

(Added Pub. L. 103-66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 555, §1397D; renumbered §1397F, Pub. L. 105-34, title II, §226(a), Aug. 5, 1997, 111 Stat. 820; amended Pub. L. 105-206, title VI, §6004(g)(1), July 22, 1998, 112 Stat. 796.)

AMENDMENTS

1998—Pub. L. 105-206 amended directory language of Pub. L. 105-34, §226(a). See 1997 Amendment note below.

1997—Pub. L. 105-34, §226(a), as amended by Pub. L. 105-206, renumbered section 1397D of this title as this section.

Subchapter V—Title 11 Cases

Sec.

1398. Rules relating to individuals' title 11 cases.

1399. No separate taxable entities for partnerships, corporations, etc.

AMENDMENTS

1980—Pub. L. 96-589, §3(a)(1), Dec. 24, 1980, 94 Stat. 3397, added subchapter V heading "Title 11 Cases" and items 1398 and 1399.

§ 1398. Rules relating to individuals' title 11 cases

(a) Cases to which section applies

Except as provided in subsection (b), this section shall apply to any case under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of title 11 of the United States Code in which the debtor is an individual.

(b) Exceptions where case is dismissed, etc.

(1) Section does not apply where case is dismissed

This section shall not apply if the case under chapter 7 or 11 of title 11 of the United States Code is dismissed.

(2) Section does not apply at partnership level

For purposes of subsection (a), a partnership shall not be treated as an individual, but the interest in a partnership of a debtor who is an individual shall be taken into account under this section in the same manner as any other interest of the debtor.

(c) Computation and payment of tax; basic standard deduction

(1) Computation and payment of tax

Except as otherwise provided in this section, the taxable income of the estate shall be computed in the same manner as for an individual. The tax shall be computed on such taxable income and shall be paid by the trustee.

(2) Tax rates

The tax on the taxable income of the estate shall be determined under subsection (d) of section 1.

(3) Basic standard deduction

In the case of an estate which does not itemize deductions, the basic standard deduction for the estate for the taxable year shall be the same as for a married individual filing a separate return for such year.

(d) Taxable year of debtors

(1) General rule

Except as provided in paragraph (2), the taxable year of the debtor shall be determined

without regard to the case under title 11 of the United States Code to which this section applies.

(2) Election to terminate debtor's year when case commences

(A) In general

Notwithstanding section 442, the debtor may (without the approval of the Secretary) elect to treat the debtor's taxable year which includes the commencement date as 2 taxable years—

- (i) the first of which ends on the day before the commencement date, and
- (ii) the second of which begins on the commencement date.

(B) Spouse may join in election

In the case of a married individual (within the meaning of section 7703), the spouse may elect to have the debtor's election under subparagraph (A) also apply to the spouse, but only if the debtor and the spouse file a joint return for the taxable year referred to in subparagraph (A)(i).

(C) No election where debtor has no assets

No election may be made under subparagraph (A) by a debtor who has no assets other than property which the debtor may treat as exempt property under section 522 of title 11 of the United States Code.

(D) Time for making election

An election under subparagraph (A) or (B) may be made only on or before the due date for filing the return for the taxable year referred to in subparagraph (A)(i). Any such election, once made, shall be irrevocable.

(E) Returns

A return shall be made for each of the taxable years specified in subparagraph (A).

(F) Annualization

For purposes of subsections (b), (c), and (d) of section 443, a return filed for either of the taxable years referred to in subparagraph (A) shall be treated as a return made under paragraph (1) of subsection (a) of section 443.

(3) Commencement date defined

For purposes of this subsection, the term "commencement date" means the day on which the case under title 11 of the United States Code to which this section applies commences.

(e) Treatment of income, deductions, and credits

(1) Estate's share of debtor's income

The gross income of the estate for each taxable year shall include the gross income of the debtor to which the estate is entitled under title 11 of the United States Code. The preceding sentence shall not apply to any amount received or accrued by the debtor before the commencement date (as defined in subsection (d)(3)).

(2) Debtor's share of debtor's income

The gross income of the debtor for any taxable year shall not include any item to the extent that such item is included in the gross income of the estate by reason of paragraph (1).

