a deduction the amount received as interest on obligations of the United States or on obligations of corporations organized under Acts of Congress which are instrumentalities of the United States under certain conditions.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§ 243. Dividends received by corporations

(a) General rule

In the case of a corporation, there shall be allowed as a deduction an amount equal to the following percentages of the amount received as dividends from a domestic corporation which is subject to taxation under this chapter:

(1) 70 percent, in the case of dividends other than dividends described in paragraph (2) or (3);

(2) 100 percent, in the case of dividends received by a small business investment company operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following); and

(3) 100 percent, in the case of qualifying dividends (as defined in subsection (b)(1)).

(b) Qualifying dividends

(1) In general

For purposes of this section, the term ''qualifying dividend'' means any dividend received by a corporation—

(A) if at the close of the day on which such dividend is received, such corporation is a member of the same affiliated group as the corporation distributing such dividend, and

(B) if—

(i) such dividend is distributed out of the earnings and profits of a taxable year of the distributing corporation which ends after December 31, 1963, for which an election under section 1562 was not in effect, and on each day of which the distributing corporation and the corporation receiving the dividend were members of such affiliated group, or

(ii) such dividend is paid by a corporation with respect to which an election under section 936 is in effect for the taxable year in which such dividend is paid.

(2) Affiliated group

For purposes of this subsection:

(A) In general

The term ''affiliated group'' has the meaning given such term by section 1504(a), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply.

(B) Group must be consistent in foreign tax treatment

The requirements of paragraph (1)(A) shall not be treated as being met with respect to any dividend received by a corporation if, for any taxable year which includes the day on which such dividend is received—

(i) 1 or more members of the affiliated group referred to in paragraph (1)(A) choose to any extent to take the benefits of section 901, and

(ii) 1 or more other members of such group claim to any extent a deduction for taxes otherwise creditable under section 901.

(3) Special rule for groups which include life insurance companies

(A) In general

In the case of an affiliated group which includes 1 or more insurance companies under section 801, no dividend by any member of such group shall be treated as a qualifying dividend unless an election under this paragraph is in effect for the taxable year in which the dividend is received. The preceding sentence shall not apply in the case of a dividend described in paragraph (1)(B)(ii).

(B) Effect of election

If an election under this paragraph is in effect with respect to any affiliated group—

(i) part II of subchapter B of chapter 6 (relating to certain controlled corporations) shall be applied with respect to the members of such group without regard to sections 1563(a)(4) and 1563(b)(2)(D), and

(ii) for purposes of this subsection, a distribution by any member of such group which is subject to tax under section 801 shall not be treated as a qualifying dividend if such distribution is out of earnings and profits for a taxable year for which an election under this paragraph is not effective and for which such distributing corporation was not a component member of a controlled group of corporations within the meaning of section 1563 solely by reason of section 1563(b)(2)(D).

(C) Election

An election under this paragraph shall be made by the common parent of the affiliated group and at such time and in such manner as the Secretary shall by regulations prescribe. Any such election shall be binding on all members of such group and may be revoked only with the consent of the Secretary.

(c) Retention of 80-percent dividends received deduction for dividends from 20-percent owned corporations

(1) In general

In the case of any dividend received from a 20-percent owned corporation—

(A) subsection (a)(1) of this section, and

(B) subsections (a)(3) and (b)(2) of section 244,

shall be applied by substituting ''80 percent'' for ''70 percent''.

(2) 20-percent owned corporation

For purposes of this section, the term ''20-percent owned corporation'' means any corporation if 20 percent or more of the stock of such corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account.

(d) Special rules for certain distributions

For purposes of subsection (a)—

(1) Any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.) shall not be treated as a dividend.

(2) A dividend received from a regulated investment company shall be subject to the limitations prescribed in section 854.

(3) Any dividend received from a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (section 856 and following) shall not be treated as a dividend.

(4) Any dividend received which is described in section 244 (relating to dividends received on preferred stock of a public utility) shall not be treated as a dividend.

(e) Certain dividends from foreign corporations

For purposes of subsection (a) and for purposes of section 245, any dividend from a foreign cor-

poration from earnings and profits accumulated by a domestic corporation during a period with respect to which such domestic corporation was subject to taxation under this chapter (or corresponding provisions of prior law) shall be treated as a dividend from a domestic corporation which is subject to taxation under this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 73; Pub. L. 85–866, title I, § 57(b), Sept. 2, 1958, 72 Stat. 1645; Pub. L. 86–779, §§ 3(a), 10(g), Sept. 14, 1960, 74 Stat. 998, 1009; Pub. L. 88–272, title II, § 214(a), Feb. 26, 1964, 78 Stat. 52; Pub. L. 90–364, title I, § 103(e)(2), June 28, 1968, 82 Stat. 264; Pub. L. 91–172, title V, § 504(c)(1), Dec. 30, 1969, 83 Stat. 633; Pub. L. 94–12, title III, § 304(b), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–455, title X, §§ 1031(b)(2), 1051(f)(1), (2), title XIX, §§ 1901(a)(34), (b)(1)(J)(ii), (21)(A)(i), 1906(b)(3)(C)(ii), (13)(A), Oct. 4, 1976, 90 Stat. 1622, 1646, 1769, 1791, 1797, 1833, 1834; Pub. L. 97–34, title II, § 232(b)(2), Aug. 13, 1981, 95 Stat. 250; Pub. L. 98–369, div. A, title II, § 211(b)(3), July 18, 1984, 98 Stat. 754; Pub. L. 99–514, title IV, § 411(b)(2)(C)(iv), title VI, § 611(a)(1), Oct. 22, 1986, 100 Stat. 2227, 2249; Pub. L. 100–203, title X, § 10221(a)(1), (b), Dec. 22, 1987, 101 Stat. 1330–408; Pub. L. 100–647, title I, § 1010(f)(4), Nov. 10, 1988, 102 Stat. 3454; Pub. L. 101–508, title XI, § 11814(a), Nov. 5, 1990, 104 Stat. 1388–556; Pub. L. 104–188, title I, § 1702(h)(4), (8), Aug. 20, 1996, 110 Stat. 1873, 1874.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (a)(2), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

Section 1562, referred to in subsec. (b)(1)(B)(i), was repealed by Pub. L. 91–172, title IV, § 401(a)(2), Dec. 30, 1969, 83 Stat. 600.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–188, § 1702(h)(8), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'affiliated group' has the meaning given such term by section 1504(a), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply.''

Subsec. (b)(3)(A). Pub. L. 104–188, § 1702(h)(4), inserted ''of'' after ''In the case''.

1990—Subsec. (b). Pub. L. 101–508 amended subsec. (b) generally, substituting present provisions for provisions defining ''qualifying dividends'', providing for an election by or for an affiliated group, the effect of an election, and the termination of an election, defining an ''affiliated group'', and providing special rules for insurance companies.

1988—Subsec. (b)(6). Pub. L. 100–647 substituted ''section 801'' for ''section 801 or 821''.

1987—Subsec. (a)(1). Pub. L. 100–203, § 10221(a)(1), substituted ''70 percent'' for ''80 percent''.

Subsecs. (c) to (e). Pub. L. 100–203, § 10221(b), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1986—Subsec. (a)(1). Pub. L. 99–514, § 611(a)(1), substituted ''80 percent'' for ''85 percent''.

Subsec. (b)(3)(C). Pub. L. 99–514, § 411(b)(2)(C)(iv), inserted ''and'' at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''$400,000 limitation for certain exploration expenditures under section 617(h)(1), and''.

1984—Subsec. (b)(3)(C). Pub. L. 98–369, § 211(b)(3)(A), inserted ''and'' at end of cl. (ii), struck out cl. (iii) which provided for a $25,000 limitation on small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and redesignated cl. (iv) as (iii).

Subsec. (b)(6). Pub. L. 98–369, § 211(b)(3)(B), substituted ''section 801'' for ''section 802''.

1981—Subsec. (b)(3)(C)(i). Pub. L. 97–34 struck out ''$150,000'' before ''minimum accumulated earnings credit''.

1976—Subsec. (a)(2). Pub. L. 94–455, § 1901(a)(34)(A), inserted ''(15 U.S.C. 661 and following)'' after ''Small Business Investment Act of 1958''.

Subsec. (b)(1). Pub. L. 94–455, § 1051(f)(1), inserted ''either'' at end of subpar. (A), substituted a comma for a period and inserted ''or'' at end of subpar. (B), and added subpar. (C).

Subsec. (b)(2), (3), (4). Pub. L. 94–455, title XIX, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(2)(A). Pub. L. 94–455, § 1901(a)(34)(B), struck out ''(except that in the case of a taxable year of a member beginning in 1963 and ending in 1964, if the election is effective for the taxable year of the common parent corporation which includes the last day of such taxable year of such member, such election shall be effective for such taxable year of such member, if such member consents to such election with respect to such taxable year)'' after ''with respect to which the election is made''.

Subsec. (b)(3)(B). Pub. L. 94–455, § 1031(b)(2), substituted ''election under section 901(a) (relating to allowance of foreign tax credit)'' for ''elections under section 901(a) (relating to allowance of foreign tax credit) and section 904(b)(1) (relating to election of overall limitation)''.

Subsec. (b)(3)(C). Pub. L. 94–455, §§ 1901(b)(1)(J)(ii), (21)(A)(i), 1906(b)(3)(C)(ii), struck out cl. (ii) which set a $100,000 limitation for exploration expenditures under section 615 (a) and (b), redesignated former cls. (iii), (iv), and (v) as cls. (ii), (iii), and (iv), respectively, and substituted ''certain exploration expenditures under section 617(h)(1)'' for ''exploration expenditures under sections 615(c)(1) and 617(h)(1)'' in cl. (ii) as so redesignated, ''804(a)(3)'' for ''804(a)(4)'' in cl. (iii) as so redesignated, and ''section 6154(c)(2) and section 6655(e)(2)'' for ''sections 6154(c)(2) and (3) and sections 6655(e)(2) and (3)'' in cl. (iv) as so redesignated.

Subsec. (b)(5). Pub. L. 94–455, § 1051(f)(2), inserted '', 1504(b)(4),'' after ''sections 1504(b)(2)''.

1975—Subsec. (b)(3)(C)(i). Pub. L. 94–12 substituted ''$150,000'' for ''$100,000''.

1969—Subsec. (b)(3)(C)(iii). Pub. L. 91–172 substituted ''sections 615(c)(1) and 617(h)(1)'' for ''section 615(c)(1)''.

1968—Subsec. (b)(3)(C)(v). Pub. L. 90–364 substituted ''surtax exemption, and one amount under section 6154(c)(2) and (3) and sections 6655(e)(2) and (3), for purposes of estimated tax payment requirements under section 6154'' for ''$100,000 exemption for purposes of estimated tax filing requirements under section 6016''.

1964—Subsec. (a). Pub. L. 88–272 substituted provisions permitting a deduction for 85 percent of dividends received except that it shall be 100 percent when received by a small business investment company operating under the Small Business Investment Act of 1958, and 100 percent in case of qualifying dividends, for provisions permitting an 85 percent deduction for corporations other than one operating under the Small Business Investment Act of 1958, and for other than dividends described in section 244(1) of this title.

Subsec. (b). Pub. L. 88–272 added subsec. (b) and omitted a prior subsec. (b) which allowed a 100 percent deduction of dividends received by a small business investment company operating under the Small Business Investment Act of 1958, other than dividends described in section 244(1) of this title.

Subsec. (c). Pub. L. 88–272 substituted ''subsection (a)'' for ''subsections (a) and (b)'' and added par. (4).

Subsec. (d). Pub. L. 88–272 substituted ''subsection (a)'' for ''subsections (a) and (b)''.

1960—Subsec. (c)(3). Pub. L. 86–779, § 10(g), added par. (3).

Subsec. (d). Pub. L. 86–779, § 3(a), added subsec. (d).

1958—Subsec. (a). Pub. L. 85–866, § 57(b)(1), inserted ''(other than a small business investment company operating under the Small Business Investment Act of 1958)''.

Subsecs. (b), (c). Pub. L. 85–866, § 57(b)(2), (3), added subsec. (b), redesignated former subsec. (b) as (c), and substituted ''subsections (a) and (b)'' for ''subsection (a)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11814(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1504 of this title] shall apply to taxable years beginning after December 31, 1990.

''(2) TREATMENT OF OLD ELECTIONS.—For purposes of section 243(b)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any reference to an election under such section shall be treated as including a reference to an election under section 243(b) of such Code (as in effect on the day before the date of the enactment of this Act [Nov. 5, 1990]).''

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10221(e) of Pub. L. 100–203, as amended by Pub. L. 100–647, title II, § 2004(i)(1), Nov. 10, 1988, 102 Stat. 3603, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 244 to 246A, 805, 854, and 861 of this title] shall apply to dividends received or accrued after December 31, 1987, in taxable years ending after such date.

''(2) AMENDMENTS RELATING TO LIMITATIONS.—The amendments made by subsection (c) [amending sections 246 and 805 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 411(b)(2)(C)(iv) of Pub. L. 99–514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

Amendment by section 611(a)(1) of Pub. L. 99–514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b) of Pub. L. 99–514, set out as a note under section 246 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 232(c) of Pub. L. 97–34, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1031(b)(2) of Pub. L. 94–455, see section 1031(c) of Pub. L. 94–455, set out as a note set out under section 904 of this title.

For effective date of amendment by section 1051(f)(1), (2) of Pub. L. 94–455, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(a)(34), (b)(1), (21) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

For effective date of amendment by section 1906(b)(3)(C)(ii) of Pub. L. 94–455, see section 1906(d) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years beginning after Dec. 31, 1974, see section 305(c) of Pub. L. 94–12, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 504(d) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 381, 615, 617, 703, and 1016 of this title] shall apply with respect to exploration expenditures paid or incurred after December 31, 1969.

''(2) PRESUMPTION OF ELECTION UNDER SECTION 617.—For purposes of section 617 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], an election under section 615(e) of such Code, which is effective with respect to exploration expenditures paid or incurred before January 1, 1970, shall be treated as an election under section 617(a) of such Code with respect to exploration expenditures paid or incurred after December 31, 1969. The preceding sentence shall not apply to any taxpayer who notifies the Secretary of the Treasury or his delegate (at such time and in such manner as the Secretary or his delegate prescribes by regulations) that he does not desire his election under section 615(e) to be so treated.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 103(f) of Pub. L. 90–364 provided that: ''Except as provided by section 104 [formerly set out as notes under sections 51 and 6154 of this title], the amendments made by this section [enacting section 6425, amending this section and sections 6020, 6154, 6651, 6655, 7203, and 7701, and repealing sections 6016 and 6074 of this title] shall apply with respect to taxable years beginning after December 31, 1967.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 214(c) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) [amending this section] and (b) [amending sections 244, 246, 804, and 809 of this title] shall apply with respect to dividends received in taxable years ending after December 31, 1963.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3(c) of Pub. L. 86–779 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 861 of this title] shall apply to dividends received after December 31, 1959, in taxable years ending after such date.''

Amendment by section 10(g) of Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 57(d) of Pub. L. 85–866 provided that: ''The amendments made by this section [enacting sections 1242 and 1243 and amending this section and sections 165

and 246 of this title] shall apply with respect to taxable years beginning after the date of the enactment of this Act [Sept. 2, 1958].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 244. Dividends received on certain preferred stock

(a) General rule

In the case of a corporation, there shall be allowed as a deduction an amount computed as follows:

(1) First determine the amount received as dividends on the preferred stock of a public utility which is subject to taxation under this chapter and with respect to which the deduction provided in section 247 for dividends paid is allowable.

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the highest rate of tax specified in section 11(b).

(3) Finally ascertain the amount which is 70 percent of the excess of—

(A) the amount determined under paragraph (1), over

(B) the amount determined under paragraph (2).

(b) Exception

If the dividends described in subsection (a)(1) are qualifying dividends (as defined in section 243(b)(1), but determined without regard to section 243(d)(4))—

(1) subsection (a) shall be applied separately to such qualifying dividends, and

(2) for purposes of subsection (a)(3), the percentage applicable to such qualifying dividends shall be 100 percent in lieu of 70 percent.

(Aug. 16, 1954, ch. 736, 68A Stat. 73; Pub. L. 88–272, title II, § 214(b)(1), Feb. 26, 1964, 78 Stat. 55; Pub. L. 95–600, title III, § 301(b)(3), Nov. 6, 1978, 92 Stat. 2820; Pub. L. 99–514, title VI, § 611(a)(2), Oct. 22, 1986, 100 Stat. 2249; Pub. L. 100–203, title X, § 10221(a)(2), Dec. 22, 1987, 101 Stat. 1330–408; Pub. L. 100–647, title II, § 2004(i)(2), Nov. 10, 1988, 102 Stat. 3603.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647 substituted ''section 243(d)(4)'' for ''section 243(c)(4)''.

1987—Subsecs. (a)(3), (b)(2). Pub. L. 100–203 substituted ''70 percent'' for ''80 percent''.

1986—Subsecs. (a)(3), (b)(2). Pub. L. 99–514 substituted ''80 percent'' for ''85 percent''.

1978—Subsec. (a)(2)(B). Pub. L. 95–600 substituted ''the highest rate of tax specified in section 11(b)'' for ''the sum of the normal tax rate and the surtax rate for the taxable year prescribed by section 11''.

1964—Pub. L. 88–272 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b) of Pub. L. 99–514, set out as a note under section 246 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dividends received in taxable years ending after Dec. 31, 1963, see section 214(c) of Pub. L. 88–272, set out as a note under section 243 of this title.

§ 245. Dividends received from certain foreign corporations

(a) Dividends from 10-percent owned foreign corporations

(1) In general

In the case of dividends received by a corporation from a qualified 10-percent owned foreign corporation, there shall be allowed as a deduction an amount equal to the percent (specified in section 243 for the taxable year) of the U.S.-source portion of such dividends.

(2) Qualified 10-percent owned foreign corporation

For purposes of this subsection, the term ''qualified 10-percent owned foreign corporation'' means any foreign corporation (other than a passive foreign investment company) if at least 10 percent of the stock of such corporation (by vote and value) is owned by the taxpayer.

(3) U.S.-source portion

For purposes of this subsection, the U.S.-source portion of any dividend is an amount which bears the same ratio to such dividend as—

(A) the post-1986 undistributed U.S. earnings, bears to

(B) the total post-1986 undistributed earnings.

(4) Post-1986 undistributed earnings

For purposes of this subsection, the term ''post-1986 undistributed earnings'' has the meaning given to such term by section 902(c)(1).

(5) Post-1986 undistributed U.S. earnings

For purposes of this subsection, the term ''post-1986 undistributed U.S. earnings'' means

the portion of the post-1986 undistributed earnings which is attributable to—

(A) income of the qualified 10-percent owned foreign corporation which is effectively connected with the conduct of a trade or business within the United States and subject to tax under this chapter, or

(B) any dividend received (directly or through a wholly owned foreign corporation) from a domestic corporation at least 80 percent of the stock of which (by vote and value) is owned (directly or through such wholly owned foreign corporation) by the qualified 10-percent owned foreign corporation.

(6) Special rule

If the 1st day on which the requirements of paragraph (2) are met with respect to any foreign corporation is in a taxable year of such corporation beginning after December 31, 1986, the post-1986 undistributed earnings and the post-1986 undistributed U.S. earnings of such corporation shall be determined by only taking into account periods beginning on and after the 1st day of the 1st taxable year in which such requirements are met.

(7) Coordination with subsection (b)

Earnings and profits of any qualified 10-percent owned foreign corporation for any taxable year shall not be taken into account under this subsection if the deduction provided by subsection (b) would be allowable with respect to dividends paid out of such earnings and profits.

(8) Disallowance of foreign tax credit

No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the United States-source portion of any dividend received by a corporation from a qualified 10-percent-owned foreign corporation.

(9) Coordination with section 904

For purposes of section 904, the U.S.-source portion of any dividend received by a corporation from a qualified 10-percent owned foreign corporation shall be treated as from sources in the United States.

(10) Coordination with treaties

If—

(A) any portion of a dividend received by a corporation from a qualified 10-percent-owned foreign corporation would be treated as from sources in the United States under paragraph (9),

(B) under a treaty obligation of the United States (applied without regard to this subsection), such portion would be treated as arising from sources outside the United States, and

(C) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such dividend (but subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to such portion of such dividend).

(11) Coordination with section 1248

For purposes of this subsection, the term ''dividend'' does not include any amount treated as a dividend under section 1248.

(b) Certain dividends received from wholly owned foreign subsidiaries

(1) In general

In the case of dividends described in paragraph (2) received from a foreign corporation by a domestic corporation which, for its taxable year in which such dividends are received, owns (directly or indirectly) all of the outstanding stock of such foreign corporation, there shall be allowed as a deduction (in lieu of the deduction provided by subsection (a)) an amount equal to 100 percent of such dividends.

(2) Eligible dividends

Paragraph (1) shall apply only to dividends which are paid out of the earnings and profits of a foreign corporation for a taxable year during which—

(A) all of its outstanding stock is owned (directly or indirectly) by the domestic corporation to which such dividends are paid; and

(B) all of its gross income from all sources is effectively connected with the conduct of a trade or business within the United States.

(3) Exception

Paragraph (1) shall not apply to any dividends if an election under section 1562 is effective for either—

(A) the taxable year of the domestic corporation in which such dividends are received, or

(B) the taxable year of the foreign corporation out of the earnings and profits of which such dividends are paid.

(c) Certain dividends received from FSC

(1) In general

In the case of a domestic corporation, there shall be allowed as a deduction an amount equal to—

(A) 100 percent of any dividend received from another corporation which is distributed out of earnings and profits attributable to foreign trade income for a period during which such other corporation was a FSC, and

(B) 70 percent (80 percent in the case of dividends from a 20-percent owned corporation as defined in section 243(c)(2)) of any dividend received from another corporation which is distributed out of earnings and profits attributable to effectively connected income received or accrued by such other corporation while such other corporation was a FSC.

(2) Exception for certain dividends

Paragraph (1) shall not apply to any dividend which is distributed out of earnings and profits attributable to foreign trade income which—

(A) is section 923(a)(2) nonexempt income (within the meaning of section 927(d)(6)), or

(B) would not, but for section 923(a)(4), be treated as exempt foreign trade income.

(3) No deduction under subsection (a) or (b)

No deduction shall be allowable under subsection (a) or (b) with respect to any dividend which is distributed out of earnings and profits of a corporation accumulated while such corporation was a FSC.

(4) Definitions

For purposes of this subsection—

(A) Foreign trade income; exempt foreign trade income

The terms ''foreign trade income'' and ''exempt foreign trade income'' have the respective meanings given such terms by section 923.

(B) Effectively connected income

The term ''effectively connected income'' means any income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States and is subject to tax under this chapter. Such term shall not include any foreign trade income.

(C) FSC

The term ''FSC'' has the meaning given such term by section 922.

(5) References to prior law

Any reference in this subsection to section 922, 923, or 927 shall be treated as a reference to such section as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

(Aug. 16, 1954, ch. 736, 68A Stat. 73; Pub. L. 87–834, §5(c), Oct. 16, 1962, 76 Stat. 977; Pub. L. 89–809, title I, §104(d), (e), Nov. 13, 1966, 80 Stat. 1558; Pub. L. 98–369, div. A, title VIII, §801(b)(1), (2)(B), July 18, 1984, 98 Stat. 994, 995; Pub. L. 99–514, title XII, §1226(a), title XVIII, §1876(d)(1), (j), Oct. 22, 1986, 100 Stat. 2559, 2898, 2900; Pub. L. 100–203, title X, §10221(d)(1), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, §§1006(e)(16), 1012(*l*)(2), (3), (bb)(9)(A), Nov. 10, 1988, 102 Stat. 3403, 3513, 3537; Pub. L. 101–239, title VII, §7811(i)(14), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 108–357, title IV, §413(c)(3), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 110–172, §11(g)(3), (4), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

Section 1562, referred to in subsec. (b)(3), was repealed by Pub. L. 91–172, title IV, §401(a)(2), Dec. 30, 1969, 83 Stat. 600.

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (c)(5), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2007—Subsec. (c)(4)(C). Pub. L. 110–172, §11(g)(3), added subpar. (C).

Subsec. (c)(5). Pub. L. 110–172, §11(g)(4), added par. (5).

2004—Subsec. (a)(2). Pub. L. 108–357 struck out ''foreign personal holding company or'' after ''(other than a''.

1989—Subsec. (a)(8). Pub. L. 101–239 made clarifying amendment to directory language of Pub. L. 100–647, §1012(*l*)(2)(A), see 1988 Amendment note below.

1988—Subsec. (a)(8). Pub. L. 100–647, §1012(*l*)(2)(A), as amended by Pub. L. 101–239, substituted ''Disallowance of foreign tax credit'' for ''Coordination with section 902'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of a dividend received by a corporation from a qualified 10-percent owned foreign corporation, no credit shall be allowed under section 901 for any taxes treated as paid under section 902 with respect to the U.S.-source portion of such dividend.''

Subsec. (a)(10), (11). Pub. L. 100–647, §1012(*l*)(2)(B), (3), added pars. (10) and (11).

Subsec. (c). Pub. L. 100–647, §1012(bb)(9)(A), amended subsec. (c) generally, revising and restating provisions of pars. (1) to (4).

Subsec. (d). Pub. L. 100–647, §1006(e)(16), struck out subsec. (d) which read as follows: ''PROPERTY DISTRIBUTIONS.—For purposes of this section, the amount of any distribution of property other than money shall be the amount determined by applying section 301(b)(1)(B).''

1987—Subsec. (c)(1)(B). Pub. L. 100–203 substituted ''70 percent (80 percent in the case of dividends from a 20-percent owned corporation as defined in section 243(c)(2))'' for ''85 percent''.

1986—Subsec. (a). Pub. L. 99–514, §1226(a), in amending subsec. (a) generally, substituted ''Dividends from 10-percent owned foreign corporations'' for ''General rule'' as heading, and in text substituted provisions set out in nine numbered paragraphs allowing for deduction for dividends received from certain foreign corporations qualifying as ''10-percent owned foreign corporations'' for former provisions which directed that, in the case of dividends received from a foreign corporation (other than a foreign personal holding company) which was subject to taxation under this chapter, if, for an uninterrupted period of not less than 36 months ending with the close of such foreign corporation's taxable year in which such dividends were paid (or, if the corporation had not been in existence for 36 months at the close of such taxable year, for the period the foreign corporation had been in existence as of the close of such taxable year) such foreign corporation had been engaged in trade or business within the United States and if 50 percent or more of the gross income of such corporation from all sources for such period was effectively connected with the conduct of a trade or business within the United States, there was allowed as a deduction in the case of a corporation a percentage of dividends received.

Subsec. (c)(1). Pub. L. 99–514, §1876(d)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In the case of a domestic corporation, there shall be allowed as a deduction an amount equal to 100 percent of any dividend received by such corporation from another corporation which is distributed out of earnings and profits attributable to foreign trade income for a period during which such other corporation was a FSC. The deduction allowable under the preceding sentence with respect to any dividend shall be in lieu of any deduction allowable under subsection (a) or (b) with respect to such dividend.''

Subsec. (c)(3). Pub. L. 99–514, §1876(j), added par. (3). Former par. (3) redesignated (4).

Pub. L. 99–514, §1876(d)(1)(B), inserted ''For purposes of this subsection, the term 'qualified interest and carrying charges' means any interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income.''

Subsec. (c)(4). Pub. L. 99–514, §1876(j), redesignated former par. (3) as (4).

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c), redesignated former subsec. (c) as (d), and substituted therein ''this section'' for ''subsections (a) and (b)''.

1966—Subsec. (a). Pub. L. 89–809, §104(d), (e)(2), substituted ''and if 50 percent or more of the gross income of such corporation from all sources for such period is effectively connected with the conduct of a trade or business within the United States'' for ''and has derived 50 percent or more of its gross income from sources within the United States'' in provisions preceding par. (1), ''which is effectively connected with the conduct of a trade or business within the United

States'' for ''from sources within the United States'' in par. (1), '', which is effectively connected with the conduct of a trade or business within the United States,'' for ''from sources within the United States'' in par. (2), and inserted provisions following par. (2).

Subsecs. (b), (c). Pub. L. 89–809, § 104(e)(1), (3), added subsec. (b), redesignated former subsec. (b) as (c), and substituted therein ''subsections (a) and (b)'' for ''subsection (a)''.

1962—Subsec. (b). Pub. L. 87–834 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(bb)(9)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply as if included in the provision of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A] to which it relates.''

Amendment by sections 1006(e)(16) and 1012(*l*)(2), (3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1226(c)(1) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions out of earnings and profits for taxable years beginning after December 31, 1986.''

Amendment by section 1876(d)(1), (j) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 805(a) of title VIII of div. A of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1876(i), (*o*), (p)(4), Oct. 22, 1986, 100 Stat. 2095, 2900–2902, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this title [enacting sections 921 to 927 of this title, amending this section and sections 246, 274, 275, 441, 901, 904, 906, 934, 936, 951, 956, 992, 993, 995, 996, 999, 1248, 6011, 6072, 6501, 6686, and 7651 of this title, and enacting provisions set out as notes under sections 921 and 991 of this title] shall apply to transactions after December 31, 1984, in taxable years ending after such date.

''(2) SPECIAL RULE FOR CERTAIN CONTRACTS.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, any event or activity required to occur or required to be performed, before January 1, 1985, by section 924(c) or (d) or 925(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be treated as meeting the requirements of such section if such event or activity is with respect to—

''(A) any lease of more than 3 years duration which was entered into before January 1, 1985,

''(B) any contract with respect to which the taxpayer uses the completed contract method of accounting which was entered into before January 1, 1985, or

''(C) in the case of any contract other than a lease or contract described in subparagraph (A) or (B), any contract which was entered into before January 1, 1985; except that this subparagraph shall only apply to the first 3 taxable years of the FSC ending after January 1, 1985, or such later taxable years as the Secretary of the Treasury or his delegate may prescribe.

''(3) SECTION 801(d)(10).—The amendment made by section 801(d)(10) [amending section 996 of this title] shall apply to distributions on or after June 22, 1984.

''(4) SECTION 803.—The amendments made by section 803 [amending section 441 of this title] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to distributions made after Dec. 31, 1962, see section 5(d) of Pub. L. 87–834, set out as a note under section 301 of this title.

DIVIDENDS RECEIVED OR ACCRUED DURING 1987

Section 1006(b)(1) of Pub. L. 100–647 provided that: ''In the case of dividends received or accrued during 1987—

''(A) subparagraph (B) of section 245(c)(1) of the 1986 Code shall be applied by substituting '80 percent' for the percentage specified therein, and

''(B) subparagraph (B) of section 861(a)(2) of the 1986 Code shall be applied by substituting '100‰ths' for the fraction specified therein.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 246. Rules applying to deductions for dividends received

(a) Deduction not allowed for dividends from certain corporations

(1) In general

The deductions allowed by sections 243, 244, and 245 shall not apply to any dividend from a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations).

(2) Subsection not to apply to certain dividends of Federal Home Loan Banks

(A) Dividends out of current earnings and profits

In the case of any dividend paid by any FHLB out of earnings and profits of the FHLB for the taxable year in which such dividend was paid, paragraph (1) shall not apply to that portion of such dividend which bears the same ratio to the total dividend as—

(i) the dividends received by the FHLB from the FHLMC during such taxable year, bears to

(ii) the total earnings and profits of the FHLB for such taxable year.

(B) Dividends out of accumulated earnings and profits

In the case of any dividend which is paid out of any accumulated earnings and profits of any FHLB, paragraph (1) shall not apply to that portion of the dividend which bears the same ratio to the total dividend as—

(i) the amount of dividends received by such FHLB from the FHLMC which are out of earnings and profits of the FHLMC—

(I) for taxable years ending after December 31, 1984, and

(II) which were not previously treated as distributed under subparagraph (A) or this subparagraph, bears to

(ii) the total accumulated earnings and profits of the FHLB as of the time such dividend is paid.

For purposes of clause (ii), the accumulated earnings and profits of the FHLB as of January 1, 1985, shall be treated as equal to its retained earnings as of such date.

(C) Coordination with section 243

To the extent that paragraph (1) does not apply to any dividend by reason of subparagraph (A) or (B) of this paragraph, the requirement contained in section 243(a) that the corporation paying the dividend be subject to taxation under this chapter shall not apply.

(D) Definitions

For purposes of this paragraph—

(i) FHLB

The term ''FHLB'' means any Federal Home Loan Bank.

(ii) FHLMC

The term ''FHLMC'' means the Federal Home Loan Mortgage Corporation.

(iii) Taxable year of FHLB

The taxable year of an FHLB shall, except as provided in regulations prescribed by the Secretary, be treated as the calendar year.

(iv) Earnings and profits

The earnings and profits of any FHLB for any taxable year shall be treated as equal to the sum of—

(I) any dividends received by the FHLB from the FHLMC during such taxable year, and

(II) the total earnings and profits (determined without regard to dividends described in subclause (I)) of the FHLB as reported in its annual financial statement prepared in accordance with section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440).

(b) Limitation on aggregate amount of deductions

(1) General rule

Except as provided in paragraph (2), the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and subsection (a) or (b) of section 245 shall not exceed the percentage determined under paragraph (3) of the taxable income computed without regard to the deductions allowed by sections 172, 199, 243(a)(1), 244(a), subsection (a) or (b) of section 245, and 247, without regard to any adjustment under section 1059, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1).

(2) Effect of net operating loss

Paragraph (1) shall not apply for any taxable year for which there is a net operating loss (as determined under section 172).

(3) Special rules

The provisions of paragraph (1) shall be applied—

(A) first separately with respect to dividends from 20-percent owned corporations (as defined in section 243(c)(2)) and the percentage determined under this paragraph shall be 80 percent, and

(B) then separately with respect to dividends not from 20-percent owned corporations and the percentage determined under this paragraph shall be 70 percent and the taxable income shall be reduced by the aggregate amount of dividends from 20-percent owned corporations (as so defined).

(c) Exclusion of certain dividends

(1) In general

No deduction shall be allowed under section 243, 244, or 245, in respect of any dividend on any share of stock—

(A) which is held by the taxpayer for 45 days or less during the 91-day period beginning on the date which is 45 days before the date on which such share becomes ex-dividend with respect to such dividend, or

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

(2) 90-day rule in the case of certain preference dividends

In the case of stock having preference in dividends, if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days, paragraph (1)(A) shall be applied—

(A) by substituting ''90 days'' for ''45 days'' each place it appears, and

(B) by substituting ''181-day period'' for ''91-day period''.

(3) Determination of holding periods

For purposes of this subsection, in determining the period for which the taxpayer has held any share of stock—

(A) the day of disposition, but not the day of acquisition, shall be taken into account, and

(B) paragraph (3) of section 1223 shall not apply.

(4) Holding period reduced for periods where risk of loss diminished

The holding periods determined for purposes of this subsection shall be appropriately reduced (in the manner provided in regulations prescribed by the Secretary) for any period (during such periods) in which—

(A) the taxpayer has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially identical stock or securities,

(B) the taxpayer is the grantor of an option to buy substantially identical stock or securities, or

(C) under regulations prescribed by the Secretary, a taxpayer has diminished his risk of loss by holding 1 or more other positions with respect to substantially similar or related property.

The preceding sentence shall not apply in the case of any qualified covered call (as defined in section 1092(c)(4) but without regard to the requirement that gain or loss with respect to the option not be ordinary income or loss), other than a qualified covered call option to which section 1092(f) applies.

(d) Dividends from a DISC or former DISC

No deduction shall be allowed under section 243 in respect of a dividend from a corporation which is a DISC or former DISC (as defined in section 992(a)) to the extent such dividend is paid out of the corporation's accumulated DISC income or previously taxed income, or is a deemed distribution pursuant to section 995(b)(1).

(e) Certain distributions to satisfy requirements

No deduction shall be allowed under section 243(a) with respect to a dividend received pursuant to a distribution described in section 936(h)(4).

(Aug. 16, 1954, ch. 736, 68A Stat. 74; Pub. L. 85–866, title I, §§18(a), 57(c)(2), Sept. 2, 1958, 72 Stat. 1614, 1646; Pub. L. 88–272, title II, §214(b)(2), Feb. 26, 1964, 78 Stat. 55; Pub. L. 91–172, title IV, §434(b)(1), title V, §512(f)(3), Dec. 30, 1969, 83 Stat. 625, 641; Pub. L. 92–178, title V, §502(a), Dec. 10, 1971, 85 Stat. 549; Pub. L. 94–455, title X, §1051(f)(3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1646, 1834; Pub. L. 97–248, title II, §213(c), Sept. 3, 1982, 96 Stat. 465; Pub. L. 98–369, div. A, title I, §§53(b), (d)(2), 177(b), title VIII, §801(b)(2)(A), July 18, 1984, 98 Stat. 567, 568, 709, 995; Pub. L. 99–514, title VI, §611(a)(3), title XII, §1275(a)(2)(B), title XVIII, §§1804(b)(1)(A), (B), 1812(d)(1), Oct. 22, 1986, 100 Stat. 2249, 2598, 2798, 2835; Pub. L. 100–203, title X, §10221(c)(1), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, §1018(u)(10), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 104–188, title I, §1616(b)(4), Aug. 20, 1996, 110 Stat. 1856; Pub. L. 105–34, title X, §1015(a), (b), Aug. 5, 1997, 111 Stat. 921, 922; Pub. L. 108–311, title IV, §406(f), Oct. 4, 2004, 118 Stat. 1190; Pub. L. 108–357, title I, §102(d)(4), title VIII, §888(d), Oct. 22, 2004, 118 Stat. 1429, 1643; Pub. L. 109–135, title IV, §402(a)(4), Dec. 21, 2005, 119 Stat. 2610.)

AMENDMENTS

2005—Subsec. (c)(3)(B). Pub. L. 109–135 substituted ''paragraph (3) of section 1223'' for ''paragraph (4) of section 1223''.

2004—Subsec. (b)(1). Pub. L. 108–357, §102(d)(4), inserted ''199,'' after ''172,''.

Subsec. (c)(1)(A). Pub. L. 108–311, §406(f)(1), substituted ''91-day period'' for ''90-day period''.

Subsec. (c)(2)(B). Pub. L. 108–311, §406(f)(2), substituted ''181-day period'' for ''180-day period'' and ''91-day period'' for ''90-day period''.

Subsec. (c)(4). Pub. L. 108–357, §888(d), inserted '', other than a qualified covered call option to which section 1092(f) applies'' before period at end of concluding provisions.

1997—Subsec. (c)(1)(A). Pub. L. 105–34, §1015(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which is held by the taxpayer for 45 days or less, or''.

Subsec. (c)(2). Pub. L. 105–34, §1015(b)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In the case of any stock having preference in dividends, the holding period specified in paragraph (1)(A) shall be 90 days in lieu of 45 days if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days.''

Subsec. (c)(3). Pub. L. 105–34, §1015(b)(2), inserted ''and'' at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''there shall not be taken into account any day which is more than 45 days (or 90 days in the case of stock to which paragraph (2) applies) after the date on which such share becomes ex-dividend, and''.

1996—Subsec. (f). Pub. L. 104–188 struck out subsec. (f) which provided a cross reference to section 596 of this title for special rule relating to mutual savings banks, etc., to which section 593 applies.

1988—Subsec. (c)(1)(A). Pub. L. 100–647 substituted ''which'' for ''Which''.

1987—Subsec. (b)(1). Pub. L. 100–203, §10221(c)(1)(A), substituted ''the percentage determined under paragraph (3)'' for ''80 percent''.

Subsec. (b)(3). Pub. L. 100–203, §10221(c)(1)(B), added par. (3).

1986—Subsec. (a)(2)(B). Pub. L. 99–514, §1812(d)(1)(A), substituted ''In'' for ''For purposes of subparagraph (A), in'' in introductory provisions and substituted cl. (i)(II) for former cl. (i)(II) which read as follows: ''which were not taken into account under subparagraph (A), bears to''.

Subsec. (a)(2)(C), (D). Pub. L. 99–514, §1812(d)(1)(B), (C), added subpar. (C), redesignated former subpar. (C) as (D), and added cl. (iv) to subpar. (D).

Subsec. (b)(1). Pub. L. 99–514, §611(a)(3), substituted ''80 percent'' for ''85 percent''.

Subsec. (c)(1)(A). Pub. L. 99–514, §1804(b)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which is sold or otherwise disposed of in any case in which the taxpayer has held such share for 45 days or less, or''.

Subsec. (c)(4). Pub. L. 99–514, §1804(b)(1)(B), substituted ''determined for purposes of this subsection'' for ''determined under paragraph (3)''.

Subsec. (e). Pub. L. 99–514, §1275(a)(2)(B), struck out ''or 934(e)(3)'' after ''936(h)(4)''.

1984—Subsec. (a). Pub. L. 98–369, §177(b), amended subsec. (a) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (b)(1). Pub. L. 98–369, §801(b)(2)(A), substituted ''subsection (a) or (b) of section 245'' for ''245'' in two places.

Pub. L. 98–369, § 53(d)(2), substituted ''without regard to any adjustment under section 1059, and without regard'' for ''and without regard''.

Subsec. (c)(1)(A). Pub. L. 98–369, § 53(b)(1), substituted ''45'' for ''15''.

Subsec. (c)(1)(B). Pub. L. 98–369, § 53(b)(3), substituted ''to make related payments with respect to positions in substantially similar or related property'' for ''to make corresponding payments with respect to substantially identical stock or securities''.

Subsec. (c)(2). Pub. L. 98–369, § 53(b)(1), substituted ''45'' for ''15''.

Subsec. (c)(3). Pub. L. 98–369, § 53(b)(4), struck out last sentence which directed that the holding periods determined under the preceding provisions of this paragraph be appropriately reduced (in the manner provided in regulations prescribed by the Secretary) for any period (during such holding periods) in which the taxpayer had an option to sell, was under a contractual obligation to sell, or had made (and not closed) a short sale of, substantially identical stock or securities.

Subsec. (c)(3)(B). Pub. L. 98–369, § 53(b)(1), substituted ''45'' for ''15''.

Subsec. (c)(4). Pub. L. 98–369, § 53(b)(2), added par. (4).

1982—Subsecs. (e), (f). Pub. L. 97–248 added subsec. (e) and redesignated former subsec. (e) as (f).

1976—Subsec. (a). Pub. L. 94–455, § 1051(f)(3), struck out references to dividends from corporations organized under the China Trade Act, 1922, and corporations to which section 931 (relating to income from sources within possessions of the United States) applies.

Subsec. (c)(3). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1971—Subsecs. (d), (e). Pub. L. 92–178 added subsec. (d) and redesignated former subsec. (d) as (e).

1969—Subsec. (b)(1). Pub. L. 91–172, § 512(f)(3), substituted ''and 247, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1)'' for ''and 247''.

Subsec. (d). Pub. L. 91–172, § 434(b)(1), added subsec. (d).

1964—Subsec. (b). Pub. L. 88–272 substituted ''243(a)(1), 244(a)'' for ''243(a), 244'' wherever appearing.

1958—Subsec. (b)(1). Pub. L. 85–866, § 57(c)(2), substituted ''243(a)'' for ''243'' wherever appearing.

Subsec. (c). Pub. L. 85–866, § 18(a), added subsec. (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 102(d)(4) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

Pub. L. 108–357, title VIII, § 888(e), Oct. 22, 2004, 118 Stat. 1643, provided that: ''The amendments made by this section [amending this section and sections 1092 and 1258 of this title] shall apply to positions established on or after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1015(c) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to dividends received or accrued after the 30th day after the date of the enactment of this Act [Aug. 5, 1997].

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to dividends received or accrued during the 2-year period beginning on the date of the enactment of this Act if—

''(A) the dividend is paid with respect to stock held by the taxpayer on June 8, 1997, and all times thereafter until the dividend is received,

''(B) such stock is continuously subject to a position described in section 246(c)(4) of the Internal Revenue Code of 1986 on June 8, 1997, and all times thereafter until the dividend is received, and

''(C) such stock and position are clearly identified in the taxpayer's records within 30 days after the date of the enactment of this Act.

Stock shall not be treated as meeting the requirement of subparagraph (B) if the position is sold, closed, or otherwise terminated and reestablished.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10221(e)(2) of Pub. L. 100–203, as amended, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 611(b) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section and sections 243, 244, 246A, and 805 of this title] shall apply to dividends received or accrued after December 31, 1986, in taxable years ending after such date.

''(2) AMENDMENT RELATING TO LIMITATION ON DEDUCTIONS.—The amendment made by subsection (a) to section 246(b) of the Internal Revenue Code of 1986 shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1275(a)(2)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Section 1804(b)(1)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section] shall apply to stock acquired after March 1, 1986.''

