TITLE 26—INTERNAL REVENUE CODE

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Definition of ‘person’ shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) Partnership and partner

The term ‘partnership’ includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term ‘partner’ includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) Corporation

The term ‘corporation’ includes associations, joint-stock companies, and insurance companies.

(4) Domestic

The term ‘domestic’ when applied to a corporation or partnership means created or organized in the United States or under the laws of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

(5) Foreign

The term ‘foreign’ when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) Fiduciary

The term ‘fiduciary’ means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) Stock

The term ‘stock’ includes shares in an association, joint-stock company, or insurance company.
(8) Shareholder
The term “shareholder” includes a member in an association, joint-stock company, or insurance company.

(9) United States
The term “United States” when used in a geographical sense includes only the States and the District of Columbia.

(10) State
The term “State” shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) Secretary of the Treasury and Secretary
(A) Secretary of the Treasury
The term “Secretary of the Treasury” means the Secretary of the Treasury, personally, and shall not include any delegate of his.

(B) Secretary
The term “Secretary” means the Secretary of the Treasury or his delegate.

(12) Delegate
(A) In general
The term “or his delegate”—
(i) when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context; and
(ii) when used with reference to any other official of the United States, shall be similarly construed.

(B) Performance of certain functions in Guam or American Samoa
The term “delegate,” in relation to the performance of functions in Guam or American Samoa with respect to the taxes imposed by chapters 1, 2, and 21, also includes any officer or employee of any other department or agency of the United States, or of any possession thereof, duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform such functions.

(13) Commissioner
The term “Commissioner” means the Commissioner of Internal Revenue.

(14) Taxpayer
The term “taxpayer” means any person subject to any internal revenue tax.

(15) Military or naval forces and armed forces of the United States
The term “military or naval forces of the United States” and the term “Armed Forces of the United States” each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

(16) Withholding agent
The term “withholding agent” means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461.

(17) Husband and wife
As used in section 2516, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such section, the term “wife” shall be read “former wife” and the term “husband” shall be read “former husband”; and, if the payments described in such section are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such section, the term “husband” shall be read “wife” and the term “wife” shall be read “husband.”

(18) International organization
The term “international organization” means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f).

(19) Domestic building and loan association
The term “domestic building and loan association” means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association—

(A) which is subject by law to supervision and examination by State or Federal authority having supervision over such associations;

(B) the business of which consists principally of acquiring the savings of the public and investing in loans; and

(C) at least 60 percent of the amount of the total assets of which (at the close of the taxable year) consists of—

(i) cash,

(ii) obligations of the United States or of a State or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof, but not including obligations the interest on which is excludable from gross income under section 103,

(iii) certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations,

(iv) loans secured by a deposit or share of a member,

(v) loans (including redeemable ground rents, as defined in section 1865) secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential
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real property or real property used primarily for church purposes, provided that for purposes of this clause, residential real property shall include single or multi-family dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis,

(vi) loans secured by an interest in real property located within an urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part B of title I of the Housing Act of 1949, as amended, or loans made for the improvement of any such real property,

(vii) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities,

(viii) property acquired through the liquidation of defaulted loans described in clause (v), (vi), or (vii),

(ix) loans made for the payment of expenses of college or university education or vocational training, in accordance with such regulations as may be prescribed by the Secretary,

(x) property used by the association in the conduct of the business described in subparagraph (B), and

(xi) any regular or residual interest in a REMIC, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC are assets described in clauses (i) through (x), the entire interest in the REMIC shall qualify.

At the election of the taxpayer, the percentage specified in this subparagraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year, computed under regulations prescribed by the Secretary. For purposes of clause (v), if a multifamily structure securing a loan is used in part for nonresidential purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds 80 percent of the property’s planned use (determined as of the time the loan is made). For purposes of clause (v), loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if, under regulations prescribed by the Secretary, there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such 3-year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC’s are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi).

(20) Employee

For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees, for the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident and health insurance or accident and health plans, and for the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, and for purposes of applying section 125 with respect to cafeteria plans, the term “employee” shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21.

(21) Levy

The term “levy” includes the power of distraint and seizure by any means.

(22) Attorney General

The term “Attorney General” means the Attorney General of the United States.

(23) Taxable year

The term “taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed under subtitle A. “Taxable year” means, in the case of a return made for a fractional part of a year under the provisions of subtitle A or under regulations prescribed by the Secretary, the period for which such return is made.

(24) Fiscal year

The term “fiscal year” means an accounting period of 12 months ending on the last day of any month other than December.

(25) Paid or incurred, paid or accrued

The terms “paid or incurred” and “paid or accrued” shall be construed according to the method of accounting upon the basis of which the taxable income is computed under subtitle A.

(26) Trade or business

The term “trade or business” includes the performance of the functions of a public office.

(27) Tax Court

The term “Tax Court” means the United States Tax Court.

