

“(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

Pub. L. 85-866, title I, §97, Sept. 2, 1958, 72 Stat. 1672, 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 ex-

penses 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).¹ 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.

(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

¹ See References in Text note below.

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 to² 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 pe-

² So in original. Probably should be followed by “in”.

riod 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 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, or
- (iii) has a maturity (at issue) of not more than 1 year.

(B) Authority to include other obligations

Clauses (ii) and (iii) of subparagraph (A) shall not apply to any obligation if—

- (i) such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, 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, 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.

(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, 2016, 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 Department of Veterans Affairs, the Federal Housing Administration, or the Rural Housing Service, 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 Department of Veterans Affairs or the Rural Housing Service.

(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 disquali-

fied 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(7)) 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 non-disclosed 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)¹ 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.

(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; Pub. L. 112–240, title II, §204(a), (b), Jan. 2, 2013, 126 Stat. 2323; Pub. L. 113–295, div. A, title I, §104(a), title II, §§220(h), 221(a)(25)(A), Dec. 19, 2014, 128 Stat. 4013, 4036, 4040; Pub. L. 114–113, div. Q, title I, §152(a), Dec. 18, 2015, 129 Stat. 3066.)

REFERENCES IN TEXT

Section 469(m), referred to in subsec. (d)(4)(E), was repealed by Pub. L. 113–295, div. A, title II, §221(a)(60)(A), Dec. 19, 2014, 128 Stat. 4047.

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

2015—Subsec. (h)(3)(E)(iv)(I). Pub. L. 114–113 substituted “December 31, 2016” for “December 31, 2014”.

2014—Subsec. (d)(6). Pub. L. 113–295, §221(a)(25)(A)(i), struck out par. (6) which related to phase-in of disallowance.

Subsec. (h)(3)(E)(iv)(I). Pub. L. 113–295, §104(a), substituted “December 31, 2014” for “December 31, 2013”.

Subsec. (h)(4)(F). Pub. L. 113–295, §220(h), substituted “Department of Veterans Affairs or the Rural Housing Service” for “Veterans Administration or the Rural Housing Administration”.

Subsec. (h)(5). Pub. L. 113–295, §221(a)(25)(A)(ii), struck out par. (5). Text read as follows: “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.”

2013—Subsec. (h)(3)(E)(iv)(I). Pub. L. 112–240, §204(a), substituted “December 31, 2013” for “December 31, 2011”.

Subsec. (h)(4)(E)(i). Pub. L. 112–240, §204(b), substituted “Department of Veterans Affairs” for “Veterans Administration” and “Rural Housing Service” for “Rural Housing Administration”.

2010—Subsec. (f)(2)(A)(ii) to (iv). Pub. L. 111–147, §502(a)(2)(B), inserted “or” at end of cl. (ii), substituted

period for “, or” in cl. (iii), and struck out cl. (iv), which read as follows: “is described in subparagraph (B).”

Subsec. (f)(2)(B). Pub. L. 111-147, § 502(a)(1), (2)(C)(i), redesignated subpar. (C) as (B), struck out “, and subparagraph (B),” after “subparagraph (A)” in introductory provisions, and struck out former subpar. (B) which related to certain obligations not included as registration-required obligations.

Subsec. (f)(2)(B)(i). Pub. L. 111-147, § 502(a)(2)(C)(ii), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “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”.

Subsec. (f)(2)(C). Pub. L. 111-147, § 502(a)(1), redesignated subpar. (C) as (B).

Subsec. (f)(3). Pub. L. 111-147, § 502(c), inserted before period at end “, 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”.

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 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.”

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)(B). 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 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, §152(b), Dec. 18, 2015, 129 Stat. 3066, provided that: “The amendment made by this section [amending this section] shall apply to amounts paid or accrued after December 31, 2014.”

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, §104(b), Dec. 19, 2014, 128 Stat. 4013, provided that: “The amendment made by this section [amending this section] shall apply to amounts paid or accrued after December 31, 2013.”

Amendment by section 221(a)(25)(A) of Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title II, §204(c), Jan. 2, 2013, 126 Stat. 2323, provided that: “The amendments made by this

section [amending this section] shall apply to amounts paid or accrued after December 31, 2011.”

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 DATE 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 an Effective and Termination Dates of 2003 Amendment 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.

Pub. L. 105-34, title V, §503(d), Aug. 5, 1997, 111 Stat. 853, 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.”

Pub. L. 105-34, title X, §1005(b), Aug. 5, 1997, 111 Stat. 912, 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.

Pub. L. 104-188, title I, §1704(f)(2)(C), Aug. 20, 1996, 110 Stat. 1879, 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.

Pub. L. 103-66, title XIII, §13228(d), Aug. 10, 1993, 107 Stat. 495, 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

Pub. L. 101-239, title VII, §7202(c), Dec. 19, 1989, 103 Stat. 2332, 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.”

Pub. L. 101-239, title VII, §7210(b), Dec. 19, 1989, 103 Stat. 2342, 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 be-

fore 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

Pub. L. 100-647, title I, §1005(c)(13), Nov. 10, 1988, 102 Stat. 3392, 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

Pub. L. 100-203, title X, §10102(c), Dec. 22, 1987, 101 Stat. 1330-386, 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

Pub. L. 99-514, title V, §511(e), Oct. 22, 1986, 100 Stat. 2249, 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.

Pub. L. 98-369, div. A, title I, §56(d), July 18, 1984, 98 Stat. 574, 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 sec-

tion 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 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.

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.

Pub. L. 94-455, title II, §209(b), Oct. 4, 1976, 90 Stat. 1543, 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

Pub. L. 92-178, title III, §304(e), Dec. 10, 1971, 85 Stat. 524, 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

Pub. L. 91-172, title II, §221(b), Dec. 30, 1969, 83 Stat. 576, 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

Pub. L. 88-272, title II, §224(d), Feb. 26, 1964, 78 Stat. 79, 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

Pub. L. 100-647, title I, §1005(c)(14), Nov. 10, 1988, 102 Stat. 3392, 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

Pub. L. 98-369, div. A, title X, §1066, July 18, 1984, 98 Stat. 1048, 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.

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 (as in effect before its repeal),

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