Amendment by section 1812(d)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 53(d)(2) of Pub. L. 98–369 applicable to distributions after Mar. 1, 1984, in taxable years ending after such date, and amendment of subsec. (c) of this section by section 53(b) of Pub. L. 98–369, applicable to stock acquired after July 18, 1984, in taxable years ending after such date, see section 53(e)(1), (2) of Pub. L. 98–369, set out as an Effective Date note under section 1059 of this title.

Amendment by section 177(b) of Pub. L. 98–369, effective Jan. 1, 1985, see section 177(d) of Pub. L. 98–369, set out as a note under section 172 of this title.

Amendment by section 801(b)(2)(A) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 213(e)(1) of Pub. L. 97–248, set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1051(f)(3) of Pub. L. 94–455, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 512(f)(3) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

Section 434(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting section 596 of this title and amending this section] shall apply to taxable years beginning after July 11, 1969.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dividends received in taxable years ending after Dec. 31, 1963, see section 214(c) of Pub. L. 88–272, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 18(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to shares of stock acquired or short sales made after December 31, 1957.''

Amendment by section 57(c)(2) of Pub. L. 85–866 applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as a note under section 243 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 246A. Dividends received deduction reduced where portfolio stock is debt financed

(a) General rule

In the case of any dividend on debt-financed portfolio stock, there shall be substituted for the percentage which (but for this subsection) would be used in determining the amount of the deduction allowable under section 243, 244, or 245(a) a percentage equal to the product of—

(1) 70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2)), and

(2) 100 percent minus the average indebtedness percentage.

(b) Section not to apply to dividends for which 100 percent dividends received deduction allowable

Subsection (a) shall not apply to—

(1) qualifying dividends (as defined in section 243(b) without regard to section 243(d)(4)), and

(2) dividends received by a small business investment company operating under the Small Business Investment Act of 1958.

(c) Debt financed portfolio stock

For purposes of this section—

(1) In general

The term ''debt financed portfolio stock'' means any portfolio stock if at some time during the base period there is portfolio indebtedness with respect to such stock.

(2) Portfolio stock

The term ''portfolio stock'' means any stock of a corporation unless—

(A) as of the beginning of the ex-dividend date, the taxpayer owns stock of such corporation—

(i) possessing at least 50 percent of the total voting power of the stock of such corporation, and

(ii) having a value equal to at least 50 percent of the total value of the stock of such corporation, or

(B) as of the beginning of the ex-dividend date—

(i) the taxpayer owns stock of such corporation which would meet the requirements of subparagraph (A) if ''20 percent'' were substituted for ''50 percent'' each place it appears in such subparagraph, and

(ii) stock meeting the requirements of subparagraph (A) is owned by 5 or fewer corporate shareholders.

(3) Special rule for stock in a bank or bank holding company

(A) In general

If, as of the beginning of the ex-dividend date, the taxpayer owns stock of any bank or bank holding company having a value equal to at least 80 percent of the total value of the stock of such bank or bank holding company, for purposes of paragraph (2)(A)(i), the taxpayer shall be treated as owning any stock of such bank or bank holding company which the taxpayer has an option to acquire.

(B) Definitions

For purposes of subparagraph (A)—

(i) Bank

The term ''bank'' has the meaning given such term by section 581.

(ii) Bank holding company

The term ''bank holding company'' means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956).

(4) Treatment of certain preferred stock

For purposes of determining whether the requirements of subparagraph (A) or (B) of paragraph (2) or of subparagraph (A) of paragraph (3) are met, stock described in section 1504(a)(4) shall not be taken into account.

(d) Average indebtedness percentage

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term ''average indebtedness percentage'' means the percentage obtained by dividing—

(A) the average amount (determined under regulations prescribed by the Secretary) of the portfolio indebtedness with respect to the stock during the base period, by

(B) the average amount (determined under regulations prescribed by the Secretary) of the adjusted basis of the stock during the base period.

(2) Special rule where stock not held throughout base period

In the case of any stock which was not held by the taxpayer throughout the base period, paragraph (1) shall be applied as if the base period consisted only of that portion of the base period during which the stock was held by the taxpayer.

(3) Portfolio indebtedness

(A) In general

The term ''portfolio indebtedness'' means any indebtedness directly attributable to investment in the portfolio stock.

(B) Certain amounts received from short sale treated as indebtedness

For purposes of subparagraph (A), any amount received from a short sale shall be treated as indebtedness for the period beginning on the day on which such amount is received and ending on the day the short sale is closed.

(4) Base period

The term ''base period'' means, with respect to any dividend, the shorter of—

(A) the period beginning on the ex-dividend date for the most recent previous dividend on the stock and ending on the day before the ex-dividend date for the dividend involved, or

(B) the 1-year period ending on the day before the ex-dividend date for the dividend involved.

(e) Reduction in dividends received deduction not to exceed allocable interest

Under regulations prescribed by the Secretary, any reduction under this section in the amount allowable as a deduction under section 243, 244, or 245 with respect to any dividend shall not exceed the amount of any interest deduction (including any deductible short sale expense) allocable to such dividend.

(f) Regulations

The regulations prescribed for purposes of this section under section 7701(f) shall include regulations providing for the disallowance of interest deductions or other appropriate treatment (in lieu of reducing the dividend received deduction) where the obligor of the indebtedness is a person other than the person receiving the dividend.

(Added Pub. L. 98–369, div. A, title I, § 51(a), July 18, 1984, 98 Stat. 562; amended Pub. L. 99–514, title VI, § 611(a)(4), title XVIII, § 1804(a), Oct. 22, 1986, 100 Stat. 2249, 2798; Pub. L. 100–203, title X, § 10221(d)(2), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, § 1012(*l*)(1), Nov. 10, 1988, 102 Stat. 3513; Pub. L. 108–311, title IV, § 408(a)(9), Oct. 4, 2004, 118 Stat. 1191.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (b)(2), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (c)(3)(B)(ii), is classified to section 1841(a) of Title 12, Banks and Banking.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–311 substituted ''section 243(d)(4)'' for ''section 243(c)(4)''.

1988—Subsec. (a). Pub. L. 100–647 struck out at end ''The preceding sentence shall be applied before any determination of a ratio under paragraph (1) or (2) of section 245(a).''

1987—Subsec. (a)(1). Pub. L. 100–203 substituted ''70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2))'' for ''80 percent''.

1986—Subsec. (a). Pub. L. 99–514, § 1804(a), substituted ''or 245(a)'' for ''or 245'' and inserted ''The preceding sentence shall be applied before any determination of a ratio under paragraph (1) or (2) of section 245(a).''

Subsec. (a)(1). Pub. L. 99–514, § 611(a)(4), substituted ''80 percent'' for ''85 percent''.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 611(a)(4) of Pub. L. 99–514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b) of Pub. L. 99–514, set out as a note under section 246 of this title.

Amendment by section 1804(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 51(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to stock the holding period for which begins after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 247. Dividends paid on certain preferred stock of public utilities

(a) Amount of deduction

In the case of a public utility, there shall be allowed as a deduction an amount computed as follows:

(1) First determine the amount which is the lesser of—

(A) the amount of dividends paid during the taxable year on its preferred stock, or

(B) the taxable income for the taxable year (computed without the deduction allowed by this section).

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the highest rate of tax specified in section 11(b).

For purposes of the deduction provided in this section, the amount of dividends paid shall not include any amount distributed in the current taxable year with respect to dividends unpaid and accumulated in any taxable year ending before October 1, 1942. Amounts distributed in the current taxable year with respect to dividends unpaid and accumulated for a prior taxable year shall for purposes of this subsection be deemed to be distributed with respect to the earliest year or years for which there are dividends unpaid and accumulated.

(b) Definitions

For purposes of this section and section 244—

(1) Public utility

The term ''public utility'' means a corporation engaged in the furnishing of telephone service or in the sale of electrical energy, gas, or water, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof or by an agency or instrumentality of the United States or by a public utility or public service commission or other similar body of the District of Columbia or of any State or political subdivision thereof.

(2) Preferred stock

(A) In general

The term ''preferred stock'' means stock issued before October 1, 1942, which during the whole of the taxable year (or the part of the taxable year after its issue) was stock the dividends in respect of which were cumulative, limited to the same amount, and payable in preference to the payment of dividends on other stock.

(B) Certain stock issued on or after October 1, 1942

Stock issued on or after October 1, 1942, shall be deemed for purposes of this paragraph to have been issued before October 1, 1942, if it was issued to refund or replace bonds or debentures issued before October 1, 1942, or to refund or replace other preferred stock (including stock which is preferred stock by reason of this subparagraph or subparagraph (D)), but only to the extent that the par or stated value of the new stock does not exceed the par, stated, or face value of the bonds or debentures issued before October 1, 1942, or the other preferred stock, which such new stock is issued to refund or replace.

(C) Determination under regulations

The determination of whether stock was issued to refund or replace bonds or debentures issued before October 1, 1942, or to refund or replace other preferred stock, shall be made under regulations prescribed by the Secretary.

(D) Issuance of stock

For purposes of subparagraph (B), issuance of stock includes issuance either by the same or another corporation in a transaction which is a reorganization (as defined in section 368(a)) or a transaction subject to part VI of subchapter O as in effect before its repeal (relating to exchanges in SEC obedience orders), or the respectively corresponding provisions of the Internal Revenue Code of 1939.

(Aug. 16, 1954, ch. 736, 68A Stat. 75; Pub. L. 94–455, title XIX, § 1901(a)(35), Oct. 4, 1976, 90 Stat. 1770; Pub. L. 95–600, title III, § 301(b)(4), Nov. 6, 1978, 92 Stat. 2820; Pub. L. 101–508, title XI, § 11801(c)(8)(C), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 104–188, title I, § 1704(t)(49), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 109–135, title IV, § 402(a)(5), Dec. 21, 2005, 119 Stat. 2610.)

REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (b)(2)(D), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

AMENDMENTS

2005—Subsec. (b)(2)(D). Pub. L. 109–135 inserted ''as in effect before its repeal'' after ''part VI of subchapter O''.

1996—Subsec. (b)(2)(D). Pub. L. 104–188 provided that section 11801(c)(8)(C) of Pub. L. 101–508 shall be applied as if ''reorganizations'' appeared instead of ''reorganization'' in the material proposed to be stricken. See 1990 Amendment note below.

1990—Subsec. (b)(2)(D). Pub. L. 101–508 which directed that '', a transaction to which section 371 (relating to insolvency reorganization) applies,'' be struck out was executed by striking out '', a transaction to which section 371 (relating to insolvency reorganizations) applies,'' after ''(as defined in section 368(a))''. See 1996 Amendment note above.

1978—Subsec. (a)(2)(B). Pub. L. 95–600 substituted ''the highest rate of tax specified in section 11(b)'' for ''the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11''.

1976—Subsec. (b)(2). Pub. L. 94–455 divided existing provisions into subpars. (A), (B), (C), and (D), added headings for subpars. (A), (B), (C), and (D), and, in subpar. (C) as so redesignated, substituted ''prescribed by the Secretary'' for ''prescribed by the Secretary or his delegate''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 248. Organizational expenditures

(a) Election to deduct

If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

(A) the amount of organizational expenditures with respect to the taxpayer, or

(B) $5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed $50,000, and

(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.

(b) Organizational expenditures defined

The term ''organizational expenditures'' means any expenditure which—

(1) is incident to the creation of the corporation;

(2) is chargeable to capital account; and

(3) is of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over such life.

(c) Time for and scope of election

The election provided by subsection (a) may be made for any taxable year beginning after December 31, 1953, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The period so elected shall be adhered to in computing the taxable income of the corporation for the taxable year for which the election is made and all subsequent taxable years. The election shall apply only with respect to expenditures paid or incurred on or after August 16, 1954.

(Aug. 16, 1954, ch. 736, 68A Stat. 76; Pub. L. 94–455, title XIX, §§1901(a)(36), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1770, 1834; Pub. L. 108–357, title VIII, §902(b), Oct. 22, 2004, 118 Stat. 1651.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The organizational expenditures of a corporation may, at the election of the corporation (made in accordance with regulations prescribed by the Secretary, be treated as deferred expenses. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the corporation (beginning with the month in which the corporation begins business).''

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c). Pub. L. 94–455, §1901(a)(36), substituted ''August 16, 1954'' for ''the date of enactment of this title''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to amounts paid or incurred after Oct. 22, 2004, see section 902(d) of Pub. L. 108–357, set out as a note under section 195 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(36) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

§ 249. Limitation on deduction of bond premium on repurchase

(a) General rule

No deduction shall be allowed to the issuing corporation for any premium paid or incurred upon the repurchase of a bond, debenture, note, or certificate or other evidence of indebtedness which is convertible into the stock of the issuing corporation, or a corporation in control of, or controlled by, the issuing corporation, to the extent the repurchase price exceeds an amount equal to the adjusted issue price plus a normal call premium on bonds or other evidences of indebtedness which are not convertible. The preceding sentence shall not apply to the extent that the corporation can demonstrate to the satisfaction of the Secretary that such excess is attributable to the cost of borrowing and is not attributable to the conversion feature.

(b) Special rules

For purposes of subsection (a)—

(1) Adjusted issue price

The adjusted issue price is the issue price (as defined in sections 1273(b) and 1274) increased

by any amount of discount deducted before repurchase, or, in the case of bonds or other evidences of indebtedness issued after February 28, 1913, decreased by any amount of premium included in gross income before repurchase by the issuing corporation.

(2) Control

The term ''control'' has the meaning assigned to such term by section 368(c).

(Added Pub. L. 91–172, title IV, § 414(a), Dec. 30, 1969, 83 Stat. 612; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, § 42(a)(5), July 18, 1984, 98 Stat. 557.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–369 substituted ''sections 1273(b) and 1274'' for ''section 1232(b)''.

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE

Section 414(c) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting this section] shall apply to a convertible bond or other convertible evidence of indebtedness repurchased after April 22, 1969, other than such a bond or other evidence of indebtedness repurchased pursuant to a binding obligation incurred on or before April 22, 1969, to repurchase such bond or other evidence of indebtedness at a specified call premium, but no inference shall be drawn from the fact that section 249 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) does not apply to the repurchase of such convertible bond or other convertible evidence of indebtedness.''

[§ 250. Repealed. Pub. L. 101–508, title XI, § 11801(a)(15), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 91–518, title IX, § 901(a), Oct. 30, 1970, 84 Stat. 1341; amended Pub. L. 93–496, § 12, Oct. 28, 1974, 88 Stat. 1531; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–473, § 2(a)(2)(C), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 96–454, § 3(b)(1), Oct. 15, 1980, 94 Stat. 2012; Pub. L. 97–261, § 6(d)(3), Sept. 20, 1982, 96 Stat. 1107; Pub. L. 99–521, § 4(3), Oct. 22, 1986, 100 Stat. 2993, related to certain payments to National Railroad Passenger Corporation.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART IX—ITEMS NOT DEDUCTIBLE

Sec.
261. General rule for disallowance of deductions.
262. Personal, living, and family expenses.
263. Capital expenditures.
263A. Capitalization and inclusion in inventory costs of certain expenses.
264. Certain amounts paid in connection with insurance contracts.
265. Expenses and interest relating to tax-exempt income.
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274. Disallowance of certain entertainment, etc., expenses.
275. Certain taxes.
276. Certain indirect contributions to political parties.
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[278. Repealed.]
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[280. Repealed.]
280A. Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.
280B. Demolition of structures.
280C. Certain expenses for which credits are allowable.
[280D. Repealed.]
280E. Expenditures in connection with the illegal sale of drugs.
280F. Limitation on depreciation for luxury automobiles; limitation where certain property used for personal purposes.
280G. Golden parachute payments.
280H. Limitation on certain amounts paid to owner-employees by personal service corporations electing alternative taxable years.[1]

AMENDMENTS

1996—Pub. L. 104–188, title I, § 1704(t)(55), Aug. 20, 1996, 110 Stat. 1890, provided that section 11813(b)(13)(F) of Pub. L. 101–508 shall be applied as if ''tax'' appeared after ''investment'' in the material proposed to be stricken. See 1990 Amendment note below.

1990—Pub. L. 101–508, title XI, § 11813(b)(13)(F), Nov. 5, 1990, 104 Stat. 1388–555, which directed the striking out of ''investment credit and'' in item 280F, was executed by striking out ''investment tax credit and'' after ''Limitation on''. See 1996 Amendment note above.

1988—Pub. L. 100–418, title I, § 1941(b)(4)(B), Aug. 23, 1988, 102 Stat. 1324, struck out item 280D ''Portion of chapter 45 taxes for which credit or refund is allowable under section 6429''.

1987—Pub. L. 100–203, title X, § 10206(c)(2), Dec. 22, 1987, 101 Stat. 1330–402, added item 280H.

1986—Pub. L. 99–514, title VIII, § 803(c)(1), (3), Oct. 22, 1986, 100 Stat. 2356, added item 263A and struck out items 278 ''Capital expenditures incurred in planting and developing citrus and almond groves'' and 280 ''Certain expenditures incurred in production of films, books, records, or similar property''.

1984—Pub. L. 98–369, div. A, title I, §§ 67(d)(1), 136(b), 179(c), title X, § 1063(b)(2), July 18, 1984, 98 Stat. 587, 670,

[1] So in original. Does not conform to section catchline.

718, 1047, added items 269B, 280F, and 280G, and struck out ''certain historic'' before ''structures'' in item 280B.

1983—Pub. L. 97–414, § 4(b)(2)(B), Jan. 4, 1983, 96 Stat. 2056, substituted ''Certain expenses for which credits are allowable'' for ''Portion of wages for which credit is claimed under section 44B'' in item 280C.

1982—Pub. L. 97–248, title II, § 250(b), title III, § 351(b), Sept. 3, 1982, 96 Stat. 528, 640, added items 269A and 280E.

1980—Pub. L. 96–499, title XI, § 1131(d)(2), Dec. 5, 1980, 94 Stat. 2693, added item 280D.

1977—Pub. L. 95–30, title II, § 202(c)(2), May 23, 1977, 91 Stat. 147, added item 280C.

1976—Pub. L. 94–455, title II, § 210(b), title VI, § 601(b), title XXI, § 2124(b)(2), Oct. 4, 1976, 90 Stat. 1544, 1572, 1918, added items 280, 280A, and 280B.

1971—Pub. L. 91–680, § 1(c), Jan. 12, 1971, 84 Stat. 2064, inserted ''and almond'' after ''citrus'' in item 278.

1969—Pub. L. 91–172, title I, § 121(b)(3)(B), title II, §§ 213(c)(2), 216(b), title IV, § 411(b), Dec. 30, 1969, 83 Stat. 541, 572, 574, 608, struck out item 270 ''Limitation on deductions allowable to individuals in certain cases'', and added items 277 to 279.

1966—Pub. L. 89–368, title III, § 301(b), Mar. 15, 1966, 80 Stat. 67, added item 276.

1964—Pub. L. 88–272, title II, §§ 207(b)(3)(B), 227(b)(4), Feb. 26, 1964, 78 Stat. 42, 98, inserted ''or domestic iron ore'' in item 272, and added item 275.

1962—Pub. L. 87–834, § 4(a)(2), Oct. 16, 1962, 76 Stat. 976, added item 274.

§ 261. General rule for disallowance of deductions

In computing taxable income no deduction shall in any case be allowed in respect of the items specified in this part.

(Aug. 16, 1954, ch. 736, 68A Stat. 76.)

§ 262. Personal, living, and family expenses

(a) General rule

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

(b) Treatment of certain phone expenses

For purposes of subsection (a), in the case of an individual, any charge (including taxes thereon) for basic local telephone service with respect to the 1st telephone line provided to any residence of the taxpayer shall be treated as a personal expense.

(Aug. 16, 1954, ch. 736, 68A Stat. 76; Pub. L. 100–647, title V, § 5073(a), Nov. 10, 1988, 102 Stat. 3682.)

AMENDMENTS

1988—Pub. L. 100–647 amended section generally. Prior to amendment, section read as follows: ''Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 5073(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988.''

§ 263. Capital expenditures

(a) General rule

No deduction shall be allowed for—

(1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. This paragraph shall not apply to—

(A) expenditures for the development of mines or deposits deductible under section 616,

(B) research and experimental expenditures deductible under section 174,

(C) soil and water conservation expenditures deductible under section 175,

(D) expenditures by farmers for fertilizer, etc., deductible under section 180,

(E) expenditures for removal of architectural and transportation barriers to the handicapped and elderly which the taxpayer elects to deduct under section 190,

(F) expenditures for tertiary injectants with respect to which a deduction is allowed under section 193; [1]

(G) expenditures for which a deduction is allowed under section 179; [1]

(H) expenditures for which a deduction is allowed under section 179A,

(I) expenditures for which a deduction is allowed under section 179B,

(J) expenditures for which a deduction is allowed under section 179C,

(K) expenditures for which a deduction is allowed under section 179D, or

(L) expenditures for which a deduction is allowed under section 179E.

(2) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

[(b) Repealed. Pub. L. 101–508, title XI, § 11801(a)(16), Nov. 5, 1990, 104 Stat. 1388–520]

(c) Intangible drilling and development costs in the case of oil and gas wells and geothermal wells

Notwithstanding subsection (a), and except as provided in subsection (i), regulations shall be prescribed by the Secretary under this subtitle corresponding to the regulations which granted the option to deduct as expenses intangible drilling and development costs in the case of oil and gas wells and which were recognized and approved by the Congress in House Concurrent Resolution 50, Seventy-ninth Congress. Such regulations shall also grant the option to deduct as expenses intangible drilling and development costs in the case of wells drilled for any geothermal deposit (as defined in section 613(e)(2)) to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells. This subsection shall not apply with respect to any costs to which any deduction is allowed under section 59(e) or 291.

(d) Expenditures in connection with certain railroad rolling stock

In the case of expenditures in connection with the rehabilitation of a unit of railroad rolling stock (except a locomotive) used by a domestic common carrier by railroad which would, but for this subsection, be properly chargeable to capital account, such expenditures, if during any 12-month period they do not exceed an amount

[1] So in original. The semicolon probably should be a comma.

equal to 20 percent of the basis of such unit in the hands of the taxpayer, shall, at the election of the taxpayer, be treated (notwithstanding subsection (a)) as deductible repairs under section 162 or 212. An election under this subsection shall be made for any taxable year at such time and in such manner as the Secretary prescribes by regulations. An election may not be made under this subsection for any taxable year to which an election under subsection (e) applies to railroad rolling stock (other than locomotives).

[(e) Repealed. Pub. L. 97–34, title II, § 201(c), Aug. 13, 1981, 95 Stat. 219]

(f) Railroad ties

In the case of a domestic common carrier by rail (including a railroad switching or terminal company) which uses the retirement-replacement method of accounting for depreciation of its railroad track, expenditures for acquiring and installing replacement ties of any material (and fastenings related to such ties) shall be accorded the same tax accounting treatment as expenditures for replacement ties of wood (and fastenings related to such ties).

(g) Certain interest and carrying costs in the case of straddles

(1) General rule

No deduction shall be allowed for interest and carrying charges properly allocable to personal property which is part of a straddle (as defined in section 1092(c)). Any amount not allowed as a deduction by reason of the preceding sentence shall be chargeable to the capital account with respect to the personal property to which such amount relates.

(2) Interest and carrying charges defined

For purposes of paragraph (1), the term ''interest and carrying charges'' means the excess of—

(A) the sum of—

(i) interest on indebtedness incurred or continued to purchase or carry the personal property, and

(ii) all other amounts (including charges to insure, store, or transport the personal property) paid or incurred to carry the personal property, over

(B) the sum of—

(i) the amount of interest (including original issue discount) includible in gross income for the taxable year with respect to the property described in subparagraph (A),

(ii) any amount treated as ordinary income under section 1271(a)(3)(A), 1276, or 1281(a) with respect to such property for the taxable year,

(iii) the excess of any dividends includible in gross income with respect to such property for the taxable year over the amount of any deduction allowable with respect to such dividends under section 243, 244, or 245, and

(iv) any amount which is a payment with respect to a security loan (within the meaning of section 512(a)(5)) includible in gross income with respect to such property for the taxable year.

For purposes of subparagraph (A), the term ''interest'' includes any amount paid or incurred in connection with personal property used in a short sale.

(3) Exception for hedging transactions

This subsection shall not apply in the case of any hedging transaction (as defined in section 1256(e)).

(4) Application with other provisions

(A) Subsection (c)

In the case of any short sale, this subsection shall be applied after subsection (h).

(B) Section 1277 or 1282

In the case of any obligation to which section 1277 or 1282 applies, this subsection shall be applied after section 1277 or 1282.

(h) Payments in lieu of dividends in connection with short sales

(1) In general

If—

(A) a taxpayer makes any payment with respect to any stock used by such taxpayer in a short sale and such payment is in lieu of a dividend payment on such stock, and

(B) the closing of such short sale occurs on or before the 45th day after the date of such short sale,

then no deduction shall be allowed for such payment. The basis of the stock used to close the short sale shall be increased by the amount not allowed as a deduction by reason of the preceding sentence.

(2) Longer period in case of extraordinary dividends

If the payment described in paragraph (1)(A) is in respect of an extraordinary dividend, paragraph (1)(B) shall be applied by substituting ''the day 1 year after the date of such short sale'' for ''the 45th day after the date of such short sale''.

(3) Extraordinary dividend

For purposes of this subsection, the term ''extraordinary dividend'' has the meaning given to such term by section 1059(c); except that such section shall be applied by treating the amount realized by the taxpayer in the short sale as his adjusted basis in the stock.

(4) Special rule where risk of loss diminished

The running of any period of time applicable under paragraph (1)(B) (as modified by paragraph (2)) shall be suspended during any period in which—

(A) the taxpayer holds, has an option to buy, or is under a contractual obligation to buy, substantially identical stock or securities, or

(B) under regulations prescribed by the Secretary, a taxpayer has diminished his risk of loss by holding 1 or more other positions with respect to substantially similar or related property.

(5) Deduction allowable to extent of ordinary income from amounts paid by lending broker for use of collateral

(A) In general

Paragraph (1) shall apply only to the extent that the payments or distributions with

respect to any short sale exceed the amount which—

(i) is treated as ordinary income by the taxpayer, and

(ii) is received by the taxpayer as compensation for the use of any collateral with respect to any stock used in such short sale.

(B) Exception not to apply to extraordinary dividends

Subparagraph (A) shall not apply if one or more payments or distributions is in respect of an extraordinary dividend.

(6) Application of this subsection with subsection (g)

In the case of any short sale, this subsection shall be applied before subsection (g).

(i) Special rules for intangible drilling and development costs incurred outside the United States

In the case of intangible drilling and development costs paid or incurred with respect to an oil, gas, or geothermal well located outside the United States—

(1) subsection (c) shall not apply, and

(2) such costs shall—

(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (determined without regard to section 613), or

(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such costs were paid or incurred.

This subsection shall not apply to costs paid or incurred with respect to a nonproductive well.

(Aug. 16, 1954, ch. 736, 68A Stat. 77; Pub. L. 86–779, §6(c), Sept. 14, 1960, 74 Stat. 1001; Pub. L. 87–834, §21(b), Oct. 16, 1962, 76 Stat. 1064; Pub. L. 88–563, §4, Sept. 2, 1964, 78 Stat. 845; Pub. L. 89–243, §4(p)(1), (2), Oct. 9, 1965, 79 Stat. 964; Pub. L. 91–172, title VII, §706(a), Dec. 30, 1969, 83 Stat. 674; Pub. L. 92–178, title I, §109(b), (c), Dec. 10, 1971, 85 Stat. 509; Pub. L. 94–455, title XVII, §1701(a), title XIX, §§1904(b)(10)(A)(i), 1906(b)(13)(A), title XXI, §2122(b)(2), Oct. 4, 1976, 90 Stat. 1759, 1817, 1834, 1915; Pub. L. 95–618, title IV, §402(a), Nov. 9, 1978, 92 Stat. 3201; Pub. L. 96–223, title II, §251(a)(2)(B), Apr. 2, 1980, 94 Stat. 287; Pub. L. 97–34, title II, §§201(c), 202(d)(1), title V, §502, Aug. 13, 1981, 95 Stat. 219, 221, 327; Pub. L. 97–248, title II, §204(c)(1), Sept. 3, 1982, 96 Stat. 426; Pub. L. 97–448, title I, §105(b)(1), title III, §306(a)(9)(A), Jan. 12, 1983, 96 Stat. 2385, 2403; Pub. L. 98–369, div. A, title I, §§56(a), 102(e)(7), (8), July 18, 1984, 98 Stat. 573, 624, 625; Pub. L. 99–514, title IV, §§402(b)(1), 411(b)(1), title VII, §701(e)(4)(D), title XVIII, §1808(b), Oct. 22, 1986, 100 Stat. 2221, 2225, 2343, 2817; Pub. L. 100–647, title I, §1007(g)(5), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 101–508, title XI, §§11801(a)(16), 11815(b)(3), Nov. 5, 1990, 104 Stat. 1388–520, 1388–558; Pub. L. 105–34, title XVI, §1604(a)(1), Aug. 5, 1997, 111 Stat. 1097; Pub. L. 108–311, title IV, §408(a)(10), Oct. 4, 2004, 118 Stat. 1191; Pub. L. 108–357, title III, §338(b)(1), Oct. 22, 2004, 118 Stat. 1481; Pub. L. 109–58, title XIII, §§1323(b)(2), 1331(b)(4), Aug. 8, 2005, 119 Stat. 1015, 1024; Pub. L. 109–432, div. A, title IV, §404(b)(1), Dec. 20, 2006, 120 Stat. 2956.)

AMENDMENTS

2006—Subsec. (a)(1)(L). Pub. L. 109–432 added subpar. (L).

2005—Subsec. (a)(1)(J). Pub. L. 109–58, §1323(b)(2), added subpar. (J).

Subsec. (a)(1)(K). Pub. L. 109–58, §1331(b)(4), added subpar. (K).

2004—Subsec. (a)(1)(I). Pub. L. 108–357 added subpar. (I).

Subsec. (g)(2)(B)(ii). Pub. L. 108–311 substituted ''1276'' for ''1278''.

1997—Subsec. (a)(1)(H). Pub. L. 105–34 added subpar. (H).

1990—Subsec. (b). Pub. L. 101–508, §11801(a)(16), struck out subsec. (b) ''Expenditures for advertising and good will'' which read as follows: ''If a corporation has, for the purpose of computing its excess profits tax credit under chapter 2E or subchapter D of chapter 1 of the Internal Revenue Code of 1939 claimed the benefits of the election provided in section 733 or section 451 of such code, as the case may be, no deduction shall be allowable under section 162 to such corporation for expenditures for advertising or the promotion of good will which, under the rules and regulations prescribed under section 733 or section 451 of such code, as the case may be, may be regarded as capital investments.''

Subsec. (c). Pub. L. 101–508, §11815(b)(3), substituted ''section 613(e)(2)'' for ''section 613(e)(3)''.

1988—Subsec. (c). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 59(d)''.

1986—Subsec. (a)(1)(E) to (H). Pub. L. 99–514, §402(b)(1), struck out subpar. (E) relating to nonapplication of par. (1) to expenditures by farmers for clearing land deductible under section 182, and redesignated subpars. (F) to (H) as (E) to (G), respectively.

Subsec. (c). Pub. L. 99–514, §701(e)(4)(D), substituted ''59(d)'' for ''58(i)''.

Pub. L. 99–514, §411(b)(1)(B), inserted ''and except as provided in subsection (i),''.

Subsec. (g)(2)(B)(iv). Pub. L. 99–541, §1808(b), added cl. (iv).

Subsec. (i). Pub. L. 99–514, §411(b)(1)(A), added subsec. (i).

1984—Subsec. (g)(2). Pub. L. 98–369, §102(e)(7), amended par. (2) generally, striking out ''charges for temporary use of the personal property in a short sale, or'' after ''(including'' in subpar. (A)(ii), substituting ''any amount treated as ordinary income under section 1271(a)(3)(A), 1278, or 1281(a) with respect to such property for the taxable year, and'' for ''any amount treated as ordinary income under section 1232(a)(3)(A) with respect to such property for the taxable year'' in subpar. (B)(ii), and adding subpar. (B)(iii).

Subsec. (g)(4). Pub. L. 98–369, §102(e)(8), added par. (4).

Subsec. (h). Pub. L. 98–369, §56(a), added subsec. (h).

1983—Subsec. (g)(2)(A)(ii). Pub. L. 97–448, §105(b)(1), substituted ''all other amounts (including charges for temporary use of the personal property in a short sale, or to insure, store, or transport the personal property) paid or incurred to carry the personal property, over'' for ''amounts paid or incurred to insure, store, or transport the personal property, over''.

Subsec. (g)(2)(B)(ii). Pub. L. 97–448, §306(a)(9)(A), substituted ''section 1232(a)(3)(A)'' for ''section 1232(a)(4)(A)''.

1982—Subsec. (c). Pub. L. 97–248, §204(c)(1), inserted provision that this subsection not apply with respect to any costs to which any deduction is allowed under section 58(i) or 291.

1981—Subsec. (a)(1)(H). Pub. L. 97–34, §202(d)(1), added subpar. (H).

Subsec. (e). Pub. L. 97–34, §201(c), struck out subsec. (e) which related to the allowance of repair expenses or specified repair, rehabilitation, or improvement expenditures.

Subsec. (g). Pub. L. 97–34, § 502, added subsec. (g).

1980—Subsec. (a)(1)(G). Pub. L. 96–223 added subpar. (G).

1978—Subsec. (c). Pub. L. 95–618 inserted ''and geothermal wells'' after ''gas wells'' in heading and in text inserted provision that such regulations also grant the option to deduct as expenses intangible drilling and development costs in the case of wells drilled for any geothermal deposit (as defined in section 613(e)(3)) to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells.

1976—Subsec. (a)(1)(F). Pub. L. 94–455, § 2122(b)(2), added subpar. (F).

Subsec. (a)(3). Pub. L. 94–455, § 1904(b)(10)(A)(i)(I), struck out par. (3) which provided that no deduction be allowed for amounts paid as tax under section 4911 (relating to imposition of interest equalization tax) except as provided in subsec. (d).

Subsec. (d). Pub. L. 94–455, §§ 1904(b)(10)(A)(i)(I), (II), 1906(b)(13)(A), redesignated subsec. (e) as (d) and struck out ''or his delegate'' after ''Secretary'' and substituted ''subsection (e)'' for ''subsection (f)''. Former subsec. (d) was struck out.

Subsec. (e). Pub. L. 94–455, §§ 1904(b)(10)(A)(i)(I), 1906(b)(13)(A), redesignated subsec. (f) as (e) and struck out ''or his delegate'' after ''Secretary''. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 94–455, §§ 1701(a), 1904(b)(10)(A)(i)(I), added subsec. (f). Former subsec. (f) redesignated (e).

1971—Subsec. (e). Pub. L. 92–178, § 109(c), substituted ''shall, at the election of the taxpayer, be treated'' for ''shall be treated'' and inserted provisions respecting making of election under this subsection for any taxable year at such time and in such manner as Secretary or his delegate prescribed by regulation and prohibiting making of election for any taxable year to which an election under subsec. (f) applies to railroad rolling stock (other than locomotives).

Subsec. (f). Pub. L. 92–178, § 109(b), added subsec. (f).

1969—Subsec. (e). Pub. L. 91–172 added subsec. (e).

1965—Subsec. (a)(3). Pub. L. 89–243, § 4(p)(1), inserted ''Except as provided in subsection (d)'', and struck out ''except to the extent that any amount attributable to the amount paid as tax is included in gross income for the taxable year'' after parenthetical provision.

Subsec. (d). Pub. L. 89–243, § 4(p)(2), added subsec. (d).

1964—Subsec. (a)(3). Pub. L. 88–563 added par. (3).

1962—Subsec. (a)(1)(E). Pub. L. 87–834 added subpar. (E).

1960—Subsec. (a)(1)(D). Pub. L. 86–779 added subpar. (D).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to costs paid or incurred after Dec. 20, 2006, see section 404(c) of Pub. L. 109–432, set out as an Effective Date note under section 179E of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1323(b)(2) of Pub. L. 109–58 applicable to properties placed in service after Aug. 8, 2005, see section 1323(c) of Pub. L. 109–58, set out as an Effective Date note under section 179C of this title.

Amendment by section 1331(b)(4) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1604(a)(4) of Pub. L. 105–34 provided that: ''The amendments made by this subsection [amending this section and sections 312 and 1245 of this title] shall take effect as if included in the amendments made by section 1913 of the Energy Policy Act of 1992 [Pub. L. 102–486].''

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 402(b)(1) of Pub. L. 99–514 applicable to amounts paid or incurred after Dec. 31, 1985, in taxable years ending after such date, see section 402(c) of Pub. L. 99–514 set out as an Effective Date of Repeal note under former section 182 of this title.

Section 411(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 243, 291, 381, 616, and 617 of this title] shall apply to costs paid or incurred after December 31, 1986, in taxable years ending after such date.

''(2) TRANSITION RULE.—The amendments made by this section shall not apply with respect to intangible drilling and development costs incurred by United States companies pursuant to a minority interest in a license for Netherlands or United Kingdom North Sea development if such interest was acquired on or before December 31, 1985.''

Amendment by section 701(e)(4)(D) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1808(b) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 56(a) of Pub. L. 98–369 applicable to short sales after July 18, 1984, in taxable years ending after that date, see section 56(d) of Pub. L. 98–369, set out as a note under section 163 of this title.

Amendment by section 102(e)(7), (8) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 105(b)(2) of Pub. L. 97–448 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to property acquired, and positions established, by the taxpayer after September 22, 1982, in taxable years ending after such date.''

Amendment by section 306 of Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after December 31, 1982, see section 204(d)(1) of Pub. L. 97–248, set out as an Effective Date note under section 291 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 201(c) and 202(d)(1) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 502 of Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to taxable years beginning after Dec. 31, 1979, see section 251(b) of Pub. L. 96–223, set out as an Effective Date note under section 193 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 402(e) of Pub. L. 95–618, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 57, 465, 751, and 1254 of this title] shall apply with respect to wells commenced on or after October 1, 1978, in taxable years ending on or after such date.

''(2) ELECTION.—The taxpayer may elect to capitalize or deduct any costs to which section 263(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies by reason of the amendments made by this section [amending this section and sections 57, 465, 751, and 1254 of this title]. Any such election shall be made before the expiration of the time for filing claim for credit or refund of any overpayment of tax imposed by chapter 1 of such Code [section 1 et seq. of this title] with respect to the taxpayer's first taxable year to which the amendments made by this section apply and for which he pays or incurs costs to which such section 263(c) applies by reason of the amendments made by this section. Any election under this paragraph may be changed or revoked at any time before the expiration of the time referred to in the preceding sentence, but after the expiration of such time such election may not be changed or revoked.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1904(b)(10)(A)(vii) of Pub. L. 94–455 provided that: ''The amendments made by this subparagraph [amending this section and sections 6011, 6611, and 6651 of this title and repealing sections 6076 and 6680 of this title] shall apply with respect to acquisitions of stock or debt obligations made after June 30, 1974, except that the repeal of paragraph (2) of section 6011(d) under clause (ii) shall apply with respect to loans and commitments made after such date.''

Amendment by section 2122(b)(2) of Pub. L. 94–455, as amended by Pub. L. 96–167, § 9(c), Dec. 29, 1979, 93 Stat. 1278, applicable to taxable years beginning after Dec. 31, 1976, see section 2122(c) of Pub. L. 94–455, as amended, set out as an Effective Date note under section 190 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 109(d)(2), (3) of Pub. L. 92–178 provided that:

''(2) The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 1970.

''(3) The amendments made by subsection (c) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 706(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 4(p)(3) of Pub. L. 89–243 provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after September 2, 1964.''

Section 4(q) of Pub. L. 89–243 provided in part that: ''Except as otherwise specifically provided in this section and in the amendments made by this section [amending this section and sections 4912, 4914, 4916, 4917, 4919, 4920, and 4931 of this title], such amendments shall apply with respect to acquisitions of stock and debt obligations made after February 10, 1965.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 21(d) of Pub. L. 87–834 provided that: ''The amendments made by this section [enacting section 182 of this title and amending this section] shall apply with respect to taxable years beginning after December 31, 1962.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable to taxable years beginning after Dec. 31, 1959, see section 6(d) of Pub. L. 86–779, set out as an Effective Date note under section 180 of this title.

SHORT TITLE OF 1965 AMENDMENT

Section 1(a) of Pub. L. 89–243 provided that: ''This Act [amending this section and sections 4912, 4914, 4916, 4917, 4919, 4920, and 4931 of this title, and enacting provisions set out as notes under sections 6011 and 6076 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1965'.''

SHORT TITLE OF 1964 AMENDMENT

Section 1(a) of Pub. L. 88–563 provided that: ''This Act [enacting sections 4911 to 4920, 4931, 6076, 6680, 6681, and 7241 of this title, amending this section and sections 1232, 6011, and 6103 of this title, and enacting provisions set out as notes under section 6011 of this title] may be cited as the 'Interest Equalization Tax Act'.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(D) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 263A. Capitalization and inclusion in inventory costs of certain expenses

(a) Nondeductibility of certain direct and indirect costs

(1) In general

In the case of any property to which this section applies, any costs described in paragraph (2)—

(A) in the case of property which is inventory in the hands of the taxpayer, shall be included in inventory costs, and

(B) in the case of any other property, shall be capitalized.

(2) Allocable costs

The costs described in this paragraph with respect to any property are—

(A) the direct costs of such property, and

(B) such property's proper share of those indirect costs (including taxes) part or all of which are allocable to such property.

Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph.

(b) Property to which section applies

Except as otherwise provided in this section, this section shall apply to—

(1) Property produced by taxpayer

Real or tangible personal property produced by the taxpayer.

(2) Property acquired for resale

(A) In general

Real or personal property described in section 1221(a)(1) which is acquired by the taxpayer for resale.

(B) Exception for taxpayer with gross receipts of $10,000,000 or less

Subparagraph (A) shall not apply to any personal property acquired during any taxable year by the taxpayer for resale if the average annual gross receipts of the taxpayer (or any predecessor) for the 3-taxable year period ending with the taxable year preceding such taxable year do not exceed $10,000,000.

(C) Aggregation rules, etc.

For purposes of subparagraph (B), rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply.

For purposes of paragraph (1), the term ''tangible personal property'' shall include a film, sound recording, video tape, book, or similar property.

(c) General exceptions

(1) Personal use property

This section shall not apply to any property produced by the taxpayer for use by the taxpayer other than in a trade or business or an activity conducted for profit.

(2) Research and experimental expenditures

This section shall not apply to any amount allowable as a deduction under section 174.

(3) Certain development and other costs of oil and gas wells or other mineral property

This section shall not apply to any cost allowable as a deduction under section 167(h), 179B, 263(c), 263(i), 291(b)(2), 616, or 617.

(4) Coordination with long-term contract rules

This section shall not apply to any property produced by the taxpayer pursuant to a long-term contract.

(5) Timber and certain ornamental trees

This section shall not apply to—

(A) trees raised, harvested, or grown by the taxpayer other than trees described in clause (ii) of subsection (e)(4)(B) (after application of the last sentence thereof), and

(B) any real property underlying such trees.

(6) Coordination with section 59(e)

Paragraphs (2) and (3) shall apply to any amount allowable as a deduction under section 59(e) for qualified expenditures described in subparagraphs (B), (C), (D), and (E) of paragraph (2) thereof.

(d) Exception for farming businesses

(1) Section not to apply to certain property

(A) In general

This section shall not apply to any of the following which is produced by the taxpayer in a farming business:

(i) Any animal.

(ii) Any plant which has a preproductive period of 2 years or less.

(B) Exception for taxpayers required to use accrual method

Subparagraph (A) shall not apply to any corporation, partnership, or tax shelter required to use an accrual method of accounting under section 447 or 448(a)(3).

(2) Treatment of certain plants lost by reason of casualty

(A) In general

If plants bearing an edible crop for human consumption were lost or damaged (while in the hands of the taxpayer) by reason of freezing temperatures, disease, drought, pests, or casualty, this section shall not apply to any costs of the taxpayer of replanting plants bearing the same type of crop (whether on the same parcel of land on which such lost or damaged plants were located or any other parcel of land of the same acreage in the United States).

(B) Special rule for person with minority interest who materially participates

Subparagraph (A) shall apply to amounts paid or incurred by a person (other than the taxpayer described in subparagraph (A)) if—

(i) the taxpayer described in subparagraph (A) has an equity interest of more than 50 percent in the plants described in subparagraph (A) at all times during the taxable year in which such amounts were paid or incurred, and

(ii) such other person holds any part of the remaining equity interest and materially participates in the planting, maintenance, cultivation, or development of such the plants described in subparagraph (A) during the taxable year in which such amounts were paid or incurred.