(28) Other terms

Any term used in this subtitle with respect to the application of, or in connection with,
the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) **Internal Revenue Code**


(30) **United States person**

The term "United States person" means—

(A) a citizen or resident of the United States,

(B) a domestic partnership,

(C) a domestic corporation,

(D) any estate (other than a foreign estate, within the meaning of paragraph (31)), and

(E) any trust if—

(i) a court within the United States is able to exercise primary supervision over the administration of the trust, and

(ii) one or more United States persons have the authority to control all substantial decisions of the trust.

(31) **Foreign estate or trust**

(A) **Foreign estate**

The term "foreign estate" means an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.

(B) **Foreign trust**

The term "foreign trust" means any trust other than a trust described in subparagraph (B) of paragraph (31)), and

(ii) at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, an agreement for lease of railroad properties entered into before January 1, 1954 shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into before January 1, 1954.
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(36) Tax return preparer

The term “tax return preparer” means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this title or any claim for refund of tax imposed by this title. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.

(B) Exceptions

A person shall not be a “tax return preparer” merely because such person—

(i) furnishes typing, reproducing, or other mechanical assistance,

(ii) prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed,

(iii) prepares as a fiduciary a return or claim for refund for any person, or

(iv) prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to such taxpayer or in response to any waiver of restriction after the commencement of an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

(37) Individual retirement plan

The term “individual retirement plan” means—

(A) an individual retirement account described in section 408(a), and

(B) an individual retirement annuity described in section 408(b).

(38) Joint return

The term “joint return” means a single return made jointly under section 6013 by a husband and wife.

(39) Persons residing outside United States

If any citizen or resident of the United States does not reside in (and is not found in) any United States judicial district, such citizen or resident shall be treated as residing in the District of Columbia for purposes of any provision of this title relating to—

(A) jurisdiction of courts, or

(B) enforcement of summons.

(40) Indian tribal government

(A) In general

The term “Indian tribal government” means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

(B) Special rule for Alaska Natives

No determination under subparagraph (A) with respect to Alaska Natives shall grant or defer any status or powers other than those enumerated in section 7871. Nothing in the Indian Tribal Governmental Tax Status Act of 1982, or in the amendments made thereby, shall validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.

(41) TIN

The term “TIN” means the identifying number assigned to a person under section 6109.

(42) Substituted basis property

The term “substituted basis property” means property which is—

(A) transferred basis property, or

(B) exchanged basis property.

(43) Transferred basis property

The term “transferred basis property” means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to the basis in the hands of the donor, grantor, or other transferor.

(44) Exchanged basis property

The term “exchanged basis property” means property having a basis determined under any
provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to other property held at any time by the person for whom the basis is to be determined.

(45) Nonrecognition transaction

The term “nonrecognition transaction” means any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A.

(46) Determination of whether there is a collective bargaining agreement

In determining whether there is a collective bargaining agreement between employee representatives and 1 or more employers, the term “employee representatives” shall not include any organization more than one-half of the members of which are employees who are owners, officers, or executives of the employer. An agreement shall not be treated as a collective bargaining agreement unless it is a bona fide agreement between bona fide employee representatives and 1 or more employers.


(48) Off-highway vehicles

(A) Off-highway transportation vehicles

(i) In general

A vehicle shall not be treated as a high-

way vehicle if such vehicle is specially de-

signed for the primary function of trans-

porting a particular type of load other

than over the public highway and because

of this special design such vehicle’s capa-

bility to transport a load over the public

highway is substantially limited or im-

paired.

(ii) Determination of vehicle’s design

For purposes of clause (i), a vehicle’s de-

sign is determined solely on the basis of

its physical characteristics.

(iii) Determination of substantial limitation

or impairment

For purposes of clause (i), in determining

whether substantial limitation or impair-

ment exists, account may be taken of fac-

tors such as the size of the vehicle, whe-

ther such vehicle is subject to the licensing,

safety, and other requirements applicable
to highway vehicles, and whether such ve-

hicle can transport a load at a sustained

speed of at least 25 miles per hour. It is im-

material that a vehicle can transport a

greater load off the public highway than

such vehicle is permitted to transport over

the public highway.

(B) Nontransportation trailers and semitrailers

A trailer or semitrailer shall not be treat-
ded as a highway vehicle if it is specially de-
signed to function only as an enclosed sta-
nationary shelter for the carrying on of an off-
highway function at an off-highway site.

(49) Qualified blood collector organization

The term “qualified blood collector organi-

zation” means an organization which is—

(A) described in section 501(c)(3) and ex-

empt from tax under section 501(a),

(B) primarily engaged in the activity of

the collection of human blood,

(C) registered with the Secretary for pur-

poses of excise tax exemptions, and

(D) registered by the Food and Drug Ad-

ministration to collect blood.

(50) Termination of United States citizenship

(A) In general

An individual shall not cease to be treated

as a United States citizen before the date on

which the individual’s citizenship is treated

as relinquished under section 877A(g)(4).

(B) Dual citizens

Under regulations prescribed by the Sec-

retary, subparagraph (A) shall not apply to

an individual who became at birth a citizen

of the United States and a citizen of another

country.