(3) Rule for making determinations with respect to deductions, credits, and employment taxes

Except as otherwise provided in this section, the determination of whether or not any amount paid or incurred by the estate—

(A) is allowable as a deduction or credit under this chapter, or

(B) is wages for purposes of subtitle C,

shall be made as if the amount were paid or incurred by the debtor and as if the debtor were still engaged in the trades and businesses, and in the activities, the debtor was engaged in before the commencement of the case.

(f) Treatment of transfers between debtor and estate

(1) Transfer to estate not treated as disposition

A transfer (other than by sale or exchange) of an asset from the debtor to the estate shall not be treated as a disposition for purposes of any provision of this title assigning tax consequences to a disposition, and the estate shall be treated as the debtor would be treated with respect to such asset.

(2) Transfer from estate to debtor not treated as disposition

In the case of a termination of the estate, a transfer (other than by sale or exchange) of an asset from the estate to the debtor shall not be treated as a disposition for purposes of any provision of this title assigning tax consequences to a disposition, and the debtor shall be treated as the estate would be treated with respect to such asset.

(g) Estate succeeds to tax attributes of debtor

The estate shall succeed to and take into account the following items (determined as of the first day of the debtor's taxable year in which the case commences) of the debtor—

(1) Net operating loss carryovers

The net operating loss carryovers determined under section 172.

(2) Charitable contributions carryovers

The carryover of excess charitable contributions determined under section 170(d)(1).

(3) Recovery of tax benefit items

Any amount to which section 111 (relating to recovery of tax benefit items) applies.

(4) Credit carryovers, etc.

The carryovers of any credit, and all other items which, but for the commencement of the case, would be required to be taken into account by the debtor with respect to any credit.

(5) Capital loss carryovers

The capital loss carryover determined under section 1212.

(6) Basis, holding period, and character of assets

In the case of any asset acquired (other than by sale or exchange) by the estate from the debtor, the basis, holding period, and character it had in the hands of the debtor.

(7) Method of accounting

The method of accounting used by the debtor.

(8) Other attributes

Other tax attributes of the debtor, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of this section.

(h) Administration, liquidation, and reorganization expenses; carryovers and carrybacks of certain excess expenses

(1) Administration, liquidation, and reorganization expenses

Any administrative expense allowed under section 503 of title 11 of the United States Code, and any fee or charge assessed against the estate under chapter 123 of title 28 of the United States Code, to the extent not disallowed under any other provision of this title, shall be allowed as a deduction.

(2) Carryback and carryover of excess administrative costs, etc., to estate taxable years

(A) Deduction allowed

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (i) the administrative expense carryovers to such year, plus (ii) the administrative expense carrybacks to such year.

(B) Administrative expense loss, etc.

If a net operating loss would be created or increased for any estate taxable year if section 172(c) were applied without the modification contained in paragraph (4) of section 172(d), then the amount of the net operating loss so created (or the amount of the increase in the net operating loss) shall be an administrative expense loss for such taxable year which shall be an administrative expense carryback to each of the 3 preceding taxable years and an administrative expense carryover to each of the 7 succeeding taxable years.

(C) Determination of amount carried to each taxable year

The portion of any administrative expense loss which may be carried to any other taxable year shall be determined under section 172(b)(2), except that for each taxable year the computation under section 172(b)(2) with respect to the net operating loss shall be made before the computation under this paragraph.

(D) Administrative expense deductions allowed only to estate

The deductions allowable under this chapter solely by reason of paragraph (1), and the deduction provided by subparagraph (A) of this paragraph, shall be allowable only to the estate.

(i) Debtor succeeds to tax attributes of estate

In the case of a termination of an estate, the debtor shall succeed to and take into account the items referred to in paragraphs (1), (2), (3), (4), (5), and (6) of subsection (g) in a manner similar to that provided in such paragraphs (but taking into account that the transfer is from the estate to the debtor instead of from the debtor to the estate). In addition, the debtor shall succeed to and take into account the other

tax attributes of the estate, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of this section.

(j) Other special rules

(1) Change of accounting period without approval

Notwithstanding section 442, the estate may change its annual accounting period one time without the approval of the Secretary.

(2) Treatment of certain carrybacks

(A) Carrybacks from estate

If any carryback year of the estate is a taxable year before the estate's first taxable year, the carryback to such carryback year shall be taken into account for the debtor's taxable year corresponding to the carryback year.

(B) Carrybacks from debtor's activities

The debtor may not carry back to a taxable year before the debtor's taxable year in which the case commences any carryback from a taxable year ending after the case commences.