The determination of whether an individual materially participates in any activity shall be made in a manner similar to the manner in which such determination is made under section 2032A(e)(6).

(3) Election to have this section not apply

(A) In general

If a taxpayer makes an election under this paragraph, this section shall not apply to any plant produced in any farming business carried on by such taxpayer.

(B) Certain persons not eligible

No election may be made under this paragraph by a corporation, partnership, or tax shelter, if such corporation, partnership, or tax shelter is required to use an accrual method of accounting under section 447 or 448(a)(3).

(C) Special rule for citrus and almond growers

An election under this paragraph shall not apply with respect to any item which is attributable to the planting, cultivation, maintenance, or development of any citrus or almond grove (or part thereof) and which is incurred before the close of the 4th taxable year beginning with the taxable year in which the trees were planted. For purposes of the preceding sentence, the portion of a citrus or almond grove planted in 1 taxable year shall be treated separately from the portion of such grove planted in another taxable year.

(D) Election

Unless the Secretary otherwise consents, an election under this paragraph may be made only for the taxpayer's 1st taxable year which begins after December 31, 1986, and during which the taxpayer engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary.

(e) Definitions and special rules for purposes of subsection (d)

(1) Recapture of expensed amounts on disposition

(A) In general

In the case of any plant with respect to which amounts would have been capitalized under subsection (a) but for an election under subsection (d)(3)—

(i) such plant (if not otherwise section 1245 property) shall be treated as section 1245 property, and

(ii) for purposes of section 1245, the recapture amount shall be treated as a deduction allowed for depreciation with respect to such property.

(B) Recapture amount

For purposes of subparagraph (A), the term ''recapture amount'' means any amount allowable as a deduction to the taxpayer which, but for an election under subsection (d)(3), would have been capitalized with respect to the plant.

(2) Effects of election on depreciation

(A) In general

If the taxpayer (or any related person) makes an election under subsection (d)(3), the provisions of section 168(g)(2) (relating to alternative depreciation) shall apply to all property of the taxpayer used predominantly in the farming business and placed in service in any taxable year during which any such election is in effect.

(B) Related person

For purposes of subparagraph (A), the term ''related person'' means—

(i) the taxpayer and members of the taxpayer's family,

(ii) any corporation (including an S corporation) if 50 percent or more (in value) of the stock of such corporation is owned (directly or through the application of section 318) by the taxpayer or members of the taxpayer's family,

(iii) a corporation and any other corporation which is a member of the same controlled group described in section 1563(a)(1), and

(iv) any partnership if 50 percent or more (in value) of the interests in such partnership is owned directly or indirectly by the taxpayer or members of the taxpayer's family.

(C) Members of family

For purposes of this paragraph, the term ''family'' means the taxpayer, the spouse of the taxpayer, and any of their children who have not attained age 18 before the close of the taxable year.

(3) Preproductive period

(A) In general

For purposes of this section, the term ''preproductive period'' means—

(i) in the case of a plant which will have more than 1 crop or yield, the period before the 1st marketable crop or yield from such plant, or

(ii) in the case of any other plant, the period before such plant is reasonably expected to be disposed of.

For purposes of this subparagraph, use by the taxpayer in a farming business of any supply produced in such business shall be treated as a disposition.

(B) Rule for determining period

In the case of a plant grown in commercial quantities in the United States, the preproductive period for such plant if grown in the United States shall be based on the nationwide weighted average preproductive period for such plant.

(4) Farming business

For purposes of this section—

(A) In general

The term ''farming business'' means the trade or business of farming.

(B) Certain trades and businesses included

The term ''farming business'' shall include the trade or business of—

(i) operating a nursery or sod farm, or

(ii) the raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees.

For purposes of clause (ii), an evergreen tree which is more than 6 years old at the time

severed from the roots shall not be treated as an ornamental tree.

(5) Certain inventory valuation methods permitted

The Secretary shall by regulations permit the taxpayer to use reasonable inventory valuation methods to compute the amount required to be capitalized under subsection (a) in the case of any plant.

(f) Special rules for allocation of interest to property produced by the taxpayer

(1) Interest capitalized only in certain cases

Subsection (a) shall only apply to interest costs which are—

(A) paid or incurred during the production period, and

(B) allocable to property which is described in subsection (b)(1) and which has—

(i) a long useful life,

(ii) an estimated production period exceeding 2 years, or

(iii) an estimated production period exceeding 1 year and a cost exceeding $1,000,000.

(2) Allocation rules

(A) In general

In determining the amount of interest required to be capitalized under subsection (a) with respect to any property—

(i) interest on any indebtedness directly attributable to production expenditures with respect to such property shall be assigned to such property, and

(ii) interest on any other indebtedness shall be assigned to such property to the extent that the taxpayer's interest costs could have been reduced if production expenditures (not attributable to indebtedness described in clause (i)) had not been incurred.

(B) Exception for qualified residence interest

Subparagraph (A) shall not apply to any qualified residence interest (within the meaning of section 163(h)).

(C) Special rule for flow-through entities

Except as provided in regulations, in the case of any flow-through entity, this paragraph shall be applied first at the entity level and then at the beneficiary level.

(3) Interest relating to property used to produce property

This subsection shall apply to any interest on indebtedness allocable (as determined under paragraph (2)) to property used to produce property to which this subsection applies to the extent such interest is allocable (as so determined) to the produced property.

(4) Definitions

For purposes of this subsection—

(A) Long useful life

Property has a long useful life if such property is—

(i) real property, or

(ii) property with a class life of 20 years or more (as determined under section 168).

(B) Production period

The term ''production period'' means, when used with respect to any property, the period—

(i) beginning on the date on which production of the property begins, and

(ii) ending on the date on which the property is ready to be placed in service or is ready to be held for sale.

(C) Production expenditures

The term ''production expenditures'' means the costs (whether or not incurred during the production period) required to be capitalized under subsection (a) with respect to the property.

(g) Production

For purposes of this section—

(1) In general

The term ''produce'' includes construct, build, install, manufacture, develop, or improve.

(2) Treatment of property produced under contract for the taxpayer

The taxpayer shall be treated as producing any property produced for the taxpayer under a contract with the taxpayer; except that only costs paid or incurred by the taxpayer (whether under such contract or otherwise) shall be taken into account in applying subsection (a) to the taxpayer.

(h) Exemption for free lance authors, photographers, and artists

(1) In general

Nothing in this section shall require the capitalization of any qualified creative expense.

(2) Qualified creative expense

For purposes of this subsection, the term ''qualified creative expense'' means any expense—

(A) which is paid or incurred by an individual in the trade or business of such individual (other than as an employee) of being a writer, photographer, or artist, and

(B) which, without regard to this section, would be allowable as a deduction for the taxable year.

Such term does not include any expense related to printing, photographic plates, motion picture films, video tapes, or similar items.

(3) Definitions

For purposes of this subsection—

(A) Writer

The term ''writer'' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a literary manuscript, musical composition (including any accompanying words), or dance score.

(B) Photographer

The term ''photographer'' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a photograph or photographic negative or transparency.

(C) Artist

(i) In general

The term ''artist'' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a picture, painting, sculpture, statue, etching, drawing, cartoon, graphic design, or original print edition.

(ii) Criteria

In determining whether any expense is paid or incurred in the trade or business of being an artist, the following criteria shall be taken into account:

(I) The originality and uniqueness of the item created (or to be created).

(II) The predominance of aesthetic value over utilitarian value of the item created (or to be created).

(D) Treatment of certain corporations

(i) In general

If—

(I) substantially all of the stock of a corporation is owned by a qualified employee-owner and members of his family (as defined in section 267(c)(4)), and

(II) the principal activity of such corporation is performance of personal services directly related to the activities of the qualified employee-owner and such services are substantially performed by the qualified employee-owner,

this subsection shall apply to any expense of such corporation which directly relates to the activities of such employee-owner in the same manner as if such expense were incurred by such employee-owner.

(ii) Qualified employee-owner

For purposes of this subparagraph, the term ''qualified employee-owner'' means any individual who is an employee-owner of the corporation (as defined in section 269A(b)(2)) and who is a writer, photographer, or artist.

(i) Regulations

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

(1) regulations to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section, and

(2) regulations providing for simplified procedures for the application of this section in the case of property described in subsection (b)(2).

(Added Pub. L. 99–514, title VIII, §803(a), Oct. 22, 1986, 100 Stat. 2350; amended Pub. L. 100–647, title I, §1008(b)(1)–(4), title VI, §6026(a)–(c), Nov. 10, 1988, 102 Stat. 3437, 3438, 3691–3693; Pub. L. 101–239, title VII, §7816(d)(1), Dec. 19, 1989, 103 Stat. 2420; Pub. L. 106–170, title V, §532(c)(2)(B), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title III, §338(b)(2), Oct. 22, 2004, 118 Stat. 1481; Pub. L. 109–58, title XIII, §1329(b), Aug. 8, 2005, 119 Stat. 1020).

AMENDMENTS

2005—Subsec. (c)(3). Pub. L. 109–58 inserted ''167(h),'' after ''under section''.

2004—Subsec. (c)(3). Pub. L. 108–357, which directed amendment of par. (3) by inserting ''179B,'' after ''section'', was executed by making the insertion after ''section'' the second place it appeared to reflect the probable intent of Congress.

1999—Subsec. (b)(2)(A). Pub. L. 106–170 substituted ''1221(a)(1)'' for ''1221(1)''.

1989—Subsec. (h)(3)(D). Pub. L. 101–239 substituted ''corporations'' for ''personal service corporations'' in heading and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—In the case of a personal service corporation, this subsection shall apply to any expense of such corporation which directly relates to the activities of the qualified employee-owner in the same manner as if such expense were incurred by such employee-owner.

''(ii) QUALIFIED EMPLOYEE-OWNER.—The term 'qualified employee-owner' means any individual who is an employee-owner of the personal service corporation and who is a writer, photographer, or artist, but only if substantially all of the stock of such corporation is owned by such individual and members of his family (as defined in section 267(c)(4)).

''(iii) PERSONAL SERVICE CORPORATION.—For purposes of this subparagraph, the term 'personal service corporation' means any personal service corporation (as defined in section 269A(b)).''

1988—Subsec. (a)(2). Pub. L. 100–647, §1008(b)(1), inserted at end ''Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph.''

Subsec. (c)(3). Pub. L. 100–647, §1008(b)(2)(A), substituted ''section 263(c), 263(i), 291(b)(2), 616, or 617'' for ''section 263(c), 616(a), or 617(a)''.

Subsec. (c)(6). Pub. L. 100–647, §1008(b)(2)(B), added par. (6).

Subsec. (d)(1). Pub. L. 100–647, §6026(b)(2)(A), substituted ''Section not to apply to certain property'' for ''Section to apply only if preproductive period is more than 2 years'' in heading.

Subsec. (d)(1)(A). Pub. L. 100–647, §6026(b)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''This section shall not apply to any plant or animal which is produced by the taxpayer in a farming business and which has a preproductive period of 2 years or less.''

Subsec. (d)(2)(B)(i). Pub. L. 100–647, §1008(b)(3)(A), substituted ''the plants described in subparagraph (A) at all times during the taxable year in which such amounts were paid or incurred'' for ''such grove, orchard, or vineyard''.

Subsec. (d)(2)(B)(ii). Pub. L. 100–647, §1008(b)(3)(B), substituted ''the plants described in subparagraph (A) during the taxable year in which such amounts were paid or incurred'' for ''such grove, orchard, or vineyard during the 4-taxable year period beginning with the taxable year in which the grove, orchard, or vineyard was lost or damaged''.

Subsec. (d)(3)(A). Pub. L. 100–647, §6026(b)(2)(B), struck out ''or animal'' after ''plant''.

Subsec. (d)(3)(B). Pub. L. 100–647, §6026(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''No election may be made under this paragraph—

''(i) by a corporation, partnership, or tax shelter, if such corporation, partnership, or tax shelter is required to use an accrual method of accounting under section 447 or 448(a)(3), or

''(ii) with respect to the planting, cultivation, maintenance, or development of pistachio trees.''

Subsec. (e). Pub. L. 100–647, §6026(b)(2)(B), struck out ''or animal'' after ''plant'' wherever appearing in pars. (1), (3), and (5).

Subsec. (f)(3). Pub. L. 100–647, §1008(b)(4), substituted ''allocable (as determined under paragraph (2)) to'' for ''incurred or continued in connection with'' and inserted ''(as so determined)'' after ''allocable''.

Subsecs. (h), (i). Pub. L. 100–647, §6026(a), added subsec. (h) and redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to amounts paid or incurred in taxable years beginning after Aug. 8, 2005, see section 1329(c) of Pub. L. 109–58, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(b)(1)–(4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6026(d) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, § 7816(d)(2), Dec. 19, 1989, 103 Stat. 2421, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 803 of the Tax Reform Act of 1986 [section 803 of Pub. L. 99–514].

''(2) SUBSECTION (b).—

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section] shall apply to costs incurred after December 31, 1988, in taxable years ending after such date.

''(B) REVOCATION OF ELECTION.—If a taxpayer engaged in a farming business involving the production of animals having a preproductive period of more than 2 years made an election under section 263A(d)(3) of the 1986 Code for a taxable year beginning before January 1, 1989, such taxpayer may, without the consent of the Secretary of the Treasury or his delegate, revoke such election effective for the taxpayer's 1st taxable year beginning after December 31, 1988.''

EFFECTIVE DATE

Section 7831(d)(2) of Pub. L. 101–239 provided that: ''If any interest costs incurred after December 31, 1986, are attributable to costs incurred before January 1, 1987, the amendments made by section 803 of the Tax Reform Act of 1986 [section 803 of Pub. L. 99–514, enacting this section, amending sections 48, 267, 312, 447, 464, and 471 of this title, and repealing sections 189, 278, and 280 of this title] shall apply to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of the Tax Reform Act of 1986) or, if applicable, section 266 of such Code.''

Section 803(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1008(b)(7), Nov. 10, 1988, 102 Stat. 3438; Pub. L. 101–239, title VII, § 7831(d)(1), Dec. 19, 1989, 103 Stat. 2426, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section, amending sections 48, 267, 312, 447, 464, and 471 of this title, and repealing sections 189, 278, and 280 of this title] shall apply to costs incurred after December 31, 1986, in taxable years ending after such date.

''(2) SPECIAL RULE FOR INVENTORY PROPERTY.—In the case of any property which is inventory in the hands of the taxpayer—

''(A) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

''(B) CHANGE IN METHOD OF ACCOUNTING.—If the taxpayer is required by the amendments made by this section to change its method of accounting with respect to such property for any taxable year—

''(i) such change shall be treated as initiated by the taxpayer,

''(ii) such change shall be treated as made with the consent of the Secretary, and

''(iii) the period for taking into account the adjustments under section 481 by reason of such change shall not exceed 4 years.

''(3) SPECIAL RULE FOR SELF-CONSTRUCTED PROPERTY.—The amendments made by this section shall not apply to any property which is produced by the taxpayer for use by the taxpayer if substantial construction had occurred before March 1, 1986.

''(4) TRANSITIONAL RULE FOR CAPITALIZATION OF INTEREST AND TAXES.—

''(A) TRANSITION PROPERTY EXEMPTED FROM INTEREST CAPITALIZATION.—Section 263A of the Internal Revenue Code of 1986 (as added by this section) and the amendment made by subsection (b)(1) [repealing section 189 of this title] shall not apply to interest costs which are allocable to any property—

''(i) to which the amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] do not apply by reason of sections 204(a)(1)(D) and (E) and 204(a)(5)(A) [set out as a note under section 168 of this title], and

''(ii) to which the amendments made by section 251 [amending sections 46 and 48 of this title and enacting provisions set out as a note under section 46 of this title] do not apply by reason of section 251(d)(3)(M) [set out as a note under section 46 of this title].

''(B) INTEREST AND TAXES.—Section 263A of such Code shall not apply to property described in the matter following subparagraph (B) of section 207(e)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 207(e)(2)(B) of Pub. L. 97–248, formerly set out as a note under section 189 of this title] to the extent it would require the capitalization of interest and taxes paid or incurred in connection with such property which are not required to be capitalized under section 189 of such Code (as in effect before the amendment made by subsection (b)(1)) [repealing section 189 of this title].

''(5) TRANSITION RULE CONCERNING CAPITALIZATION OF INVENTORY RULES.—In the case of a corporation which on the date of the enactment of this Act [Oct. 22, 1986] was a member of an affiliated group of corporations (within the meaning of section 1504(a) of the Internal Revenue Code of 1986), the parent of which—

''(A) was incorporated in California on April 15, 1925,

''(B) adopted LIFO accounting as of the close of the taxable year ended December 31, 1950, and

''(C) was, on May 22, 1986, merged into a Delaware corporation incorporated on March 12, 1986,

the amendments made by this section shall apply under a cut-off method whereby the uniform capitalization rules are applied only in costing layers of inventory acquired during taxable years beginning on or after January 1, 1987.

''(6) TREATMENT OF CERTAIN REHABILITATION PROJECT.—The amendments made by this section shall not apply to interest and taxes paid or incurred with

respect to the rehabilitation and conversion of a certified historic building which was formerly a factory into an apartment project with 155 units, 39 units of which are for low-income families, if the project was approved for annual interest assistance on June 10, 1986, by the housing authority of the State in which the project is located.

''(7) SPECIAL RULE FOR CASUALTY LOSSES.—Section 263A(d)(2) of the Internal Revenue Code of 1986 (as added by this section) shall apply to expenses incurred on or after the date of the enactment of this Act [Oct. 22, 1986].''

ALLOCATION RATIO FOR APPORTIONING STORAGE COSTS AND RELATED HANDLING COSTS

Section 1008(b)(8) of Pub. L. 100–647 provided that: ''The allocation used in the regulations prescribed under section 263A(h)(2) of the Internal Revenue Code of 1986 for apportioning storage costs and related handling costs shall be determined by dividing the amount of such costs by the beginning inventory balances and the purchases during the year and by multiplying the resulting allocation ratio by inventory amounts determined in accordance with the provisions of the joint explanatory statement of the committee of conference of the conference report accompanying H.R. 3838 (H.R. Rept. No. 99–841, Vol. II., 99th Cong., 2d Sess. II–306–307 (1986)).''

AMORTIZATION OF PAST SERVICE PENSION COSTS

Pub. L. 100–203, title X, § 10204, Dec. 22, 1987, 101 Stat. 1330–394, provided that:

''(a) IN GENERAL.—For purposes of sections 263A and 460 of the Internal Revenue Code of 1986, the allocable costs (within the meaning of section 263A(a)(2) or section 460(c) of such Code, whichever is applicable) with respect to any property shall include contributions paid to or under a pension or annuity plan whether or not such contributions represent past service costs.

''(b) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), subsection (a) shall apply to costs incurred after December 31, 1987, in taxable years ending after such date.

''(2) SPECIAL RULE FOR INVENTORY PROPERTY.—In the case of any property which is inventory in the hands of the taxpayer—

''(A) IN GENERAL.—Subsection (a) shall apply to taxable years beginning after December 31, 1987.

''(B) CHANGE IN METHOD OF ACCOUNTING.—If the taxpayer is required by this section to change its method of accounting for any taxable year—

''(i) such change shall be treated as initiated by the taxpayer,

''(ii) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

''(iii) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.''

§ 264. Certain amounts paid in connection with insurance contracts

(a) General rule

No deduction shall be allowed for—

(1) Premiums on any life insurance policy, or endowment or annuity contract, if the taxpayer is directly or indirectly a beneficiary under the policy or contract.

(2) Any amount paid or accrued on indebtedness incurred or continued to purchase or carry a single premium life insurance, endowment, or annuity contract.

(3) Except as provided in subsection (d), any amount paid or accrued on indebtedness incurred or continued to purchase or carry a life insurance, endowment, or annuity contract (other than a single premium contract or a contract treated as a single premium contract) pursuant to a plan of purchase which contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of such contract (either from the insurer or otherwise).

(4) Except as provided in subsection (e), any interest paid or accrued on any indebtedness with respect to 1 or more life insurance policies owned by the taxpayer covering the life of any individual, or any endowment or annuity contracts owned by the taxpayer covering any individual.

Paragraph (2) shall apply in respect of annuity contracts only as to contracts purchased after March 1, 1954. Paragraph (3) shall apply only in respect of contracts purchased after August 6, 1963. Paragraph (4) shall apply with respect to contracts purchased after June 20, 1986.

(b) Exceptions to subsection (a)(1)

Subsection (a)(1) shall not apply to—

(1) any annuity contract described in section 72(s)(5), and

(2) any annuity contract to which section 72(u) applies.

(c) Contracts treated as single premium contracts

For purposes of subsection (a)(2), a contract shall be treated as a single premium contract—

(1) if substantially all the premiums on the contract are paid within a period of 4 years from the date on which the contract is purchased, or

(2) if an amount is deposited after March 1, 1954, with the insurer for payment of a substantial number of future premiums on the contract.

(d) Exceptions

Subsection (a)(3) shall not apply to any amount paid or accrued by a person during a taxable year on indebtedness incurred or continued as part of a plan referred to in subsection (a)(3)—

(1) if no part of 4 of the annual premiums due during the 7-year period (beginning with the date the first premium on the contract to which such plan relates was paid) is paid under such plan by means of indebtedness,

(2) if the total of the amounts paid or accrued by such person during such taxable year for which (without regard to this paragraph) no deduction would be allowable by reason of subsection (a)(3) does not exceed $100.

(3) if such amount was paid or accrued on indebtedness incurred because of an unforeseen substantial loss of income or unforeseen substantial increase in his financial obligations, or

(4) if such indebtedness was incurred in connection with his trade or business.

For purposes of applying paragraph (1), if there is a substantial increase in the premiums on a contract, a new 7-year period described in such paragraph with respect to such contract shall commence on the date of first such increased premium is paid.

(e) Special rules for application of subsection (a)(4)

(1) Exception for key persons

Subsection (a)(4) shall not apply to any interest paid or accrued on any indebtedness with respect to policies or contracts covering an individual who is a key person to the extent that the aggregate amount of such indebtedness with respect to policies and contracts covering such individual does not exceed $50,000.

(2) Interest rate cap on key persons and pre-1986 contracts

(A) In general

No deduction shall be allowed by reason of paragraph (1) or the last sentence of subsection (a) with respect to interest paid or accrued for any month beginning after December 31, 1995, to the extent the amount of such interest exceeds the amount which would have been determined if the applicable rate of interest were used for such month.

(B) Applicable rate of interest

For purposes of subparagraph (A)—

(i) In general

The applicable rate of interest for any month is the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto, for such month.

(ii) Pre-1986 contracts

In the case of indebtedness on a contract purchased on or before June 20, 1986—

(I) which is a contract providing a fixed rate of interest, the applicable rate of interest for any month shall be the Moody's rate described in clause (i) for the month in which the contract was purchased, or

(II) which is a contract providing a variable rate of interest, the applicable rate of interest for any month in an applicable period shall be such Moody's rate for the third month preceding the first month in such period.

For purposes of subclause (II), the term ''applicable period'' means the 12-month period beginning on the date the policy is issued (and each successive 12-month period thereafter) unless the taxpayer elects a number of months (not greater than 12) other than such 12-month period to be its applicable period. Such an election shall be made not later than the 90th day after the date of the enactment of this sentence and, if made, shall apply to the taxpayer's first taxable year ending on or after October 13, 1995, and all subsequent taxable years unless revoked with the consent of the Secretary.

(3) Key person

For purposes of paragraph (1), the term ''key person'' means an officer or 20-percent owner, except that the number of individuals who may be treated as key persons with respect to any taxpayer shall not exceed the greater of—

(A) 5 individuals, or

(B) the lesser of 5 percent of the total officers and employees of the taxpayer or 20 individuals.

(4) 20-percent owner

For purposes of this subsection, the term ''20-percent owner'' means—

(A) if the taxpayer is a corporation, any person who owns directly 20 percent or more of the outstanding stock of the corporation or stock possessing 20 percent or more of the total combined voting power of all stock of the corporation, or

(B) if the taxpayer is not a corporation, any person who owns 20 percent or more of the capital or profits interest in the taxpayer.

(5) Aggregation rules

(A) In general

For purposes of paragraph (4)(A) and applying the $50,000 limitation in paragraph (1)—

(i) all members of a controlled group shall be treated as one taxpayer, and

(ii) such limitation shall be allocated among the members of such group in such manner as the Secretary may prescribe.

(B) Controlled group

For purposes of this paragraph, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (*o*) of section 414 shall be treated as members of a controlled group.

(f) Pro rata allocation of interest expense to policy cash values

(1) In general

No deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values.

(2) Allocation

For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values is an amount which bears the same ratio to such interest expense as—

(A) the taxpayer's average unborrowed policy cash values of life insurance policies, and annuity and endowment contracts, issued after June 8, 1997, bears to

(B) the sum of—

(i) in the case of assets of the taxpayer which are life insurance policies or annuity or endowment contracts, the average unborrowed policy cash values of such policies and contracts, and

(ii) in the case of assets of the taxpayer not described in clause (i), the average adjusted bases (within the meaning of section 1016) of such assets.

(3) Unborrowed policy cash value

For purposes of this subsection, the term ''unborrowed policy cash value'' means, with respect to any life insurance policy or annuity or endowment contract, the excess of—

(A) the cash surrender value of such policy or contract determined without regard to any surrender charge, over

(B) the amount of any loan with respect to such policy or contract.

If the amount described in subparagraph (A) with respect to any policy or contract does not reasonably approximate its actual value, the amount taken into account under subparagraph (A) shall be the greater of the amount of the insurance company liability or the insurance company reserve with respect to such policy or contract (as determined for purposes of the annual statement approved by the National Association of Insurance Commissioners) or shall be such other amount as is determined by the Secretary.

(4) Exception for certain policies and contracts

(A) Policies and contracts covering 20-percent owners, officers, directors, and employees

Paragraph (1) shall not apply to any policy or contract owned by an entity engaged in a trade or business if such policy or contract covers only 1 individual and if such individual is (at the time first covered by the policy or contract)—

(i) a 20-percent owner of such entity, or

(ii) an individual (not described in clause (i)) who is an officer, director, or employee of such trade or business.

A policy or contract covering a 20-percent owner of such entity shall not be treated as failing to meet the requirements of the preceding sentence by reason of covering the joint lives of such owner and such owner's spouse.

(B) Contracts subject to current income inclusion

Paragraph (1) shall not apply to any annuity contract to which section 72(u) applies.

(C) Coordination with paragraph (2)

Any policy or contract to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2).

(D) 20-percent owner

For purposes of subparagraph (A), the term ''20-percent owner'' has the meaning given such term by subsection (e)(4).

(E) Master contracts

If coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract for purposes of subparagraph (A). For purposes of the preceding sentence, the term ''master contract'' shall not include any group life insurance contract (as defined in section 848(e)(2)).

(5) Exception for policies and contracts held by natural persons; treatment of partnerships and S corporations

(A) Policies and contracts held by natural persons

(i) In general

This subsection shall not apply to any policy or contract held by a natural person.

(ii) Exception where business is beneficiary

If a trade or business is directly or indirectly the beneficiary under any policy or contract, such policy or contract shall be treated as held by such trade or business and not by a natural person.

(iii) Special rules

(I) Certain trades or businesses not taken into account

Clause (ii) shall not apply to any trade or business carried on as a sole proprietorship and to any trade or business performing services as an employee.

(II) Limitation on unborrowed cash value

The amount of the unborrowed cash value of any policy or contract which is taken into account by reason of clause (ii) shall not exceed the benefit to which the trade or business is directly or indirectly entitled under the policy or contract.

(iv) Reporting

The Secretary shall require such reporting from policyholders and issuers as is necessary to carry out clause (ii).

(B) Treatment of partnerships and S corporations

In the case of a partnership or S corporation, this subsection shall be applied at the partnership and corporate levels.

(6) Special rules

(A) Coordination with subsection (a) and section 265

If interest on any indebtedness is disallowed under subsection (a) or section 265—

(i) such disallowed interest shall not be taken into account for purposes of applying this subsection, and

(ii) the amount otherwise taken into account under paragraph (2)(B) shall be reduced (but not below zero) by the amount of such indebtedness.

(B) Coordination with section 263A

This subsection shall be applied before the application of section 263A (relating to capitalization of certain expenses where taxpayer produces property).

(7) Interest expense

The term ''interest expense'' means the aggregate amount allowable to the taxpayer as a deduction for interest (within the meaning of section 265(b)(4)) for the taxable year (determined without regard to this subsection, section 265(b), and section 291).

(8) Aggregation rules

(A) In general

All members of a controlled group (within the meaning of subsection (e)(5)(B)) shall be treated as 1 taxpayer for purposes of this subsection.

(B) Treatment of insurance companies

This subsection shall not apply to an insurance company subject to tax under sub-

chapter L, and subparagraph (A) shall be applied without regard to any member of an affiliated group which is an insurance company.

(Aug. 16, 1954, ch. 736, 68A Stat. 77; Pub. L. 88–272, title II, § 215(a), (b), Feb. 26, 1964, 78 Stat. 55; Pub. L. 99–514, title X, § 1003(a), (b), Oct. 22, 1986, 100 Stat. 2388; Pub. L. 104–191, title V, § 501(a), (b), Aug. 21, 1996, 110 Stat. 2090; Pub. L. 105–34, title X, § 1084(a), (b)(1), (c), title XVI, § 1602(f)(1)–(3), Aug. 5, 1997, 111 Stat. 951, 952, 1094, 1095; Pub. L. 105–206, title VI, § 6010(*o*)(1)–(3)(A), (4)(A), (5), July 22, 1998, 112 Stat. 816; Pub. L. 105–277, div. J, title IV, § 4003(i), Oct. 21, 1998, 112 Stat. 2681–910.)

REFERENCES IN TEXT

The date of the enactment of this sentence, referred to in subsec. (e)(2)(B)(ii), probably means the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 805, 807, 812, and 832 of this title. Another section 1084(c) of Pub. L. 105–34 amended section 265 of this title.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105–206, § 6010(*o*)(1), substituted ''subsection (d)'' for ''subsection (c)''.

Subsec. (a)(4). Pub. L. 105–206, § 6010(*o*)(2), substituted ''subsection (e)'' for ''subsection (d)''.

Subsec. (f)(3). Pub. L. 105–277 inserted concluding provisions.

Subsec. (f)(4)(E). Pub. L. 105–206, § 6010(*o*)(3)(A), added subpar. (E).

Subsec. (f)(5)(A)(iv). Pub. L. 105–206, § 6010(*o*)(4)(A), struck out at end ''Any report required under the preceding sentence shall be treated as a statement referred to in section 6724(d)(1).''

Subsec. (f)(8)(A). Pub. L. 105–206, § 6010(*o*)(5), substituted ''subsection (e)(5)(B)'' for ''subsection (d)(5)(B)''.

1997—Subsec. (a)(1). Pub. L. 105–34, § 1084(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.''

Subsec. (a)(4). Pub. L. 105–34, § 1602(f)(1), added subpars. (A) and (B) and concluding provisions and struck out former subpars. (A) and (B) and concluding provisions which read as follows:

''(A) is an officer or employee of, or

''(B) is financially interested in,

any trade or business carried on by the taxpayer.''

Pub. L. 105–34, § 1084(b)(1), substituted ''individual.'' for ''individual, who—

''(A) is or was an officer or employee, or

''(B) is or was financially interested in,

any trade or business carried on (currently or formerly) by the taxpayer.''

Subsecs. (b), (c). Pub. L. 105–34, § 1084(a)(2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–34, § 1084(a)(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(2)(B)(ii). Pub. L. 105–34, § 1602(f)(2), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''For purposes of subclause (II), the taxpayer shall elect an applicable period for such contract on its return of tax imposed by this chapter for its first taxable year ending on or after October 13, 1995. Such applicable period shall be for any number of months (not greater than 12) specified in the election and may not be changed by the taxpayer without the consent of the Secretary.''

Subsec. (d)(4)(B). Pub. L. 105–34, § 1602(f)(3), substituted ''interest in the taxpayer'' for ''interest in the employer''.

Subsec. (e). Pub. L. 105–34, § 1084(a)(2), redesignated subsec. (d) as (e).

Subsec. (f). Pub. L. 105–34, § 1084(c), added subsec. (f).

1996—Subsec. (a)(4). Pub. L. 104–191, § 501(a)(1), (b)(1), in introductory provisions, substituted ''Except as provided in subsection (d), any'' for ''Any'' and inserted '', or any endowment or annuity contracts owned by the taxpayer covering any individual,'' after ''the life of any individual''.

Pub. L. 104–191, § 501(a)(2), struck out ''to the extent that the aggregate amount of such indebtedness with respect to policies covering such individual exceeds $50,000'' after ''carried on by the taxpayer'' in concluding provisions.

Subsec. (d). Pub. L. 104–191, § 501(b)(2), added subsec. (d).

1986—Subsec. (a). Pub. L. 99–514 added par. (4) and last sentence providing that par. (4) shall apply with respect to contracts purchased after June 20, 1986.

1964—Subsec. (a). Pub. L. 88–272 added par. (3) and sentence providing that par. (3) shall apply only to contracts purchased after August 6, 1963.

Subsec. (c). Pub. L. 88–272 added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1084(a), (b)(1), (c) of Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

Amendment by section 1602(f)(1)–(3) of Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 501(c) of Pub. L. 104–191, as amended by Pub. L. 105–34, title XVI, § 1602(f)(4), Aug. 5, 1997, 111 Stat. 1095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to interest paid or accrued after October 13, 1995.

''(2) TRANSITION RULE FOR EXISTING INDEBTEDNESS.—

''(A) IN GENERAL.—In the case of—

''(i) indebtedness incurred before January 1, 1996, or

''(ii) indebtedness incurred before January 1, 1997 with respect to any contract or policy entered into in 1994 or 1995,

the amendments made by this section shall not apply to qualified interest paid or accrued on such indebtedness after October 13, 1995, and before January 1, 1999.

''(B) QUALIFIED INTEREST.—For purposes of subparagraph (A), the qualified interest with respect to any indebtedness for any month is the amount of interest (otherwise deductible) which would be paid or accrued for such month on such indebtedness if—

''(i) in the case of any interest paid or accrued after December 31, 1995, indebtedness with respect to no more than 20,000 insured individuals were taken into account, and

''(ii) the lesser of the following rates of interest were used for such month:

''(I) The rate of interest specified under the terms of the indebtedness as in effect on October 13, 1995 (and without regard to modification of such terms after such date).

''(II) The applicable percentage of the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto, for such month.

For purposes of clause (i), all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (*o*) of section 414 of such Code shall be treated as 1 person. Subclause (II) of clause (ii) shall not apply to any month before January 1, 1996.

''(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (B), the applicable percentage is as follows:

For calendar year:	The percentage is:
1996	100 percent
1997	90 percent
1998	80 percent.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1003(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to contracts purchased after June 20, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 215(c) of Pub. L. 88–272 provided that: ''The amendments made by this section [amending this section] shall apply with respect to amounts paid or accrued in taxable years beginning after December 31, 1963.''

SPREAD OF INCOME INCLUSION ON SURRENDER, ETC. OF CONTRACTS

Section 501(d) of Pub. L. 104–191, as amended by Pub. L. 105–34, title XVI, §1602(f)(5), Aug. 5, 1997, 111 Stat. 1095, provided that:

''(1) IN GENERAL.—If any amount is received under any life insurance policy or endowment or annuity contract described in paragraph (4) of section 264(a) of the Internal Revenue Code of 1986—

''(A) on the complete surrender, redemption, or maturity of such policy or contract during calendar year 1996, 1997, or 1998, or

''(B) in full discharge during any such calendar year of the obligation under the policy or contract which is in the nature of a refund of the consideration paid for the policy or contract,

then (in lieu of any other inclusion in gross income) such amount shall be includible in gross income ratably over the 4-taxable year period beginning with the taxable year such amount would (but for this paragraph) be includible. The preceding sentence shall only apply to the extent the amount is includible in gross income for the taxable year in which the event described in subparagraph (A) or (B) occurs.

''(2) SPECIAL RULES FOR APPLYING SECTION 264.—A contract shall not be treated as—

''(A) failing to meet the requirement of section 264(c)(1) of the Internal Revenue Code of 1986, or

''(B) a single premium contract under section 264(b)(1) of such Code,

solely by reason of an occurrence described in subparagraph (A) or (B) of paragraph (1) of this subsection or solely by reason of a lapse occurring after October 13, 1995, by reason of no additional premiums being received under the contract.

''(3) SPECIAL RULE FOR DEFERRED ACQUISITION COSTS.—In the case of the occurrence of any event described in subparagraph (A) or (B) of paragraph (1) of this subsection with respect to any policy or contract—

''(A) section 848 of the Internal Revenue Code of 1986 shall not apply to the unamortized balance (if any) of the specified policy acquisition expenses attributable to such policy or contract immediately before the insurance company's taxable year in which such event occurs, and

''(B) there shall be allowed as a deduction to such company for such taxable year under chapter 1 of such Code an amount equal to such unamortized balance.''

§ 265. Expenses and interest relating to tax-exempt income

(a) General rule

No deduction shall be allowed for—

(1) Expenses

Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this subtitle, or any amount otherwise allowable under section 212 (relating to expenses for production of income) which is allocable to interest (whether or not any amount of such interest is received or accrued) wholly exempt from the taxes imposed by this subtitle.

(2) Interest

Interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle.

(3) Certain regulated investment companies

In the case of a regulated investment company which distributes during the taxable year an exempt-interest dividend (including exempt-interest dividends paid after the close of the taxable year as described in section 855), that portion of any amount otherwise allowable as a deduction which the amount of the income of such company wholly exempt from taxes under this subtitle bears to the total of such exempt income and its gross income (excluding from gross income, for this purpose, capital gain net income, as defined in section 1222(9)).

(4) Interest related to exempt-interest dividends

Interest on indebtedness incurred or continued to purchase or carry shares of stock of a regulated investment company which during the taxable year of the holder thereof distributes exempt-interest dividends.

(5) Special rules for application of paragraph (2) in the case of short sales

For purposes of paragraph (2)—

(A) In general

The term ''interest'' includes any amount paid or incurred—

(i) by any person making a short sale in connection with personal property used in such short sale, or

(ii) by any other person for the use of any collateral with respect to such short sale.

(B) Exception where no return on cash collateral

If—

(i) the taxpayer provides cash as collateral for any short sale, and

(ii) the taxpayer receives no material earnings on such cash during the period of the sale,

subparagraph (A)(i) shall not apply to such short sale.

(6) Section not to apply with respect to parsonage and military housing allowances

No deduction shall be denied under this section for interest on a mortgage on, or real property taxes on, the home of the taxpayer by reason of the receipt of an amount as—

(A) a military housing allowance, or

(B) a parsonage allowance excludable from gross income under section 107.

(b) Pro rata allocation of interest expense of financial institutions to tax-exempt interest

(1) In general

In the case of a financial institution, no deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to tax-exempt interest.

(2) Allocation

For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to tax-exempt interest is an amount which bears the same ratio to such interest expense as—

(A) the taxpayer's average adjusted bases (within the meaning of section 1016) of tax-exempt obligations acquired after August 7, 1986, bears to

(B) such average adjusted bases for all assets of the taxpayer.

(3) Exception for certain tax-exempt obligations

(A) In general

Any qualified tax-exempt obligation acquired after August 7, 1986, shall be treated for purposes of paragraph (2) and section 291(e)(1)(B) as if it were acquired on August 7, 1986.

(B) Qualified tax-exempt obligation

(i) In general

For purposes of subparagraph (A), the term ''qualified tax-exempt obligation'' means a tax-exempt obligation—

(I) which is issued after August 7, 1986, by a qualified small issuer,

(II) which is not a private activity bond (as defined in section 141), and

(III) which is designated by the issuer for purposes of this paragraph.

(ii) Certain bonds not treated as private activity bonds

For purposes of clause (i)(II), there shall not be treated as a private activity bond—

(I) any qualified 501(c)(3) bond (as defined in section 145), or

(II) any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) or a private loan bond (as defined in section 103(*o*)(2)(A), as so in effect, but without regard to any exemption from such definition other than section 103(*o*)(2)(A)).

(C) Qualified small issuer

(i) In general

For purposes of subparagraph (B), the term ''qualified small issuer'' means, with respect to obligations issued during any calendar year, any issuer if the reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii)) which will be issued by such issuer during such calendar year does not exceed $10,000,000.

(ii) Obligations not taken into account in determining status as qualified small issuer

For purposes of clause (i), an obligation is described in this clause if such obligation is—

(I) a private activity bond (other than a qualified 501(c)(3) bond, as defined in section 145),

(II) an obligation to which section 141(a) does not apply by reason of section 1312, 1313, 1316(g), or 1317 of the Tax Reform Act of 1986 and which would (if issued on August 15, 1986) have been an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of such Act) or a private loan bond (as defined in section 103(*o*)(2)(A), as so in effect, but without regard to any exception from such definition other than section 103(*o*)(2)(A)), or

(III) an obligation issued to refund (other than to advance refund within the meaning of section 149(d)(5)) any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation.

(iii) Allocation of amount of issue in certain cases

In the case of an issue under which more than 1 governmental entity receives benefits, if—

(I) all governmental entities receiving benefits from such issue irrevocably agree (before the date of issuance of the issue) on an allocation of the amount of such issue for purposes of this subparagraph, and

(II) such allocation bears a reasonable relationship to the respective benefits received by such entities,

then the amount of such issue so allocated to an entity (and only such amount with respect to such issue) shall be taken into account under clause (i) with respect to such entity.

(D) Limitation on amount of obligations which may be designated

(i) In general

Not more than $10,000,000 of obligations issued by an issuer during any calendar year may be designated by such issuer for purposes of this paragraph.

(ii) Certain refundings of designated obligations deemed designated

Except as provided in clause (iii), in the case of a refunding (or series of refundings) of a qualified tax-exempt obligation, the refunding obligation shall be treated as a qualified tax-exempt obligation (and shall not be taken into account under clause (i)) if—

(I) the refunding obligation was not taken into account under subparagraph (C) by reason of clause (ii)(III) thereof,

(II) the average maturity date of the refunding obligations issued as part of the issue of which such refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue, and

(III) the refunding obligation has a maturity date which is not later than the date which is 30 years after the date the original qualified tax-exempt obligation was issued.

Subclause (II) shall not apply if the average maturity of the issue of which the original qualified tax-exempt obligation was a part (and of the issue of which the obligations to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147(b)(2)(A).

(iii) Certain obligations may not be designated or deemed designated

No obligation issued as part of an issue may be designated under this paragraph (or may be treated as designated under clause (ii)) if—

(I) any obligation issued as part of such issue is issued to refund another obligation, and

(II) the aggregate face amount of such issue exceeds $10,000,000.

(E) Aggregation of issuers

For purposes of subparagraphs (C) and (D)—

(i) an issuer and all entities which issue obligations on behalf of such issuer shall be treated as 1 issuer,

(ii) all obligations issued by a subordinate entity shall, for purposes of applying subparagraphs (C) and (D) to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

(iii) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of subparagraph (C) or (D) and all entities benefiting thereby shall be treated as 1 issuer.

(F) Treatment of composite issues

In the case of an obligation which is issued as part of a direct or indirect composite issue, such obligation shall not be treated as a qualified tax-exempt obligation unless—

(i) the requirements of this paragraph are met with respect to such composite issue (determined by treating such composite issue as a single issue), and

(ii) the requirements of this paragraph are met with respect to each separate lot of obligations which are part of the issue (determined by treating each such separate lot as a separate issue).

(G) Special rules for obligations issued during 2009 and 2010

(i) Increase in limitation

In the case of obligations issued during 2009 or 2010, subparagraphs (C)(i), (D)(i), and (D)(iii)(II) shall each be applied by substituting ''$30,000,000'' for ''$10,000,000''.

(ii) Qualified 501(c)(3) bonds treated as issued by exempt organization

In the case of a qualified 501(c)(3) bond (as defined in section 145) issued during 2009 or 2010, this paragraph shall be applied by treating the 501(c)(3) organization for whose benefit such bond was issued as the issuer.

(iii) Special rule for qualified financings

In the case of a qualified financing issue issued during 2009 or 2010—

(I) subparagraph (F) shall not apply, and

(II) any obligation issued as a part of such issue shall be treated as a qualified tax-exempt obligation if the requirements of this paragraph are met with respect to each qualified portion of the issue (determined by treating each qualified portion as a separate issue which is issued by the qualified borrower with respect to which such portion relates).