(b) Definition of resident alien and nonresident alien

(1) In general

For purposes of this title (other than sub-
title B)—

(A) Resident alien

An alien individual shall be treated as a res-

ident of the United States with respect to

any calendar year if (and only if) such indi-

vidual meets the requirements of clause (i),

(ii), or (iii):

(i) Lawfully admitted for permanent resi-
dence

Such individual is a lawful permanent

resident of the United States at any time
during such calendar year.

(ii) Substantial presence test

Such individual meets the substantial

presence test of paragraph (3).

(iii) First year election

Such individual makes the election pro-
vided in paragraph (4).

(B) Nonresident alien

An individual is a nonresident alien if such

individual is neither a citizen of the United

States nor a resident of the United States

(within the meaning of subparagraph (A)).

(2) Special rules for first and last year of resi-
dency

(A) First year of residency

(i) In general

If an alien individual is a resident of the

United States under paragraph (1)(A) with

respect to any calendar year, but was not

a resident of the United States at any time
during the preceding calendar year, such

alien individual shall be treated as a resi-
dent of the United States only for the por-
tion of such calendar year which begins on

the residency starting date.
(ii) Residency starting date for individuals lawfully admitted for permanent residence

In the case of an individual who is a lawfully permanent resident of the United States at any time during the calendar year, but does not meet the substantial presence test of paragraph (3), the residency starting date shall be the first day in such calendar year on which he was present in the United States while a lawful permanent resident of the United States.

(iii) Residency starting date for individuals meeting substantial presence test

In the case of an individual who meets the substantial presence test of paragraph (3) with respect to any calendar year, the residency starting date shall be the first day during such calendar year on which the individual is present in the United States.

(iv) Residency starting date for individuals making first year election

In the case of an individual who makes the election provided by paragraph (4) with respect to any calendar year, the residency starting date shall be the first day during such calendar year on which the individual is treated as a resident of the United States under that paragraph.

(B) Last year of residency

An alien individual shall not be treated as a resident of the United States during a portion of any calendar year if—

(i) such portion is after the last day in such calendar year on which the individual was present in the United States (or, in the case of an individual described in paragraph (1)(A)(i), the last day on which he was so described),

(ii) during such portion the individual has a closer connection to a foreign country than to the United States, and

(iii) the individual is not a resident of the United States at any time during the next calendar year.

(C) Certain nominal presence disregarded

(i) In general

For purposes of subparagraphs (A)(iii) and (B), an individual shall not be treated as present in the United States during any period for which the individual establishes that he has a closer connection to a foreign country than to the United States.

(ii) Not more than 10 days disregarded

Clause (i) shall not apply to more than 10 days on which the individual is present in the United States.

(3) Substantial presence test

(A) In general

Except as otherwise provided in this paragraph, an individual meets the substantial presence test of this paragraph with respect to any calendar year (hereinafter in this subsection referred to as the “current year”) if—

(i) such individual was present in the United States on at least 31 days during the calendar year, and

(ii) the sum of the number of days on which such individual was present in the United States during the current year and the 2 preceding calendar years (when multiplied by the applicable multiplier determined under the following table) equals or exceeds 183 days:

<table>
<thead>
<tr>
<th>In the case of days in:</th>
<th>The applicable multiplier is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current year</td>
<td>1</td>
</tr>
<tr>
<td>1st preceding year</td>
<td>$\frac{1}{2}$</td>
</tr>
<tr>
<td>2nd preceding year</td>
<td>$\frac{1}{3}$</td>
</tr>
</tbody>
</table>

(B) Exception where individual is present in the United States during less than one-half of current year and closer connection to foreign country is established

An individual shall not be treated as meeting the substantial presence test of this paragraph with respect to any current year if—

(i) such individual is present in the United States on fewer than 183 days during the current year, and

(ii) it is established that for the current year such individual has a tax home (as defined in section 911(d)(3) without regard to the second sentence thereof) in a foreign country and has a closer connection to such foreign country than to the United States.

(C) Subparagraph (B) not to apply in certain cases

Subparagraph (B) shall not apply to any individual with respect to any current year if at any time during such year—

(i) such individual had an application for adjustment of status pending, or

(ii) such individual took other steps to apply for status as a lawful permanent resident of the United States.

(D) Exception for exempt individuals or for certain medical conditions

An individual shall not be treated as being present in the United States on any day if—

(i) such individual is an exempt individual for such day, or

(ii) such individual was unable to leave the United States on such day because of a medical condition which arose while such individual was present in the United States.

(4) First-year election

(A) An alien individual shall be deemed to meet the requirements of this subparagraph if such individual—

(i) is not a resident of the United States under clause (i) or (ii) of paragraph (1)(A) with respect to a calendar year (hereinafter referred to as the “election year”),

(ii) was not a resident of the United States under paragraph (1)(A) with respect to the calendar year immediately preceding the election year,

(iii) is a resident of the United States under clause (ii) of paragraph (1)(A) with re-
pect to the calendar year immediately following the election year, and
(iv) is both—
(I) present in the United States for a period of at least 31 consecutive days in the election year, and
(II) present in the United States during the period beginning with the first day of such 31-day period and ending with the last day of the election year (hereinafter referred to as the “testing period”) for a number of days equal to or exceeding 75 percent of the number of days in the testing period (provided that an individual shall be treated for purposes of this subclause as present in the United States for a number of days during the testing period not exceeding 5 days in the aggregate, notwithstanding his absence from the United States on such days).