(C) Carryback and carryback year defined

For purposes of this paragraph—

(i) Carryback

The term “carryback” means a net operating loss carryback under section 172 or a carryback of any credit provided by part IV of subchapter A.

(ii) Carryback year

The term “carryback year” means the taxable year to which a carryback is carried.

(Added Pub. L. 96-589, §3(a)(1), Dec. 24, 1980, 94 Stat. 3397; amended Pub. L. 99-514, title I, §104(b)(14), title XIII, §1301(j)(8), title XVIII, §1812(a)(5), Oct. 22, 1986, 100 Stat. 2105, 2658, 2833.)

REFERENCES IN TEXT

Part IV of subchapter A, referred to in subsec. (j)(2)(C)(i), probably means part IV of subchapter A of chapter 1 of this title.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-514, §104(b)(14)(A), substituted “basic standard deduction” for “zero bracket amount” in heading.

Subsec. (c)(3). Pub. L. 99-514, §104(b)(14)(B), amended par. (3) generally, substituting “Basic standard deduction” for “Amount of zero bracket amount” in heading and substituting “In the case of an estate which does not itemize deductions, the basic standard deduction for the estate” for “The amount of the estate's zero bracket amount” in text.

Subsec. (d)(2)(B). Pub. L. 99-514, §1301(j)(8), substituted “section 7703” for “section 143”.

Subsec. (g)(3). Pub. L. 99-514, §1812(a)(5), amended par. (3) generally. Prior to amendment, par. (3), recovery exclusion, read as follows: “Any recovery exclusion under section 111 (relating to recovery of bad debts, prior taxes, and delinquency amounts).”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(14) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1812(a)(5) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Subchapter applicable to bankruptcy cases commencing more than 90 days after Dec. 24, 1980, see section 7(b) of Pub. L. 96-589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

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

§ 1399. No separate taxable entities for partnerships, corporations, etc.

Except in any case to which section 1398 applies, no separate taxable entity shall result from the commencement of a case under title 11 of the United States Code.

(Added Pub. L. 96-589, §3(a)(1), Dec. 24, 1980, 94 Stat. 3400.)

[Subchapter W—Repealed]

[[§§ 1400 to 1400C. Repealed. Pub. L. 115-141, div. U, title IV, § 401(d)(4)(A), Mar. 23, 2018, 132 Stat. 1209]]

Section 1400, added Pub. L. 105-34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 863; amended Pub. L. 105-206, title VI, §6008(a), July 22, 1998, 112 Stat. 811; Pub. L. 106-554, §1(a)(7) [title I, §§113(c), 116(b)(5), 164(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-601, 2763A-603, 2763A-625; Pub. L. 108-311, title III, §310(a), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109-432, div. A, title I, §110(a)(1), Dec. 20, 2006, 120 Stat. 2939; Pub. L. 110-343, div. C, title III, §322(a)(1), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111-312, title VII, §754(a), Dec. 17, 2010, 124 Stat. 3321, related to establishment of DC Zone.

Section 1400A, added Pub. L. 105-34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 864; amended Pub. L. 105-206, title VI, §6008(b), July 22, 1998, 112 Stat. 811; Pub. L. 106-554, §1(a)(7) [title I, §164(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-625; Pub. L. 108-311, title III, §310(b), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109-432, div. A, title I, §110(b)(1), Dec. 20, 2006, 120 Stat. 2939; Pub. L. 110-343, div. C, title III, §322(b)(1), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111-312, title VII, §754(b), Dec. 17, 2010, 124 Stat. 3321, related to tax-exempt economic development bonds.

Section 1400B, added Pub. L. 105-34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 864; amended Pub. L. 105-206, title VI, §6008(c), July 22, 1998, 112 Stat. 811; Pub. L. 106-554, §1(a)(7) [title I, §§116(b)(5), 164(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-603, 2763A-625; Pub. L. 108-311, title III, §310(c)(1)-(2)(B), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109-432, div. A, title I, §110(c)(1)-(2)(B), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110-343, div. C, title III, §322(c)(1), (2)(A), (B), Oct. 3, 2008, 122 Stat. 3874; Pub. L. 111-312, title VII, §754(c), Dec. 17, 2010, 124 Stat. 3321, related to zero percent capital gains rate.

Section 1400C, added Pub. L. 105-34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 867; amended Pub. L. 105-206, title