(iv) Qualified financing issue

For purposes of this subparagraph, the term ''qualified financing issue'' means any composite, pooled, or other conduit financing issue the proceeds of which are used directly or indirectly to make or finance loans to 1 or more ultimate borrowers each of whom is a qualified borrower.

(v) Qualified portion

For purposes of this subparagraph, the term ''qualified portion'' means that portion of the proceeds which are used with respect to each qualified borrower under the issue.

(vi) Qualified borrower

For purposes of this subparagraph, the term ''qualified borrower'' means a borrower which is a State or political subdivision thereof or an organization described in section 501(c)(3) and exempt from taxation under section 501(a).

(4) Definitions

For purposes of this subsection—

(A) Interest expense

The term ''interest expense'' means the aggregate amount allowable to the taxpayer

as a deduction for interest for the taxable year (determined without regard to this subsection, section 264, and section 291). For purposes of the preceding sentence, the term ''interest'' includes amounts (whether or not designated as interest) paid in respect of deposits, investment certificates, or withdrawable or repurchasable shares.

(B) Tax-exempt obligation

The term ''tax-exempt obligation'' means any obligation the interest on which is wholly exempt from taxes imposed by this subtitle. Such term includes shares of stock of a regulated investment company which during the taxable year of the holder thereof distributes exempt-interest dividends.

(5) Financial institution

For purposes of this subsection, the term ''financial institution'' means any person who—

(A) accepts deposits from the public in the ordinary course of such person's trade or business, and is subject to Federal or State supervision as a financial institution, or

(B) is a corporation described in section 585(a)(2).

(6) Special rules

(A) Coordination with subsection (a)

If interest on any indebtedness is disallowed under subsection (a) with respect to any tax-exempt obligation—

(i) such disallowed interest shall not be taken into account for purposes of applying this subsection, and

(ii) for purposes of applying paragraph (2), the adjusted basis of such tax-exempt obligation shall be reduced (but not below zero) by the amount of such indebtedness.

(B) Coordination with section 263A

This section shall be applied before the application of section 263A (relating to capitalization of certain expenses where taxpayer produces property).

(7) De minimis exception for bonds issued during 2009 or 2010

(A) In general

In applying paragraph (2)(A), there shall not be taken into account tax-exempt obligations issued during 2009 or 2010.

(B) Limitation

The amount of tax-exempt obligations not taken into account by reason of subparagraph (A) shall not exceed 2 percent of the amount determined under paragraph (2)(B).

(C) Refundings

For purposes of this paragraph, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

(Aug. 16, 1954, ch. 736, 68A Stat. 78; Pub. L. 88–272, title II, § 216(a), Feb. 26, 1964, 78 Stat. 56; Pub. L. 94–455, title XIX, §§ 1901(a)(37), 1906(b)(13)(A), title XXI, § 2137(e), Oct. 4, 1976, 90 Stat. 1770, 1834, 1931; Pub. L. 96–223, title IV, § 404(b)(2), Apr. 2, 1980, 94 Stat. 306; Pub. L. 97–34, title III, §§ 301(b)(2), 302(c)(2), (d)(1), Aug. 13, 1981, 95 Stat. 270, 272, 274; Pub. L. 98–369, div. A, title I, §§ 16(a), 56(c), July 18, 1984, 98 Stat. 505, 574; Pub. L. 99–514, title I, § 144, title IX, § 902(a), (b), (d), Oct. 22, 1986, 100 Stat. 2121, 2380–2382; Pub. L. 100–647, title I, § 1009(b)(3)(A), Nov. 10, 1988, 102 Stat. 3446; Pub. L. 101–508, title XI, § 11801(c)(4), Nov. 5, 1990, 104 Stat. 1388–523; Pub. L. 105–34, title X, § 1084(c), Aug. 5, 1997, 111 Stat. 955; Pub. L. 111–5, div. B, title I, §§ 1501(a), 1502(a), Feb. 17, 2009, 123 Stat. 353.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(3)(B)(ii)(II), (C)(ii)(II), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Sections 1312, 1313, 1316(g), and 1317 of the Tax Reform Act of 1986, referred to in subsec. (b)(3)(C)(ii)(II), are sections 1312, 1313, 1316(g), and 1317 of Pub. L. 99–514, which are set out as a note under section 141 of this title.

CODIFICATION

Another section 1084(c) of Pub. L. 105–34 amended section 264 of this title.

AMENDMENTS

2009—Subsec. (b)(3)(G). Pub. L. 111–5, § 1502(a), added subpar. (G).

Subsec. (b)(7). Pub. L. 111–5, § 1501(a), added par. (7).

1997—Subsec. (b)(4)(A). Pub. L. 105–34 inserted '', section 264,'' before ''and section 291''.

1990—Subsec. (a)(2). Pub. L. 101–508, § 11801(c)(4), struck out before period at end '', or to purchase or carry any certificate to the extent the interest on such certificate is excludable under section 128''.

1988—Subsec. (b)(3). Pub. L. 100–647 amended par. (3) generally, reenacting subpar. (A) without change, revising and restating provisions of subpars. (B) to (E), and adding subpar. (F).

1986—Pub. L. 99–514, § 902(a), (d), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Par. (2). Pub. L. 99–514, § 902(b), struck out last sentence which read as follows: ''In applying the preceding sentence to a financial institution (other than a bank) which is a face-amount certificate company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 and following) and which is subject to the banking laws of the State in which such institution is incorporated, interest on face-amount certificates (as defined in section 2(a)(15) of such Act) issued by such institution, and interest on amounts received for the purchase of such certificates to be issued by such institution, shall not be considered as interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle, to the extent that the average amount of such obligations held by such institution during the taxable year (as determined under regulations prescribed by the Secretary) does not exceed 15 percent of the average of the total assets held by such institution during the taxable year (as so determined).''

Par. (6). Pub. L. 99–514, § 144, added par. (6).

1984—Par. (2). Pub. L. 98–369, § 16(a), repealed amendments made by Pub. L. 97–34, § 302(c). See 1981 Amendment note below.

Par. (5). Pub. L. 98–369, § 56(c), added par. (5).

1981—Par. (2). Pub. L. 97–34, § 302(c)(2), (d)(1), provided that, applicable to taxable years beginning after Dec. 31, 1984, par. (2) is amended by striking out ''or to purchase or carry any certificate to the extent the interest on such certificate is excludable under section 128'' and

inserting in lieu thereof ''or to purchase or carry obligations or shares, or to make other deposits or investments, the interest on which is described in section 128(c)(1) to the extent such interest is excludable from gross income under section 128''. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by such section 302(c), had not been enacted.

Pub. L. 97–34, §301(b)(2), inserted '', or to purchase or carry any certificate to the extent the interest on such certificate is excludable under section 128'' after ''116''.

1980—Par. (2). Pub. L. 96–223 inserted '', or to purchase or carry obligations or shares, or to make deposits or other investments, the interest on which is described in section 116(c) to the extent such interest is excludable from gross income under section 116'' after ''subtitle''.

1976—Par. (2). Pub. L. 94–455, §§1901(a)(37), 1906(b)(13)(A), struck out ''(other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer)'' after ''to purchase or carry obligations'' and ''or his delegate'' after ''Secretary''.

Pars. (3), (4). Pub. L. 94–455, §2137(e), added pars. (3) and (4).

1964—Par. (2). Pub. L. 88–272 provided that interest on face-amount certificates issued by a face-amount certificate company, and interest on amounts received for the purchase of such certificates to be issued by such institution, shall not be considered interest on indebtedness to purchase or carry obligations the interest on which is wholly exempt from the taxes under this subtitle, to the extent the average amount of such obligations held by such institution during the taxable year doesn't exceed 15 percent of the average total assets held by such institution during the taxable year.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1501(c), Feb. 17, 2009, 123 Stat. 353, provided that: ''The amendments made by this section [amending this section and section 291 of this title] shall apply to obligations issued after December 31, 2008.''

Pub. L. 111–5, div. B, title I, §1502(b), Feb. 17, 2009, 123 Stat. 354, provided that: ''The amendment made by this section [amending this section] shall apply to obligations issued after December 31, 2008.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1009(b)(3)(B)–(D) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, §7811(f)(2), Dec. 19, 1989, 103 Stat. 2409, provided that:

''(B) In the case of any obligation issued after August 7, 1986, and before January 1, 1987, the time for making a designation with respect to such obligation under section 265(b)(3)(B)(i)(III) of the 1986 Code shall not expire before January 1, 1989.

''(C) If—

''(i) an obligation is issued on or after January 1, 1986, and on or before August 7, 1986,

''(ii) when such obligation was issued, the issuer made a designation that it intended to qualify under section 802(e)(3) of H.R. 3838 of the 99th Congress as passed by the House of Representatives [H.R. 3838 was enacted as Pub. L. 99–514], and

''(iii) the issuer makes an election under this subparagraph with respect to such obligation,

for purposes of section 265(b)(3) of the 1986 Code, such obligation shall be treated as issued on August 8, 1986.

''(D)(i) Except as provided in clause (ii), the following provisions of section 265(b)(3) of the 1986 Code (as amended by this subparagraph (A)) shall apply to obligations issued after June 30, 1987:

''(I) subparagraph (C)(ii)(III),

''(II) clauses (ii) and (iii) of subparagraph (D), and

''(III) subparagraphs (E) and (F).

''(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the provisions referred to in clause (i) shall apply to such issuer as if included in the amendments made by section 902(a) of the Tax Reform Act of 1986 [section 902(a) of Pub. L. 99–514, amending this section].''

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 144 of Pub. L. 99–514 applicable to taxable years beginning before, on, or after Dec. 31, 1986, see section 151(e) of Pub. L. 99–514, set out as a note under section 1 of this title.

Section 902(f) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1009(b)(1), (2), (7), Nov. 10, 1988, 102 Stat. 3445, 3446, 3449, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 163, 291, and 1277 of this title] shall apply to taxable years ending after December 31, 1986.

''(2) OBLIGATIONS ACQUIRED PURSUANT TO CERTAIN COMMITMENTS.—For purposes of sections 265(b) and 291(e)(1)(B) of the Internal Revenue Code of 1986, any tax-exempt obligation which is acquired after August 7, 1986, pursuant to a direct or indirect written commitment—

''(A) to purchase or repurchase such obligation, and

''(B) entered into on or before September 25, 1985,

shall be treated as an obligation acquired before August 8, 1986.

''(3) TRANSITIONAL RULES.—For purposes of sections 265(b) and 291(e)(1)(B) of the Internal Revenue Code of 1986, obligations with respect to any of the following projects shall be treated as obligations acquired before August 8, 1986, in the hands of the first and any subsequent financial institution acquiring such obligations:

''(A) Park Forest, Illinois, redevelopment project.

''(B) Clinton, Tennessee, Carriage Trace project.

''(C) Savannah, Georgia, Mall Terrace Warehouse project.

''(D) Chattanooga, Tennessee, Warehouse Row project.

''(E) Dalton, Georgia, Towne Square project.

''(F) Milwaukee, Wisconsin, Standard Electric Supply Company—distribution facility.

''(G) Wausau, Wisconsin, urban renewal project.

''(H) Cassville, Missouri, UDAG project.

''(I) Outlook Envelope Company—plant expansion.

''(J) Woodstock, Connecticut, Crabtree Warehouse partnership.

''(K) Louisville, Kentucky, Speed Mansion renovation project.

''(L) Charleston, South Carolina, 2 Festival Market Place projects at Union Pier Terminal and 1 project at the Remount Road Container Yard, State Pier No. 15 at North Charleston Terminal.

''(M) New Orleans, Louisiana, Upper Pontalba Building renovation.

''(N) Woodward Wight Building.

''(O) Minneapolis, Minnesota, Miller Milling Company—flour mill project.

''(P) Homewood, Alabama, the Club Apartments.

''(Q) Charlotte, North Carolina—qualified mortgage bonds acquired by NCNB bank ($5,250,000).

''(R) Grand Rapids, Michigan, Central Bank project.

''(S) Ruppman Marketing Services, Inc.—building project.

''(T) Bellows Falls, Vermont—building project.

''(U) East Broadway Project, Louisville, Kentucky.

''(V) O.K. Industries, Oklahoma.

''(4) ADDITIONAL TRANSITIONAL RULE.—Obligations issued pursuant to an allocation of a State's volume limitation for private activity bonds, which allocation was made by Executive Order 25 signed by the Governor of the State on May 22, 1986 (as such order may be amended before January 1, 1987), and qualified 501(c)(3) bonds designated by such Governor for purposes of this paragraph, shall be treated as acquired on or before August 7, 1986, in the hands of the first and any subsequent financial institution acquiring such obligation. The aggregate face amount of obligations to which this paragraph applies shall not exceed $200,000,000.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 56(c) of Pub. L. 98–369 applicable to short sales after July 18, 1984, in taxable years ending after that date, see section 56(d) of Pub. L. 98–369, set out as a note under section 163 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 301(d) of Pub. L. 97–34 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 128 of this title and amending this section and sections 584, 643, and 702 of this title] shall apply to taxable years ending after September 30, 1981.

''(2) CONFORMING AMENDMENTS.—The amendments made by subsection (b)(6) [amending sections 584, 643, and 702 of this title] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Section 404(c) of Pub. L. 96–223, as amended by Pub. L. 97–34, title III, § 302(b)(1), Aug. 13, 1981, 95 Stat. 272, provided that: ''The amendments made by this section [amending this section and sections 116, 584, 643, 702, 854, and 857 of this title] shall apply with respect to taxable years beginning after December 31, 1980, and before January 1, 1982.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(37) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 2137(e) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1975, see section 2137(e) of Pub. L. 94–455, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 216(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [Feb. 21, 1964].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF TREATMENT OF AMOUNTS EXCLUDED UNDER SECTION 597

Section 904(c)(2)(B) of Pub. L. 99–514 provided that this section shall not deny any deduction by reason of such deduction being allocable to amounts excluded from gross income under section 597 of this title as in effect on Oct. 21, 1986, prior to repeal by Pub. L. 101–73, title XIV, § 1401(a)(3)(B), Aug. 9, 1989, 103 Stat. 549.

§ 266. Carrying charges

No deduction shall be allowed for amounts paid or accrued for such taxes and carrying charges as, under regulations prescribed by the Secretary, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such regulations, to treat such taxes or charges as so chargeable.

(Aug. 16, 1954, ch. 736, 68A Stat. 78; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

§ 267. Losses, expenses, and interest with respect to transactions between related taxpayers

(a) In general

(1) Deduction for losses disallowed

No deduction shall be allowed in respect of any loss from the sale or exchange of property, directly or indirectly, between persons specified in any of the paragraphs of subsection (b). The preceding sentence shall not apply to any loss of the distributing corporation (or the distributee) in the case of a distribution in complete liquidation.

(2) Matching of deduction and payee income item in the case of expenses and interest

If—

(A) by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not (unless paid) includible in the gross income of such person, and

(B) at the close of the taxable year of the taxpayer for which (but for this paragraph) the amount would be deductible under this chapter, both the taxpayer and the person to whom the payment is to be made are persons specified in any of the paragraphs of subsection (b),

then any deduction allowable under this chapter in respect of such amount shall be allowable as of the day as of which such amount is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph). For purposes of this paragraph, in the case of a personal service corporation (within the meaning of section 441(i)(2)), such corporation and any employee-owner (within the meaning of section 269A(b)(2), as modified by section 441(i)(2)) shall be treated as persons specified in subsection (b).

(3) Payments to foreign persons

(A) In general

The Secretary shall by regulations apply the matching principle of paragraph (2) in cases in which the person to whom the payment is to be made is not a United States person.

(B) Special rule for certain foreign entities

(i) In general

Notwithstanding subparagraph (A), in the case of any item payable to a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent that an amount attributable to such item is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

(ii) Secretarial authority

The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.

(b) Relationships

The persons referred to in subsection (a) are:

(1) Members of a family, as defined in subsection (c)(4);

(2) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

(3) Two corporations which are members of the same controlled group (as defined in subsection (f));

(4) A grantor and a fiduciary of any trust;

(5) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(6) A fiduciary of a trust and a beneficiary of such trust;

(7) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(9) A person and an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such person or (if such person is an individual) by members of the family of such individual;

(10) A corporation and a partnership if the same persons own—

(A) more than 50 percent in value of the outstanding stock of the corporation, and

(B) more than 50 percent of the capital interest, or the profits interest, in the partnership;

(11) An S corporation and another S corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation;

(12) An S corporation and a C corporation, if the same persons own more than 50 percent in value of the outstanding stock of each corporation; or

(13) Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

(c) Constructive ownership of stock

For purposes of determining, in applying subsection (b), the ownership of stock—

(1) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(2) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;

(3) An individual owning (otherwise than by the application of paragraph (2)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;

(4) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(5) Stock constructively owned by a person by reason of the application of paragraph (1) shall, for the purpose of applying paragraph (1), (2), or (3), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of paragraph (2) or (3) shall not be treated as owned by him for the purpose of again applying either of such paragraphs in order to make another the constructive owner of such stock.

(d) Amount of gain where loss previously disallowed

If—

(1) in the case of a sale or exchange of property to the taxpayer a loss sustained by the transferor is not allowable to the transferor as a deduction by reason of subsection (a)(1) (or by reason of section 24(b) of the Internal Revenue Code of 1939); and

(2) after December 31, 1953, the taxpayer sells or otherwise disposes of such property (or of other property the basis of which in his hands is determined directly or indirectly by reference to such property) at a gain,

then such gain shall be recognized only to the extent that it exceeds so much of such loss as is properly allocable to the property sold or otherwise disposed of by the taxpayer. This subsection applies with respect to taxable years ending after December 31, 1953. This subsection shall not apply if the loss sustained by the transferor is not allowable to the transferor as a deduction by reason of section 1091 (relating to wash sales) or by reason of section 118 of the Internal Revenue Code of 1939.

(e) Special rules for pass-thru entities

(1) In general

In the case of any amount paid or incurred by, to, or on behalf of, a pass-thru entity, for purposes of applying subsection (a)(2)—

(A) such entity,

(B) in the case of—

(i) a partnership, any person who owns (directly or indirectly) any capital interest or profits interest of such partnership, or

(ii) an S corporation, any person who owns (directly or indirectly) any of the stock of such corporation,

(C) any person who owns (directly or indirectly) any capital interest or profits interest of a partnership in which such entity owns (directly or indirectly) any capital interest or profits interest, and

(D) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to a person described in subparagraph (B) or (C),

shall be treated as persons specified in a paragraph of subsection (b). Subparagraph (C) shall apply to a transaction only if such transaction is related either to the operations of the partnership described in such subparagraph or to an interest in such partnership.

(2) Pass-thru entity

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

(A) a partnership, and

(B) an S corporation.

(3) Constructive ownership in the case of partnerships

For purposes of determining ownership of a capital interest or profits interest of a partnership, the principles of subsection (c) shall apply, except that—

(A) paragraph (3) of subsection (c) shall not apply, and

(B) interests owned (directly or indirectly) by or for a C corporation shall be considered as owned by or for any shareholder only if such shareholder owns (directly or indirectly) 5 percent or more in value of the stock of such corporation.

(4) Subsection (a)(2) not to apply to certain guaranteed payments of partnerships

In the case of any amount paid or incurred by a partnership, subsection (a)(2) shall not apply to the extent that section 707(c) applies to such amount.

(5) Exception for certain expenses and interest of partnerships owning low-income housing

(A) In general

This subsection shall not apply with respect to qualified expenses and interest paid or incurred by a partnership owning low-income housing to—

(i) any qualified 5-percent or less partner of such partnership, or

(ii) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to any qualified 5-percent or less partner of such partnership.

(B) Qualified 5-percent or less partner

For purposes of this paragraph, the term ''qualified 5-percent or less partner'' means any partner who has (directly or indirectly) an interest of 5 percent or less in the aggregate capital and profits interests of the partnership but only if—

(i) such partner owned the low-income housing at all times during the 2-year period ending on the date such housing was transferred to the partnership, or

(ii) such partnership acquired the low-income housing pursuant to a purchase, assignment, or other transfer from the Department of Housing and Urban Development or any State or local housing authority.

For purposes of the preceding sentence, a partner shall be treated as holding any interest in the partnership which is held (directly or indirectly) by any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to such partner.

(C) Qualified expenses and interest

For purpose of this paragraph, the term ''qualified expenses and interest'' means any expense or interest incurred by the partnership with respect to low-income housing held by the partnership but—

(i) only if the amount of such expense or interest (as the case may be) is unconditionally required to be paid by the partnership not later than 10 years after the date such amount was incurred, and

(ii) in the case of such interest, only if such interest is incurred at an annual rate not in excess of 12 percent.

(D) Low-income housing

For purposes of this paragraph, the term ''low-income housing'' means—

(i) any interest in property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B), and

(ii) any interest in a partnership owning such property.

(6) Cross reference

For additional rules relating to partnerships, see section 707(b).

(f) Controlled group defined; special rules applicable to controlled groups

(1) Controlled group defined

For purposes of this section, the term ''controlled group'' has the meaning given to such term by section 1563(a), except that—

(A) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(2) Deferral (rather than denial) of loss from sale or exchange between members

In the case of any loss from the sale or exchange of property which is between members of the same controlled group and to which subsection (a)(1) applies (determined without regard to this paragraph but with regard to paragraph (3))—

(A) subsections (a)(1) and (d) shall not apply to such loss, but

(B) such loss shall be deferred until the property is transferred outside such controlled group and there would be recognition of loss under consolidated return principles or until such other time as may be prescribed in regulations.

(3) Loss deferral rules not to apply in certain cases

(A) Transfer to DISC

For purposes of applying subsection (a)(1), the term ''controlled group'' shall not include a DISC.

(B) Certain sales of inventory

Except to the extent provided in regulations prescribed by the Secretary, subsection (a)(1) shall not apply to the sale or exchange of property between members of the same controlled group (or persons described in subsection (b)(10)) if—

(i) such property in the hands of the transferor is property described in section 1221(a)(1),

(ii) such sale or exchange is in the ordinary course of the transferor's trade or business,

(iii) such property in the hands of the transferee is property described in section 1221(a)(1), and

(iv) the transferee or the transferor is a foreign corporation.

(C) Certain foreign currency losses

To the extent provided in regulations, subsection (a)(1) shall not apply to any loss sustained by a member of a controlled group on the repayment of a loan made to another member of such group if such loan is payable in a foreign currency or is denominated in such a currency and such loss is attributable to a reduction in value of such foreign currency.

(D) Redemptions by fund-of-funds regulated investment companies

Except to the extent provided in regulations prescribed by the Secretary, subsection (a)(1) shall not apply to any distribution in redemption of stock of a regulated investment company if—

(i) such company issues only stock which is redeemable upon the demand of the stockholder, and

(ii) such redemption is upon the demand of another regulated investment company.

(4) Determination of relationship resulting in disallowance of loss, for purposes of other provisions

For purposes of any other section of this title which refers to a relationship which would result in a disallowance of losses under this section, deferral under paragraph (2) shall be treated as disallowance.

(g) Coordination with section 1041

Subsection (a)(1) shall not apply to any transfer described in section 1041(a) (relating to transfers of property between spouses or incident to divorce).

(Aug. 16, 1954, ch. 736, 68A Stat. 78; Pub. L. 95–628, §2(a), Nov. 10, 1978, 92 Stat. 3627; Pub. L. 97–354, §3(h), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 98–369, div. A, title I, §174(a)–(b)(4), title VII, §721(s), July 18, 1984, 98 Stat. 704–707, 970; Pub. L. 99–514, title VIII, §§803(b)(5), 806(c)(2), title XVIII, §§1812(c)(1), (2), (3)(C), (4)(A), 1842(a), Oct. 22, 1986, 100 Stat. 2356, 2364, 2834, 2835, 2852; Pub. L. 100–647, title I, §§1006(e)(9), 1008(e)(6), Nov. 10, 1988, 102 Stat. 3401, 3441; Pub. L. 105–34, title XIII, §1308(a), title XVI, §1604(e)(1), Aug. 5, 1997, 111 Stat. 1041, 1098; Pub. L. 106–170, title V, §532(c)(2)(C), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title VIII, §841(b), Oct. 22, 2004, 118 Stat. 1598; Pub. L. 111–325, title III, §306(b), Dec. 22, 2010, 124 Stat. 3549.)

REFERENCES IN TEXT

Sections 24(b) and 118 of the Internal Revenue Code of 1939, referred to in subsec. (d), were classified to sections 24(b) and 118 of former Title 26, Internal Revenue Code. Sections 24(b) and 118 were repealed by section 7851(a)(1) of this title. For table of comparisons of the 1939 Code to the 1986 Code [formerly I.R.C. 1954], see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

AMENDMENTS

2010—Subsec. (f)(3)(D). Pub. L. 111–325 added subpar. (D).

2004—Subsec. (a)(3). Pub. L. 108–357 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1999—Subsec. (f)(3)(B)(i), (iii). Pub. L. 106–170 substituted ''1221(a)(1)'' for ''1221(1)''.

1997—Subsec. (b)(13). Pub. L. 105–34, §1308(a), added par. (13).

Subsec. (f)(4). Pub. L. 105–34, §1604(e)(1), added par. (4).

1988—Subsec. (a)(1). Pub. L. 100–647, §1006(e)(9), struck out ''(other than a loss in case of a distribution in corporate liquidation)'' after ''exchange of property'' and inserted at end ''The preceding sentence shall not apply to any loss of the distributing corporation (or the distributee) in the case of a distribution in complete liquidation.''

Subsec. (a)(2). Pub. L. 100–647, §1008(e)(6), made technical correction to directory language of Pub. L. 99–514, §806(c)(2), see 1986 Amendment note below.

1986—Subsec. (a)(2). Pub. L. 99–514, §806(c)(2), as amended by Pub. L. 100–647, §1008(e)(6), inserted at end ''For purposes of this paragraph, in the case of a personal service corporation (within the meaning of section 441(i)(2)), such corporation and any employee-owner (within the meaning of section 269A(b)(2), as modified by section 441(i)(2)) shall be treated as persons specified in subsection (b).''

Subsec. (a)(3). Pub. L. 99–514, §1812(c)(1), added par. (3).

Subsec. (b)(12). Pub. L. 99–514, §1812(c)(4)(A), substituted ''same persons own'' for ''same persons owns''.

Subsec. (e)(5)(D). Pub. L. 99–514, §803(b)(5), substituted in cl. (i) ''interest in property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B)'' for ''interest in low-income housing (as defined in paragraph (5) of section 189(e))'' and in cl. (ii) ''such property'' for ''low-income housing (as so defined)''.

Subsec. (e)(6). Pub. L. 99–514, §1812(c)(3)(C), added par. (6).

Subsec. (f)(3)(B). Pub. L. 99–514, §1812(c)(2), inserted ''(or persons described in subsection (b)(10))''.

Subsec. (g). Pub. L. 99–514, §1842(a), added subsec. (g).

1984—Subsec. (a). Pub. L. 98–369, §174(a), amended subsec. (a) generally, substituting ''In general'' for ''De-

duction disallowed'' in heading, ''Deduction for losses disallowed'' for ''Losses'' in par. (1) heading, and provisions dealing with matching of deduction and payee income item in the case of expenses and interest for provisions dealing with unpaid expenses and interest in par. (2).

Subsec. (b)(3). Pub. L. 98–369, §174(b)(2)(A), substituted ''Two corporations which are members of the same controlled group (as defined in subsection (f))'' for ''Two corporations more than 50 percent in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company''.

Subsec. (b)(10). Pub. L. 98–369, §174(b)(3), substituted ''A corporation'' for ''An S corporation'' in introductory provisions and ''the corporation'' for ''the S corporation'' in subpar. (A).

Subsec. (b)(12). Pub. L. 98–369, §174(b)(4), substituted ''the same persons'' for ''the same individual''.

Subsec. (e). Pub. L. 98–369, §174(b)(1), added subsec. (e).

Pub. L. 98–369, §174(a)(2), struck out subsec. (e) which provided that for purposes of subsection (a)(2) where the last day of the 2½ month period falls on Saturday, Sunday, or a legal holiday, such last day be treated as falling on the next succeeding day which is not a Saturday, Sunday, or a legal holiday, and the determination of what constitutes a legal holiday be made under section 7503 with respect to the payor's return of tax under this chapter for the preceding taxable year.

Subsec. (f). Pub. L. 98–369, §174(b)(2)(B), added subsec. (f).

Pub. L. 98–369, §174(b)(1), struck out subsec. (f) which related to special rules for unpaid expenses and interest of S corporations and treatment under such provisions of certain shareholders, etc., as related persons.

Pub. L. 98–369, §721(s), in closing provision of par. (1) substituted ''then any deduction allowable under such sections in respect of such amount shall be allowable as of the day as of which such payment is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph)'' for ''then no deduction shall be allowed in respect of expenses otherwise deductible under section 162 or 212, or of interest otherwise deductible under section 163, before the day as of which the amount thereof is includible in the gross income of the person to whom the payment is made''.

1982—Subsec. (b)(10) to (12). Pub. L. 97–354, §3(h)(1), (3), added pars. (10) to (12).

Subsec. (f). Pub. L. 97–354, §3(h)(2), added subsec. (f).

1978—Subsec. (e). Pub. L. 95–628 added subsec. (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title III, §306(c), Dec. 22, 2010, 124 Stat. 3550, provided that: ''The amendments made by this section [amending this section and section 302 of this title] shall apply to distributions after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to payments accrued on or after Oct. 22, 2004, see section 841(c) of Pub. L. 108–357, set out as a note under section 163 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1308(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 1239 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

Section 1604(e)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in section 174(b) of the Tax Reform Act of 1984 [Pub. L. 98–369].''

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(5) of Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by section 803(b)(5) of Pub. L. 99–514 applicable, except as otherwise provided, to costs incurred after Dec. 31, 1986, in taxable years ending after that date, see section 803(d) of Pub. L. 99–514, set out as a note under section 263A of this title.

Amendment by section 806(c)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99–514, set out as a note under section 1378 of this title.

Amendment by sections 1812(c)(1), (2), (3)(C), (4)(A) and 1842(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 174(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) SUBSECTIONS (a) AND (b)(1).—The amendments made by subsections (a) and (b)(1) [amending this section] shall apply to amounts allowable as deductions under chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for taxable years beginning after December 31, 1983. For purposes of the preceding sentence, the allowability of a deduction shall be determined without regard to any disallowance or postponement of deductions under section 267 of such Code.

''(2) SUBSECTION (b) (OTHER THAN PARAGRAPH (1)).—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) (other than paragraph (1) thereof) [amending this section and sections 170, 368, 514, and 1235 of this title] shall apply to transactions after December 31, 1983, in taxable years ending after such date.

''(B) EXCEPTION FOR TRANSFERS TO FOREIGN CORPORATIONS ON OR BEFORE MARCH 1, 1984.—The amendments made by subsection (b)(2) [amending this section] shall not apply to property transferred to a foreign corporation on or before March 1, 1984.

''(3) EXCEPTION FOR EXISTING INDEBTEDNESS, ETC.—

''(A) IN GENERAL.—The amendments made by this section [amending this section and sections 170, 368, 514, and 1235 of this title] shall not apply to any amount paid or incurred—

''(i) on indebtedness incurred on or before September 29, 1983, or

''(ii) pursuant to a contract which was binding on September 29, 1983, and at all times thereafter before the amount is paid or incurred.

''(B) TREATMENT OF RENEGOTIATIONS, EXTENSIONS, ETC.—If any indebtedness (or contract described in subparagraph (A)) is renegotiated, extended, renewed, or revised after September 29, 1983, subparagraph (A) shall not apply to any amount paid or incurred on such indebtedness (or pursuant to such contract) after the date of such renegotiation, extension, renewal, or revision.''

Amendment by section 721(s) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2(b) of Pub. L. 95–628 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to payments made after the date of the enactment of this Act [Nov. 10, 1978].''

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Nothing in section 806 of Pub. L. 99–514 [amending this section] or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100–647, set out as a note under section 1378 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

EXCEPTION FOR CERTAIN INDEBTEDNESS

Section 1812(c)(5) of Pub. L. 99–514 provided that: ''Clause (i) of section 174(c)(3)(A) of the Tax Reform Act of 1984 [section 174(c)(3)(A)(i) of Pub. L. 98–369, set out as a note above] shall be applied by substituting 'December 31, 1983' for 'September 29, 1983' in the case of indebtedness which matures on January 1, 1999, the payments on which from January 1989 through November 1993 equal U/L plus $77,600, the payments on which from December 1993 to maturity equal U/L plus $50,100, and which accrued interest at 13.75 percent through December 31, 1989.''

§ 268. Sale of land with unharvested crop

Where an unharvested crop sold by the taxpayer is considered under the provisions of section 1231 as ''property used in the trade or business'', in computing taxable income no deduction (whether or not for the taxable year of the sale and whether for expenses, depreciation, or otherwise) attributable to the production of such crop shall be allowed.

(Aug. 16, 1954, ch. 736, 68A Stat. 80.)

§ 269. Acquisitions made to evade or avoid income tax

(a) In general

If—

(1) any person or persons acquire, or acquired on or after October 8, 1940, directly or indirectly, control of a corporation, or

(2) any corporation acquires, or acquired on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately before such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation,

and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraphs (1) and (2), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of the corporation.

(b) Certain liquidations after qualified stock purchases

(1) In general

If—

(A) there is a qualified stock purchase by a corporation of another corporation,

(B) an election is not made under section 338 with respect to such purchase,

(C) the acquired corporation is liquidated pursuant to a plan of liquidation adopted not more than 2 years after the acquisition date, and

(D) the principal purpose for such liquidation is the evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which the acquiring corporation would not otherwise enjoy,

then the Secretary may disallow such deduction, credit, or other allowance.

(2) Meaning of terms

For purposes of paragraph (1), the terms ''qualified stock purchase'' and ''acquisition date'' have the same respective meanings as when used in section 338.

(c) Power of Secretary to allow deduction, etc., in part

In any case to which subsection (a) or (b) applies the Secretary is authorized—

(1) to allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(2) to distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or

avoidance of Federal income tax for which the acquisition was made; or

(3) to exercise his powers in part under paragraph (1) and in part under paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 80; Pub. L. 88–272, title II, § 235(c)(2), Feb. 26, 1964, 78 Stat. 126; Pub. L. 94–455, title XIX, §§ 1901(a)(38), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1771, 1834; Pub. L. 98–369, div. A, title VII, § 712(k)(8)(A), (B), July 18, 1984, 98 Stat. 952.)

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98–369 added subsec. (b), redesignated former subsec. (b) as (c) and inserted reference to subsec. (b).

1976—Subsecs. (a), (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (c). Pub. L. 94–455, § 1901(a)(38), struck out subsec. (c) relating to presumptions in the case of disproportionate purchase price.

1964—Subsec. (a). Pub. L. 88–272 substituted ''the Secretary or his delegate may disallow such deduction, credit, or other allowance'' for ''such deduction, credit or other allowance shall not be allowed''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 712(k)(8)(C) of Pub. L. 98–369 provided that: ''The amendments made by this paragraph [amending this section] shall apply to liquidations after October 20, 1983, in taxable years ending after such date.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272, set out as a note under section 1551 of this title.

§ 269A. Personal service corporations formed or availed of to avoid or evade income tax

(a) General rule

If—

(1) substantially all of the services of a personal service corporation are performed for (or on behalf of) 1 other corporation, partnership, or other entity, and

(2) the principal purpose for forming, or availing of, such personal service corporation is the avoidance or evasion of Federal income tax by reducing the income of, or securing the benefit of any expense, deduction, credit, exclusion, or other allowance for, any employee-owner which would not otherwise be available,

then the Secretary may allocate all income, deductions, credits, exclusions, and other allowances between such personal service corporation and its employee-owners, if such allocation is necessary to prevent avoidance or evasion of Federal income tax or clearly to reflect the income of the personal service corporation or any of its employee-owners.

(b) Definitions

For purposes of this section—

(1) Personal service corporation

The term ''personal service corporation'' means a corporation the principal activity of which is the performance of personal services and such services are substantially performed by employee-owners.

(2) Employee-owner

The term ''employee-owner'' means any employee who owns, on any day during the taxable year, more than 10 percent of the outstanding stock of the personal service corporation. For purposes of the preceding sentence, section 318 shall apply, except that ''5 percent'' shall be substituted for ''50 percent'' in section 318(a)(2)(C).

(3) Related persons

All related persons (within the meaning of section 144(a)(3)) shall be treated as 1 entity.

(Added Pub. L. 97–248, title II, § 250(a), Sept. 3, 1982, 96 Stat. 528; amended Pub. L. 99–514, title XIII, § 1301(j)(4), Oct. 22, 1986, 100 Stat. 2657.)

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99–514 substituted ''section 144(a)(3)'' for ''section 103(b)(6)(C)''.

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE

Section 250(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1982.''

§ 269B. Stapled entities

(a) General rule

Except as otherwise provided by regulations, for purposes of this title—

(1) if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation shall be treated as a domestic corporation.

(2) in applying section 1563, stock in a second corporation which constitutes a stapled interest with respect to stock of a first corporation shall be treated as owned by such first corporation, and

(3) in applying subchapter M for purposes of determining whether any stapled entity is a regulated investment company or a real estate investment trust, all entities which are stapled entities with respect to each other shall be treated as 1 entity.

(b) Secretary to prescribe regulations

The Secretary shall prescribe such regulations as may be necessary to prevent avoidance or evasion of Federal income tax through the use of stapled entities. Such regulations may include (but shall not be limited to) regulations providing the extent to which 1 of such entities shall be treated as owning the other entity (to the extent of the stapled interest) and regulations providing that any tax imposed on the foreign corporation referred to in subsection (a)(1) may, if not paid by such corporation, be collected from the domestic corporation referred to in such subsection or the shareholders of such foreign corporation.

(c) Definitions

For purposes of this section—

(1) Entity

The term ''entity'' means any corporation, partnership, trust, association, estate, or

other form of carrying on a business or activity.

(2) Stapled entities

The term ''stapled entities'' means any group of 2 or more entities if more than 50 percent in value of the beneficial ownership in each of such entities consists of stapled interests.

(3) Stapled interests

Two or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of 1 of such interests the other such interests are also transferred or required to be transferred.

(d) Special rule for treaties

Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

(e) Subsection (a)(1) not to apply in certain cases

(1) In general

Subsection (a)(1) shall not apply if it is established to the satisfaction of the Secretary that the domestic corporation and the foreign corporation referred to in such subsection are foreign owned.

(2) Foreign owned

For purposes of paragraph (1), a corporation is foreign owned if less than 50 percent of—

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, and

(B) the total value of the stock of the corporation,

is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

(Added Pub. L. 98–369, div. A, title I, §136(a), July 18, 1984, 98 Stat. 669; amended Pub. L. 99–514, title XVIII, §1810(j), Oct. 22, 1986, 100 Stat. 2829.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514, §1810(j)(1), inserted ''and regulations providing that any tax imposed on the foreign corporation referred to in subsection (a)(1) may, if not paid by such corporation, be collected from the domestic corporation referred to in such subsection or the shareholders of such foreign corporation''.

Subsec. (e). Pub. L. 99–514, §1810(j)(2), added subsec. (e).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 136(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section] shall take effect on the date of the enactment of this Act [July 18, 1984].

''(2) INTERESTS STAPLED AS OF JUNE 30, 1983.—Except as otherwise provided in this subsection, in the case of any interests which on June 30, 1983, were stapled interests (as defined in section 269B(c)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section)), the amendments made by this section shall take effect on January 1, 1985 (January 1, 1987, in the case of stapled interests in a foreign corporation).

''(3) CERTAIN STAPLED ENTITIES WHICH INCLUDE REAL ESTATE INVESTMENT TRUST.—Paragraph (3) of section 269B(a) of such Code shall not apply in determining the application of the provisions of part II of subchapter M of chapter 1 of such Code to any real estate investment trust which is part of a group of stapled entities if—

''(A) all members of such group were stapled entities as of June 30, 1983, and

''(B) as of June 30, 1983, such group included one or more real estate investment trusts.

''(4) CERTAIN STAPLED ENTITIES WHICH INCLUDE PUERTO RICAN CORPORATIONS.—

''(A) Paragraph (1) of section 269B(a) of such Code shall not apply to a domestic corporation and a qualified Puerto Rican corporation which, on June 30, 1983, were stapled entities.

''(B) For purposes of subparagraph (A), the term 'qualified Puerto Rican corporation' means any corporation organized in Puerto Rico—

''(i) which is described in section 957(c) of such Code or would be so described if any dividends it received from any other corporation described in such section 957(c) were treated as gross income of the type described in such section 957(c), and

''(ii) does not, at any time during the taxable year, own (within the meaning of section 958 of such Code but before applying paragraph (2) of section 269B(a) of such Code) any stock of any corporation which is not described in such section 957(c).

''(5) TREATY RULE NOT TO APPLY TO STAPLED ENTITIES ENTITLED TO TREATY BENEFITS AS OF JUNE 30, 1983.—In the case of any entity which was a stapled entity as of June 30, 1983, subsection (d) of section 269B of such Code shall not apply to any treaty benefit to which such entity was entitled as of June 30, 1983.

''(6) ELECTIONS TO TREAT STAPLED FOREIGN ENTITIES AS SUBSIDIARIES.—

''(A) IN GENERAL.—In the case of any foreign corporation and domestic corporation which as of June 30, 1983, were stapled entities, such domestic corporation may elect (in lieu of applying paragraph (1) of section 269B(a) of such Code) to be treated as owning all interests in the foreign corporation which constitute stapled interests with respect to stock of the domestic corporation.

''(B) ELECTION.—Any election under subparagraph (A) shall be made not later than 180 days after the date of the enactment of this Act and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe.

''(C) ELECTION IRREVOCABLE.—Any election under subparagraph (A), once made, may be revoked only with the consent of the Secretary of the Treasury or his delegate.

''(7) OTHER STAPLED ENTITIES WHICH INCLUDE REAL ESTATE INVESTMENT TRUST.—

''(A) IN GENERAL.—Paragraph (3) of section 269B(a) of such Code shall not apply in determining the application of the provisions of part II of subchapter M of chapter 1 of such Code to any qualified real estate investment trust which is a part of a group of stapled entities—

''(i) which was created pursuant to a written board of directors resolution adopted on April 5, 1984, and

''(ii) all members of such group were stapled entities as of June 16, 1985.

''(B) QUALIFIED REAL ESTATE INVESTMENT TRUST.—The term 'qualified real estate investment trust' means any real estate trust—

''(i) at least 75 percent of the gross income of which is derived from interest on obligations secured by mortgages on real property (as defined in section 856 of such Code),

''(ii) with respect to which the interest on the obligations described in clause (i) made or acquired by such trust (other than to persons who are independent contractors, as defined in section 856(d)(3) of such Code) is at an arm's length rate or a rate not more than 1 percentage point greater than the associated borrowing cost of the trust, and

''(iii) with respect to which any real property held by the trust is not used in the trade or business of any other member of the group of stapled entities.''

TERMINATION OF EXCEPTION FOR CERTAIN REAL ESTATE INVESTMENT TRUSTS FROM THE TREATMENT OF STAPLED ENTITIES

Pub. L. 105–206, title VII, § 7002, July 22, 1998, 112 Stat. 827, provided that:

''(a) IN GENERAL.—Notwithstanding paragraph (3) of section 136(c) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out above] (relating to stapled stock; stapled entities), the REIT gross income provisions shall be applied by treating the activities and gross income of members of the stapled REIT group properly allocable to any nonqualified real property interest held by the exempt REIT or any stapled entity which is a member of such group (or treated under subsection (c) as held by such REIT or stapled entity) as the activities and gross income of the exempt REIT in the same manner as if the exempt REIT and such group were one entity.

''(b) NONQUALIFIED REAL PROPERTY INTEREST.—For purposes of this section—

''(1) IN GENERAL.—The term 'nonqualified real property interest' means, with respect to any exempt REIT, any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity.

''(2) EXCEPTION FOR BINDING CONTRACTS, ETC.—Such term shall not include any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity if—

''(A) the acquisition is pursuant to a written agreement (including a put option, buy-sell agreement, and an agreement relating to a third party default) which was binding on such date and at all times thereafter on such REIT or stapled entity; or

''(B) the acquisition is described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

''(3) IMPROVEMENTS AND LEASES.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'nonqualified real property interest' shall not include—

''(i) any improvement to land owned or leased by the exempt REIT or any member of the stapled REIT group; and

''(ii) any repair to, or improvement of, any improvement owned or leased by the exempt REIT or any member of the stapled REIT group,

if such ownership or leasehold interest is a qualified real property interest.