(B) An alien individual who meets the requirements of subparagraph (A) shall, if he so elects, be treated as a resident of the United States with respect to the election year.

(C) An alien individual who makes the election provided by subparagraph (B) shall be treated as a resident of the United States for the portion of the election year for which an election was made under subparagraph (A).

(D) The rules of subparagraph (D)(i) of paragraph (3) shall apply for purposes of determining an individual’s presence in the United States under this paragraph.

(E) An election under subparagraph (B) shall be made on the individual’s tax return for the election year, provided that such election may not be made before the individual has met the substantial presence test of paragraph (3) with respect to the calendar year immediately following the election year.

(F) An election once made under subparagraph (B) remains in effect for the election year, unless revoked with the consent of the Secretary.

(5) Exempt individual defined
For purposes of this subsection—

(A) In general
An individual is an exempt individual for any day if, for such day, such individual is—
(i) a foreign government-related individual,
(ii) a teacher or trainee,
(iii) a student, or
(iv) a professional athlete who is temporarily in the United States to compete in a sports event—
(1) which is organized for the primary purpose of benefiting an organization which is described in section 501(c)(3) and exempt from tax under section 501(a),
(2) all of the net proceeds of which are contributed to such organization, and,\(^1\)
(3) which utilizes volunteers for substantially all of the work performed in carrying out such event.

(B) Foreign government-related individual
The term “foreign government-related individual” means any individual temporarily present in the United States by reason of—
(i) diplomatic status, or a visa which the Secretary (after consultation with the Secretary of State) determines represents full-time diplomatic or consular status for purposes of this subsection,
(ii) being a full-time employee of an international organization, or
(iii) being a member of the immediate family of an individual described in clause (i) or (ii).

(C) Teacher or trainee
The term “teacher or trainee” means any individual—
(i) who is temporarily present in the United States under subparagraph (J) or (Q) of section 101(15) of the Immigration and Nationality Act (other than as a student), and
(ii) who substantially complies with the requirements for being so present.

(D) Student
The term “student” means any individual—
(i) who is temporarily present in the United States—
(1) under subparagraph (F) or (M) of section 101(15) of the Immigration and Nationality Act, or
(2) as a student under subparagraph (J) or (Q) of such section 101(15), and
(ii) who substantially complies with the requirements for being so present.

(E) Special rules for teachers, trainees, and students
(i) Limitation on teachers and trainees
An individual shall not be treated as an exempt individual by reason of clause (ii) of subparagraph (A) for the current year if, for any 2 calendar years during the preceding 6 calendar years, such person was an exempt person under clause (ii) or (iii) of subparagraph (A). In the case of an individual all of whose compensation is described in section 872(b)(3), the preceding sentence shall be applied by substituting “4 calendar years” for “2 calendar years”.

(ii) Limitation on students
For any calendar year after the 5th calendar year for which an individual was an exempt individual under clause (ii) or (iii) of subparagraph (A), such individual shall not be treated as an exempt individual by reason of clause (iii) of subparagraph (A), unless such individual establishes to the satisfaction of the Secretary that such individual does not intend to permanently reside in the United States and that such individual meets the requirements of subparagraph (D)(ii).

(6) Lawful permanent resident
For purposes of this subsection, an individual is a lawful permanent resident of the United States at any time if—

\(^1\) So in original. The comma probably should not appear.
(A) such individual has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, and
(B) such status has not been revoked (and has not been administratively or judicially determined to have been abandoned).

An individual shall cease to be treated as a lawful permanent resident of the United States if such individual commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country, does not waive the benefits of such treaty applicable to residents of the foreign country, and notifies the Secretary of the commencement of such treatment.

(7) Presence in the United States

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), (C), or (D), an individual shall be treated as present in the United States on any day if such individual is physically present in the United States at any time during such day.

(B) Commuters from Canada or Mexico

If an individual regularly commutes to employment (or self-employment) in the United States from a place of residence in Canada or Mexico, such individual shall not be treated as present in the United States on any day during which he so commutes.

(C) Transit between 2 foreign points

If an individual, who is in transit between 2 points outside the United States, is physically present in the United States for less than 24 hours, such individual shall not be treated as present in the United States on any day during such transit.

(D) Crew members temporarily present

An individual who is temporarily present in the United States on any day as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States shall not be treated as present in the United States on such day.

(8) Annual statements

The Secretary may prescribe regulations under which an individual who (but for subparagraph (B) or (D) of paragraph (3)) would meet the substantial presence test of paragraph (3) is required to submit an annual statement setting forth the basis on which such individual claims the benefits of subparagraph (B) or (D) of paragraph (3), as the case may be.

(9) Taxable year

(A) In general

For purposes of this title, an alien individual who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(B) Fiscal year taxpayer

If—

(i) an individual is treated under paragraph (1) as a resident of the United States for any calendar year, and

(ii) after the application of subparagraph (A), such individual has a taxable year other than a calendar year,

he shall be treated as a resident of the United States with respect to any portion of a taxable year which is within such calendar year.