''(B) LEASES.—The term 'nonqualified real property interest' shall not include—

''(i) any lease of a qualified real property interest if such lease is not otherwise such an interest; or

''(ii) any renewal of a lease which is a qualified real property interest,

but only if the rent on any lease referred to in clause (i) or any renewal referred to in clause (ii) does not exceed an arm's length rate.

''(C) TERMINATION WHERE CHANGE IN USE.—

''(i) IN GENERAL.—Subparagraph (A) shall not apply to any improvement placed in service after December 31, 1999, which is part of a change in the use of the property to which such improvement relates unless the cost of such improvement does not exceed 200 percent of—

''(I) the cost of such property; or

''(II) if such property is substituted basis property (as defined in section 7701(a)(42) of the Internal Revenue Code of 1986), the fair market value of the property at the time of acquisition.

''(ii) BINDING CONTRACTS.—For purposes of clause (i), an improvement shall be treated as placed in service before January 1, 2000, if such improvement is placed in service before January 1, 2004, pursuant to a binding contract in effect on December 31, 1999, and at all times thereafter.

''(4) EXCEPTION FOR PERMITTED TRANSFERS, ETC.—The term 'nonqualified real property interest' shall not include any interest in real property acquired solely as a result of a direct or indirect contribution, distribution, or other transfer of such interest from the exempt REIT or any member of the stapled REIT group to such REIT or any such member, but only to the extent the aggregate of the interests of the exempt REIT and all stapled entities in such interest in real property (determined in accordance with subsection (c)(1)) is not increased by reason of the transfer.

''(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—Notwithstanding any other provision of this section, all interests in real property held by an exempt REIT or any stapled entity with respect to such REIT (or treated under subsection (c) as held by such REIT or stapled entity) shall be treated as nonqualified real property interests unless—

''(A) such stapled entity was a stapled entity with respect to such REIT as of March 26, 1998, and at all times thereafter; and

''(B) as of March 26, 1998, and at all times thereafter, such REIT was a real estate investment trust.

''(6) QUALIFIED REAL PROPERTY INTEREST.—The term 'qualified real property interest' means any interest in real property other than a nonqualified real property interest.

''(c) TREATMENT OF PROPERTY HELD BY 10-PERCENT SUBSIDIARIES.—For purposes of this section—

''(1) IN GENERAL.—Any exempt REIT and any stapled entity shall be treated as holding their proportionate shares of each interest in real property held by any 10-percent subsidiary entity of the exempt REIT or stapled entity, as the case may be.

''(2) PROPERTY HELD BY 10-PERCENT SUBSIDIARIES TREATED AS NONQUALIFIED.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), any interest in real property held by a 10-percent subsidiary entity of an exempt REIT or stapled entity shall be treated as a nonqualified real property interest.

''(B) EXCEPTION FOR INTERESTS IN REAL PROPERTY HELD ON MARCH 26, 1998, ETC.—In the case of an entity which was a 10-percent subsidiary entity of an exempt REIT or stapled entity on March 26, 1998, and at all times thereafter, an interest in real property held by such subsidiary entity shall be treated as a qualified real property interest if such interest would be so treated if held or acquired directly by the exempt REIT or the stapled entity.

''(3) REDUCTION IN QUALIFIED REAL PROPERTY INTERESTS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—If, after March 26, 1998, an exempt REIT or stapled entity increases its ownership interest in a subsidiary entity to which paragraph (2)(B) applies above its ownership interest in such subsidiary entity as of such date, the additional portion of each interest in real property which is treated as held by the exempt REIT or stapled entity by reason of such increased ownership shall be treated as a nonqualified real property interest.

''(4) SPECIAL RULES FOR DETERMINING OWNERSHIP.—For purposes of this subsection—

''(A) percentage ownership of an entity shall be determined in accordance with subsection (e)(4);

''(B) interests in the entity which are acquired by an exempt REIT or a member of the stapled REIT

group in any acquisition described in an agreement, announcement, or filing described in subsection (b)(2) shall be treated as acquired on March 26, 1998; and

''(C) except as provided in guidance prescribed by the Secretary, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

''(5) TREATMENT OF 60-PERCENT PARTNERSHIPS.—

''(A) IN GENERAL.—If, as of March 26, 1998—

''(i) an exempt REIT or stapled entity held directly or indirectly at least 60 percent of the capital or profits interest in a partnership; and

''(ii) 90 percent or more of the capital interests and 90 percent or more of the profits interests in such partnership (other than interests held directly or indirectly by the exempt REIT or stapled entity) are, or will be, redeemable or exchangeable for consideration the amount of which is determined by reference to the value of shares of stock in the exempt REIT or stapled entity (or both),

paragraph (3) shall not apply to such partnership, and such REIT or entity shall be treated for all purposes of this section as holding all of the capital and profits interests in such partnership.

''(B) LIMITATION TO ONE PARTNERSHIP.—If, as of January 1, 1999, more than one partnership owned by any exempt REIT or stapled entity meets the requirements of subparagraph (A), only the largest such partnership on such date (determined by aggregate asset bases) shall be treated as meeting such requirements.

''(C) MIRROR ENTITY.—For purposes of subparagraph (A), an interest in a partnership formed after March 26, 1998, shall be treated as held by an exempt REIT or stapled entity on March 26, 1998, if such partnership is formed to mirror the stapling of an exempt REIT and a stapled entity in connection with an acquisition agreed to or announced on or before March 26, 1998.

''(d) TREATMENT OF PROPERTY SECURED BY MORTGAGE HELD BY EXEMPT REIT OR MEMBER OF STAPLED REIT GROUP.—

''(1) IN GENERAL.—In the case of any nonqualified obligation held by an exempt REIT or any member of the stapled REIT group, the REIT gross income provisions shall be applied by treating the exempt REIT as having impermissible tenant service income equal to—

''(A) the interest income from such obligation which is properly allocable to the property described in paragraph (2); and

''(B) the income of any member of the stapled REIT group from services described in paragraph (2) with respect to such property.

If the income referred to in subparagraph (A) or (B) is of a 10-percent subsidiary entity, only the portion of such income which is properly allocable to the exempt REIT's or the stapled entity's interest in the subsidiary entity shall be taken into account.

''(2) NONQUALIFIED OBLIGATION.—Except as otherwise provided in this subsection, the term 'nonqualified obligation' means any obligation secured by a mortgage on an interest in real property if the income of any member of the stapled REIT group for services furnished with respect to such property would be impermissible tenant service income were such property held by the exempt REIT and such services furnished by the exempt REIT.

''(3) EXCEPTION FOR CERTAIN MARKET RATE OBLIGATIONS.—Such term shall not include any obligation—

''(A) payments under which would be treated as interest if received by a REIT; and

''(B) the rate of interest on which does not exceed an arm's length rate.

''(4) EXCEPTION FOR EXISTING OBLIGATIONS.—Such term shall not include any obligation—

''(A) which is secured on March 26, 1998, by an interest in real property; and

''(B) which is held on such date by the exempt REIT or any entity which is a member of the stapled REIT group on such date and at all times thereafter,

but only so long as such obligation is secured by such interest, and the interest payable on such obligation is not changed to a rate which exceeds an arm's length rate unless such change is pursuant to the terms of the obligation in effect on March 26, 1998. The preceding sentence shall not cease to apply by reason of the refinancing of the obligation if (immediately after the refinancing) the principal amount of the obligation resulting from the refinancing does not exceed the principal amount of the refinanced obligation (immediately before the refinancing) and the interest payable on such refinanced obligation does not exceed an arm's length rate.

''(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—A rule similar to the rule of subsection (b)(5) shall apply for purposes of this subsection.

''(6) INCREASE IN AMOUNT OF NONQUALIFIED OBLIGATIONS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—A rule similar to the rule of subsection (c)(3) shall apply for purposes of this subsection.

''(7) COORDINATION WITH SUBSECTION (a).—This subsection shall not apply to the portion of any interest in real property that the exempt REIT or stapled entity holds or is treated as holding under this section without regard to this subsection.

''(e) DEFINITIONS.—For purposes of this section—

''(1) REIT GROSS INCOME PROVISIONS.—The term 'REIT gross income provisions' means—

''(A) paragraphs (2), (3), and (6) of section 856(c) of the Internal Revenue Code of 1986; and

''(B) section 857(b)(5) of such Code.

''(2) EXEMPT REIT.—The term 'exempt REIT' means a real estate investment trust to which section 269B of the Internal Revenue Code of 1986 does not apply by reason of paragraph (3) of section 136(c) of the Tax Reform Act of 1984.

''(3) STAPLED REIT GROUP.—The term 'stapled REIT group' means, with respect to an exempt REIT, the group consisting of—

''(A) all entities which are stapled entities with respect to the exempt REIT; and

''(B) all entities which are 10-percent subsidiary entities of the exempt REIT or any such stapled entity.

''(4) 10-PERCENT SUBSIDIARY ENTITY.—

''(A) IN GENERAL.—The term '10-percent subsidiary entity' means, with respect to any exempt REIT or stapled entity, any entity in which the exempt REIT or stapled entity (as the case may be) directly or indirectly holds at least a 10-percent interest.

''(B) EXCEPTION FOR CERTAIN C CORPORATION SUBSIDIARIES OF REITS.—A corporation which would, but for this subparagraph, be treated as a 10-percent subsidiary of an exempt REIT shall not be so treated if such corporation is taxable under section 11 of the Internal Revenue Code of 1986.

''(C) 10-PERCENT INTEREST.—The term '10-percent interest' means—

''(i) in the case of an interest in a corporation, ownership of 10 percent (by vote or value) of the stock in such corporation;

''(ii) in the case of an interest in a partnership, ownership of 10 percent of the capital or profits interest in the partnership; and

''(iii) in any other case, ownership of 10 percent of the beneficial interests in the entity.

''(5) OTHER DEFINITIONS.—Terms used in this section which are used in section 269B or section 856 of such Code shall have the respective meanings given such terms by such section.

''(f) GUIDANCE.—The Secretary may prescribe such guidance as may be necessary or appropriate to carry out the purposes of this section, including guidance to prevent the avoidance of such purposes and to prevent the double counting of income.

''(g) EFFECTIVE DATE.—This section shall apply to taxable years ending after March 26, 1998.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 270. Repealed. Pub. L. 91–172, title II, § 213(b), Dec. 30, 1969, 83 Stat. 572]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 81, related to the limitation on deductions allowable to certain individuals. See section 183 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1969, see section 213(d) of Pub. L. 91–172, set out as an Effective Date note under section 183 of this title.

§ 271. Debts owed by political parties, etc.

(a) General rule

In the case of a taxpayer (other than a bank as defined in section 581) no deduction shall be allowed under section 166 (relating to bad debts) or under section 165(g) (relating to worthlessness of securities) by reason of the worthlessness of any debt owed by a political party.

(b) Definitions

(1) Political party

For purposes of subsection (a), the term ''political party'' means—

(A) a political party;

(B) a national, State, or local committee of a political party; or

(C) a committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of presidential or vice-presidential electors or of any individual whose name is presented for election to any Federal, State, or local elective public office, whether or not such individual is elected.

(2) Contributions

For purposes of paragraph (1)(C), the term ''contributions'' includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable.

(3) Expenditures

For purposes of paragraph (1)(C), the term ''expenditures'' includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable.

(c) Exception

In the case of a taxpayer who uses an accrual method of accounting, subsection (a) shall not apply to a debt which accrued as a receivable on a bona fide sale of goods or services in the ordinary course of the taxpayer's trade or business if—

(1) for the taxable year in which such receivable accrued, more than 30 percent of all receivables which accrued in the ordinary course of the trades and businesses of the taxpayer were due from political parties, and

(2) the taxpayer made substantial continuing efforts to collect on the debt.

(Aug. 16, 1954, ch. 736, 68A Stat. 82; Pub. L. 94–455, title XXI, § 2104(a), Oct. 4, 1976, 90 Stat. 1901.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 added subsec. (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2104(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975.''

§ 272. Disposal of coal or domestic iron ore

Where the disposal of coal or iron ore is covered by section 631, no deduction shall be allowed for expenditures attributable to the making and administering of the contract under which such disposition occurs and to the preservation of the economic interest retained under such contract, except that if in any taxable year such expenditures plus the adjusted depletion basis of the coal or iron ore disposed of in such taxable year exceed the amount realized under such contract, such excess, to the extent not availed of as a reduction of gain under section 1231, shall be a loss deductible under section 165(a). This section shall not apply to any taxable year during which there is no income under the contract.

(Aug. 16, 1954, ch. 736, 68A Stat. 82; Pub. L. 88–272, title II, § 227(a)(3), (b)(3), Feb. 26, 1964, 78 Stat. 98.)

AMENDMENTS

1964—Pub. L. 88–272 inserted ''or domestic iron ore'' in section catchline, and ''or iron ore'' wherever appearing in text.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 227(c) of Pub. L. 88–272 provided that: ''The amendments made by this section [amending this section and sections 631, 1016, 1231, and 1402 and section 411 of Title 42, The Public Health and Welfare] shall apply with respect to amounts received or accrued in taxable years beginning after December 31, 1963, attributable to iron ore mined in such taxable years.''

§ 273. Holders of life or terminable interest

Amounts paid under the laws of a State, the District of Columbia, a possession of the United States, or a foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time.

(Aug. 16, 1954, ch. 736, 68A Stat. 83; Pub. L. 94–455, title XIX, § 1901(c)(2), Oct. 4, 1976, 90 Stat. 1803.)

AMENDMENTS

1976—Pub. L. 94–455 struck out reference to amounts paid under laws of a Territory.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of

Pub. L. 94–455, set out as a note under section 2 of this title.

§ 274. Disallowance of certain entertainment, etc., expenses

(a) Entertainment, amusement, or recreation

(1) In general

No deduction otherwise allowable under this chapter shall be allowed for any item—

(A) Activity

With respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, unless the taxpayer establishes that the item was directly related to, or, in the case of an item directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), that such item was associated with, the active conduct of the taxpayer's trade or business, or

(B) Facility

With respect to a facility used in connection with an activity referred to in subparagraph (A).

In the case of an item described in subparagraph (A), the deduction shall in no event exceed the portion of such item which meets the requirements of subparagraph (A).

(2) Special rules

For purposes of applying paragraph (1)—

(A) Dues or fees to any social, athletic, or sporting club or organization shall be treated as items with respect to facilities.

(B) An activity described in section 212 shall be treated as a trade or business.

(C) In the case of a club, paragraph (1)(B) shall apply unless the taxpayer establishes that the facility was used primarily for the furtherance of the taxpayer's trade or business and that the item was directly related to the active conduct of such trade or business.

(3) Denial of deduction for club dues

Notwithstanding the preceding provisions of this subsection, no deduction shall be allowed under this chapter for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose.

(b) Gifts

(1) Limitation

No deduction shall be allowed under section 162 or section 212 for any expense for gifts made directly or indirectly to any individual to the extent that such expense, when added to prior expenses of the taxpayer for gifts made to such individual during the same taxable year, exceeds $25. For purposes of this section, the term ''gift'' means any item excludable from gross income of the recipient under section 102 which is not excludable from his gross income under any other provision of this chapter, but such term does not include—

(A) an item having a cost to the taxpayer not in excess of $4.00 on which the name of the taxpayer is clearly and permanently imprinted and which is one of a number of identical items distributed generally by the taxpayer, or

(B) a sign, display rack, or other promotional material to be used on the business premises of the recipient.

(2) Special rules

(A) In the case of a gift by a partnership, the limitation contained in paragraph (1) shall apply to the partnership as well as to each member thereof.

(B) For purposes of paragraph (1), a husband and wife shall be treated as one taxpayer.

(c) Certain foreign travel

(1) In general

In the case of any individual who travels outside the United States away from home in pursuit of a trade or business or in pursuit of an activity described in section 212, no deduction shall be allowed under section 162, or section 212 for that portion of the expenses of such travel otherwise allowable under such section which, under regulations prescribed by the Secretary, is not allocable to such trade or business or to such activity.

(2) Exception

Paragraph (1) shall not apply to the expenses of any travel outside the United States away from home if—

(A) such travel does not exceed one week, or

(B) the portion of the time of travel outside the United States away from home which is not attributable to the pursuit of the taxpayer's trade or business or an activity described in section 212 is less than 25 percent of the total time on such travel.

(3) Domestic travel excluded

For purposes of this subsection, travel outside the United States does not include any travel from one point in the United States to another point in the United States.

(d) Substantiation required

No deduction or credit shall be allowed—

(1) under section 162 or 212 for any traveling expense (including meals and lodging while away from home),

(2) for any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity,

(3) for any expense for gifts, or

(4) with respect to any listed property (as defined in section 280F(d)(4)),

unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons entertained, using the facility or prop-

erty, or receiving the gift. The Secretary may by regulations provide that some or all of the requirements of the preceding sentence shall not apply in the case of an expense which does not exceed an amount prescribed pursuant to such regulations. This subsection shall not apply to any qualified nonpersonal use vehicle (as defined in subsection (i)).

(e) Specific exceptions to application of subsection (a)

Subsection (a) shall not apply to—

(1) Food and beverages for employees

Expenses for food and beverages (and facilities used in connection therewith) furnished on the business premises of the taxpayer primarily for his employees.

(2) Expenses treated as compensation

(A) In general

Except as provided in subparagraph (B), expenses for goods, services, and facilities, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).

(B) Specified individuals

(i) In general

In the case of a recipient who is a specified individual, subparagraph (A) and paragraph (9) shall each be applied by substituting ''to the extent that the expenses do not exceed the amount of the expenses which'' for ''to the extent that the expenses''.

(ii) Specified individual

For purposes of clause (i), the term ''specified individual'' means any individual who—

(I) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to the taxpayer or a related party to the taxpayer, or

(II) would be subject to such requirements if the taxpayer (or such related party) were an issuer of equity securities referred to in such section.

For purposes of this clause, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

(3) Reimbursed expenses

Expenses paid or incurred by the taxpayer, in connection with the performance by him of services for another person (whether or not such other person is his employer), under a reimbursement or other expense allowance arrangement with such other person, but this paragraph shall apply—

(A) where the services are performed for an employer, only if the employer has not treated such expenses in the manner provided in paragraph (2), or

(B) where the services are performed for a person other than an employer, only if the taxpayer accounts (to the extent provided by subsection (d)) to such person.

(4) Recreational, etc., expenses for employees

Expenses for recreational, social, or similar activities (including facilities therefor) primarily for the benefit of employees (other than employees who are highly compensated employees (within the meaning of section 414(q))). For purposes of this paragraph, an individual owning less than a 10-percent interest in the taxpayer's trade or business shall not be considered a shareholder or other owner, and for such purposes an individual shall be treated as owning any interest owned by a member of his family (within the meaning of section 267(c)(4)). This paragraph shall not apply for purposes of subsection (a)(3).

(5) Employees, stockholder, etc., business meetings

Expenses incurred by a taxpayer which are directly related to business meetings of his employees, stockholders, agents, or directors.

(6) Meetings of business leagues, etc.

Expenses directly related and necessary to attendance at a business meeting or convention of any organization described in section 501(c)(6) (relating to business leagues, chambers of commerce, real estate boards, and boards of trade) and exempt from taxation under section 501(a).

(7) Items available to public

Expenses for goods, services, and facilities made available by the taxpayer to the general public.

(8) Entertainment sold to customers

Expenses for goods or services (including the use of facilities) which are sold by the taxpayer in a bona fide transaction for an adequate and full consideration in money or money's worth.

(9) Expenses includible in income of persons who are not employees

Expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient of the entertainment, amusement, or recreation who is not an employee of the taxpayer as compensation for services rendered or as a prize or award under section 74. The preceding sentence shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included (or would be so required except that the amount is less than $600) in any information return filed by such taxpayer under part III of subchapter A of chapter 61 and is not so included.

For purposes of this subsection, any item referred to in subsection (a) shall be treated as an expense.

(f) Interest, taxes, casualty losses, etc.

This section shall not apply to any deduction allowable to the taxpayer without regard to its connection with his trade or business (or with

his income-producing activity). In the case of a taxpayer which is not an individual, the preceding sentence shall be applied as if it were an individual.

(g) Treatment of entertainment, etc., type facility

For purposes of this chapter, if deductions are disallowed under subsection (a) with respect to any portion of a facility, such portion shall be treated as an asset which is used for personal, living, and family purposes (and not as an asset used in the trade or business).

(h) Attendance at conventions, etc.

(1) In general

In the case of any individual who attends a convention, seminar, or similar meeting which is held outside the North American area, no deduction shall be allowed under section 162 for expenses allocable to such meeting unless the taxpayer establishes that the meeting is directly related to the active conduct of his trade or business and that, after taking into account in the manner provided by regulations prescribed by the Secretary—

(A) the purpose of such meeting and the activities taking place at such meeting,

(B) the purposes and activities of the sponsoring organizations or groups,

(C) the residences of the active members of the sponsoring organization and the places at which other meetings of the sponsoring organization or groups have been held or will be held, and

(D) such other relevant factors as the taxpayer may present,

it is as reasonable for the meeting to be held outside the North American area as within the North American area.

(2) Conventions on cruise ships

In the case of any individual who attends a convention, seminar, or other meeting which is held on any cruise ship, no deduction shall be allowed under section 162 for expenses allocable to such meeting, unless the taxpayer meets the requirements of paragraph (5) and establishes that the meeting is directly related to the active conduct of his trade or business and that—

(A) the cruise ship is a vessel registered in the United States; and

(B) all ports of call of such cruise ship are located in the United States or in possessions of the United States.

With respect to cruises beginning in any calendar year, not more than $2,000 of the expenses attributable to an individual attending one or more meetings may be taken into account under section 162 by reason of the preceding sentence.

(3) Definitions

For purposes of this subsection—

(A) North American area

The term ''North American area'' means the United States, its possessions, and the Trust Territory of the Pacific Islands, and Canada and Mexico.

(B) Cruise ship

The term ''cruise ship'' means any vessel sailing within or without the territorial waters of the United States.

(4) Subsection to apply to employer as well as to traveler

(A) Except as provided in subparagraph (B), this subsection shall apply to deductions otherwise allowable under section 162 to any person, whether or not such person is the individual attending the convention, seminar, or similar meeting.

(B) This subsection shall not deny a deduction to any person other than the individual attending the convention, seminar, or similar meeting with respect to any amount paid by such person to or on behalf of such individual if includible in the gross income of such individual. The preceding sentence shall not apply if the amount is required to be included in any information return filed by such person under part III of subchapter A of chapter 61 and is not so included.

(5) Reporting requirements

No deduction shall be allowed under section 162 for expenses allocable to attendance at a convention, seminar, or similar meeting on any cruise ship unless the taxpayer claiming the deduction attaches to the return of tax on which the deduction is claimed—

(A) a written statement signed by the individual attending the meeting which includes—

(i) information with respect to the total days of the trip, excluding the days of transportation to and from the cruise ship port, and the number of hours of each day of the trip which such individual devoted to scheduled business activities,

(ii) a program of the scheduled business activities of the meeting, and

(iii) such other information as may be required in regulations prescribed by the Secretary; and

(B) a written statement signed by an officer of the organization or group sponsoring the meeting which includes—

(i) a schedule of the business activities of each day of the meeting,

(ii) the number of hours which the individual attending the meeting attended such scheduled business activities, and

(iii) such other information as may be required in regulations prescribed by the Secretary.

(6) Treatment of conventions in certain Caribbean countries

(A) In general

For purposes of this subsection, the term ''North American area'' includes, with respect to any convention, seminar, or similar meeting, any beneficiary country if (as of the time such meeting begins)—

(i) there is in effect a bilateral or multilateral agreement described in subparagraph (C) between such country and the United States providing for the exchange of information between the United States and such country, and

(ii) there is not in effect a finding by the Secretary that the tax laws of such country discriminate against conventions held in the United States.

(B) Beneficiary country

For purposes of this paragraph, the term ''beneficiary country'' has the meaning given to such term by section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act; except that such term shall include Bermuda.

(C) Authority to conclude exchange of information agreements

(i) In general

The Secretary is authorized to negotiate and conclude an agreement for the exchange of information with any beneficiary country. Except as provided in clause (ii), an exchange of information agreement shall provide for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country such as provisions respecting bank secrecy and bearer shares. The exchange of information agreement shall be terminable by either country on reasonable notice and shall provide that information received by either country will be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration or oversight of, or in the determination of appeals in respect of, taxes of the United States or the beneficiary country and will be used by such persons or authorities only for such purposes.

(ii) Nondisclosure of qualified confidential information sought for civil tax purposes

An exchange of information agreement need not provide for the exchange of qualified confidential information which is sought only for civil tax purposes if—

(I) the Secretary of the Treasury, after making all reasonable efforts to negotiate an agreement which includes the exchange of such information, determines that such an agreement cannot be negotiated but that the agreement which was negotiated will significantly assist in the administration and enforcement of the tax laws of the United States, and

(II) the President determines that the agreement as negotiated is in the national security interest of the United States.

(iii) Qualified confidential information defined

For purposes of this subparagraph, the term ''qualified confidential information'' means information which is subject to the nondisclosure provisions of any local law of the beneficiary country regarding bank secrecy or ownership of bearer shares.

(iv) Civil tax purposes

For purposes of this subparagraph, the determination of whether information is sought only for civil tax purposes shall be made by the requesting party.

(D) Coordination with other provisions

Any exchange of information agreement negotiated under subparagraph (C) shall be treated as an income tax convention for purposes of section 6103(k)(4). The Secretary may exercise his authority under subchapter A of chapter 78 to carry out any obligation of the United States under an agreement referred to in subparagraph (C).

(E) Determinations published in the Federal Register

The following shall be published in the Federal Register—

(i) any determination by the President under subparagraph (C)(ii) (including the reasons for such determination),

(ii) any determination by the Secretary under subparagraph (C)(ii) (including the reasons for such determination), and

(iii) any finding by the Secretary under subparagraph (A)(ii) (and any termination thereof).

(7) Seminars, etc. for section 212 purposes

No deduction shall be allowed under section 212 for expenses allocable to a convention, seminar, or similar meeting.

(i) Qualified nonpersonal use vehicle

For purposes of subsection (d), the term ''qualified nonpersonal use vehicle'' means any vehicle which, by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes.

(j) Employee achievement awards

(1) General rule

No deduction shall be allowed under section 162 or section 212 for the cost of an employee achievement award except to the extent that such cost does not exceed the deduction limitations of paragraph (2).

(2) Deduction limitations

The deduction for the cost of an employee achievement award made by an employer to an employee—

(A) which is not a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year which are not qualified plan awards, shall not exceed $400, and

(B) which is a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year (including employee achievement awards which are not qualified plan awards), shall not exceed $1,600.

(3) Definitions

For purposes of this subsection—

(A) Employee achievement award

The term ''employee achievement award'' means an item of tangible personal property which is—

(i) transferred by an employer to an employee for length of service achievement or safety achievement,

(ii) awarded as part of a meaningful presentation, and

(iii) awarded under conditions and circumstances that do not create a significant likelihood of the payment of disguised compensation.

(B) Qualified plan award

(i) In general

The term ''qualified plan award'' means an employee achievement award awarded as part of an established written plan or program of the taxpayer which does not discriminate in favor of highly compensated employees (within the meaning of section 414(q)) as to eligibility or benefits.

(ii) Limitation

An employee achievement award shall not be treated as a qualified plan award for any taxable year if the average cost of all employee achievement awards which are provided by the employer during the year, and which would be qualified plan awards but for this subparagraph, exceeds $400. For purposes of the preceding sentence, average cost shall be determined by including the entire cost of qualified plan awards, without taking into account employee achievement awards of nominal value.

(4) Special rules

For purposes of this subsection—

(A) Partnerships

In the case of an employee achievement award made by a partnership, the deduction limitations contained in paragraph (2) shall apply to the partnership as well as to each member thereof.

(B) Length of service awards

An item shall not be treated as having been provided for length of service achievement if the item is received during the recipient's 1st 5 years of employment or if the recipient received a length of service achievement award (other than an award excludable under section 132(e)(1)) during that year or any of the prior 4 years.

(C) Safety achievement awards

An item provided by an employer to an employee shall not be treated as having been provided for safety achievement if—

(i) during the taxable year, employee achievement awards (other than awards excludable under section 132(e)(1)) for safety achievement have previously been awarded by the employer to more than 10 percent of the employees of the employer (excluding employees described in clause (ii)), or

(ii) such item is awarded to a manager, administrator, clerical employee, or other professional employee.

(k) Business meals

(1) In general

No deduction shall be allowed under this chapter for the expense of any food or beverages unless—

(A) such expense is not lavish or extravagant under the circumstances, and

(B) the taxpayer (or an employee of the taxpayer) is present at the furnishing of such food or beverages.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e), and

(B) any other expense to the extent provided in regulations.

(*l*) Additional limitations on entertainment tickets

(1) Entertainment tickets

(A) In general

In determining the amount allowable as a deduction under this chapter for any ticket for any activity or facility described in subsection (d)(2), the amount taken into account shall not exceed the face value of such ticket.

(B) Exception for certain charitable sports events

Subparagraph (A) shall not apply to any ticket for any sports event—

(i) which is organized for the primary purpose of benefiting an organization which is described in section 501(c)(3) and exempt from tax under section 501(a),

(ii) all of the net proceeds of which are contributed to such organization, and

(iii) which utilizes volunteers for substantially all of the work performed in carrying out such event.

(2) Skyboxes, etc.

In the case of a skybox or other private luxury box leased for more than 1 event, the amount allowable as a deduction under this chapter with respect to such events shall not exceed the sum of the face value of non-luxury box seat tickets for the seats in such box covered by the lease. For purposes of the preceding sentence, 2 or more related leases shall be treated as 1 lease.

(m) Additional limitations on travel expenses

(1) Luxury water transportation

(A) In general

No deduction shall be allowed under this chapter for expenses incurred for transportation by water to the extent such expenses exceed twice the aggregate per diem amounts for days of such transportation. For purposes of the preceding sentence, the term ''per diem amounts'' means the highest amount generally allowable with respect to a day to employees of the executive branch of the Federal Government for per diem

while away from home but serving in the United States.

(B) Exceptions

Subparagraph (A) shall not apply to—

(i) any expense allocable to a convention, seminar, or other meeting which is held on any cruise ship, and

(ii) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).

(2) Travel as form of education

No deduction shall be allowed under this chapter for expenses for travel as a form of education.

(3) Travel expenses of spouse, dependent, or others

No deduction shall be allowed under this chapter (other than section 217) for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless—

(A) the spouse, dependent, or other individual is an employee of the taxpayer,

(B) the travel of the spouse, dependent, or other individual is for a bona fide business purpose, and

(C) such expenses would otherwise be deductible by the spouse, dependent, or other individual.

(n) Only 50 percent of meal and entertainment expenses allowed as deduction

(1) In general

The amount allowable as a deduction under this chapter for—

(A) any expense for food or beverages, and

(B) any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such activity,

shall not exceed 50 percent of the amount of such expense or item which would (but for this paragraph) be allowable as a deduction under this chapter.

(2) Exceptions

Paragraph (1) shall not apply to any expense if—

(A) such expense is described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),

(B) in the case of an expense for food or beverages, such expense is excludable from the gross income of the recipient under section 132 by reason of subsection (e) thereof (relating to de minimis fringes),

(C) such expense is covered by a package involving a ticket described in subsection (*l*)(1)(B),

(D) in the case of an employer who pays or reimburses moving expenses of an employee, such expenses are includible in the income of the employee under section 82, or

(E) such expense is for food or beverages—

(i) required by any Federal law to be provided to crew members of a commercial vessel,

(ii) provided to crew members of a commercial vessel—

(I) which is operating on the Great Lakes, the Saint Lawrence Seaway, or any inland waterway of the United States, and

(II) which is of a kind which would be required by Federal law to provide food and beverages to crew members if it were operated at sea,

(iii) provided on an oil or gas platform or drilling rig if the platform or rig is located offshore, or

(iv) provided on an oil or gas platform or drilling rig, or at a support camp which is in proximity and integral to such platform or rig, if the platform or rig is located in the United States north of 54 degrees north latitude.

Clauses (i) and (ii) of subparagraph (E) shall not apply to vessels primarily engaged in providing luxury water transportation (determined under the principles of subsection (m)). In the case of the employee, the exception of subparagraph (A) shall not apply to expenses described in subparagraph (D).

(3) Special rule for individuals subject to Federal hours of service

(A) In general

In the case of any expenses for food or beverages consumed while away from home (within the meaning of section 162(a)(2)) by an individual during, or incident to, the period of duty subject to the hours of service limitations of the Department of Transportation, paragraph (1) shall be applied by substituting ''the applicable percentage'' for ''50 percent''.

(B) Applicable percentage

For purposes of this paragraph, the term ''applicable percentage'' means the percentage determined under the following table:

For taxable years beginning in calendar year—	The applicable percentage is—
1998 or 1999	55
2000 or 2001	60
2002 or 2003	65
2004 or 2005	70
2006 or 2007	75
2008 or thereafter	80.

(*o*) Regulatory authority

The Secretary shall prescribe such regulations as he may deem necessary to carry out the purposes of this section, including regulations prescribing whether subsection (a) or subsection (b) applies in cases where both such subsections would otherwise apply.

(Added Pub. L. 87–834, § 4(a)(1), Oct. 16, 1962, 76 Stat. 974; amended Pub. L. 88–272, title II, § 217(a), Feb. 26, 1964, 78 Stat. 56; Pub. L. 94–455, title VI, § 602(a), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1572, 1834; Pub. L. 95–600, title III, § 361(a), (b), title VII, § 701(g)(1)–(3), Nov. 6, 1978, 92 Stat. 2847, 2903, 2904; Pub. L. 96–222, title I, § 103(a)(10)(A), (B) Apr. 1, 1980, 94 Stat. 212; Pub. L. 96–598, § 5(a), Dec. 24, 1980, 94 Stat. 3488; Pub. L. 96–605, title I, § 108(a), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 96–608, § 4(a), Dec. 28, 1980, 94 Stat. 3552; Pub. L. 97–34, title II, § 265(a), (b), Aug. 13,

1981, 95 Stat. 265; Pub. L. 97–248, title III, §§307(a)(1), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 97–424, title V, §543(a), Jan. 6, 1983, 96 Stat. 2195; Pub. L. 98–67, title I, §102(a), title II, §222(a), Aug. 5, 1983, 97 Stat. 369, 395; Pub. L. 98–369, div. A, title I, §179(b)(1), title VIII, §801(c), July 18, 1984, 98 Stat. 718, 995; Pub. L. 99–44, §§1(a), 2, 6(b), May 24, 1985, 99 Stat. 77, 79; Pub. L. 99–514, title I, §§122(c), (d), 142(a)–(c), title XI, §1114(b)(6), Oct. 22, 1986, 100 Stat. 2110, 2117–2120, 2451; Pub. L. 100–647, title I, §§1001(g)(1)–(4)(A), (5), 1018(u)(2), title VI, §6003(a), Nov. 10, 1988, 102 Stat. 3351, 3352, 3590, 3684; Pub. L. 101–239, title VII, §§7816(a), 7841(d)(18), Dec. 19, 1989, 103 Stat. 2420, 2429; Pub. L. 101–508, title XI, §11802(b), Nov. 5, 1990, 104 Stat. 1388–529; Pub. L. 103–66, title XIII, §§13209(a), (b), 13210(a), (b), 13272(a), Aug. 10, 1993, 107 Stat. 469, 542; Pub. L. 105–34, title IX, §969(a), Aug. 5, 1997, 111 Stat. 896; Pub. L. 108–357, title VIII, §907(a), Oct. 22, 2004, 118 Stat. 1654; Pub. L. 109–135, title IV, §403(mm), Dec. 21, 2005, 119 Stat. 2632.)

REFERENCES IN TEXT

Section 16 of the Securities Exchange Act of 1934, referred to in subsec. (e)(2)(B)(ii), is classified to section 78p of Title 15, Commerce and Trade.

Section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, referred to in subsec. (h)(6)(B), is classified to section 2702(a)(1)(A) of Title 19, Customs Duties.

AMENDMENTS

2005—Subsec. (e)(2)(B)(ii). Pub. L. 109–135, §403(mm)(1), (2), inserted ''or a related party to the taxpayer'' after ''with respect to the taxpayer'' in subcl. (I), ''(or such related party)'' after ''the taxpayer'' in subcl. (II), and ''For purposes of this clause, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).'' at end.

2004—Subsec. (e)(2). Pub. L. 108–357 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Expenses for goods, services, and facilities, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).''

1997—Subsec. (n)(3). Pub. L. 105–34 added par. (3).

1993—Subsec. (a)(3). Pub. L. 103–66, §13210(a), added par. (3).

Subsec. (e)(4). Pub. L. 103–66, §13210(b), inserted at end ''This paragraph shall not apply for purposes of subsection (a)(3).''

Subsec. (m)(3). Pub. L. 103–66, §13272(a), added par. (3).

Subsec. (n). Pub. L. 103–66, §13209(a), (b), substituted ''50'' for ''80'' in heading and in concluding provisions of par. (1).

1990—Subsec. (*l*)(2). Pub. L. 101–508, §11802(b)(1), in amending par. (2) generally, struck out ''(A) In general'' and subpar. (B) which provided for phasein deductions of skybox tickets in the 1987 and 1988 taxable years.

Subsec. (n)(2). Pub. L. 101–508, §11802(b)(2)(A)(ii), (iii), substituted ''described in subparagraph (D)'' for ''described in subparagraph (E)'' and ''of subparagraph (E)'' for ''of subparagraph (F)'' in concluding provisions.

Subsec. (n)(2)(D) to (F). Pub. L. 101–508, §11802(b)(2)(A)(i), redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: ''in the case of an expense for food or beverages before January 1, 1989, such expense is an integral part of a qualified meeting,''.

Subsec. (n)(3). Pub. L. 101–508, §11802(b)(2)(B), struck out par. (3) ''Qualified meeting'' which read as follows: ''For purposes of paragraph (2)(D), the term 'qualified meeting' means any convention, seminar, annual meeting, or similar business program with respect to which—

''(A) an expense for food or beverages is not separately stated,

''(B) more than 50 percent of the participants are away from home,

''(C) at least 40 individuals attend, and

''(D) such food and beverages are part of a program which includes a speaker.''

1989—Subsec. (n)(2). Pub. L. 101–239, §7816(a), added a new subpar. (E), substantially identical to former subpar. (E), and moved sentence formerly appearing between subpars. (E) and (F) to end of concluding provisions after subpar. (F).

Subsec. (n)(2)(F)(i). Pub. L. 101–239, §7841(d)(18), inserted ''any'' before ''Federal law''.

1988—Subsec. (b)(1). Pub. L. 100–647, §1018(u)(2), related to execution of amendment by Pub. L. 99–514, §122(c)(2), see 1986 Amendment note below.

Subsec. (h)(1), (2). Pub. L. 100–647, §1001(g)(5), substituted ''trade or business and that'' for ''trade or business that''.

Subsec. (k)(2). Pub. L. 100–647, §1001(g)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) shall not apply to any expense if subsection (a) does not apply to such expense by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).''

Subsec. (m)(1)(B)(ii). Pub. L. 100–647, §1001(g)(3), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''any expense to which subsection (a) does not apply by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).''

Subsec. (n)(2). Pub. L. 100–647, §6003(a), struck out ''or'' at end of subpar. (D), substituted '', or'' for the period at end of subpar. (E), and added subpar. (F) and flush sentence at end.

Pub. L. 100–647, §1001(g)(4)(A), struck out ''or'' at end of subpar. (C), substituted '', or'' for the period at end of subpar. (D), and added subpar. (E) and flush sentence at end.

Pub. L. 100–647, §1001(g)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''subsection (a) does not apply to such expense by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),''.

1986—Subsec. (b)(1). Pub. L. 99–514, §122(c)(1)–(3), and Pub. L. 100–647, §1018(u)(2), made conforming amendments to subpars. (A) and (B) and struck out subpar. (C) which read as follows: ''an item of tangible personal property which is awarded to an employee by reason of length of service, productivity, or safety achievement, but only to the extent that—

''(i) the cost of such item to the taxpayer does not exceed $400, or

''(ii) such item is a qualified plan award.''

Subsec. (b)(3). Pub. L. 99–514, §122(c)(4), struck out par. (3) relating to qualified plan award, defining such term in subpar. (A), and providing for average amount of awards in subpar. (B) and maximum amount per item in subpar. (C).

Subsec. (e)(1). Pub. L. 99–514, §142(a)(2)(A), redesignated par. (2) as (1) and struck out former par. (1), business meals, which read as follows: ''Expenses for food and beverages furnished to any individual under circumstances which (taking into account the surroundings in which furnished, the taxpayer's trade, business, or income-producing activity and the relationship to such trade, business, or activity of the persons to whom the food and beverages are furnished) are of a type generally considered to be conducive to a business discussion.''

Subsec. (e)(2). Pub. L. 99–514, §142(a)(2)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (e)(3). Pub. L. 99–514, §142(a)(2), redesignated par. (4) as (3) and substituted ''paragraph (2)'' for ''para-

graph (3)'' in subpar. (A). Former par. (3) redesignated (2).

Subsec. (e)(4). Pub. L. 99–514, §1114(b)(6), which directed the substitution of ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, shareholders or other owners, or highly compensated employees'' in par. (5) was executed to par. (4) to reflect the probable intent of Congress, in view of the redesignation of par. (5) as (4) by section 142(a)(2)(A) of Pub. L. 99–514.

Pub. L. 99–514, §142(a)(2)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(5) to (10). Pub. L. 99–514, §142(a)(2)(A), redesignated pars. (5) to (10) as pars. (4) to (9), respectively.

Subsec. (h). Pub. L. 99–514, §142(c), struck out ''or 212'' after ''section 162'' in introductory provisions of pars. (1), (2), and (5), in closing provisions of par. (2), and in par. (4)(A), struck out ''or to an activity described in section 212 and'' after ''active conduct of his trade or business'' in introductory provisions of pars. (1) and (2), and added par. (7).

Subsec. (j). Pub. L. 99–514, §122(d), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 99–514, §142(a)(1), added subsec. (k). Former subsec. (k) redesignated (*o*).

Subsecs. (*l*) to (n). Pub. L. 99–514, §142(b), added subsecs. (*l*) to (n).

Subsec. (*o*). Pub. L. 99–514, §142(a)(1), redesignated former subsec. (k) as (*o*).

1985—Subsec. (d). Pub. L. 99–44, §2(a), inserted at end ''This subsection shall not apply to any qualified nonpersonal use vehicle (as defined in subsection (i)).''

Pub. L. 99–44, §1(a), substituted ''adequate records or by sufficient evidence corroborating the taxpayer's own statement'' for ''adequate contemporaneous records'', and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied as if ''contemporaneous'' had not been added to subsec. (d). See Effective Date of 1985 Amendment note below.

Subsecs. (i), (j). Pub. L. 99–44, §2(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1984—Subsec. (d). Pub. L. 98–369, §179(b), substituted, in introductory provisions, ''No deduction or credit'' for ''No deduction'' and, in provisions following par. (4), ''adequate contemporaneous records'' for ''adequate records or by sufficient evidence corroborating his own statement'' and ''the facility or property'' for ''the facility'' in two places, and added par. (4).

Subsec. (h)(6)(D). Pub. L. 98–369, §801(c), substituted in heading ''with other provisions'' for ''with section 6103'' and in text inserted provision that the Secretary may exercise his authority under subchapter A of chapter 78 to carry out any obligations of the United States under an agreement referred to in subpar. (C).

1983—Subsec. (e)(3). Pub. L. 98–67, §102(a), repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Subsec. (h)(2). Pub. L. 97–424, §543(a)(1), inserted provisions relating to requirements of par. (5) and the description in section 212, and inserted the $2,000 limit relating to section 162 or 212.

Subsec. (h)(5). Pub. L. 97–424, §543(a)(2), added par. (5).

Subsec. (h)(6). Pub. L. 98–67, §227(a), added par. (6).

1982—Subsec. (e)(3). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (3) is amended by inserting ''subchapter A of'' before ''chapter 24''. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Subsec. (b)(1)(C). Pub. L. 97–34, §265(a), excluded from term ''gift'' an award for productivity, designated existing provisions as cl. (i), and as so designated, increased the limitation to $400 from $100, and added cl. (ii).

Subsec. (b)(3). Pub. L. 97–34, §265(b), added par. (3).

1980—Subsec. (a)(2)(C). Pub. L. 96–222, §103(a)(10)(A), struck out ''country'' after ''the case of a''.

Subsec. (e)(10). Pub. L. 96–605 and Pub. L. 96–598 made identical amendments by adding par. (10).