(10) Coordination with section 877

If—

(A) an alien individual was treated as a resident of the United States during any period which includes at least 3 consecutive calendar years (hereinafter referred to as the “initial residency period”), and

(B) such individual ceases to be treated as a resident of the United States but subsequently becomes a resident of the United States before the close of the 3rd calendar year beginning after the close of the initial residency period,

such individual shall be taxable for the period after the close of the initial residency period and before the day on which he subsequently became a resident of the United States in the manner provided in section 877(b). The preceding sentence shall apply only if the tax imposed pursuant to section 877(b) exceeds the tax which, without regard to this paragraph, is imposed pursuant to section 871.

(11) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(c) Includes and including

The terms “includes” and “including” when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(d) Commonwealth of Puerto Rico

Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(e) Treatment of certain contracts for providing services, etc.

For purposes of chapter 1—

(1) In general

A contract which purports to be a service contract shall be treated as a lease of property if such contract is properly treated as a lease of property, taking into account all relevant factors including whether or not—

(A) the service recipient is in physical possession of the property,

(B) the service recipient controls the property,

(C) the service recipient has a significant economic or possessory interest in the property.
(D) the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract,

(E) the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient, and

(F) the total contract price does not substantially exceed the rental value of the property for the contract period.

(2) Other arrangements

An arrangement (including a partnership or other pass-thru entity) which is not described in paragraph (1) shall be treated as a lease if such arrangement is properly treated as a lease, taking into account all relevant factors including factors similar to those set forth in paragraph (1).

(3) Special rules for contracts or arrangements involving solid waste disposal, energy, and clean water facilities

(A) In general

Notwithstanding paragraphs (1) and (2), and except as provided in paragraph (4), any contract or arrangement between a service provider and a service recipient—

(i) with respect to—

(I) the operation of a qualified solid waste disposal facility,

(II) the sale to the service recipient of electrical or thermal energy produced at a cogeneration or alternative energy facility, or

(III) the operation of a water treatment works facility, and

(ii) which purports to be a service contract,

shall be treated as a service contract.

(B) Qualified solid waste disposal facility

For purposes of subparagraph (A), the term “qualified solid waste disposal facility” means any facility if such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed at such facility is collected from the general public.

(C) Cogeneration facility

For purposes of subparagraph (A), the term “cogeneration facility” means a facility which uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy.

(D) Alternative energy facility

For purposes of subparagraph (A), the term “alternative energy facility” means a facility for producing electrical or thermal energy if the primary energy source for the facility is not oil, natural gas, coal, or nuclear power.

(E) Water treatment works facility

For purposes of subparagraph (A), the term “water treatment works facility” means any treatment works within the meaning of section 212(2) of the Federal Water Pollution Control Act.

(4) Paragraph (3) not to apply in certain cases

(A) In general

Paragraph (3) shall not apply to any qualified solid waste disposal facility, cogeneration facility, alternative energy facility, or water treatment works facility used under a contract or arrangement if—

(i) the service recipient (or a related entity) operates such facility,

(ii) the service recipient (or a related entity) bears any significant financial burden if there is nonperformance under the contract or arrangement if—

(I) the service recipient (or a related entity) has an option to purchase, or may be required to purchase, all or a part of such facility at a fixed and determinable price (other than for fair market value),

For purposes of this paragraph, the term “related entity” has the same meaning as when used in section 168(h).

(B) Special rules for application of subparagraph (A) with respect to certain rights and allocations under the contract

For purposes of subparagraph (A), there shall not be taken into account—

(i) any right of a service recipient to inspect any facility, to exercise any sovereign power the service recipient may possess, or to act in the event of a breach of contract by the service provider, or

(ii) any allocation of any financial burden or benefits in the event of any change in any law.

(C) Special rules for application of subparagraph (A) in the case of certain events

(i) Temporary shut-downs, etc.

For purposes of clause (ii) of subparagraph (A), there shall not be taken into account any temporary shut-down of the facility for repairs, maintenance, or capital improvements, or any financial burden caused by the bankruptcy or similar financial difficulty of the service provider.

(ii) Reduced costs

For purposes of clause (iii) of subparagraph (A), there shall not be taken into account any significant financial benefit merely because payments by the service recipient under the contract or arrangement are decreased by reason of increased production or efficiency or the recovery of energy or other products.

(5) Exception for certain low-income housing

This subsection shall not apply to any property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) (relating to low-income housing) if—
(A) such property is operated by or for an organization described in paragraph (3) or (4) of section 501(c), and
(B) at least 80 percent of the units in such property are leased to low-income tenants (within the meaning of section 167(k)(3)(B)) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(6) Regulations
The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection.

(f) Use of related persons or pass-thru entities
The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of those provisions of this title which deal with—

(1) the linking of borrowing to investment, or
(2) diminishing risks,

through the use of related persons, pass-thru entities, or other intermediaries.