Subsec. (h) Pub. L. 96–608 substituted provision disallowing any deductions for expenses allocable to a convention, seminar, or other similar meeting outside the North American area unless, taking certain factors into account, it is as reasonable for the meeting to be held outside the North American area as within it, disallowing any deductions for a convention, seminar, or similar meeting held on any cruise ship, and defining North American area and cruise ship, for provision allowing deductions with respect to not more than 2 foreign conventions per year, limiting deductible transportation cost to not to exceed the cost of coach or economy air fare, permitting transportation costs to be fully deductible only if at least one-half of the days are devoted to business related activities, disallowing deductions for subsistence expenses unless the individual attends two-thirds of the business activities, limiting deductible subsistence costs to not to exceed the per diem rate for United States civil servants, defining foreign convention and subsistence expenses, providing that if transportation expenses or subsistence expenses are not separately stated or do not reflect the proper allocation all amounts paid be treated as subsistence expenses, and prescribing special reporting and substantiation requirements.

1978—Subsec. (a)(1). Pub. L. 95–600, §361(a), substituted provisions allowing no deduction for expenses paid or incurred with respect to a facility which is used in conjunction with an activity which is of a type generally considered to constitute entertainment, amusement, or recreation for provisions allowing a deduction for expenses paid or incurred with respect to a facility if the facility used is primarily for the furtherance of the taxpayer's business, and the expense is ''directly related'' to the active conduct of taxpayer's business.

Subsec. (a)(2)(C). Pub. L. 95–600, §361(b), as amended by Pub. L. 96–222, §103(a)(10)(B), added subpar. (C).

Subsec. (h)(3). Pub. L. 95–600, §701(g)(3), substituted ''at least one-half'' for ''more than one-half'' in first sentence.

Subsec. (h)(6)(D). Pub. L. 95–600, §701(g)(1), designated existing provisions as cl. (i), inserted introductory phrase ''Except as provided in clause (ii)'' and substituted ''For the purposes'' for ''For purpose'', and added cl. (ii).

Subsec. (h)(6)(E). Pub. L. 95–600, §701(g)(2), added subpar. (E).

1976—Subsecs. (c)(1), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (h). Pub. L. 94–455, §602(a), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 94–455, §§602(a), 1906(b)(13)(A), redesignated former subsec. (h) as (i) and struck out ''or his delegate'' after ''Secretary''.

1964—Subsec. (c). Pub. L. 88–272 limited subsec. (c) to individuals traveling outside the United States.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §907(b), Oct. 22, 2004, 118 Stat. 1655, provided that: ''The amendment made by this section [amending this section] shall apply to expenses incurred after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 969(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13209(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993.''

Section 13210(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 1993.''

Section 13272(b) of Pub. L. 103–66 provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 1993.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7816(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(g)(1)–(4)(A), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6003(b) of Pub. L. 100–647 provided that:

''(1) Clauses (i) and (ii) of section 274(n)(2)(F) of the 1986 Code, as added by subsection (a), shall apply to taxable years beginning after December 31, 1988.

''(2) Clauses (iii) and (iv) of section 274(n)(2)(F) of the 1986 Code, as added by subsection (a), shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(c), (d) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 142(a)–(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1114(b)(6) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 6(a)–(c) of Pub. L. 99–44, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) REPEALS.—The amendment and repeals made by subsections (a) and (b) of section 1 [amending this section and repealing section 179(b)(2), (3) of Pub. L. 98–369 which had amended sections 6653 and 6695 of this title] shall take effect as if included in the amendments made by section 179(b) of the Tax Reform Act of 1984 [Pub. L. 98–369].

''(b) RESTORATION OF PRIOR LAW FOR 1985.—For taxable years beginning in 1985, section 274(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply as it read before the amendments made by section 179(b)(1) of the Tax Reform Act of 1984 [Pub. L. 98–369, see 1984 Amendments note above].

''(c) EXCEPTION FROM SUBSTANTIATION REQUIREMENTS FOR QUALIFIED NONPERSONAL USE VEHICLES.—The amendments made by section 2 [amending this section] shall apply to taxable years beginning after December 31, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 179(b)(1) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 179(d)(2) of Pub. L. 98–369, set out as an Effective Date note under section 280F of this title.

Amendment by section 801(c) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 222(b) of Pub. L. 98–67 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to conventions, seminars, or other meetings which begin after June 30, 1983.''

Section 543(b) of Pub. L. 97–424 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 265(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending on or after the date of the enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 4(b) of Pub. L. 96–608, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall apply to conventions, seminars, and meetings beginning after December 31, 1980, except that in the case of any convention, seminar, or meeting beginning after such date which was scheduled on or before such date, a person, in such manner as the Secretary of the Treasury or his delegate may prescribe, may elect to have the provisions of section 274(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] be applied to such convention seminar or meeting without regard to such amendment.''

Section 5(b) of Pub. L. 96–598 and section 108(b) of Pub. L. 96–605 provided that: ''The amendment made by this section [amending this section] shall apply to any expenses paid or incurred after December 31, 1980, in taxable years ending after such date.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 361(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to items paid or incurred after December 31, 1978, in taxable years ending after such date.''

Section 701(g)(4) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section] shall apply to conventions beginning after December 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 602(b) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section] shall apply to conventions beginning after December 31, 1976.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 217(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date.''

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1962, but only in respect of periods after such date, see section 4(c) of Pub. L. 87–834, set out as an Effective Date of 1962 Amendment note under section 162 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 5 of Pub. L. 99–44 provided that: ''Not later than October 1, 1985, the Secretary of the Treasury or his delegate shall prescribe regulations to carry out the provisions of this Act [amending sections 274, 280F, 3402, 6653, and 6695 of this title, and enacting provisions set out as notes under sections 274, 280F, 3402, and 6653 of this title] which shall fully reflect such provisions.''

Section 1(c) of Pub. L. 99–44 provided that: ''Regulations issued before the date of the enactment of this Act [May 24, 1985] to carry out the amendments made by paragraphs (1)(C), (2), and (3) of section 179(b) of the Tax Reform Act of 1984 [Pub. L. 98–369, amending sections 274, 6653, and 6695 of this title] shall have no force and effect.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CERTAIN RECORDKEEPING REQUIREMENTS

For treatment of use of automobile by I.R.S. special agent for purposes of this section and section 132 of this title, see section 1567 of Pub. L. 99–514, set out as a note under section 132 of this title.

SUBSTANTIATION BY ADEQUATE CONTEMPORANEOUS RECORDS

Section 1(a) of Pub. L. 99–44, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided in part that: ''the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if the word 'contemporaneous' had not been added [by Pub. L. 98–369] to such subsection (d) [subsec. (d) of this section].''

USE OF FACILITIES IN CASE OF INDEPENDENT CONTRACTORS, ETC.

Section 103(a)(10)(C) of Pub. L. 96–222, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(i) IN GENERAL.—Subsection (a) of section 274 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to disallowance of certain entertainment, etc., expenses) shall not apply to expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient of the entertainment, amusement, or recreation who is not an employee of the taxpayer as compensation for services rendered or as a prize or award under section 74 of such Code.

''(ii) INFORMATION RETURN REQUIREMENT.—Clause (i) shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included in any information return filed by such taxpayer under part III of subchapter A of chapter 61 of such Code [section 6031 et seq. of this title] and is not so included.

''(iii) APPLICATION OF SUBPARAGRAPH.—This subparagraph shall only apply with respect to expenses paid or incurred during 1979 or 1980.''

§ 275. Certain taxes

(a) General rule

No deduction shall be allowed for the following taxes:

(1) Federal income taxes, including—

(A) the tax imposed by section 3101 (relating to the tax on employees under the Federal Insurance Contributions Act);

(B) the taxes imposed by sections 3201 and 3211 (relating to the taxes on railroad employees and railroad employee representatives); and

(C) the tax withheld at source on wages under section 3402.

(2) Federal war profits and excess profits taxes.

(3) Estate, inheritance, legacy, succession, and gift taxes.

(4) Income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States if the taxpayer chooses to take to any extent the benefits of section 901.

(5) Taxes on real property, to the extent that section 164(d) requires such taxes to be treated as imposed on another taxpayer.

(6) Taxes imposed by chapters 41, 42, 43, 44, 45, 46, and 54.

Paragraph (1) shall not apply to the tax imposed by section 59A. Paragraph (1) shall not apply to any taxes to the extent such taxes are allowable as a deduction under section 164(f).

(b) Cross reference

For disallowance of certain other taxes, see section 164(c).

(Added Pub. L. 88–272, title II, § 207(b)(3)(A), Feb. 26, 1964, 78 Stat. 42; amended Pub. L. 93–406, title II, § 1016(a)(1), Sept. 2, 1974, 88 Stat. 929; Pub. L. 94–455, title XIII, § 1307(d)(2)(A), title XVI, § 1605(b)(1), title XIX, § 1901(a)(39), Oct. 4, 1976, 90 Stat. 1727, 1754, 1771; Pub. L. 95–600, title VII, § 701(t)(3)(B), Nov. 6, 1978, 92 Stat. 2912; Pub. L. 97–248, title III, §§ 305(a), 308(a), Sept. 3, 1982, 96 Stat. 588, 591; Pub. L. 98–21, title I, § 124(c)(5), Apr. 20, 1983, 97 Stat. 91; Pub. L. 98–67, title I, § 102(a) Aug. 5, 1983, 97 Stat. 369; Pub. L. 98–369, div. A, title I, § 67(b)(2), title VIII, § 801(d)(5), July 18, 1984, 98 Stat. 587, 996; Pub. L. 99–499, title V, § 516(b)(2)(B), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 100–203, title X, § 10228(b), Dec. 22, 1987, 101 Stat. 1330–418; Pub. L. 106–519, § 4(2), Nov. 15, 2000, 114 Stat. 2432; Pub. L. 108–357, title I, § 101(b)(5), title VIII, § 802(b)(1), Oct. 22, 2004, 118 Stat. 1423, 1568; Pub. L. 110–172, § 11(g)(5), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in subsec. (a)(1)(A), is act Aug. 16, 1954, ch. 736, §§ 3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended,

which is classified generally to chapter 21 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

CODIFICATION

Pub. L. 95–600, § 701(t)(3)(B) (effective Oct. 4, 1976, see Pub. L. 95–600, § 701(t)(5), set out as an Effective Date of 1978 Amendment note under section 859 of this title) repealed § 1605(b)(1) of Pub. L. 94–455, cited as a credit to this section, which had duplicated the amendment to subsec. (a)(6) made by § 1307(d)(2)(A) of Pub. L. 94–455.

AMENDMENTS

2007—Subsec. (a)(4). Pub. L. 110–172 substituted ''if the taxpayer chooses to take to any extent the benefits of section 901.'' for ''if—

''(A) the taxpayer chooses to take to any extent the benefits of section 901, or

''(B) such taxes are paid or accrued with respect to foreign trade income (within the meaning of section 923(b)) of a FSC,.''

2004—Subsec. (a). Pub. L. 108–357, § 101(b)(5)(B), struck out at end of concluding provisions ''A rule similar to the rule of section 943(d) shall apply for purposes of paragraph (4)(C).''

Subsec. (a)(4). Pub. L. 108–357, § 101(b)(5)(A), inserted ''or'' at end of subpar. (A), substituted period for ''or'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''such taxes are paid or accrued with respect to qualifying foreign trade income (as defined in section 941).''

Subsec. (a)(6). Pub. L. 108–357, § 802(b)(1), inserted ''45,'' before ''46,''.

2000—Subsec. (a). Pub. L. 106–519, § 4(2)(B), inserted at end ''A rule similar to the rule of section 943(d) shall apply for purposes of paragraph (4)(C).''

Subsec. (a)(4)(C). Pub. L. 106–519, § 4(2)(A), added subpar. (C).

1987—Subsec. (a)(6). Pub. L. 100–203 substituted ''46, and 54'' for ''and 46''.

1986—Subsec. (a). Pub. L. 99–499 inserted at end ''Paragraph (1) shall not apply to the tax imposed by section 59A.''

1984—Subsec. (a)(4). Pub. L. 98–369, § 801(d)(5), inserted provision disallowing a deduction for income, war profits, and excess profits taxes if such taxes are paid or accrued with respect to foreign trade income, within the meaning of section 923(b), of a FSC.

Subsec. (a)(6). Pub. L. 98–369, § 67(b)(2), inserted reference to chapter 46.

1983—Subsec. (a). Pub. L. 98–21 inserted at end ''Paragraph (1) shall not apply to any taxes to the extent such taxes are allowable as a deduction under section 164(f).''

Subsec. (a)(1). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (a)(1). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (1) is amended by striking out ''and'' at end of subpar. (B), by substituting ''; and'' for the period at end of subpar. (C), and by inserting subpar. (D) relating to the tax withheld at source on interest, dividends, and patronage dividends under section 3451. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsec. (a)(1)(C). Pub. L. 94–455, § 1901(a)(39), struck out '', and corresponding provisions of prior revenue laws'' after ''under section 3402''.

Subsec. (a)(6). Pub. L. 94–455, §§ 1307(d)(2)(A), 1605(b)(1), inserted reference to chapters 41 and 44.

1974—Subsec. (a)(6). Pub. L. 93–406 added par. (6).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b)(5) of Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

Amendment by section 802(b)(1) of Pub. L. 108–357 effective Mar. 4, 2003, see section 802(d) of Pub. L. 108–357, set out as an Effective Date note under section 4985 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to consideration received after Dec. 22, 1987, in taxable years ending after such date, except not applicable in the case of any acquisition pursuant to a written binding contract in effect on Dec. 15, 1987, and at all times thereafter before the acquisition, see section 10228(d) of Pub. L. 100–203, set out as an Effective Date note under section 5881 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 67(b)(2) of Pub. L. 98–369 applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98–369, set out as an Effective Date note under section 280G of this title.

Amendment by section 801(d)(5) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1307(d)(2)(A) of Pub. L. 94–455, see section 1307(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(1) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

Amendment by section 1901(a)(39) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as a note under section 410 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 164 of this title.

§ 276. Certain indirect contributions to political parties

(a) Disallowance of deduction

No deduction otherwise allowable under this chapter shall be allowed for any amount paid or incurred for—

(1) advertising in a convention program of a political party, or in any other publication if any part of the proceeds of such publication directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate,

(2) admission to any dinner or program, if any part of the proceeds of such dinner or program directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate, or

(3) admission to an inaugural ball, inaugural gala, inaugural parade, or inaugural concert, or to any similar event which is identified with a political party or a political candidate.

(b) Definitions

For purposes of this section—

(1) Political party

The term ''political party'' means—

(A) a political party;

(B) a National, State, or local committee of a political party; or

(C) a committee, association, or organization, whether incorporated or not, which directly or indirectly accepts contributions (as defined in section 271(b)(2)) or make expenditures (as defined in section 271(b)(3)) for the purpose of influencing or attempting to influence the selection, nomination, or election of any individual to any Federal, State, or local elective public office, or the election of presidential and vice-presidential electors, whether or not such individual or electors are selected, nominated, or elected.

(2) Proceeds inuring to or for the use of political candidates

Proceeds shall be treated as inuring to or for the use of a political candidate only if—

(A) such proceeds may be used directly or indirectly for the purpose of furthering his candidacy for selection, nomination, or election to any elective public office, and

(B) such proceeds are not received by such candidate in the ordinary course of a trade or business (other than the trade or business of holding elective public office).

(c) Cross reference

For disallowance of certain entertainment, etc., expenses, see section 274.

(Added Pub. L. 89–368, title III, § 301(a), Mar. 15, 1966, 80 Stat. 66; amended Pub. L. 90–364, title I, § 108(a), June 28, 1968, 82 Stat. 268; Pub. L. 93–443, title IV, § 406(d), Oct. 15, 1974, 88 Stat. 1296.)

AMENDMENTS

1974—Subsecs. (c), (d). Pub. L. 93–443 struck out subsec. (c) relating to advertising in a convention program of a national political convention, and redesignated subsec. (d) as (c).

1968—Subsecs. (c), (d). Pub. L. 90–364 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 431 of Title 2, The Congress.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 108(b) of Pub. L. 90–364 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to amounts paid or incurred on or after January 1, 1968.''

EFFECTIVE DATE

Section 301(c) of Pub. L. 89–368 provided that: ''The amendments made by subsections (a) and (b) [enacting this section] shall apply to taxable years beginning after December 31, 1965, but only with respect to amounts paid or incurred after the date of the enactment of this Act [Mar. 15, 1966].''

PROGRAM ADVERTISING FOR PRESIDENTIAL AND VICE-PRESIDENTIAL NOMINATING CONVENTIONS

Pub. L. 90–346, June 18, 1968, 82 Stat. 183, provided for advertising in a convention program of a national political convention, applicable with respect to amounts paid or incurred on or after Jan. 1, 1968, prior to repeal by Pub. L. 93–625, § 10(g), Jan. 3, 1975, 88 Stat. 2119.

§ 277. Deductions incurred by certain membership organizations in transactions with members

(a) General rule

In the case of a social club or other membership organization which is operated primarily to furnish services or goods to members and which is not exempt from taxation, deductions for the taxable year attributable to furnishing services, insurance, goods, or other items of value to members shall be allowed only to the extent of income derived during such year from members or transactions with members (including income derived during such year from institutes and trade shows which are primarily for the education of members). If for any taxable year such deductions exceed such income, the excess shall be treated as a deduction attributable to furnishing services, insurance, goods, or other items of value to members paid or incurred in the succeeding taxable year. The deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall not be allowed to any organization to which this section applies for the taxable year.

(b) Exceptions

Subsection (a) shall not apply to any organization—

(1) which for the taxable year is subject to taxation under subchapter H or L,

(2) which has made an election before October 9, 1969, under section 456(c) or which is affiliated with such an organization,

(3) which for each day of any taxable year is a national securities exchange subject to regulation under the Securities Exchange Act of 1934 or a contract market subject to regulation under the Commodity Exchange Act, or

(4) which is engaged primarily in the gathering and distribution of news to its members for publication.

(Added Pub. L. 91–172, title I, § 121(b)(3)(A), Dec. 30, 1969, 83 Stat. 540; amended Pub. L. 94–568, § 1(c), Oct. 20, 1976, 90 Stat. 2697; Pub. L. 99–514, title XVI, § 1604(a), Oct. 22, 1986, 100 Stat. 2769.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, as

amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Commodity Exchange Act, referred to in subsec. (b)(3), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

AMENDMENTS

1986—Subsec. (b)(4). Pub. L. 99–514 added par. (4).

1976—Subsec. (a). Pub. L. 94–568 provided that the deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall not be allowed to any organization to which this section applies for the taxable year.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1604(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–568 applicable to taxable years beginning after Oct. 20, 1976, see section 1(d) of Pub. L. 94–568, set out as a note under section 501 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1970, see section 121(g) of Pub. L. 91–172, set out as an Effective Date of 1969 Amendment note under section 511 of this title.

[§ 278. Repealed. Pub. L. 99–514, title VIII, § 803(b)(6), Oct. 22, 1986, 100 Stat. 2356]

Section, added Pub. L. 91–172, title II, § 216(a), Dec. 30, 1969, 83 Stat. 573; amended Pub. L. 91–680, § 1(a), (b), (d), Jan. 12, 1971, 84 Stat. 2064; Pub. L. 94–455, title II, § 207(b)(1), (2), Oct. 4, 1976, 90 Stat. 1538, related to capital expenditures incurred in planting and developing citrus and almond groves, and certain capital expenditures of farming syndicates.

EFFECTIVE DATE OF REPEAL

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the repeal of this section is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

§ 279. Interest on indebtedness incurred by corporation to acquire stock or assets of another corporation

(a) General rule

No deduction shall be allowed for any interest paid or incurred by a corporation during the taxable year with respect to its corporate acquisition indebtedness to the extent that such interest exceeds—

(1) $5,000,000, reduced by

(2) the amount of interest paid or incurred by such corporation during such year on obligations (A) issued after December 31, 1967, to provide consideration for an acquisition described in paragraph (1) of subsection (b), but (B) which are not corporate acquisition indebtedness.

(b) Corporate acquisition indebtedness

For purposes of this section, the term ''corporate acquisition indebtedness'' means any obligation evidenced by a bond, debenture, note, or certificate or other evidence of indebtedness issued after October 9, 1969, by a corporation (hereinafter in this section referred to as ''issuing corporation'') if—

(1) such obligation is issued to provide consideration for the acquisition of—

(A) stock in another corporation (hereinafter in this section referred to as ''acquired corporation''), or

(B) assets of another corporation (hereinafter in this section referred to as ''acquired corporation'') pursuant to a plan under which at least two-thirds (in value) of all the assets (excluding money) used in trades and businesses carried on by such corporation are acquired,

(2) such obligation is either—

(A) subordinated to the claims of trade creditors of the issuing corporation generally, or

(B) expressly subordinated in right of payment to the payment of any substantial amount of unsecured indebtedness, whether outstanding or subsequently issued, of the issuing corporation,

(3) the bond or other evidence of indebtedness is either—

(A) convertible directly or indirectly into stock of the issuing corporation, or

(B) part of an investment unit or other arrangement which includes, in addition to such bond or other evidence of indebtedness, an option to acquire, directly or indirectly, stock in the issuing corporation, and

(4) as of a day determined under subsection (c)(1), either—

(A) the ratio of debt to equity (as defined in subsection (c)(2)) of the issuing corporation exceeds 2 to 1, or

(B) the projected earnings (as defined in subsection (c)(3)) do not exceed 3 times the annual interest to be paid or incurred (determined under subsection (c)(4)).

(c) Rules for application of subsection (b)(4)

For purposes of subsection (b)(4)—

(1) Time of determination

Determinations are to be made as of the last day of any taxable year of the issuing corporation in which it issues any obligation to provide consideration for an acquisition described in subsection (b)(1) of stock in, or assets of, the acquired corporation.

(2) Ratio of debt to equity

The term ''ratio of debt to equity'' means the ratio which the total indebtedness of the issuing corporation bears to the sum of its

money and all its other assets (in an amount equal to their adjusted basis for determining gain) less such total indebtedness.

(3) Projected earnings

(A) The term ''projected earnings'' means the ''average annual earnings'' (as defined in subparagraph (B)) of—

(i) the issuing corporation only, if clause (ii) does not apply, or

(ii) both the issuing corporation and the acquired corporation, in any case where the issuing corporation has acquired control (as defined in section 368(c)), or has acquired substantially all of the properties, of the acquired corporation.

(B) The average annual earnings referred to in subparagraph (A) is, for any corporation, the amount of its earnings and profits for any 3-year period ending with the last day of a taxable year of the issuing corporation described in paragraph (1), computed without reduction for—

(i) interest paid or incurred,

(ii) depreciation or amortization allowed under this chapter,

(iii) liability for tax under this chapter, and

(iv) distributions to which section 301(c)(1) applies (other than such distributions from the acquired to the issuing corporation),

and reduced to an annual average for such 3-year period pursuant to regulations prescribed by the Secretary. Such regulations shall include rules for cases where any corporation was not in existence for all of such 3-year period or such period includes only a portion of a taxable year of any corporation.

(4) Annual interest to be paid or incurred

The term ''annual interest to be paid or incurred'' means—

(A) if subparagraph (B) does not apply, the annual interest to be paid or incurred by the issuing corporation only, determined by reference to its total indebtedness outstanding, or

(B) if projected earnings are determined under clause (ii) of paragraph (3)(A), the annual interest to be paid or incurred by both the issuing corporation and the acquired corporation, determined by reference to their combined total indebtedness outstanding.

(5) Special rules for banks and lending or finance companies

With respect to any corporation which is a bank (as defined in section 581) or is primarily engaged in a lending or finance business—

(A) in determining under paragraph (2) the ratio of debt to equity of such corporation (or of the affiliated group of which such corporation is a member), the total indebtedness of such corporation (and the assets of such corporation) shall be reduced by an amount equal to the total indebtedness owed to such corporation which arises out of the banking business of such corporation, or out of the lending or finance business of such corporation, as the case may be;

(B) in determining under paragraph (4) the annual interest to be paid or incurred by such corporation (or by the issuing and acquired corporations referred to in paragraph (4)(B) or by the affiliated group of which such corporation is a member) the amount of such interest (determined without regard to this paragraph) shall be reduced by an amount which bears the same ratio to the amount of such interest as the amount of the reduction for the taxable year under subparagraph (A) bears to the total indebtedness of such corporation; and

(C) in determining under paragraph (3)(B) the average annual earnings, the amount of the earnings and profits for the 3-year period shall be reduced by the sum of the reductions under subparagraph (B) for such period.

For purposes of this paragraph, the term ''lending or finance business'' means a business of making loans or purchasing or discounting accounts receivable, notes, or installment obligations.

(d) Taxable years to which applicable

In applying this section—

(1) First year of disallowance

The deduction of interest on any obligation shall not be disallowed under subsection (a) before the first taxable year of the issuing corporation as of the last day of which the application of either subparagraph (A) or subparagraph (B) of subsection (b)(4) results in such obligation being corporate acquisition indebtedness.

(2) General rule for succeeding years

Except as provided in paragraphs (3), (4), and (5), if an obligation is determined to be corporate acquisition indebtedness as of the last day of any taxable year of the issuing corporation, it shall be corporate acquisition indebtedness for such taxable year and all subsequent taxable years.

(3) Redetermination where control, etc., is acquired

If an obligation is determined to be corporate acquisition indebtedness as of the close of a taxable year of the issuing corporation in which clause (i) of subsection (c)(3)(A) applied, but would not be corporate acquisition indebtedness if the determination were made as of the close of the first taxable year of such corporation thereafter in which clause (ii) of subsection (c)(3)(A) could apply, such obligation shall be considered not to be corporate acquisition indebtedness for such later taxable year and all taxable years thereafter.

(4) Special 3-year rule

If an obligation which has been determined to be corporate acquisition indebtedness for any taxable year would not be such indebtedness for each of any 3 consecutive taxable years thereafter if subsection (b)(4) were applied as of the close of each of such 3 years, then such obligation shall not be corporate acquisition indebtedness for all taxable years after such 3 consecutive taxable years.

(5) 5 percent stock rule

In the case of obligations issued to provide consideration for the acquisition of stock in another corporation, such obligations shall be corporate acquisition indebtedness for a taxable year only if at some time after October 9, 1969, and before the close of such year the issuing corporation owns 5 percent or more of the total combined voting power of all classes of stock entitled to vote of such other corporation.

(e) Certain nontaxable transactions

An acquisition of stock of a corporation of which the issuing corporation is in control (as defined in section 368(c)) in a transaction in which gain or loss is not recognized shall be deemed an acquisition described in paragraph (1) of subsection (b) only if immediately before such transaction (1) the acquired corporation was in existence, and (2) the issuing corporation was not in control (as defined in section 368(c)) of such corporation.

(f) Exemption for certain acquisitions of foreign corporations

For purposes of this section, the term ''corporate acquisition indebtedness'' does not include any indebtedness issued to any person to provide consideration for the acquisition of stock in, or assets of, any foreign corporation substantially all of the income of which, for the 3-year period ending with the date of such acquisition or for such part of such period as the foreign corporation was in existence, is from sources without the United States.

(g) Affiliated groups

In any case in which the issuing corporation is a member of an affiliated group, the application of this section shall be determined, pursuant to regulations prescribed by the Secretary, by treating all of the members of the affiliated group in the aggregate as the issuing corporation, except that the ratio of debt to equity of, projected earnings of, and annual interest to be paid or incurred by any corporation (other than the issuing corporation determined without regard to this subsection) shall be included in the determinations required under subparagraphs (A) and (B) of subsection (b)(4) as of any day only if such corporation is a member of the affiliated group on such day, and, in determining projected earnings of such corporation under subsection (c)(3), there shall be taken into account only the earnings and profits of such corporation for the period during which it was a member of the affiliated group. For purposes of the preceding sentence, the term ''affiliated group'' has the meaning assigned to such term by section 1504(a), except that all corporations other than the acquired corporation shall be treated as includible corporations (without any exclusion under section 1504(b)) and the acquired corporation shall not be treated as an includible corporation.

(h) Changes in obligation

For purposes of this section—

(1) Any extension, renewal, or refinancing of an obligation evidencing a preexisting indebtedness shall not be deemed to be the issuance of a new obligation.

(2) Any obligation which is corporate acquisition indebtedness of the issuing corporation is also corporate acquisition indebtedness of any corporation which becomes liable for such obligation as guarantor, endorser, or indemnitor or which assumes liability for such obligation in any transaction.

(i) Certain obligations issued after October 9, 1969

For purposes of this section, an obligation shall not be corporate acquisition indebtedness if issued after October 9, 1969, to provide consideration for the acquisition of—

(1) stock or assets pursuant to a binding written contract which was in effect on October 9, 1969, and at all times thereafter before such acquisition, or

(2) stock in any corporation where the issuing corporation, on October 9, 1969, and at all times thereafter before such acquisition, owned at least 50 percent of the total combined voting power of all classes of stock entitled to vote of the acquired corporation.

(j) Effect on other provisions

No inference shall be drawn from any provision in this section that any instrument designated as a bond, debenture, note, or certificate or other evidence of indebtedness by its issuer represents an obligation or indebtedness of such issuer in applying any other provision of this title.

(Added Pub. L. 91–172, title IV, §411(a), Dec. 30, 1969, 83 Stat. 604; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 94–514, §1(a), Oct. 15, 1976, 90 Stat. 2443.)

AMENDMENTS

1976—Subsecs. (c)(3)(B), (g). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

Subsec. (i). Pub. L. 94–514 struck out provisions that par. (2) would cease to apply when (at any time on or after October 9, 1969) the issuing corporation has acquired control (as defined in section 368(c)) of the acquired corporation.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1(b) of Pub. L. 94–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after October 9, 1969. If refund or credit of any overpayment of income tax resulting from the amendment made by subsection (a) [amending this section] is prevented on the date of the enactment of this Act [Oct. 15, 1976], or at any time within one year after such date, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year from such date.''

EFFECTIVE DATE

Section 411(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this section] shall apply to the determination of the allowability of the deduction of interest paid or incurred with respect to indebtedness incurred after October 9, 1969.''

[§ 280. Repealed. Pub. L. 99–514, title VIII, § 803(b)(2)(A), Oct. 22, 1986, 100 Stat. 2355]

Section, added Pub. L. 94–455, title II, §210(a), Oct. 4, 1976, 90 Stat. 1544; amended Pub. L. 95–600, title VII, §701(m)(2), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97–354, §5(a)(25), Oct. 19, 1982, 96 Stat. 1694, related to certain

expenditures incurred in the production of films, books, records, or similar property.

EFFECTIVE DATE OF REPEAL

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the repeal of this section is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

§ 280A. Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.

(a) General rule

Except as otherwise provided in this section, in the case of a taxpayer who is an individual or an S corporation, no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence.

(b) Exception for interest, taxes, casualty losses, etc.

Subsection (a) shall not apply to any deduction allowable to the taxpayer without regard to its connection with his trade or business (or with his income-producing activity).

(c) Exceptions for certain business or rental use; limitation on deductions for such use

(1) Certain business use

Subsection (a) shall not apply to any item to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis—

(A) as the principal place of business for any trade or business of the taxpayer,

(B) as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business, or

(C) in the case of a separate structure which is not attached to the dwelling unit, in connection with the taxpayer's trade or business.

In the case of an employee, the preceding sentence shall apply only if the exclusive use referred to in the preceding sentence is for the convenience of his employer. For purposes of subparagraph (A), the term ''principal place of business'' includes a place of business which is used by the taxpayer for the administrative or management activities of any trade or business of the taxpayer if there is no other fixed location of such trade or business where the taxpayer conducts substantial administrative or management activities of such trade or business.

(2) Certain storage use

Subsection (a) shall not apply to any item to the extent such item is allocable to space within the dwelling unit which is used on a regular basis as a storage unit for the inventory or product samples of the taxpayer held for use in the taxpayer's trade or business of selling products at retail or wholesale, but only if the dwelling unit is the sole fixed location of such trade or business.

(3) Rental use

Subsection (a) shall not apply to any item which is attributable to the rental of the dwelling unit or portion thereof (determined after the application of subsection (e)).

(4) Use in providing day care services

(A) In general

Subsection (a) shall not apply to any item to the extent that such item is allocable to the use of any portion of the dwelling unit on a regular basis in the taxpayer's trade or business of providing day care for children, for individuals who have attained age 65, or for individuals who are physically or mentally incapable of caring for themselves.

(B) Licensing, etc., requirement

Subparagraph (A) shall apply to items accruing for a period only if the owner or operator of the trade or business referred to in subparagraph (A)—

(i) has applied for (and such application has not been rejected),

(ii) has been granted (and such granting has not been revoked), or

(iii) is exempt from having,

a license, certification, registration, or approval as a day care center or as a family or group day care home under the provisions of any applicable State law. This subparagraph shall apply only to items accruing in periods beginning on or after the first day of the first month which begins more than 90 days after the date of the enactment of the Tax Reduction and Simplification Act of 1977.

(C) Allocation formula

If a portion of the taxpayer's dwelling unit used for the purposes described in subparagraph (A) is not used exclusively for those purposes, the amount of the expenses attributable to that portion shall not exceed an amount which bears the same ratio to the total amount of the items allocable to such portion as the number of hours the portion is used for such purposes bears to the number of hours the portion is available for use.

(5) Limitation on deductions

In the case of a use described in paragraph (1), (2), or (4), and in the case of a use described in paragraph (3) where the dwelling unit is used by the taxpayer during the taxable year as a residence, the deductions allowed under this chapter for the taxable year by reason of being attributed to such use shall not exceed the excess of—

(A) the gross income derived from such use for the taxable year, over

(B) the sum of—

(i) the deductions allocable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used, and

(ii) the deductions allocable to the trade or business (or rental activity) in which such use occurs (but which are not allocable to such use) for such taxable year.

Any amount not allowable as a deduction under this chapter by reason of the preceding sentence shall be taken into account as a deduction (allocable to such use) under this chapter for the succeeding taxable year. Any amount taken into account for any taxable year under the preceding sentence shall be subject to the limitation of the 1st sentence of this paragraph whether or not the dwelling unit is used as a residence during such taxable year.

(6) Treatment of rental to employer

Paragraphs (1) and (3) shall not apply to any item which is attributable to the rental of the dwelling unit (or any portion thereof) by the taxpayer to his employer during any period in which the taxpayer uses the dwelling unit (or portion) in performing services as an employee of the employer.

(d) Use as residence

(1) In general

For purposes of this section, a taxpayer uses a dwelling unit during the taxable year as a residence if he uses such unit (or portion thereof) for personal purposes for a number of days which exceeds the greater of—

(A) 14 days, or

(B) 10 percent of the number of days during such year for which such unit is rented at a fair rental.

For purposes of subparagraph (B), a unit shall not be treated as rented at a fair rental for any day for which it is used for personal purposes.

(2) Personal use of unit

For purposes of this section, the taxpayer shall be deemed to have used a dwelling unit for personal purposes for a day if, for any part of such day, the unit is used—

(A) for personal purposes by the taxpayer or any other person who has an interest in such unit, or by any member of the family (as defined in section 267(c)(4)) of the taxpayer or such other person;

(B) by any individual who uses the unit under an arrangement which enables the taxpayer to use some other dwelling unit (whether or not a rental is charged for the use of such other unit); or

(C) by any individual (other than an employee with respect to whose use section 119 applies), unless for such day the dwelling unit is rented for a rental which, under the facts and circumstances, is fair rental.

The Secretary shall prescribe regulations with respect to the circumstances under which use of the unit for repairs and annual maintenance will not constitute personal use under this paragraph, except that if the taxpayer is engaged in repair and maintenance on a substantially full time basis for any day, such authority shall not allow the Secretary to treat a dwelling unit as being used for personal use by the taxpayer on such day merely because other individuals who are on the premises on such day are not so engaged.

(3) Rental to family member, etc., for use as principal residence

(A) In general

A taxpayer shall not be treated as using a dwelling unit for personal purposes by reason of a rental arrangement for any period if for such period such dwelling unit is rented, at a fair rental, to any person for use as such person's principal residence.

(B) Special rules for rental to person having interest in unit

(i) Rental must be pursuant to shared equity financing agreement

Subparagraph (A) shall apply to a rental to a person who has an interest in the dwelling unit only if such rental is pursuant to a shared equity financing agreement.

(ii) Determination of fair rental

In the case of a rental pursuant to a shared equity financing agreement, fair rental shall be determined as of the time the agreement is entered into and by taking into account the occupant's qualified ownership interest.

(C) Shared equity financing agreement

For purposes of this paragraph, the term ''shared equity financing agreement'' means an agreement under which—

(i) 2 or more persons acquire qualified ownership interests in a dwelling unit, and

(ii) the person (or persons) holding 1 or more of such interests—

(I) is entitled to occupy the dwelling unit for use as a principal residence, and

(II) is required to pay rent to 1 or more other persons holding qualified ownership interests in the dwelling unit.

(D) Qualified ownership interest

For purposes of this paragraph, the term ''qualified ownership interest'' means an undivided interest for more than 50 years in the entire dwelling unit and appurtenant land being acquired in the transaction to which the shared equity financing agreement relates.

(4) Rental of principal residence

(A) In general

For purposes of applying subsection (c)(5) to deductions allocable to a qualified rental period, a taxpayer shall not be considered to have used a dwelling unit for personal purposes for any day during the taxable year which occurs before or after a qualified rental period described in subparagraph (B)(i), or before a qualified rental period described in subparagraph (B)(ii), if with respect to such day such unit constitutes the principal residence (within the meaning of section 121) of the taxpayer.

(B) Qualified rental period

For purposes of subparagraph (A), the term ''qualified rental period'' means a consecutive period of—

(i) 12 or more months which begins or ends in such taxable year, or

(ii) less than 12 months which begins in such taxable year and at the end of which such dwelling unit is sold or exchanged, and

for which such unit is rented, or is held for rental, at a fair rental.

(e) Expenses attributable to rental

(1) In general

In any case where a taxpayer who is an individual or an S corporation uses a dwelling unit for personal purposes on any day during the taxable year (whether or not he is treated under this section as using such unit as a residence), the amount deductible under this chapter with respect to expenses attributable to the rental of the unit (or portion thereof) for the taxable year shall not exceed an amount which bears the same relationship to such expenses as the number of days during each year that the unit (or portion thereof) is rented at a fair rental bears to the total number of days during such year that the unit (or portion thereof) is used.

(2) Exception for deductions otherwise allowable

This subsection shall not apply with respect to deductions which would be allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was rented.

(f) Definitions and special rules

(1) Dwelling unit defined

For purposes of this section—

(A) In general

The term ''dwelling unit'' includes a house, apartment, condominium, mobile home, boat, or similar property, and all structures or other property appurtenant to such dwelling unit.

(B) Exception

The term ''dwelling unit'' does not include that portion of a unit which is used exclusively as a hotel, motel, inn, or similar establishment.

(2) Personal use by shareholders of S corporation

In the case of an S corporation, subparagraphs (A) and (B) of subsection (d)(2) shall be applied by substituting ''any shareholder of the S corporation'' for ''the taxpayer'' each place it appears.

(3) Coordination with section 183

If subsection (a) applies with respect to any dwelling unit (or portion thereof) for the taxable year—

(A) section 183 (relating to activities not engaged in for profit) shall not apply to such unit (or portion thereof) for such year, but

(B) such year shall be taken into account as a taxable year for purposes of applying subsection (d) of section 183 (relating to 5-year presumption).

(4) Coordination with section 162(a)(2)

Nothing in this section shall be construed to disallow any deduction allowable under section 162(a)(2) (or any deduction which meets the tests of section 162(a)(2) but is allowable under another provision of this title) by reason of the taxpayer's being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units).

(g) Special rule for certain rental use

Notwithstanding any other provision of this section or section 183, if a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, then—

(1) no deduction otherwise allowable under this chapter because of the rental use of such dwelling unit shall be allowed, and

(2) the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer under section 61.

(Added Pub. L. 94–455, title VI, § 601(a), Oct. 4, 1976, 90 Stat. 1569; amended Pub. L. 95–30, title III, § 306(a), (b), May 23, 1977, 91 Stat. 152, 153; Pub. L. 95–600, title VII, § 701(h)(1), Nov. 6, 1978, 92 Stat. 2904; Pub. L. 97–119, title I, § 113(a)–(d), Dec. 29, 1981, 95 Stat. 1641, 1642; Pub. L. 97–216, title II, § 215(b), July 18, 1982, 96 Stat. 194; Pub. L. 97–354, § 5(a)(26), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 99–514, title I, § 143(b), (c), Oct. 22, 1986, 100 Stat. 2120; Pub. L. 100–647, title I, § 1001(h)(1), (2), Nov. 10, 1988, 102 Stat. 3352; Pub. L. 104–188, title I, §§ 1113(a), 1704(t)(39), Aug. 20, 1996, 110 Stat. 1759, 1889; Pub. L. 105–34, title III, § 312(d)(1), title IX, § 932(a), Aug. 5, 1997, 111 Stat. 839, 881.)

REFERENCES IN TEXT

The date of enactment of the Tax Reduction and Simplification Act of 1977, referred to in subsec. (c)(4)(B), is the date of enactment of Pub. L. 95–30, 91 Stat. 126, which was May 23, 1977.

AMENDMENTS

1997—Subsec. (c)(1). Pub. L. 105–34, § 932(a), inserted at end ''For purposes of subparagraph (A), the term 'principal place of business' includes a place of business which is used by the taxpayer for the administrative or management activities of any trade or business of the taxpayer if there is no other fixed location of such trade or business where the taxpayer conducts substantial administrative or management activities of such trade or business.''

Subsec. (d)(4)(A). Pub. L. 105–34, § 312(d)(1), substituted ''section 121'' for ''section 1034''.

1996—Subsec. (c)(1)(A). Pub. L. 104–188, § 1704(t)(39), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the principal place of business for any trade or business of the taxpayer.''

Subsec. (c)(2). Pub. L. 104–188, § 1113(a), substituted ''inventory or product samples'' for ''inventory''.

1988—Subsec. (c)(5). Pub. L. 100–647 inserted ''(or rental activity)'' after ''trade or business'' in subpar. (B)(ii) and inserted at end ''Any amount taken into account for any taxable year under the preceding sentence shall be subject to the limitation of the 1st sentence of this paragraph whether or not the dwelling unit is used as a residence during such taxable year.''

1986—Subsec. (c)(5)(B). Pub. L. 99–514, § 143(c), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the deductions allocable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used.''

Subsec. (c)(6). Pub. L. 99–514, § 143(b), added par. (6).

1982—Subsecs. (a), (e)(1). Pub. L. 97–354, § 5(a)(26)(A), (B), substituted ''an S corporation'' for ''an electing small business corporation''.

Subsec. (f)(2). Pub. L. 97–354, §5(a)(26)(C), substituted ''shareholders of S corporation'' for ''electing small business corporation'' in subsec. heading, substituted ''an S corporation'' for ''an electing small business corporation'' and ''any shareholder of the S corporation'' for ''any shareholder of the electing small business corporation''.

Subsec. (f)(4). Pub. L. 97–216 struck out '', etc.'' after ''section 162(a)(2)'' in heading, struck out ''(A) In general.—'' before ''Nothing in this section'', and struck out subpar. (B) which directed the Secretary to prescribe amounts deductible (without substantiation) pursuant to last sentence of section 162(a) and that no other provisions of this title could permit such a deduction for any taxable year of amounts in excess of the amounts determined to be appropriate under the circumstances.

1981—Subsec. (c)(1)(A). Pub. L. 97–119, §113(c), substituted ''the principal place of business for any trade or business of the taxpayer'' for ''as the taxpayer's principal place of business''.

Subsec. (d)(2). Pub. L. 97–119, §113(d), inserted in provision following subpar. (C) '', except that if the taxpayer is engaged in repair and maintenance on a substantially full time basis for any day, such authority shall not allow the Secretary to treat a dwelling unit as being used for personal use by the taxpayer on such day merely because other individuals who are on the premises on such day are not so engaged''.

Subsec. (d)(3), (4). Pub. L. 97–119, §113(a), added par. (3), redesignated former par. (3) as (4) and struck out ''to a person other than a member of the family (as defined in section 267(c)(4)) of the taxpayer'' after ''such unit is rented'' in subpar. (B).

Subsec. (f)(4). Pub. L. 97–119, §113(b)(1), added par. (4).

1978—Subsec. (d)(3). Pub. L. 95–600 added par. (3).

1977—Subsec. (c)(4), (5). Pub. L. 95–30 added par. (4), redesignated former par. (4) as (5) and substituted ''paragraph (1), (2), or (4)'' for ''paragraph (1) or (2)'' in introductory provisions.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Section 932(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1998.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1113(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1995.''