(g) Clarification of fair market value in the case of nonrecourse indebtedness
For purposes of subtitle A, in determining the amount of gain or loss (or deemed gain or loss) with respect to any property, the fair market value of such property shall be treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject.

(h) Motor vehicle operating leases
(1) In general
For purposes of this title, in the case of a qualified motor vehicle operating agreement which contains a terminal rental adjustment clause—

(A) such agreement shall be treated as a lease if (but for such terminal rental adjustment clause) such agreement would be treated as a lease under this title, and
(B) the lessee shall not be treated as the owner of the property subject to an agreement during any period such agreement is in effect.

(2) Qualified motor vehicle operating agreement defined
For purposes of this subsection—

(A) In general
The term “qualified motor vehicle operating agreement” means any agreement with respect to a motor vehicle (including a trailer) which meets the requirements of subparagraphs (B), (C), and (D) of this paragraph.

(B) Minimum liability of lessor
An agreement meets the requirements of this subparagraph if under such agreement the sum of—

(i) the amount the lessor is personally liable to repay, and
(ii) the net fair market value of the lessor’s interest in any property pledged as security for property subject to the agreement,
equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. There shall not be taken into account under clause (ii) any property pledged which is property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement.

(C) Certification by lessee; notice of tax ownership
An agreement meets the requirements of this subparagraph if such agreement contains a separate written statement separately signed by the lessee—

(i) under which the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to such agreement is to be in a trade or business of the lessee, and
(ii) which clearly and legibly states that the lessee has been advised that it will not be treated as the owner of the property subject to the agreement for Federal income tax purposes.

(D) Lessor must have no knowledge that certification is false
An agreement meets the requirements of this subparagraph if the lessor does not know that the certification described in subparagraph (C)(i) is false.

(3) Terminal rental adjustment clause defined
(A) In general
For purposes of this subsection, the term “terminal rental adjustment clause” means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property.

(B) Special rule for lessee dealers
The term “terminal rental adjustment clause” also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in subparagraph (A).

(i) Taxable mortgage pools
(1) Treated as separate corporations
A taxable mortgage pool shall be treated as a separate corporation which may not be treated as an includible corporation with any other corporation for purposes of section 1501.

(2) Taxable mortgage pool defined
For purposes of this title—

(A) In general
Except as otherwise provided in this paragraph, a taxable mortgage pool is any entity (other than a REMIC) if—

(i) substantially all of the assets of such entity consists of debt obligations (or interests therein) and more than 50 percent of such debt obligations (or interests) consists of real estate mortgages (or interests therein),
(ii) such entity is the obligor under debt obligations with 2 or more maturities, and
(j) Tax treatment of Federal Thrift Savings Fund

(1) In general

For purposes of this title—

(A) the Thrift Savings Fund shall be treated as a trust described in section 401(a) which is exempt from taxation under section 501(a);

(B) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(C) subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(e)(3), contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of subchapter III of chapter 84 of title 5, United States Code, and section 8331 of such title 5, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(2) Nondiscrimination requirements

Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the nondiscrimination requirements applicable to arrangements described in section 401(k) or to matching contributions (as described in section 401(m)), so long as it meets the requirements of this section.

(3) Coordination with Social Security Act

Paragraph (1) shall not be construed to provide that any amount of the employee’s or Member’s basic pay which is contributed to the Thrift Savings Fund shall not be included in the term “wages” for the purposes of section 200 of the Social Security Act or section 3121(a) of this title.

(4) Definitions

For purposes of this subsection, the terms “Member”, “employee”, and “Thrift Savings Fund” shall have the same respective meanings as when used in subchapter III of chapter 84 of title 5, United States Code.

(5) Coordination with other provisions of law

No provision of law not contained in this title shall apply for purposes of determining the treatment under this title of the Thrift Savings Fund or any contribution to, or distribution from, such Fund.

(k) Treatment of certain amounts paid to charity

In the case of any payment which, except for section 501(b) of the Ethics in Government Act of 1978, might be made to any officer or employee of the Federal Government but which is made instead on behalf of such officer or employee to an organization described in section 170(c)—

(1) such payment shall not be treated as received by such officer or employee for all purposes of this title and for all purposes of any tax law of a State or political subdivision thereof, and

(2) no deduction shall be allowed under any provision of this title (or of any tax law of a State or political subdivision thereof) to such officer or employee by reason of having such payment made to such organization.

(l) Regulations relating to conduit arrangements

The Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by this title.

(m) Designation of contract markets

Any designation by the Commodity Futures Trading Commission of a contract market which could not have been made under the law in effect on the day before the date of the enactment of the Commodity Futures Modernization Act of 2000 shall apply for purposes of this title except to the extent provided in regulations prescribed by the Secretary.

(n) Convention or association of churches

For purposes of this title, any organization which is otherwise a convention or association of churches shall not fail to so qualify merely because the membership of such organization includes individuals as well as churches or because
individuals have voting rights in such organization.

(o) Clarification of economic substance doctrine

(1) Application of doctrine

In the case of any transaction to which the economic substance doctrine is relevant, such transaction shall be treated as having economic substance only if—

(A) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer’s economic position, and

(B) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction.