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATES OF 1982 AMENDMENTS

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by Pub. L. 97–216 applicable to taxable years beginning after Dec. 31, 1981, see section 215(d) of Pub. L. 97–216, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 113(e) of Pub. L. 97–119 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975, except that in the case of taxable years beginning after December 31, 1975, and before January 1, 1980, the amendment made by this section shall apply only to taxable years for which, on the date of the enactment of this Act [Dec. 29, 1981], the making of a refund, or the assessment of a deficiency, was not barred by law or any rule of law.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(h)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in section 280A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as such provision was added to such Code by section 601(a) of the Tax Reform Act of 1976 [Pub. L. 94–455, title VI, §601(a), Oct. 4, 1976, 90 Stat. 1569].''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 306(c) of Pub. L. 95–30 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975.''

EFFECTIVE DATE

Section 601(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [enacting this section and amending the analysis of sections preceding section 261 of this title] shall apply to taxable years beginning after December 31, 1975.''

§280B. Demolition of structures

In the case of the demolition of any structure—

(1) no deduction otherwise allowable under this chapter shall be allowed to the owner or lessee of such structure for—

(A) any amount expended for such demolition, or

(B) any loss sustained on account of such demolition; and

(2) amounts described in paragraph (1) shall be treated as properly chargeable to capital account with respect to the land on which the demolished structure was located.

(Added Pub. L. 94–455, title XXI, §2124(b)(1), Oct. 4, 1976, 90 Stat. 1918; amended Pub. L. 95–600, title VII, §701(f)(5), Nov. 6, 1978, 92 Stat. 2902; Pub. L. 96–541, §2(b), Dec. 17, 1980, 94 Stat. 3204; Pub. L. 97–34, title II, §212(d)(2)(C), Aug. 13, 1981, 95 Stat. 239; Pub. L. 98–369, div. A, title X, §1063(a), (b)(1), July 18, 1984, 98 Stat. 1047.)

AMENDMENTS

1984—Pub. L. 98–369 struck out ''certain historic'' before ''structures'' in section catchline, struck out heading ''(a) General rule'', substituted ''In the case of the demolition of any structure'' for ''In the case of the demolition of a certified historic structure (as defined in 48(g)(3)(A))'' in text, and struck out subsecs. (b) and (c) which contained provisions relating to a special rule for registered historic districts and to the application of this section, respectively.

1981—Subsec. (a). Pub. L. 97–34, §212(d)(2)(C)(i), substituted ''48(g)(3)(A)'' for ''section 191(d)(1)'' in provisions preceding par. (1).

Subsec. (b). Pub. L. 97–34, §212(d)(2)(C)(ii), substituted ''section 48(g)(3)(B)'' for ''section 191(d)(2)''.

1980—Subsec. (c). Pub. L. 96–541 added subsec. (c).

1978—Subsec. (b). Pub. L. 95–600 substituted ''registered historic district (as defined in section 191(d)(2))''

for ''Registered Historic District'' and ''Secretary of the Interior has certified that such structure is not a certified historic structure, and that such structure is not of historic significance to the district, and if such certification occurs after the beginning of the demolition of such structure, the taxpayer has certified to the Secretary that, at the time of such demolition, he in good faith was not aware of the certification requirement by the Secretary of the Interior'' for ''Secretary of the Interior has certified, prior to the demolition of such structure, that such structure is not of historic significance to the district''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1063(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, § 1878(h), Oct. 22, 1986, 100 Stat. 2904, provided that:

''(1) The amendments made by this section [amending this section] shall apply to taxable years ending after December 31, 1983, but shall not apply to any demolition (other than of a certified historic structure) commencing before July 19, 1984.

''(2) For purposes of paragraph (1), if a demolition is delayed until the completion of the replacement structure on the same site, the demolition shall be treated as commencing when construction of the replacement structure commences.

''(3) The amendments made by this section [amending this section] shall not apply to any demolition commencing before September 1, 1984, pursuant to a bank headquarters building project if—

''(A) on April 1, 1984, a corporation was retained to advise the bank on the final completion of the project, and

''(B) on June 12, 1984, the Comptroller of the Currency approved the project.

''(4) The amendments made by this section shall not apply to the remaining adjusted basis at the time of demolition of any structure if—

''(A) such structure was used in the manufacture, storage, or distribution of lead alkyl antiknock products and intermediate and related products at facilities located in or near Baton Rouge, Louisiana, and Houston, Texas, owned by the same corporation, and

''(B) demolition of at least one such structure at the Baton Rouge facility commenced before January 1, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective as if included within the enactment of this section by section 2124 of Pub. L. 94–455, see section 701(f)(8) of Pub. L. 95–600, set out as an Effective and Termination Dates of 1978 Amendments note under section 167 of this title.

EFFECTIVE DATE

Section 2124(b)(3) of Pub. L. 94–455, which had provided that enactment of this section by subsec. (b) shall apply with respect to demolitions commencing after June 30, 1976, and before Jan. 1, 1981, was repealed by Pub. L. 96–541, § 2(e)(2), Dec. 17, 1980, 94 Stat. 3205. See subsec. (c) of this section.

§ 280C. Certain expenses for which credits are allowable

(a) Rule for employment credits

No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the sum of the credits determined for the taxable year under sections 45A(a), 45P(a), 51(a), and[1] 1396(a), 1400P(b), and 1400R. In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 52(a)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 52(b)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subsections (a) and (b) of section 52.

(b) Credit for qualified clinical testing expenses for certain drugs

(1) In general

No deduction shall be allowed for that portion of the qualified clinical testing expenses (as defined in section 45C(b)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 45C (determined without regard to section 38(c)).

(2) Similar rule where taxpayer capitalizes rather than deducts expenses

If—

(A) the amount of the credit allowable for the taxable year under section 45C (determined without regard to section 38(c)), exceeds

(B) the amount allowable as a deduction for the taxable year for qualified clinical testing expenses (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

(3) Controlled groups

In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 41(f)(5)) or a trade or business which is treated as being under common control with other trades or business (within the meaning of section 41(f)(1)(B)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subparagraphs (A) and (B) of section 41(f)(1).

(c) Credit for increasing research activities

(1) In general

No deduction shall be allowed for that portion of the qualified research expenses (as defined in section 41(b)) or basic research expenses (as defined in section 41(e)(2)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 41(a).

(2) Similar rule where taxpayer capitalizes rather than deducts expenses

If—

(A) the amount of the credit determined for the taxable year under section 41(a)(1), exceeds

(B) the amount allowable as a deduction for such taxable year for qualified research expenses or basic research expenses (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

[1] So in original. The word ''and'' probably should not appear.

(3) Election of reduced credit

(A) In general

In the case of any taxable year for which an election is made under this paragraph—

(i) paragraphs (1) and (2) shall not apply, and

(ii) the amount of the credit under section 41(a) shall be the amount determined under subparagraph (B).

(B) Amount of reduced credit

The amount of credit determined under this subparagraph for any taxable year shall be the amount equal to the excess of—

(i) the amount of credit determined under section 41(a) without regard to this paragraph, over

(ii) the product of—

(I) the amount described in clause (i), and

(II) the maximum rate of tax under section 11(b)(1).

(C) Election

An election under this paragraph for any taxable year shall be made not later than the time for filing the return of tax for such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary may prescribe. Such an election, once made, shall be irrevocable.

(4) Controlled groups

Paragraph (3) of subsection (b) shall apply for purposes of this subsection.

(d) Credit for low sulfur diesel fuel production

The deductions otherwise allowed under this chapter for the taxable year shall be reduced by the amount of the credit determined for the taxable year under section 45H(a).

(e) Mine rescue team training credit

No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45N(a).

(f) Credit for security of agricultural chemicals

No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction taken into account in determining the credit under section 45O for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45O(a).

(g)[2] Credit for health insurance premiums

No deduction shall be allowed for the portion of the premiums paid by the taxpayer for coverage of 1 or more individuals under a qualified health plan which is equal to the amount of the credit determined for the taxable year under section 36B(a) with respect to such premiums.

(h) Credit for employee health insurance expenses of small employers

No deduction shall be allowed for that portion of the premiums for qualified health plans (as defined in section 1301(a) of the Patient Protection and Affordable Care Act), or for health insurance coverage in the case of taxable years beginning in 2010, 2011, 2012, or 2013, paid by an employer which is equal to the amount of the credit determined under section 45R(a) with respect to the premiums.

(g)[3] Qualifying therapeutic discovery project credit

(1) In general

No deduction shall be allowed for that portion of the qualified investment (as defined in section 48D(b)) otherwise allowable as a deduction for the taxable year which—

(A) would be qualified research expenses (as defined in section 41(b)), basic research expenses (as defined in section 41(e)(2)), or qualified clinical testing expenses (as defined in section 45C(b)) if the credit under section 41 or section 45C were allowed with respect to such expenses for such taxable year, and

(B) is equal to the amount of the credit determined for such taxable year under section 48D(a), reduced by—

(i) the amount disallowed as a deduction by reason of section 48D(e)(2)(B), and

(ii) the amount of any basis reduction under section 48D(e)(1).

(2) Similar rule where taxpayer capitalizes rather than deducts expenses

In the case of expenses described in paragraph (1)(A) taken into account in determining the credit under section 48D for the taxable year, if—

(A) the amount of the portion of the credit determined under such section with respect to such expenses, exceeds

(B) the amount allowable as a deduction for such taxable year for such expenses (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

(3) Controlled groups

Paragraph (3) of subsection (b) shall apply for purposes of this subsection.

(Added Pub. L. 95–30, title II, §202(c)(1), May 23, 1977, 91 Stat. 147; amended Pub. L. 95–600, title III, §322(d)(1), Nov. 6, 1978, 92 Stat. 2838; Pub. L. 96–178, §6(c)(4), Jan. 2, 1980, 93 Stat. 1298; Pub. L. 96–222, title I, §103(a)(7)(D)(iv), Apr. 1, 1980, 94 Stat. 212; Pub. L. 97–414, §4(b)(1), (2)(A), Jan. 4, 1983, 96 Stat. 2055; Pub. L. 98–369, div. A, title IV, §474(r)(10), July 18, 1984, 98 Stat. 841; Pub. L. 99–514, title II, §231(d)(3)(E), title XVIII, §1847(b)(8), Oct. 22, 1986, 100 Stat. 2179, 2856; Pub. L. 100–647, title IV, §4008(a), Nov. 10, 1988, 102 Stat. 3652; Pub. L. 101–239, title VII, §§7110(c)(1), 7814(e)(2)(A), Dec. 19, 1989, 103 Stat. 2325, 2413; Pub. L. 103–66, title XIII, §§13302(b)(1), 13322(c)(1), Aug. 10, 1993, 107 Stat. 555, 563; Pub. L. 104–188, title I, §1205(d)(7), Aug. 20, 1996, 110 Stat. 1776; Pub. L. 106–170, title V, §502(c)(2), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 106–554, §1(a)(7) [title III, §311(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–639; Pub. L. 108–357, title III, §339(c), Oct. 22, 2004, 118 Stat. 1484; Pub. L. 109–135, title I, §103(b)(2), title

[2] Another subsec. (g) is set out after subsec. (h).

[3] Another subsec. (g) is set out before subsec. (h).

II, § 201(b)(2), Dec. 21, 2005, 119 Stat. 2595, 2607; Pub. L. 109–432, div. A, title IV, § 405(c), Dec. 20, 2006, 120 Stat. 2957; Pub. L. 110–172, § 7(a)(1)(B), Dec. 29, 2007, 121 Stat. 2481; Pub. L. 110–234, title XV, § 15343(c), May 22, 2008, 122 Stat. 1519; Pub. L. 110–245, title I, § 111(c), June 17, 2008, 122 Stat. 1635; Pub. L. 110–246, § 4(a), title XV, § 15343(c), June 18, 2008, 122 Stat. 1664, 2281; Pub. L. 111–148, title I, §§ 1401(b), 1421(d)(1), title IX, § 9023(c)(2), title X, § 10105(e)(3), Mar. 23, 2010, 124 Stat. 219, 242, 880, 906.)

REFERENCES IN TEXT

Section 1301(a) of the Patient Protection and Affordable Care Act, referred to in subsec. (h), is classified to section 18021(a) of Title 42, The Public Health and Welfare.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111–148, § 9023(c)(2), added subsec. (g) relating to qualifying therapeutic discovery project credit.

Pub. L. 111–148, § 1401(b), added subsec. (g) relating to credit for health insurance premiums.

Subsec. (h). Pub. L. 111–148, § 10105(e)(3), substituted ''2010, 2011'' for ''2011''.

Pub. L. 111–148, § 1421(d)(1), added subsec. (h).

2008—Subsec. (a). Pub. L. 110–245 inserted ''45P(a),'' after ''45A(a),''.

Subsec. (f). Pub. L. 110–246, § 15343(c), added subsec. (f).

2007—Subsec. (d). Pub. L. 110–172 amended heading and text generally. Prior to amendment, text read as follows: ''No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45H(a).''

2006—Subsec. (e). Pub. L. 109–432 added subsec. (e).

2005—Subsec. (a). Pub. L. 109–135, § 201(b)(2), substituted ''1400P(b), and 1400R'' for ''and 1400P(b)''.

Pub. L. 109–135, § 103(b)(2), substituted ''1396(a), and 1400P(b)'' for ''and 1396(a)''.

2004—Subsec. (d). Pub. L. 108–357 added subsec. (d).

2000—Subsec. (c)(1). Pub. L. 106–554 struck out ''or credit'' after ''deduction'' in two places.

1999—Subsec. (c)(1). Pub. L. 106–170 inserted ''or credit'' after ''deduction'' in two places.

1996—Subsec. (b)(1). Pub. L. 104–188, § 1205(d)(7), substituted ''section 45C(b)'' for ''section 28(b)'', ''section 45C'' for ''section 28'', and ''section 38(c)'' for ''subsection (d)(2) thereof''.

Subsec. (b)(2)(A). Pub. L. 104–188, § 1205(d)(7)(B), (C), substituted ''section 45C'' for ''section 28'' and ''section 38(c)'' for ''subsection (d)(2) thereof''.

1993—Subsec. (a). Pub. L. 103–66, § 13322(c)(1), substituted ''45A(a), 51(a), and'' for ''51(a)''.

Pub. L. 103–66, § 13302(b)(1), substituted ''Rule for employment credits'' for ''Rule for targeted jobs credit'' in heading and ''the sum of the credits determined for the taxable year under sections 51(a) and 1396(a)'' for ''the amount of the credit determined for the taxable year under section 51(a)'' in text.

1989—Subsec. (c)(1), (2)(A). Pub. L. 101–239, § 7110(c)(1), struck out ''50 percent of'' before ''the amount of the credit''.

Subsec. (c)(3). Pub. L. 101–239, § 7814(e)(2)(A), added par. (3). Former par. (3) redesignated (4).

Subsec. (c)(3)(B)(ii)(I). Pub. L. 101–239, § 7110(c)(1), struck out ''50 percent of'' before ''the amount described''.

Subsec. (c)(4). Pub. L. 101–239, § 7814(e)(2)(A), redesignated par. (3) as (4).

1988—Subsec. (c). Pub. L. 100–647 added subsec. (c).

1986—Subsec. (b)(1), (2)(A). Pub. L. 99–514, § 1847(b)(8), substituted ''section 28(b)'' for ''section 29(b)'' in par. (1) and ''section 28'' for ''section 29'' in pars. (1) and (2)(A).

Subsec. (b)(3). Pub. L. 99–514, § 231(d)(3)(E), substituted ''section 41(f)(5)'', ''section 41(f)(1)(B)'', and ''section 41(f)(1)'' for ''section 30(f)(5)'', ''section 30(f)(1)(B)'', and ''section 30(f)(1)'', respectively.

1984—Subsec. (a). Pub. L. 98–369, § 474(r)(10)(A), (B), redesignated subsec. (b) as (a), in heading substituted ''targeted jobs credit'' for ''section 44B credit'', and in text substituted ''No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit determined for the taxable year under section 51(a)'' for ''No deduction shall be allowed for that portion of the wage or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 44B (relating to credit for employment of certain new employees) determined without regard to the provisions of section 53 (relating to limitation based on amount of tax)''. Former subsec. (a), which had provided that no deduction would be allowed for that portion of the work incentive program expenses paid or incurred for the taxable year which was equal to the amount of the credit allowable for the taxable year under section 40 (relating to credit for expenses of work incentive programs) determined without regard to the provisions of section 50A(a)(2) (relating to limitation based on amount of tax), and that in the case of a corporation which was a member of a controlled group of corporations (within the meaning of section 50B(g)(1) or a trade or business which was treated as being under common control with other trades or businesses within the meaning of section 50B(g)(2), this subsection would be applied under rules prescribed by the Secretary similar to the rules applicable under paragraphs (1) and (2) of section 50B(g), was struck out.

Subsec. (b). Pub. L. 98–369, § 474(r)(10)(A), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (b)(1), (2)(A). Pub. L. 98–369, § 474(r)(10)(C), substituted ''29'' for ''44H''.

Subsec. (b)(3). Pub. L. 98–369, § 474(r)(10)(D), substituted ''section 30(f)(5)'' for ''section 44F(f)(5)'', ''section 30(f)(1)(B)'' for ''section 44F(f)(1)(B)'', and ''section 30(f)(1)'' for ''section 44F(f)(1)''.

Subsec. (c). Pub. L. 98–369, § 474(r)(10)(A), redesignated subsec. (c) as (b).

1983—Pub. L. 97–414, § 4(b)(2)(A), substituted ''Certain expenses for which credits are allowable'' for ''Portion of wages for which credit is claimed under section 40 or 44B'' in section catchline.

Subsec. (c). Pub. L. 97–414, § 4(b)(1), added subsec. (c).

1978—Pub. L. 95–600, as amended by Pub. L. 96–178 and Pub. L. 96–222, substituted ''section 40 or 44B'' for ''section 44B'' in section catchline, and in text designated existing provisions as subsec. (b) and added subsec. (a).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1401(b) of Pub. L. 111–148 applicable to taxable years ending after Dec. 31, 2013, see section 1401(e) of Pub. L. 111–148, set out as a note under section 36B of this title.

Amendment by section 1421(d)(1) of Pub. L. 111–148 applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2009, see section 1421(f)(1) of Pub. L. 111–148, set out as a note under section 38 of this title.

Amendment by section 9023(c)(2) of Pub. L. 111–148 applicable to amounts paid or incurred after Dec. 31, 2008, in taxable years beginning after such date, see section 9023(f) of Pub. L. 111–148, set out as a note under section 46 of this title.

Amendment by section 10105(e)(3) of Pub. L. 111–148 effective as if included in the enactment of section 1421 of Pub. L. 111–148, see section 10105(e)(5) of Pub. L. 111–148, set out as a note under section 45R of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15343(c) of Pub. L. 110–246 applicable to amounts paid or incurred after June 18, 2008, see section 15343(e) of Pub. L. 110–246, set out as a note under section 38 of this title.

Amendment by Pub. L. 110–245 applicable to amounts paid after June 17, 2008, see section 111(e) of Pub. L. 110–245, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to taxable years beginning after Dec. 31, 2005, see section 405(e) of Pub. L. 109–432, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, to which such amendment relates, see section 1(a)(7) [title III, §311(d)] of Pub. L. 106–554, set out as a note under section 30A of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to amounts paid or incurred after June 30, 1999, see section 502(c)(3) of Pub. L. 106–170, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13322(c)(1) of Pub. L. 103–66 applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7110(c)(1) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7110(e) of Pub. L. 101–239, set out as a note under section 41 of this title.

Amendment by section 7814(e)(2)(A) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub. L. 100–647, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(E) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 1847(b)(8) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–414 applicable to amounts paid or incurred after December 31, 1982, in taxable years ending after such date, see section 4(d) of Pub. L. 97–414, set out as an Effective Date note under section 28 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 322(e) of Pub. L. 95–600, as amended by Pub. L. 96–178, §6(a), (b), Jan. 2, 1980, 93 Stat. 1297; Pub. L. 96–222, title I, §103(a)(7)(A), (B), Apr. 1, 1980, 94 Stat. 211; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 50A and 50B of this title] shall apply to work incentive program expenses paid or incurred after December 31, 1978, in taxable years ending after such date; except that so much of the amendment made by subsection (a) as affects section 50A(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to taxable years beginning after December 31, 1978. For purposes of applying section 50A(a)(2) of the Internal Revenue Code of 1986 with respect to a taxable year beginning before January 1, 1979, the rules of sections 50A(a)(4), 50A(a)(5), and 50B(e)(3) of such Code (as in effect on the day before the date of the enactment of this Act [Nov. 6, 1978] shall apply.

''(2) SPECIAL RULES FOR CERTAIN ELIGIBLE EMPLOYEES.—

''(A) ELIGIBLE EMPLOYEES HIRED BEFORE SEPTEMBER 27, 1978.—In the case of any eligible employee (as defined in section 50B(h)) hired before September 27, 1978, no credit shall be allowed under section 40 with respect to second-year work incentive program expenses (as defined in section 50B(a)) attributable to service performed by such employee.

''(B) ELIGIBLE EMPLOYEES HIRED AFTER SEPTEMBER 26, 1978.—In the case of any eligible employee (as defined in section 50B(h)) hired after September 26, 1978, for purposes of applying the amendments made by this section, such individual shall be treated for purposes of the credit allowed by section 40 as having first begun work for the taxpayer not earlier than January 1, 1979, and any wages paid or incurred after December 31, 1978, with respect to such individual shall be considered to be attributable to services rendered after that date.''

[Section 6(d) of Pub. L. 96–178 provided that: ''Any amendment made by this section to the Revenue Act of 1978 [amending section 322(e)(1) and (2) of Pub. L. 95–600, set out above] shall take effect as if it had been included in the provision of the Revenue Act of 1978 [Pub. L. 95–600] to which such amendment relates.'']

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as a note under section 51 of this title.

TIME AND FORM OF CERTAIN ELECTIONS UNDER SUBSECTION (c)(3)

Section 7814(e)(2)(B) of Pub. L. 101–239 provided that: ''In the case of a taxable year for which the last date for making the election under section 280C(c)(3) of the Internal Revenue Code of 1986 (as added by subparagraph (A)) is on or before the date which is 75 days after the date of the enactment of this Act [Dec. 19, 1989], such an election for such year may be made—

''(i) at any time before the date which is 75 days after such date of enactment, and

''(ii) in such form and manner as the Secretary of the Treasury or his delegate may prescribe.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 280D. Repealed. Pub. L. 100–418, title I, § 1941(b)(4)(A), Aug. 23, 1988, 102 Stat. 1324]

Section, added Pub. L. 96–499, title XI, § 1131(d)(1), Dec. 5, 1980, 94 Stat. 2693, related to portion of chapter 45 windfall profit tax on domestic crude oil for which credit or refund was allowable under section 6429.

EFFECTIVE DATE OF REPEAL

Repeal applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 164 of this title.

§ 280E. Expenditures in connection with the illegal sale of drugs

No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.

(Added Pub. L. 97–248, title III, § 351(a), Sept. 3, 1982, 96 Stat. 640.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in text, is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. Schedules I and II are set out in section 812 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

EFFECTIVE DATE

Section 351(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [enacting this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [Sept. 3, 1982] in taxable years ending after such date.''

§ 280F. Limitation on depreciation for luxury automobiles; limitation where certain property used for personal purposes

(a) Limitation on amount of depreciation for luxury automobiles

(1) Depreciation

(A) Limitation

The amount of the depreciation deduction for any taxable year for any passenger automobile shall not exceed—

(i) $2,560 for the 1st taxable year in the recovery period,

(ii) $4,100 for the 2nd taxable year in the recovery period,

(iii) $2,450 for the 3rd taxable year in the recovery period, and

(iv) $1,475 for each succeeding taxable year in the recovery period.

(B) Disallowed deductions allowed for years after recovery period

(i) In general

Except as provided in clause (ii), the unrecovered basis of any passenger automobile shall be treated as an expense for the 1st taxable year after the recovery period. Any excess of the unrecovered basis over the limitation of clause (ii) shall be treated as an expense in the succeeding taxable year.

(ii) $1,475 limitation

The amount treated as an expense under clause (i) for any taxable year shall not exceed $1,475.

(iii) Property must be depreciable

No amount shall be allowable as a deduction by reason of this subparagraph with respect to any property for any taxable year unless a depreciation deduction would be allowable with respect to such property for such taxable year.

(iv) Amount treated as depreciation deduction

For purposes of this subtitle, any amount allowable as a deduction by reason of this subparagraph shall be treated as a depreciation deduction allowable under section 168.

(C) Special rule for certain clean-fuel passenger automobiles

(i) Modified automobiles

In the case of a passenger automobile which is propelled by a fuel which is not a clean-burning fuel and to which is installed qualified clean-fuel vehicle property (as defined in section 179A(c)(1)(A)) for purposes of permitting such vehicle to be propelled by a clean burning fuel (as defined in section 179A(e)(1)), subparagraph (A) shall not apply to the cost of the installed qualified clean burning vehicle property.

(ii) Purpose built passenger vehicles

In the case of a purpose built passenger vehicle (as defined in section 4001(a)(2)(C)(ii)), each of the annual limita-

tions specified in subparagraphs (A) and (B) shall be tripled.

(iii) Application of subparagraph

This subparagraph shall apply to property placed in service after August 5, 1997, and before January 1, 2007.

(2) Coordination with reductions in amount allowable by reason of personal use, etc.

This subsection shall be applied before—

(A) the application of subsection (b), and

(B) the application of any other reduction

in the amount of any depreciation deduction allowable under section 168 by reason of any use not qualifying the property for such credit or depreciation deduction.

(b) Limitation where business use of listed property not greater than 50 percent

(1) Depreciation

If any listed property is not predominantly used in a qualified business use for any taxable year, the deduction allowed under section 168 with respect to such property for such taxable year and any subsequent taxable year shall be determined under section 168(g) (relating to alternative depreciation system).

(2) Recapture

(A) Where business use percentage does not exceed 50 percent

If—

(i) property is predominantly used in a qualified business use in a taxable year in which it is placed in service, and

(ii) such property is not predominantly used in a qualified business use for any subsequent taxable year,

then any excess depreciation shall be included in gross income for the taxable year referred to in clause (ii), and the depreciation deduction for the taxable year referred to in clause (ii) and any subsequent taxable years shall be determined under section 168(g) (relating to alternative depreciation system).

(B) Excess depreciation

For purposes of subparagraph (A), the term ''excess depreciation'' means the excess (if any) of—

(i) the amount of the depreciation deductions allowable with respect to the property for taxable years before the 1st taxable year in which the property was not predominantly used in a qualified business use, over

(ii) the amount which would have been so allowable if the property had not been predominantly used in a qualified business use for the taxable year in which it was placed in service.

(3) Property predominantly used in qualified business use

For purposes of this subsection, property shall be treated as predominantly used in a qualified business use for any taxable year if the business use percentage for such taxable year exceeds 50 percent.

(c) Treatment of leases

(1) Lessor's deductions not affected

This section shall not apply to any listed property leased or held for leasing by any person regularly engaged in the business of leasing such property.

(2) Lessee's deductions reduced

For purposes of determining the amount allowable as a deduction under this chapter for rentals or other payments under a lease for a period of 30 days or more of listed property, only the allowable percentage of such payments shall be taken into account.

(3) Allowable percentage

For purposes of paragraph (2), the allowable percentage shall be determined under tables prescribed by the Secretary. Such tables shall be prescribed so that the reduction in the deduction under paragraph (2) is substantially equivalent to the applicable restrictions contained in subsections (a) and (b).

(4) Lease term

In determining the term of any lease for purposes of paragraph (2), the rules of section 168(i)(3)(A) shall apply.

(5) Lessee recapture

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (b)(3) shall apply to any lessee to which paragraph (2) applies.

(d) Definitions and special rules

For purposes of this section—

(1) Coordination with section 179

Any deduction allowable under section 179 with respect to any listed property shall be subject to the limitations of subsections (a) and (b), and the limitation of paragraph (3) of this subsection, in the same manner as if it were a depreciation deduction allowable under section 168.

(2) Subsequent depreciation deductions reduced for deductions allocable to personal use

Solely for purposes of determining the amount of the depreciation deduction for subsequent taxable years, if less than 100 percent of the use of any listed property during any taxable year is use in a trade or business (including the holding for the production of income), all of the use of such property during such taxable year shall be treated as use so described.

(3) Deductions of employee

(A) In general

Any employee use of listed property shall not be treated as use in a trade or business for purposes of determining the amount of any depreciation deduction allowable to the employee (or the amount of any deduction allowable to the employee for rentals or other payments under a lease of listed property) unless such use is for the convenience of the employer and required as a condition of employment.

(B) Employee use

For purposes of subparagraph (A), the term ''employee use'' means any use in connec-

tion with the performance of services as an employee.

(4) Listed property

(A) In general

Except as provided in subparagraph (B), the term ''listed property'' means—

(i) any passenger automobile,

(ii) any other property used as a means of transportation,

(iii) any property of a type generally used for purposes of entertainment, recreation, or amusement,

(iv) any computer or peripheral equipment (as defined in section 168(i)(2)(B)), ''and''[1]

(v) any other property of a type specified by the Secretary by regulations.

(B) Exception for certain computers

The term ''listed property'' shall not include any computer or peripheral equipment (as so defined) used exclusively at a regular business establishment and owned or leased by the person operating such establishment. For purposes of the preceding sentence, any portion of a dwelling unit shall be treated as a regular business establishment if (and only if) the requirements of section 280A(c)(1) are met with respect to such portion.

(C) Exception for property used in business of transporting persons or property

Except to the extent provided in regulations, clause (ii) of subparagraph (A) shall not apply to any property substantially all of the use of which is in a trade or business of providing to unrelated persons services consisting of the transportation of persons or property for compensation or hire.

(5) Passenger automobile

(A) In general

Except as provided in subparagraph (B), the term ''passenger automobile'' means any 4-wheeled vehicle—

(i) which is manufactured primarily for use on public streets, roads, and highways, and

(ii) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

In the case of a truck or van, clause (ii) shall be applied by substituting ''gross vehicle weight'' for ''unloaded gross vehicle weight''.

(B) Exception for certain vehicles

The term ''passenger automobile'' shall not include—

(i) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business,

(ii) any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire, and

(iii) under regulations, any truck or van.

(6) Business use percentage

(A) In general

The term ''business use percentage'' means the percentage of the use of any listed property during any taxable year which is a qualified business use.

(B) Qualified business use

Except as provided in subparagraph (C), the term ''qualified business use'' means any use in a trade or business of the taxpayer.

(C) Exception for certain use by 5-percent owners and related persons

(i) In general

The term ''qualified business use'' shall not include—

(I) leasing property to any 5-percent owner or related person,

(II) use of property provided as compensation for the performance of services by a 5-percent owner or related person, or

(III) use of property provided as compensation for the performance of services by any person not described in subclause (II) unless an amount is included in the gross income of such person with respect to such use, and, where required, there was withholding under chapter 24.

(ii) Special rule for aircraft

Clause (i) shall not apply with respect to any aircraft if at least 25 percent of the total use of the aircraft during the taxable year consists of qualified business use not described in clause (i).

(D) Definitions

For purposes of this paragraph—

(i) 5-percent owner

The term ''5-percent owner'' means any person who is a 5-percent owner with respect to the taxpayer (as defined in section 416(i)(1)(B)(i)).

(ii) Related person

The term ''related person'' means any person related to the taxpayer (within the meaning of section 267(b)).

(7) Automobile price inflation adjustment

(A) In general

In the case of any passenger automobile placed in service after 1988, subsection (a) shall be applied by increasing each dollar amount contained in such subsection by the automobile price inflation adjustment for the calendar year in which such automobile is placed in service. Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or if the increase is a multiple of $50, such increase shall be increased to the next higher multiple of $100).

(B) Automobile price inflation adjustment

For purposes of this paragraph—

(i) In general

The automobile price inflation adjustment for any calendar year is the percentage (if any) by which—

(I) the CPI automobile component for October of the preceding calendar year, exceeds

(II) the CPI automobile component for October of 1987.

[1] So in original. The quotation marks probably should not appear.

(ii) CPI automobile component

The term ''CPI automobile component'' means the automobile component of the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(8) Unrecovered basis

For purposes of subsection (a)(2), the term ''unrecovered basis'' means the adjusted basis of the passenger automobile determined after the application of subsection (a) and as if all use during the recovery period were use in a trade or business (including the holding of property for the production of income).

(9) All taxpayers holding interests in passenger automobile treated as 1 taxpayer

All taxpayers holding interests in any passenger automobile shall be treated as 1 taxpayer for purposes of applying subsection (a) to such automobile, and the limitations of subsection (a) shall be allocated among such taxpayers in proportion to their interests in such automobile.

(10) Special rule for property acquired in nonrecognition transactions

For purposes of subsection (a)(2) any property acquired in a nonrecognition transaction shall be treated as a single property originally placed in service in the taxable year in which it was placed in service after being so acquired.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations with respect to items properly included in, or excluded from, the adjusted basis of any listed property.

(Added Pub. L. 98–369, div. A, title I, §179(a), July 18, 1984, 98 Stat. 713; amended Pub. L. 99–44, §4, May 24, 1985, 99 Stat. 78; Pub. L. 99–514, title II, §201(d)(4), title XVIII, §1812(e)(1)(A), (C), (2)–(5), Oct. 22, 1986, 100 Stat. 2139, 2836, 2837; Pub. L. 100–647, title I, §§1002(a)(10), (b)(2), 1018(u)(3), Nov. 10, 1988, 102 Stat. 3354, 3357, 3590; Pub. L. 101–239, title VII, §7643(a), Dec. 19, 1989, 103 Stat. 2381; Pub. L. 101–508, title XI, §11813(b)(13)(A)–(E), Nov. 5, 1990, 104 Stat. 1388–554, 1388–555; Pub. L. 104–188, title I, §1702(h)(5), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105–34, title IX, §971(a), Aug. 5, 1997, 111 Stat. 897; Pub. L. 105–206, title VI, §6009(c), July 22, 1998, 112 Stat. 812; Pub. L. 107–147, title VI, §602(b)(1), Mar. 9, 2002, 116 Stat. 59; Pub. L. 111–240, title II, §2043(a), Sept. 27, 2010, 124 Stat. 2560.)

INFLATION ADJUSTED ITEMS FOR CERTAIN CALENDAR YEARS

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

AMENDMENTS

2010—Subsec. (d)(4)(A). Pub. L. 111–240 inserted '' 'and' '' at end of clause (iv), redesignated clause (vi) as (v), and struck out former cl. (v) which read as follows: ''any cellular telephone (or other similar telecommunications equipment), and''.

2002—Subsec. (a)(1)(C)(iii). Pub. L. 107–147 added cl. (iii).

1998—Subsec. (a)(1)(C)(ii). Pub. L. 105–206 substituted ''subparagraphs (A) and (B)'' for ''subparagraph (A)''.

1997—Subsec. (a)(1)(C). Pub. L. 105–34 added subpar. (C).

1996—Subsec. (a). Pub. L. 104–188 struck out ''investment tax credit and'' after ''amount of'' in heading.

1990—Pub. L. 101–508, §11813(b)(13)(E), struck out ''investment tax credit and'' after ''Limitation on'' in section catchline.

Subsec. (a)(1). Pub. L. 101–508, §11813(b)(13)(A)(i), redesignated par. (2) as (1) and struck out former par. (1) ''Investment tax credit'' which read as follows: ''The amount of the credit determined under section 46(a) for any passenger automobile shall not exceed $675.''

Subsec. (a)(2). Pub. L. 101–508, §11813(b)(13)(A)(i), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (a)(2)(B). Pub. L. 101–508, §11813(b)(13)(A)(ii), struck out ''the credit determined under section 46(a) or'' after ''the amount of''.

Subsec. (a)(3). Pub. L. 101–508, §11813(b)(13)(A)(i), redesignated par. (3) as (2).

Subsec. (a)(4). Pub. L. 101–508, §11813(b)(13)(A)(i), struck out par. (4) ''Special rule where election of reduced credit in lieu of the basis adjustment'' which read as follows: ''In the case of any election under section 48(q)(4) with respect to any passenger automobile, the limitation of paragraph (1) applicable to such passenger automobile shall be ⅔ of the amount which would be so applicable but for this paragraph.''

Subsec. (b). Pub. L. 101–508, §11813(b)(13)(B), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) ''Investment tax credit'' which read as follows: ''For purposes of this subtitle, any listed property shall not be treated as section 38 property for any taxable year unless such property is predominantly used in a qualified business use for such taxable year.''

Subsec. (c)(1). Pub. L. 101–508, §11813(b)(13)(C), struck out ''credits and'' after ''Lessor's'' in heading.

Subsec. (d)(3)(A). Pub. L. 101–508, §11813(b)(13)(D), struck out ''the amount of any credit allowable under section 38 to the employee or'' after ''of determining''.

1989—Subsec. (d)(4)(A)(v), (vi). Pub. L. 101–239 added cl. (v) and redesignated former cl. (v) as (vi).

1988—Subsec. (b)(3)(B)(i). Pub. L. 100–647, §1018(u)(3), substituted ''depreciation deductions'' for ''recovery deductions''.

Subsec. (d)(1). Pub. L. 100–647, §1002(b)(2), substituted ''subsections (a) and (b), and the limitation of paragraph (3) of this subsection,'' for ''subsections (a) and (b)''.

Subsec. (d)(3)(A). Pub. L. 100–647, §1002(a)(10), substituted ''depreciation deduction'' for ''recovery deduction''.

1986—Subsec. (a)(2)(A). Pub. L. 99–514, §201(d)(4)(A)(i), (K), substituted ''depreciation deduction'' for ''recovery deduction'' in introductory provisions and substituted cls. (i) to (iv) for former cls. (i) and (ii) which read as follows:

''(i) $3,200 for the first taxable year in the recovery period, and

''(ii) $4,800 for each succeeding taxable year in the recovery period.''

Subsec. (a)(2)(B). Pub. L. 99–514, §201(d)(4)(A)(ii), (K), substituted ''$1,475'' for ''$4,800'' in heading and text of cl. (ii), and ''depreciation deduction'' for ''recovery deduction'' in heading and text of cl. (iv).

Subsec. (a)(3)(B). Pub. L. 99–514, §201(d)(4)(K), substituted ''depreciation deduction'' for ''recovery deduction'' in two places.

Subsec. (b)(2). Pub. L. 99–514, §201(d)(4)(J), substituted ''section 168(g) (relating to alternative depreciation system)'' for ''the straight line method over the earnings and profits life for such property''.

Subsec. (b)(3)(A). Pub. L. 99–514, §201(d)(4)(B), (K), substituted ''depreciation deduction'' for ''recovery deduction'' and ''section 168(g) (relating to alternative de-

preciation system)'' for ''the straight line method over the earnings and profits life'' in closing provisions.

Subsec. (b)(4). Pub. L. 99–514, § 201(d)(4)(C), in amending par. (4) generally, struck out heading ''Definitions'', redesignated as par. (4) former subpar. (A) heading and text, substituted ''For purposes of this section, property'' for ''Property'', and struck out former subpar. (B) definition of straight line method over earnings and profits life.

Subsec. (c)(4). Pub. L. 99–514, § 201(d)(4)(D), substituted ''section 168(i)(3)(A)'' for ''section 168(j)(6)(B)''.

Subsec. (d)(1). Pub. L. 99–514, § 201(d)(4)(E), substituted ''depreciation deduction'' for ''recovery deduction''.

Subsec. (d)(2). Pub. L. 99–514, § 1812(e)(5), substituted ''is use described in'' for ''is not use described in''.

Pub. L. 99–514, § 201(d)(4)(F), substituted ''depreciation deduction'' for ''recovery deduction'' and ''use in a trade or business (including the holding for the production of income)'' for ''use described in section 168(c)(1) (defining recovery property)''.

Subsec. (d)(3)(A). Pub. L. 99–514, § 1812(e)(2), inserted ''(or the amount of any deduction allowable to the employee for rentals or other payments under a lease of listed property)''.

Subsec. (d)(4)(A)(iv). Pub. L. 99–514, § 201(d)(4)(G), substituted ''section 168(i)(2)(B)'' for ''section 168(j)(5)(D)''.

Subsec. (d)(4)(B). Pub. L. 99–514, § 1812(e)(3), inserted ''and owned or leased by the person operating such establishment''.

Subsec. (d)(4)(C). Pub. L. 99–514, § 1812(e)(4), added subpar. (C).

Subsec. (d)(5)(A). Pub. L. 99–514, § 1812(e)(1)(A), (C), substituted ''unloaded gross vehicle weight'' for ''gross vehicle weight'' in cl. (ii) and inserted at end ''In the case of a truck or van, clause (ii) shall be applied by substituting 'gross vehicle weight' for 'unloaded gross vehicle weight'.''

Subsec. (d)(8). Pub. L. 99–514, § 201(d)(4)(H), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''For purposes of subsection (a)(2), the term ''unrecovered basis'' means the excess (if any) of—

''(A) the unadjusted basis (as defined in section 168(d)(1)(A)) of the passenger automobile, over

''(B) the amount of the recovery deductions which would have been allowable for taxable years in the recovery period determined after the application of subsection (a) and as if all use during the recovery period were use described in section 168(c)(1).''

Subsec. (d)(10). Pub. L. 99–514, § 201(d)(4)(I), struck out '', notwithstanding any regulations prescribed under section 168(f)(7),'' after ''For purposes of subsection (a)(2)''.

1985—Subsec. (a)(1). Pub. L. 99–44, § 4(a)(1), substituted ''$675'' for ''$1,000''.

Subsec. (a)(2)(A)(i). Pub. L. 99–44, § 4(a)(2)(A), substituted ''$3,200'' for ''$4,000''.

Subsec. (a)(2)(A)(ii), (B)(ii). Pub. L. 99–44, § 4(a)(2)(B), substituted ''$4,800'' for ''$6,000'' wherever appearing in text and heading.

Subsec. (d)(7)(A). Pub. L. 99–44, § 4(b)(1), inserted ''placed in service after 1988'' after ''passenger automobile''.

Subsec. (d)(7)(B)(i). Pub. L. 99–44, § 4(b)(3), struck out last sentence which directed that in the case of calendar year 1984, the automobile price inflation adjustment would be zero.

Subsec. (d)(7)(B)(i)(II). Pub. L. 99–44, § 4(b)(2), substituted ''1987'' for ''1983''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, § 2043(b), Sept. 27, 2010, 124 Stat. 2560, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 applicable to property placed in service after Dec. 31, 2001, see section 602(c) of Pub. L. 107–147, set out as a note under section 30 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, § 971(b), Aug. 5, 1997, 111 Stat. 897, as amended by Pub. L. 107–147, title VI, § 602(b)(2), Mar. 9, 2002, 116 Stat. 59, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7643(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property placed in service or leased in taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(4) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(4) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1812(e)(1)(A), (C), (2)–(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 6(e) of Pub. L. 99–44 provided that:

''(1) Except as provided in paragraph (2), the amendments made by section 4 [amending this section] shall apply to—

''(A) property placed in service after April 2, 1985, in taxable years ending after such date, and

''(B) property leased after April 2, 1985, in taxable years ending after such date.

''(2) The amendments made by section 4 [amending this section] shall not apply to any property—

''(A) acquired by the taxpayer pursuant to a binding contract in effect on April 1, 1985, and at all times thereafter, but only if the property is placed in service before August 1, 1985, or

''(B) of which the taxpayer is the lessee, but only if the lease is pursuant to a binding contract in effect on April 1, 1985, and at all times thereafter, and only if the taxpayer first uses such property under the lease before August 1, 1985.''

EFFECTIVE DATE

Section 179(d) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—

''(A) Except as provided in subparagraph (B), the amendments made by subsections (a) and (c) [enacting this section] shall apply to—

''(i) property placed in service after June 18, 1984, in taxable years ending after such date, and

''(ii) property leased after June 18, 1984, in taxable years ending after such date.

''(B) The amendments made by subsections (a) and (c) shall not apply to any property—

''(i) acquired by the taxpayer pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter (or under construction on such date) but only if the property is placed in service before January 1, 1985 (January 1, 1987, in the case of 15-year real property), or

''(ii) of which the taxpayer is the lessee but only if the lease is pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter and only if the taxpayer first uses such property under the lease before January 1, 1985 (January 1, 1987, in the case of 15-year real property).

For purposes of the preceding sentence, the term '15-year real property' includes 18-year real property.