(2) Special rule where taxpayer relies on profit potential

(A) In general

The potential for profit of a transaction shall be taken into account in determining whether the requirements of subparagraphs (A) and (B) of paragraph (1) are met with respect to the transaction only if the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected.

(B) Treatment of fees and foreign taxes

Fees and other transaction expenses shall be taken into account as expenses in determining pre-tax profit under subparagraph (A). The Secretary shall issue regulations requiring foreign taxes to be treated as expenses in determining pre-tax profit in appropriate cases.

(3) State and local tax benefits

For purposes of paragraph (1), any State or local income tax effect which is related to a Federal income tax effect shall be treated in the same manner as a Federal income tax effect.

(4) Financial accounting benefits

For purposes of paragraph (1)(B), achieving a financial accounting benefit shall not be taken into account as a purpose for entering into a transaction if the origin of such financial accounting benefit is a reduction of Federal income tax.

(5) Definitions and special rules

For purposes of this subsection—

(A) Economic substance doctrine

The term “economic substance doctrine” means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

(B) Exception for personal transactions of individuals

In the case of an individual, paragraph (1) shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

(C) Determination of application of doctrine not affected

The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted.

(D) Transaction

The term “transaction” includes a series of transactions.

(p) Cross references

(1) Other definitions

For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.

(2) Plural as including singular, section 1.

(3) Masculine as including feminine, section 1.

(4) Officer, section 1.

(5) Oath as including affirmation, section 1.

(6) County as including parish, section 2.

(7) Vessel as including all means of water transportation, section 3.

(8) Vehicle as including all means of land transportation, section 4.

(9) Company or association as including successors and assigns, section 5.

(2) Effect of cross references

For effect of cross references in this title, see section 7806(a).
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(i) is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a)), or

(ii) is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and


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Subsecs. (o), (p), Pub. L. 111–152 added subsec. (o) and redesignated former subsec. (o) as (p).


Subsecs. (n) to (p), Pub. L. 110–245, § 301(c)(3), redesignated former subsecs. (o) and (p) as (n) and (o), respectively, and struck out former subsec. (n) which related to special rules for determining when an individual is no longer a United States citizen or long-term resident.

2008—Subsec. (a)(36). Pub. L. 110–28, § 824(a)(11)(A), which directed the striking out of “income” in heading, was executed by substituting “Tax” for “Income tax” to reflect the probable intent of Congress.


2005—Subsec. (n). Pub. L. 109–135 reenacted heading with change and amended text generally. Prior to amendment, text read as follows: “An individual who would (but for this subsection) cease to be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States, as the case may be, until such individual—

“(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and

“(2) provides a statement in accordance with section 6039G.”


”...and regular interest in a REMIC.” and struck out “or FASIT” after “entire interest in the REMIC” in both places.


Subsecs. (n), (o). Pub. L. 108–357, § 804(b), added subsec. (n) and redesignated former subsec. (n) as (o).


2000—Subsecs. (m), (n). Pub. L. 106–554 added subsec. (m) and redesignated former subsec. (m) as (n).

1997—Subsec. (a)(4). Pub. L. 105–34, § 151(a), inserted before period at end “(i) any income from a REMIC or from an interest in a REMIC, whether or not such REMIC is a REMIC subject to section 402(a)(8),”.


Subsec. (b)(1)(A). Pub. L. 105–34, § 1177(b)(2), substituted “(c), or (D)” for “(c)”.


1996—Subsec. (a)(19)(C)(xi). Pub. L. 104–188, § 1621(b)(8), amended cl. (xi) generally. Prior to amendment, cl. (xi) read as follows: “any regular or residual interest in a REMIC, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC are assets described in clauses (1) through (x), the entire interest in the REMIC shall qualify.”

Subsec. (a)(20). Pub. L. 104–188, § 1402(b)(3), struck out “...for purposes of applying the provisions of section 101(b) with respect to employees’ death benefits” after “health plans.”

Subsec. (a)(30)(C) to (E). Pub. L. 104–188, § 1907(a)(1), struck out “and” at end of subpar. (c), added subpars. (D) and (E), and struck out former subpar. (D) which read as follows: “any estate or trust (other than a foreign estate or foreign trust, within the meaning of section 7701(a)(31)).”

Subsec. (a)(31). Pub. L. 104–188, § 1907(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The terms ‘foreign trust’ and ‘foreign estate’ mean an estate or trust, as the case may be, the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.”


1993—Subsec. (f)(1)(m). Pub. L. 103–166 added subsec. (f) and redesignated former subsec. (f) as (m).


1991—Subsec. (k). Pub. L. 102–90 amended last sentence generally. Prior to amendment, last sentence read as follows: “For purposes of this subsection, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government or a Senator or officer (except the Vice President) or a Delegate or a Resident Commissioner to the Senate shall not be treated as an officer or employee of the Federal Government.”

1990—Subsec. (e)(5)(B). Pub. L. 101–508, § 11812(b)(13), inserted before period at end “(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).”