''(2) COMPLIANCE PROVISIONS.—The amendments made by subsection (b) [amending sections 274, 6653, and 6695 of this title] shall apply to taxable years beginning after December 31, 1984.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN CALENDAR YEARS

Provisions relating to inflation adjustment of items in this section for certain calendar years were contained in the following:

2010—Revenue Procedure 2010–18.
2009—Revenue Procedure 2009–24.
2008—Revenue Procedure 2008–22.
2007—Revenue Procedure 2007–30.
2006—Revenue Procedure 2006–18.
2005—Revenue Procedure 2005–13.
2004—Revenue Procedure 2004–20.
2003—Revenue Procedure 2003–75.
2002—Revenue Procedure 2002–14.
2001—Revenue Procedure 2001–19.
2000—Revenue Procedure 2000–18.
1999—Revenue Procedure 99–14.
1998—Revenue Procedures 98–24 and 98–30.
1997—Revenue Procedure 97–20.
1996—Revenue Procedure 96–25.

§ 280G. Golden parachute payments

(a) General rule

No deduction shall be allowed under this chapter for any excess parachute payment.

(b) Excess parachute payment

For purposes of this section—

(1) In general

The term ''excess parachute payment'' means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment.

(2) Parachute payment defined

(A) In general

The term ''parachute payment'' means any payment in the nature of compensation to (or for the benefit of) a disqualified individual if—

(i) such payment is contingent on a change—

(I) in the ownership or effective control of the corporation, or

(II) in the ownership of a substantial portion of the assets of the corporation, and

(ii) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such individual which are contingent on such change equals or exceeds an amount equal to 3 times the base amount.

For purposes of clause (ii), payments not treated as parachute payments under paragraph (4)(A), (5), or (6) shall not be taken into account.

(B) Agreements

The term ''parachute payment'' shall also include any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is made pursuant to an agreement which violates any generally enforced securities laws or regulations. In any proceeding involving the issue of whether any payment made to a disqualified individual is a parachute payment on account of a violation of any generally enforced securities laws or regulations, the burden of proof with respect to establishing the occurrence of a violation of such a law or regulation shall be upon the Secretary.

(C) Treatment of certain agreements entered into within 1 year before change of ownership

For purposes of subparagraph (A)(i), any payment pursuant to—

(i) an agreement entered into within 1 year before the change described in subparagraph (A)(i), or

(ii) an amendment made within such 1-year period of a previous agreement,

shall be presumed to be contingent on such change unless the contrary is established by clear and convincing evidence.

(3) Base amount

(A) In general

The term ''base amount'' means the individual's annualized includible compensation for the base period.

(B) Allocation

The portion of the base amount allocated to any parachute payment shall be an amount which bears the same ratio to the base amount as—

(i) the present value of such payment, bears to

(ii) the aggregate present value of all such payments.

(4) Treatment of amounts which taxpayer establishes as reasonable compensation

In the case of any payment described in paragraph (2)(A)—

(A) the amount treated as a parachute payment shall not include the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services to be rendered on or after the date of the change described in paragraph (2)(A)(i), and

(B) the amount treated as an excess parachute payment shall be reduced by the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered before the date of the change described in paragraph (2)(A)(i).

For purposes of subparagraph (B), reasonable compensation for services actually rendered before the date of the change described in paragraph (2)(A)(i) shall be first offset against the base amount.

(5) Exemption for small business corporations, etc.

(A) In general

Notwithstanding paragraph (2), the term ''parachute payment'' does not include—

(i) any payment to a disqualified individual with respect to a corporation which (immediately before the change described in paragraph (2)(A)(i)) was a small business corporation (as defined in section 1361(b) but without regard to paragraph (1)(C) thereof), and

(ii) any payment to a disqualified individual with respect to a corporation (other than a corporation described in clause (i)) if—

(I) immediately before the change described in paragraph (2)(A)(i), no stock in such corporation was readily tradeable on an established securities market or otherwise, and

(II) the shareholder approval requirements of subparagraph (B) are met with respect to such payment.

The Secretary may, by regulations, prescribe that the requirements of subclause (I) of clause (ii) are not met where a substantial portion of the assets of any entity consists (directly or indirectly) of stock in such corporation and interests in such other entity are readily tradeable on an established securities market, or otherwise. Stock described in section 1504(a)(4) shall not be taken into account under clause (ii)(I) if the payment does not adversely affect the shareholder's redemption and liquidation rights.

(B) Shareholder approval requirements

The shareholder approval requirements of this subparagraph are met with respect to any payment if—

(i) such payment was approved by a vote of the persons who owned, immediately before the change described in paragraph (2)(A)(i), more than 75 percent of the voting power of all outstanding stock of the corporation, and

(ii) there was adequate disclosure to shareholders of all material facts concerning all payments which (but for this paragraph) would be parachute payments with respect to a disqualified individual.

The regulations prescribed under subsection (e) shall include regulations providing for the application of this subparagraph in the case of shareholders which are not individuals (including the treatment of nonvoting interests in an entity which is a shareholder) and where an entity holds a de minimis amount of stock in the corporation.

(6) Exemption for payments under qualified plans

Notwithstanding paragraph (2), the term ''parachute payment'' shall not include any payment to or from—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan described in section 403(a),

(C) a simplified employee pension (as defined in section 408(k)), or

(D) a simple retirement account described in section 408(p).

(c) Disqualified individuals

For purposes of this section, the term ''disqualified individual'' means any individual who is—

(1) an employee, independent contractor, or other person specified in regulations by the Secretary who performs personal services for any corporation, and

(2) is an officer, shareholder, or highly-compensated individual.

For purposes of this section, a personal service corporation (or similar entity) shall be treated as an individual. For purposes of paragraph (2), the term ''highly-compensated individual'' only includes an individual who is (or would be if the individual were an employee) a member of the group consisting of the highest paid 1 percent of the employees of the corporation or, if less, the highest paid 250 employees of the corporation.

(d) Other definitions and special rules

For purposes of this section—

(1) Annualized includible compensation for base period

The term ''annualized includible compensation for the base period'' means the average annual compensation which—

(A) was payable by the corporation with respect to which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs, and

(B) was includible in the gross income of the disqualified individual for taxable years in the base period.

(2) Base period

The term ''base period'' means the period consisting of the most recent 5 taxable years ending before the date on which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs (or such portion of such period during which the disqualified individual performed personal services for the corporation).

(3) Property transfers

Any transfer of property—

(A) shall be treated as a payment, and

(B) shall be taken into account as its fair market value.

(4) Present value

Present value shall be determined by using a discount rate equal to 120 percent of the applicable Federal rate (determined under section 1274(d)), compounded semiannually.

(5) Treatment of affiliated groups

Except as otherwise provided in regulations, all members of the same affiliated group (as defined in section 1504, determined without regard to section 1504(b)) shall be treated as 1 corporation for purposes of this section. Any person who is an officer of any member of such group shall be treated as an officer of such 1 corporation.

(e) Special rule for application to employers participating in the Troubled Assets Relief Program

(1) In general

In the case of the severance from employment of a covered executive of an applicable employer during the period during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 of such Act), this section shall be applied to payments to such executive with the following modifications:

(A) Any reference to a disqualified individual (other than in subsection (c)) shall be treated as a reference to a covered executive.

(B) Any reference to a change described in subsection (b)(2)(A)(i) shall be treated as a reference to an applicable severance from employment of a covered executive, and any reference to a payment contingent on such a change shall be treated as a reference to any payment made during an applicable taxable year of the employer on account of such applicable severance from employment.

(C) Any reference to a corporation shall be treated as a reference to an applicable employer.

(D) The provisions of subsections (b)(2)(C), (b)(4), (b)(5), and (d)(5) shall not apply.

(2) Definitions and special rules

For purposes of this subsection:

(A) Definitions

Any term used in this subsection which is also used in section 162(m)(5) shall have the meaning given such term by such section.

(B) Applicable severance from employment

The term ''applicable severance from employment'' means any severance from employment of a covered executive—

(i) by reason of an involuntary termination of the executive by the employer, or

(ii) in connection with any bankruptcy, liquidation, or receivership of the employer.

(C) Coordination and other rules

(i) In general

If a payment which is treated as a parachute payment by reason of this subsection is also a parachute payment determined without regard to this subsection, this subsection shall not apply to such payment.

(ii) Regulatory authority

The Secretary may prescribe such guidance, rules, or regulations as are necessary—

(I) to carry out the purposes of this subsection and the Emergency Economic Stabilization Act of 2008, including the extent to which this subsection applies in the case of any acquisition, merger, or reorganization of an applicable employer,

(II) to apply this section and section 4999 in cases where one or more payments with respect to any individual are treated as parachute payments by reason of this subsection, and other payments with respect to such individual are treated as parachute payments under this section without regard to this subsection, and

(III) to prevent the avoidance of the application of this section through the mischaracterization of a severance from employment as other than an applicable severance from employment.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section (including regulations for the application of this section in the case of related corporations and in the case of personal service corporations).

(Added Pub. L. 98–369, div. A, title I, §67(a), July 18, 1984, 98 Stat. 585; amended Pub. L. 99–121, title I, §102(c)(4), Oct. 11, 1985, 99 Stat. 508; Pub. L. 99–514, title XVIII, §1804(j), Oct. 22, 1986, 100 Stat. 2807; Pub. L. 100–647, title I, §1018(d)(6)–(8), Nov. 10, 1988, 102 Stat. 3581; Pub. L. 104–188, title I, §1421(b)(9)(A), Aug. 20, 1996, 110 Stat. 1798; Pub. L. 110–343, div. A, title III, §302(b), Oct. 3, 2008, 122 Stat. 3805.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (e)(1), (2)(C)(ii)(I), is Pub. L. 110–343, div. A, Oct. 3, 2008, 122 Stat. 3765. Section 101(a) of the Act enacted section 5211(a) of Title 12, Banks and Banking, and amended section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance. Section 120 of the Act is classified to section 5230 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2008—Subsecs. (e), (f). Pub. L. 110–343 added subsec. (e) and redesignated former subsec. (e) as (f).

1996—Subsec. (b)(6)(D). Pub. L. 104–188 added subpar. (D).

1988—Subsec. (b)(5)(A). Pub. L. 100–647, §1018(d)(6), substituted ''section 1361(b) but without regard to paragraph (1)(C) thereof)'' for ''section 1361(b))'' in cl. (i) and inserted at end ''Stock described in section 1504(a)(4) shall not be taken into account under clause (ii)(I) if the payment does not adversely affect the shareholder's redemption and liquidation rights.''

Subsec. (b)(5)(B). Pub. L. 100–647, §1018(d)(7), inserted at end ''The regulations prescribed under subsection (e) shall include regulations providing for the application of this subparagraph in the case of shareholders which are not individuals (including the treatment of nonvoting interests in an entity which is a shareholder) and where an entity holds a de minimis amount of stock in the corporation.''

Subsec. (d)(5). Pub. L. 100–647, §1018(d)(8), substituted ''officer of any member'' for ''officer or any member''.

1986—Subsec. (b)(2)(A). Pub. L. 99–514, §1804(j)(6), inserted ''For purposes of clause (ii), payments not treated as parachute payments under paragraph (4)(A), (5), or (6) shall not be taken into account.''

Subsec. (b)(2)(B). Pub. L. 99–514, §1804(j)(7), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'parachute payment' shall also include any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is pursuant to an agreement which violates any securities laws or regulations.''

Subsec. (b)(4). Pub. L. 99–514, §1804(j)(2), substituted ''Treatment of amounts which taxpayer establishes as reasonable compensation'' for ''Excess parachute payments reduced to extent taxpayer establishes reasonable compensation'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of any parachute payment described in paragraph (2)(A), the amount of any excess parachute payment shall be reduced by the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered. For purposes of the preceding sentence, reasonable compensation shall be first offset against the base amount.''

Subsec. (b)(5). Pub. L. 99–514, §1804(j)(1), added par. (5).

Subsec. (b)(6). Pub. L. 99–514, §1804(j)(3), added par. (6).

Subsec. (c). Pub. L. 99–514, §1804(j)(5), inserted provision defining ''highly-compensated individual''.

Subsec. (d)(2). Pub. L. 99–514, §1804(j)(8), substituted ''performed personal services for the corporation'' for ''was an employee of the corporation''.

Subsec. (d)(5). Pub. L. 99–514, §1804(j)(4), added par. (5).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title III, §302(c)(2), Oct. 3, 2008, 122 Stat. 3806, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to payments with respect to severances occurring during the period during which the authorities under section 101(a) of this Act [enacting section 5211(a) of Title 12, Banks and Banking, and amending section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance] are in effect (determined under section 120 of this Act [12 U.S.C. 5230]).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable to sales and exchanges after June 30, 1985, in taxable years ending after such date, see section 105(a)(1) of Pub. L. 99–121, set out as a note under section 1274 of this title.

EFFECTIVE DATE

Section 67(e) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and section 4999 of this title and amending sections 275 and 3121 of this title] shall apply to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date.

''(2) SPECIAL RULE FOR CONTRACT AMENDMENTS.—Any contract entered into before June 15, 1984, which is amended after June 14, 1984, in any significant relevant aspect shall be treated as a contract entered into after June 14, 1984.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 280H. Limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years

(a) General rule

If—

(1) an election by a personal service corporation under section 444 is in effect for a taxable year, and

(2) such corporation does not meet the minimum distribution requirements of subsection (c) for such taxable year,

then the deduction otherwise allowed under this chapter for applicable amounts paid or incurred by such corporation to employee-owners shall not exceed the maximum deductible amount. The preceding sentence shall not apply for purposes of subchapter G (relating to personal holding companies).

(b) Carryover of nondeductible amounts

If any amount is not allowed as a deduction for a taxable year under subsection (a), such amount shall be treated as paid or incurred in the succeeding taxable year.

(c) Minimum distribution requirement

For purposes of this section—

(1) In general

A personal service corporation meets the minimum distribution requirements of this subsection if the applicable amounts paid or incurred during the deferral period of the taxable year (determined without regard to subsection (b)) equal or exceed the lesser of—

(A) the product of—

(i) the applicable amounts paid during the preceding taxable year, divided by the number of months in such taxable year, multiplied by

(ii) the number of months in the deferral period of the preceding taxable year, or

(B) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

(2) Applicable percentage

The term ''applicable percentage'' means the percentage (not in excess of 95 percent) determined by dividing—

(A) the applicable amounts paid or incurred during the 3 taxable years immediately preceding the taxable year, by

(B) the adjusted taxable income of such corporation for such 3 taxable years.

(d) Maximum deductible amount

For purposes of this section, the term ''maximum deductible amount'' means the sum of—

(1) the applicable amounts paid during the deferral period, plus

(2) an amount equal to the product of—

(A) the amount determined under paragraph (1), divided by the number of months in the deferral period, multiplied by

(B) the number of months in the nondeferral period.

(e) Disallowance of net operating loss carrybacks

No net operating loss carryback shall be allowed to (or from) any taxable year of a personal service corporation to which an election under section 444 applies.

(f) Other definitions and special rules

For purposes of this section—

(1) Applicable amount

The term ''applicable amount'' means any amount paid to an employee-owner which is includible in the gross income of such employee, other than—

(A) any gain from the sale or exchange of property between the owner-employee and the corporation, or

(B) any dividend paid by the corporation.

(2) Employee-owner

The term ''employee-owner'' has the meaning given such term by section 269A(b)(2) (as modified by section 441(i)(2)).

(3) Nondeferral and deferral periods

(A) Deferral period

The term ''deferral period'' has the meaning given to such term by section 444(b)(4).

(B) Nondeferral period

The term ''nondeferral period'' means the portion of the taxable year of the personal service corporation which occurs after the portion of such year constituting the deferral period.

(4) Adjusted taxable income

The term ''adjusted taxable income'' means taxable income determined without regard to—

(A) any amount paid to an employee-owner which is includible in the gross income of such employee-owner, and

(B) any net operating loss carryover to the extent such carryover is attributable to amounts described in subparagraph (A).

(5) Personal service corporation

The term ''personal service corporation'' has the meaning given to such term by section 441(i)(2).

(Added Pub. L. 100–203, title X, §10206(c)(1), Dec. 22, 1987, 101 Stat. 1330–401; amended Pub. L. 100–647, title II, §2004(e)(2)(B), (3), (14)(A), (C), Nov. 10, 1988, 102 Stat. 3600, 3602.)

AMENDMENTS

1988—Subsecs. (c)(1)(A)(i), (d)(1). Pub. L. 100–647, §2004(e)(14)(C), substituted ''amounts paid'' for ''amounts paid or incurred''.

Subsec. (f)(2). Pub. L. 100–647, §2004(e)(3), substituted ''section 269A(b)(2) (as modified by section 441(i)(2))'' for ''section 296A(b)(2)''.

Subsec. (f)(4). Pub. L. 100–647, §2004(e)(14)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The term 'adjusted taxable income' means taxable income increased by any amount paid or incurred to an employee-owner which was includible in the gross income of such employee-owner.''

Subsec. (f)(5). Pub. L. 100–647, §2004(e)(2)(B), added par. (5).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 10206(d)(1) of Pub. L. 100–203, set out as a note under section 444 of this title.

PART X—TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS

Sec.
281. Terminal railroad corporations and their shareholders.

AMENDMENTS

1962—Pub. L. 87–870, §1(a), Oct. 23, 1962, 76 Stat. 1158, added part X and item 281.

§ 281. Terminal railroad corporations and their shareholders

(a) Computation of taxable income of terminal railroad corporations

(1) In general

In computing the taxable income of a terminal railroad corporation—

(A) such corporation shall not be considered to have received or accrued—

(i) the portion of any liability of any railroad corporation, with respect to related terminal services provided by such corporation, which is discharged by crediting such liability with an amount of related terminal income, or

(ii) the portion of any charge which would be made by such corporation for related terminal services provided by it, but which is not made as a result of taking related terminal income into account in computing such charge; and

(B) no deduction otherwise allowable under this chapter shall be disallowed as a result of any discharge of liability described in subparagraph (A)(i) or as a result of any computation of charges in the manner described in subparagraph (A)(ii).

(2) Limitation

In the case of any taxable year ending after the date of the enactment of this section, paragraph (1) shall not apply to the extent that it would (but for this paragraph) operate to create (or increase) a net operating loss for the terminal railroad corporation for the taxable year.

(b) Computation of taxable income of shareholders

Subject to the limitation in subsection (a)(2), in computing the taxable income of any shareholder of a terminal railroad corporation, no amount shall be considered to have been received or accrued or paid or incurred by such shareholder as a result of any discharge of liability described in subsection (a)(1)(A)(i) or as a result of any computation of charges in the manner described in subsection (a)(1)(A)(ii).

(c) Agreement required

In the case of any taxable year, subsections (a) and (b) shall apply with respect to any discharge of liability described in subsection (a)(1)(A)(i), and to any computation of charges in the manner described in subsection (a)(1)(A)(ii), only if such discharge or computation (as in the case may be) was provided for in a written agreement, to which all of the shareholders of the terminal railroad corporation were parties, entered into before the beginning of such taxable year.

(d) Definitions

For purposes of this section—

(1) Terminal railroad corporation

The term ''terminal railroad corporation'' means a domestic railroad corporation which is not a member, other than as a common parent corporation, of an affiliated group (as defined in section 1504) and—

(A) all of the shareholders of which are rail carriers subject to part A of subtitle IV of title 49;

(B) the primary business of which is the providing of railroad terminal and switching facilities and services to rail carriers subject to part A of subtitle IV of title 49 and to the shippers and passengers of such railroad corporations;

(C) a substantial part of the services of which for the taxable year is rendered to one or more of its shareholders; and

(D) each shareholder of which computes its taxable income on the basis of a taxable year beginning or ending on the same day that the taxable year of the terminal railroad corporation begins or ends.

(2) Related terminal income

The term ''related terminal income'' means the income (determined in accordance with regulations prescribed by the Secretary) of a terminal railroad corporation derived—

(A) from services or facilities of a character ordinarily and regularly provided by terminal railroad corporations for railroad corporations or for the employees, passengers, or shippers of railroad corporations;

(B) from the use by persons other than railroad corporations of portions of a facility, or a service which is used primarily for railroad purposes;

(C) from any railroad corporation for services or facilities provided by such terminal railroad corporation in connection with railroad operations; and

(D) from the United States in payment for facilities or services in connection with mail handling.

For purposes of subparagraph (B), a substantial addition, constructed after the date of the enactment of this section, to a facility shall be treated as a separate facility.

(3) Related terminal services

The term ''related terminal services'' includes only services, and the use of facilities, taken into account in computing related terminal income.

(e) Regulations

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

(Added Pub. L. 87–870, § 1(a), Oct. 23, 1962, 76 Stat. 1158; amended Pub. L. 94–455, title XIX, §§ 1901(a)(40), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1771, 1834; Pub. L. 95–473, § 2(a)(2)(D), (E), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 104–88, title III, § 304(b), Dec. 29, 1995, 109 Stat. 943.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (a)(2), (d)(2), refers to the date of enactment of Pub. L. 87–870, which was approved Oct. 23, 1962.

AMENDMENTS

1995—Subsec. (d)(1)(A), (B). Pub. L. 104–88 substituted ''rail carriers subject to part A of subtitle IV'' for ''domestic railroad corporations providing transportation subject to subchapter I of chapter 105''.

1978—Subsec. (d)(1)(A). Pub. L. 95–473, § 2(a)(2)(D), substituted ''providing transportation subject to subchapter I of chapter 105 of title 49'' for ''subject to part I of the Interstate Commerce Act (49 U.S.C. 1 and following)''.

Subsec. (d)(1)(B). Pub. L. 95–473, §2(a)(2)(E), substituted ''providing transportation subject to subchapter I of chapter 105 of title 49'' for ''subject to part I of the Interstate Commerce Act''.

1976—Subsec. (d)(1)(A). Pub. L. 94–455, §1901(a)(40)(A), inserted ''(49 U.S.C. 1 and following)'' after ''Interstate Commerce Act''.

Subsecs. (e), (f). Pub. L. 94–455, §§1901(a)(40)(B), 1906(b)(13)(A), redesignated subsec. (f) as (e) and struck out ''or his delegate'' after ''Secretary''. Former subsec. (e), which made special provision for the application of this section to taxable years ending before Oct. 23, 1962, was struck out.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(40) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 2(a) of Pub. L. 87–870 provided that: ''The amendments made by the first section of this Act [enacting this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

INTERNAL REVENUE CODE OF 1939; INCLUSION OF TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS PROVISION

Section 2(b) of Pub. L. 87–870, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Provisions having the same effect as section 281 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the first section of this Act) shall be deemed to be included in the Internal Revenue Code of 1939, effective with respect to all taxable years to which such Code applies.''

PART XI—SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS

Sec.
291. Special rules relating to corporate preference items.

AMENDMENTS

1982—Pub. L. 97–248, title II, §204(a), Sept. 3, 1982, 96 Stat. 423, added part XI heading and analysis of sections consisting of item 291.

§ 291. Special rules relating to corporate preference items

(a) Reduction in certain preference items, etc.

For purposes of this subtitle, in the case of a corporation—

(1) Section 1250 capital gain treatment

In the case of section 1250 property which is disposed of during the taxable year, 20 percent of the excess (if any) of—

(A) the amount which would be treated as ordinary income if such property was section 1245 property, over

(B) the amount treated as ordinary income under section 1250 (determined without regard to this paragraph),

shall be treated as gain which is ordinary income under section 1250 and shall be recognized notwithstanding any other provision of this title. Under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent section 1250(a) does not apply to such disposition by reason of section 1250(d).

(2) Reduction in percentage depletion

In the case of iron ore and coal (including lignite), the amount allowable as a deduction under section 613 with respect to any property (as defined in section 614) shall be reduced by 20 percent of the amount of the excess (if any) of—

(A) the amount of the deduction allowable under section 613 for the taxable year (determined without regard to this paragraph), over

(B) the adjusted basis of the property at the close of the taxable year (determined without regard to the depletion deduction for the taxable year).

(3) Certain financial institution preference items

The amount allowable as a deduction under this chapter (determined without regard to this section) with respect to any financial institution preference item shall be reduced by 20 percent.

(4) Amortization of pollution control facilities

If an election is made under section 169 with respect to any certified pollution control facility, the amortizable basis of such facility for purposes of such section shall be reduced by 20 percent.

(b) Special rules for treatment of intangible drilling costs and mineral exploration and development costs

For purposes of this subtitle, in the case of a corporation—

(1) In general

The amount allowable as a deduction for any taxable year (determined without regard to this section)—

(A) under section 263(c) in the case of an integrated oil company, or

(B) under section 616(a) or 617(a),

shall be reduced by 30 percent.

(2) Amortization of amounts not allowable as deductions under paragraph (1)

The amount not allowable as a deduction under section 263(c), 616(a), or 617(a) (as the case may be) for any taxable year by reason of paragraph (1) shall be allowable as a deduction ratably over the 60-month period beginning with the month in which the costs are paid or incurred.

(3) Dispositions

For purposes of section 1254, any deduction under paragraph (2) shall be treated as a deduction allowable under section 263(c), 616(a), or 617(a) (whichever is appropriate).

(4) Integrated oil company defined

For purposes of this subsection, the term ''integrated oil company'' means, with respect to any taxable year, any producer of crude oil

to whom subsection (c) of section 613A does not apply by reason of paragraph (2) or (4) of section 613A(d).

(5) Coordination with cost depletion

The portion of the adjusted basis of any property which is attributable to amounts to which paragraph (1) applied shall not be taken into account for purposes of determining depletion under section 611.

(c) Special rules relating to pollution control facilities

For purposes of this subtitle—

(1) Accelerated cost recovery deduction

Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(4).

(2) 1250 Recapture

Subsection (a)(1) shall not apply to any section 1250 property which is part of a certified pollution control facility (within the meaning of section 169(d)(1)) with respect to which an election under section 169 was made.

(d) Special rule for real estate investment trusts

In the case of a real estate investment trust (as defined in section 856), the difference between the amounts described in subparagraphs (A) and (B) of subsection (a)(1) shall be reduced to the extent that a capital gain dividend (as defined in section 857(b)(3)(C), applied without regard to this section) is treated as paid out of such difference. Any capital gain dividend treated as having been paid out of such difference to a shareholder which is an applicable corporation retains its character in the hands of the shareholder as gain from the disposition of section 1250 property for purposes of applying subsection (a)(1) to such shareholder.

(e) Definitions

For purposes of this section—

(1) Financial institution preference item

The term ''financial institution preference item'' includes the following:

[(A) Repealed. Pub. L. 101–508, title XI, § 11801(c)(12)(B), Nov. 5, 1990, 104 Stat. 1388–527]

(B) Interest on debt to carry tax-exempt obligations acquired after December 31, 1982, and before August 8, 1986

(i) In general

In the case of a financial institution which is a bank (as defined in section 585(a)(2)), the amount of interest on indebtedness incurred or continued to purchase or carry obligations acquired after December 31, 1982, and before August 8, 1986, the interest on which is exempt from taxes for the taxable year, to the extent that a deduction would (but for this paragraph or section 265(b)) be allowable with respect to such interest for such taxable year.

(ii) Determination of interest allocable to indebtedness on tax-exempt obligations

Unless the taxpayer (under regulations prescribed by the Secretary) establishes otherwise, the amount determined under clause (i) shall be an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section and section 265(b)) to the taxpayer as a deduction for interest for the taxable year as—

(I) the taxpayer's average adjusted basis (within the meaning of section 1016) of obligations described in clause (i), bears to

(II) such average adjusted basis for all assets of the taxpayer.

(iii) Interest

For purposes of this subparagraph, the term ''interest'' includes amounts (whether or not designated as interest) paid in respect of deposits, investment certificates, or withdrawable or repurchasable shares.

(iv) Application of subparagraph to certain obligations issued after August 7, 1986

For application of this subparagraph to certain obligations issued after August 7, 1986, see section 265(b)(3). That portion of any obligation not taken into account under paragraph (2)(A) of section 265(b) by reason of paragraph (7) of such section shall be treated for purposes of this section as having been acquired on August 7, 1986.

(2) Section 1245 and 1250 property

The terms ''section 1245 property'' and ''section 1250 property'' have the meanings given such terms by sections 1245(a)(3) and 1250(c), respectively.

(Added Pub. L. 97–248, title II, § 204(a), Sept. 3, 1982, 96 Stat. 423; amended Pub. L. 97–354, § 5(a)(27), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97–448, title III, § 306(a)(2), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title I, § 68(a), (b), title VII, § 712(a)(1)(A), (2)–(4), July 18, 1984, 98 Stat. 588, 946; Pub. L. 99–514, title II, § 201(d)(5), title IV, §§ 411(a), (b)(2)(C)(ii), 412(b)(1), title IX, §§ 901(b)(4), (d)(4)(C), 902(c), title XVIII, §§ 1804(k)(1), (3)(A), 1854(c)(1), 1876(b)(1), Oct. 22, 1986, 100 Stat. 2140, 2225, 2227, 2378, 2380, 2382, 2809, 2878, 2898; Pub. L. 100–418, title I, § 1941(b)(5), Aug. 23, 1988, 102 Stat. 1324; Pub. L. 100–647, title I, § 1009(b)(4), (5), Nov. 10, 1988, 102 Stat. 3449; Pub. L. 101–508, title XI, § 11801(c)(12)(B), Nov. 5, 1990, 104 Stat. 1388–527; Pub. L. 104–188, title I, §§ 1602(b)(1), 1616(b)(5), Aug. 20, 1996, 110 Stat. 1833, 1856; Pub. L. 110–172, § 11(g)(6), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 111–5, div. B, title I, § 1501(b), Feb. 17, 2009, 123 Stat. 353.)

AMENDMENTS

2009—Subsec. (e)(1)(B)(iv). Pub. L. 111–5 inserted at end ''That portion of any obligation not taken into account under paragraph (2)(A) of section 265(b) by reason of paragraph (7) of such section shall be treated for purposes of this section as having been acquired on August 7, 1986.''

2007—Subsec. (a)(4), (5). Pub. L. 110–172, § 11(g)(6)(A), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''In the case of taxable years beginning after December 31, 1984, section 923(a) shall be applied with respect to any FSC by substituting—

''(A) '30 percent' for '32 percent' in paragraph (2), and

''(B) '$15\frac{23}{23}$' for '$16\frac{23}{23}$' in paragraph (3).

If all of the stock in the FSC is not held by 1 or more C corporations throughout the taxable year, under reg-

ulations, proper adjustments shall be made in the application of the preceding sentence to take into account stock held by persons other than C corporations.''

Subsec. (c)(1). Pub. L. 110–172, §11(g)(6)(B), substituted ''subsection (a)(4)'' for ''subsection (a)(5)''.

1996—Subsec. (e)(1)(B)(i). Pub. L. 104–188, §1616(b)(5), struck out ''or to which section 593 applies'' after ''585(a)(2))''.

Subsec. (e)(1)(B)(iv), (v). Pub. L. 104–188, §1602(b)(1), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: ''SPECIAL RULES FOR OBLIGATIONS TO WHICH SECTION 133 APPLIES.—In the case of an obligation to which section 133 applies, interest on such obligation shall not be treated as exempt from taxes for purposes of this subparagraph.''

1990—Subsec. (e)(1)(A). Pub. L. 101–508 struck out subpar. (A) ''Excess reserves for losses on bad debts of financial institutions'' which read as follows: ''In the case of a financial institution to which section 585 applies, the excess of—

''(i) the amount which would, but for this section, be allowable as a deduction for the taxable year for a reasonable addition to a reserve for bad debts, over

''(ii) the amount which would have been allowable had such institution maintained its bad debt reserve for all taxable years on the basis of actual experience.''

1988—Subsec. (b)(4). Pub. L. 100–418 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''For purposes of this subsection, the term 'integrated oil company' means, with respect to any taxable year, any producer (within the meaning of section 4996(a)(1)) of crude oil other than an independent producer (within the meaning of section 4992(b)).''

Subsec. (e)(1)(B)(i). Pub. L. 100–647, §1009(b)(5), substituted ''section 585(a)(2)'' for ''section 582(a)(2)''.

Subsec. (e)(1)(B)(iv), (v). Pub. L. 100–647, §1009(b)(4), redesignated cl. (iv), relating to application of subparagraph to certain obligations issued after Aug. 7, 1986, as (v).

1986—Subsec. (a). Pub. L. 99–514, §1804(k)(3)(A), substituted ''Reduction'' for ''20-percent reduction'' in heading.

Subsec. (a)(1)(A). Pub. L. 99–514, §201(d)(5)(A), struck out ''or section 1245 recovery property'' after ''section 1245 property''.

Subsec. (a)(2). Pub. L. 99–514, §412(b)(1), substituted ''20 percent'' for ''15 percent''.

Subsec. (a)(4). Pub. L. 99–514, §1876(b)(1), substituted ''Certain FSC income'' for ''Certain deferred FSC income'' in heading and amended text generally. Prior to amendment, text read as follows: ''If a C corporation is a shareholder of the FSC, in the case of taxable years beginning after December 31, 1984, section 923(a) shall be applied with respect to such corporation by substituting—

''(A) '30 percent' for '32 percent' in paragraph (2), and

''(B) '15/23' for '16/23' in paragraph (3).''

Pub. L. 99–514, §1804(k)(1), substituted ''If a C corporation'' for ''If a corporation''.

Subsec. (b)(1). Pub. L. 99–514, §411(a)(1), (b)(2)(C)(ii), substituted ''30 percent'' for ''20 percent'' in closing provisions and ''617(a)'' for ''617'' in subpar. (B).

Subsec. (b)(2) to (6). Pub. L. 99–514, §411(a)(2), added pars. (2) to (5) and struck out former pars. (2) to (6) as follows: former par. (2), special rule for amounts not allowable as deductions under paragraph (1), related in subpar. (A) to intangible drilling costs and in subpar. (B) to mineral exploration and development costs; former par. (3) defined applicable percentage in accordance with table for taxable years 1 to 5; former par. (4) dispositions, related in subpar. (A) to oil, gas, and geothermal property, in subpar. (B) to application of section 617(d) of this title, and in subpar. (C) to recapture of investment credit; former par. (5) defined integrated oil company; and former par. (6) related to coordination with cost depletion.

Subsec. (c)(1). Pub. L. 99–514, §201(d)(5)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For purposes of subclause (1) of section 168(d)(1)(A)(ii), a taxpayer shall not be treated as electing the amortization deduction under section 169 with respect to that portion of the basis not taken into account under section 169 by reason of subsection (a)(5).''

Subsec. (e)(1)(A). Pub. L. 99–514, §901(b)(4), struck out ''or 593'' after ''section 585''.

Subsec. (e)(1)(B). Pub. L. 99–514, §902(c)(2)(C), substituted ''1982, and before August 8, 1986'' for ''1982'' in heading.

Subsec. (e)(1)(B)(i). Pub. L. 99–514, §902(c)(1), (2)(A), substituted ''1982, and before August 8, 1986'' for ''1982'' and ''(but for this paragraph or section 265(b))'' for ''(but for this paragraph)''.

Pub. L. 99–514, §901(d)(4)(C), substituted ''which is a bank (as defined in section 582(a)(2)) or to which section 593 applies'' for ''to which section 585 or 593 applies''.

Subsec. (e)(1)(B)(ii). Pub. L. 99–514, §902(c)(2)(B), inserted ''and section 265(b)''.

Subsec. (e)(1)(B)(iv). Pub. L. 99–514, §1854(c)(1), added cl. (iv) relating to special rules for obligations to which section 133 applies.

Pub. L. 99–514, §902(c)(2)(D), added cl. (iv) relating to application of subparagraph to certain obligations issued after August 7, 1986.

Subsec. (e)(2). Pub. L. 99–514, §201(d)(5)(C), struck out '', 'section 1245 recovery property','' after '' 'section 1245 property' '' and directed that par. (2) be amended by striking out '', section 1245(a)(5),'' which was executed by striking out '', 1245(a)(5),'' after ''sections 1245(a)(3)'' to reflect the probable intent of Congress.

1984—Subsec. (a). Pub. L. 98–369, §68(a), which directed that each subsection be amended by substituting ''20 percent'' for ''15 percent'' wherever appearing, was executed in heading by substituting ''20-percent'' for ''15-percent'' to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 98–369, §68(a), substituted ''20 percent'' for ''15 percent'' in provisions preceding subpar. (A).

Pub. L. 98–369, §712(a)(1)(A)(ii), inserted ''under section 1250'' in provisions following subpar. (B).

Subsec. (a)(1)(B). Pub. L. 98–369, §712(a)(1)(A)(i), inserted ''(determined without regard to this paragraph)''.

Subsec. (a)(3). Pub. L. 98–369, §68(a), substituted ''20 percent'' for ''15 percent''.

Subsec. (a)(4). Pub. L. 98–369, §68(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''(4) CERTAIN DEFERRED DISC INCOME.—If a corporation is a shareholder of a DISC, in the case of taxable years beginning after December 31, 1982, section 995(b)(1)(F)(i) shall be applied with respect to such corporation by substituting '57.5 percent' for 'one-half'.''

Subsec. (a)(5). Pub. L. 98–369, §68(a), substituted ''20 percent'' for ''15 percent''.

Subsec. (b)(1). Pub. L. 98–369, §68(a), substituted ''20 percent'' for ''15 percent'' in provisions following subpar. (B).

Subsec. (b)(2)(B)(ii). Pub. L. 98–369, §712(a)(2), inserted ''in the case of a deposit located in the United States,''.

Subsec. (b)(6). Pub. L. 98–369, §712(a)(3), substituted ''attributable to amounts to which paragraph (1) applied'' for ''attributable to intangible drilling and development costs or mining exploration and development costs''.

Subsec. (e)(1)(B)(iii). Pub. L. 98–369, §712(a)(4), added cl. (iii).

1983—Subsec. (a)(1). Pub. L. 97–448 inserted provision that, under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent section 1250(a) does not apply to such disposition by reason of section 1250(d).

1982—Subsec. (a). Pub. L. 97–354, §5(a)(27)(A), substituted ''a corporation'' for ''an applicable corporation'' wherever appearing.

Subsec. (b). Pub. L. 97–354, §5(a)(27)(A), substituted ''a corporation'' for ''an applicable corporation''.

Subsec. (e)(2), (3). Pub. L. 97–354, §5(a)(27)(B), redesignated par. (3) as (2). Former par. (2), defining ''applicable corporation'', was struck out.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to obligations issued after Dec. 31, 2008, see section 1501(c) of Pub. L. 111–5, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

Amendment by section 1616(b)(5) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

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

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(5) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(5) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 411(a), (b)(2)(C)(ii) of Pub. L. 99–514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

Section 412(b)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 901(b)(4), (d)(4)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

Amendment by section 902(c) of Pub. L. 99–514 applicable to taxable years ending after Dec. 31, 1986, with certain exceptions and qualifications, see section 902(f) of Pub. L. 99–514, set out as a note under section 265 of this title.

Section 1804(k)(1) of Pub. L. 99–514 provided that amendment made by section 1804(k)(1) of Pub. L. 99–514 is effective with respect to taxable years beginning after Dec. 31, 1982.

Amendment by sections 1804(k)(3)(A), 1854(c)(1), and 1876(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 68(e), July 18, 1984, 98 Stat. 588, as amended by Pub. L. 99–514, § 2, title XVIII, § 1804(k)(2), Oct. 22, 1986, 100 Stat. 2095, 2809, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 57 and 995 of this title] shall apply to taxable years beginning after December 31, 1984.

''(2) 1250 GAIN.—The amendments made by this section to section 291(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and the amendment made by subsection (c)(2) of this section [amending section 57 of this title], shall apply to sales or other dispositions after December 31, 1984, in taxable years ending after such date.

''(3) POLLUTION CONTROL FACILITIES.—The amendments made by this section to section 291(a)(5) [now 291(a)(4)] of such Code, and so much of the amendment made by subsection (c)(1) of this section [amending section 57 of this title] as relates to pollution control facilities, shall apply to property placed in service after December 31, 1984, in taxable years ending after such date.

''(4) DRILLING AND MINING COSTS.—The amendments made by this section to section 291(b) of such Code shall apply to expenditures after December 31, 1984, in taxable years ending after such date.''

Amendment by section 712 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title II, § 204(d), Sept. 3, 1982, 96 Stat. 427, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and amending sections 57 and 263 of this title] shall apply to taxable years beginning after December 31, 1982.

''(2) 1250 GAIN.—Section 291(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to sales or other disposition after December 31, 1982, in taxable years ending after such date.

''(3) POLLUTION CONTROL FACILITIES.—Section 291(a)(5) [now 291(a)(4)] of such Code shall apply to property placed in service after December 31, 1982, in taxable years ending after such date.

''(4) DRILLING AND MINING COSTS.—Section 291(b) of such Code shall apply to expenditures after December 31, 1982, in taxable years ending after such date.

''(5) REDUCTION IN PERCENTAGE DEPLETION FOR COAL AND IRON ORE.—Section 291(a)(2) of such Code shall apply to taxable years beginning after December 31, 1983.

''(6) MINIMUM TAX.—The amendment made by subsection (b) [amending section 57 of this title] shall apply to taxable years ending after December 31, 1982, with respect to items of tax preference described in section 57(b) of such Code to which section 291 of such Code applies; except that in the case of an item described in section 291(a)(2) of such Code, such amendment shall apply to taxable years beginning after December 31, 1983.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see sec-

tion 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

Subchapter C—Corporate Distributions and Adjustments

Part
I. Distributions by corporations.
II. Corporate liquidations.
III. Corporate organizations and reorganizations.
[IV. Repealed.]
V. Carryovers.
VI. Treatment of certain corporate interests as stock or indebtedness.
[VII. Repealed.]

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11801(b)(5), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for part IV ''Insolvency reorganizations''.

1988—Pub. L. 100–647, title I, § 1006(e)(8)(C), Nov. 10, 1988, 102 Stat. 3401, struck out item for part VII ''Miscellaneous corporate provisions''.

1984—Pub. L. 98–369, div. A, title I, § 75(d), July 18, 1984, 98 Stat. 595, added item for part VII.

1976—Pub. L. 94–455, title XIX, § 1901(b)(15), Oct. 4, 1976, 90 Stat. 1796, struck out item for part VII ''Effective date of subchapter C.''

1969—Pub. L. 91–172, title IV, § 415(b), Dec. 30, 1969, 83 Stat. 614, redesignated item for part VI as VII and added part VI.

PART I—DISTRIBUTIONS BY CORPORATIONS

Subpart
A. Effects on recipients.
B. Effects on corporation.
C. Definitions; constructive ownership of stock.

SUBPART A—EFFECTS ON RECIPIENTS

Sec.
301. Distributions of property.
302. Distributions in redemption of stock.
303. Distributions in redemption of stock to pay death taxes.
304. Redemption through use of related corporations.
305. Distributions of stock and stock rights.
306. Dispositions of certain stock.
307. Basis of stock and stock rights acquired in distributions.

§ 301. Distributions of property

(a) In general

Except as otherwise provided in this chapter, a distribution of property (as defined in section 317(a)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in subsection (c).

(b) Amount distributed

(1) General rule

For purposes of this section, the amount of any distribution shall be the amount of money received, plus the fair market value of the other property received.

(2) Reduction for liabilities

The amount of any distribution determined under paragraph (1) shall be reduced (but not below zero) by—

(A) the amount of any liability of the corporation assumed by the shareholder in connection with the distribution, and

(B) the amount of any liability to which the property received by the shareholder is subject immediately before, and immediately after, the distribution.

(3) Determination of fair market value

For purposes of this section, fair market value shall be determined as of the date of the distribution.

(c) Amount taxable

In the case of a distribution to which subsection (a) applies—

(1) Amount constituting dividend

That portion of the distribution which is a dividend (as defined in section 316) shall be included in gross income.

(2) Amount applied against basis

That portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock.

(3) Amount in excess of basis

(A) In general

Except as provided in subparagraph (B), that portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, shall be treated as gain from the sale or exchange of property.

(B) Distributions out of increase in value accrued before March 1, 1913

That portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock and to the extent that it is out of increase in value accrued before March 1, 1913, shall be exempt from tax.

(d) Basis

The basis of property received in a distribution to which subsection (a) applies shall be the fair market value of such property.

(e) Special rule for certain distributions received by 20 percent corporate shareholder

(1) In general

Except to the extent otherwise provided in regulations, solely for purposes of determining the taxable income of any 20 percent corporate shareholder (and its adjusted basis in the stock of the distributing corporation), section 312 shall be applied with respect to the distributing corporation as if it did not contain subsections (k) and (n) thereof.

(2) 20 percent corporate shareholder

For purposes of this subsection, the term ''20 percent corporate shareholder'' means, with respect to any distribution, any corporation which owns (directly or through the application of section 318)—