Subsec. (j)(1)(C). Pub. L. 101–508, § 11704(a)(34), substituted “(C) subject to section 401(k)(4)(B)” and any dollar limitation on the application of section 402(a)(8)” for “(C) subject to section 401(k)(4)(B)” and any dollar limitation on the application of section 402(a)(8),”.


1988—Subsec. (a)(19). Pub. L. 100–647, § 1006(b)(25)(A), inserted at end “For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xii) except that, if such REMIC’s are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xli).”

Subsec. (a)(19)(C)(xi). Pub. L. 100–647, § 1006(b)(12), substituted “are assets described” for “are loans described”.

Subsec. (a)(20). Pub. L. 100–647, § 1001(b)(e), substituted “and 125” and inserted “and for pur-
posses of applying section 125 with respect to cafeteria plans,” before “the term”.


Subsec. (b)(5)(D)(i). Pub. L. 100–447, § 1001(d)(24)(D), substituted “paragraph (F) or (M)” for “paragraph (F)”.


1987—Subsec. (j)(1)(C). Pub. L. 100–202, § 101(m)(1)(title VI, § 624(a)(1)), which directed that “the provisions of paragraph (2)” and after “subject to” be struck out, was executed by adding cl. (iv) to subpar. (5)(A) to reflect the probable intent of Congress and the internal Revenue Code of 1986”, for “Internal Revenue Code”, as intended at end “For purposes of this paragraph, the term ‘related entity’ has the same meaning as when used in section 168(j).”

Subsec. (e)(5). Pub. L. 100–647, § 201(d)(14)(B), as amended by Pub. L. 100–647, § 1002(a)(2), substituted “property described in clause (i), (ii), (iii), or (iv) of section 1250a(a)(1)(B) (relating to low-income housing)” for “low-income housing (within the meaning of section 168(c)(2)(F))”.


Subsec. (h). Pub. L. 99–514, § 201(c), added subsec. (h). Former subsec. (h), relating to cross references, was successively redesignated as (i), (j), and (k).

Subsec. (i). Pub. L. 99–514, § 673, added subsec. (i). Former subsec. (i), relating to cross references, as previously redesignated, was successively redesignated as (j) and (k).

Subsec. (j). Pub. L. 99–514, § 1147(a), added subsec. (j). Former subsec. (j), relating to cross references, as previously redesignated, was redesignated as (k).

Subsec. (k). Pub. L. 99–514, § 201(c), 673, 1147(a), successively redesignated subsec. (h), relating to cross references, as subsecs. (i), (j), and (k).


Subsec. (a)(33)(E). Pub. L. 98–445 substituted “Secretary of Transportation” for “Civil Aeronautics Board”.


Subsec. (a)(34). Pub. L. 98–369, § 412(b)(11), repealed par. (34) which defined estimated income tax in the case of an individual or a corporation as the estimated tax defined in section 6051(d) or 6154(c), respectively.

Subsec. (a)(37)(C). Pub. L. 98–369, § 491(d)(53), struck out subpar. (C) which included a retirement bond described in section 409 within the term “individual plan”.


Subsec. (b). Pub. L. 98–369, § 138(a), added subsec. (b). Former subsec. (b), relating to includes and including, redesignated (c).

Subsec. (c). Pub. L. 98–369, § 138(a), redesignated former subsec. (b), relating to includes and including, as (c). Former subsec. (c), relating to Commonwealth of Puerto Rico, redesignated (d).

Subsec. (d). Pub. L. 98–369, § 138(a), redesignated former subsec. (c), relating to Commonwealth of Puerto Rico, as (d). Former subsec. (d), relating to cross references, redesignated (e).


Subsec. (f). Former subsec. (f), relating to cross references, redesignated (g).

Pub. L. 98–369, § 31(e), redesignated former subsec. (e), relating to cross references, as (f).

Subsec. (g). Pub. L. 98–369, § 75(c), added subsec. (g).

Former subsec. (g), relating to cross references, redesignated (h).

Pub. L. 98–369, § 53(c), redesignated former subsec. (f), relating to cross references, as (g).

Subsec. (h). Pub. L. 98–369, § 75(c), redesignated former subsec. (g), relating to cross references, as (h).


1982—Subsec. (a)(16). Pub. L. 97–248, §§ 307(a)(17), 308(a), provided that, applicable to payments of inter-
est, dividends, and patronage dividends paid or credited after June 30, 1983, par. (16) is amended by substituting “1961 or 1964” for “or 1961,” Section 102(a), (b), (c), and (d) of Title 1, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1986 [now 1986] [this title] shall be applied and administered subject to certain exceptions as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

Subsec. (a)(3). Pub. L. 97-248, §201(a)(10), formerly §201(c)(10), added par. (3) relating to joint return.

Pub. L. 97-248, §336(a), added par. (36) to section 1906(b)(13)(A), struck out “or his delegate” after “Secretary of the Treasury” and “or Territory” after “any State”.

(37). Pub. L. 97-248, §336(a), added par. (36) to section 1906(b)(13)(A), struck out “or his delegate” after “Secretary of the Treasury” and “or Territory” after “any State”.

(38). Pub. L. 97-248, §336(a), added par. (36) to section 1906(b)(13)(A), struck out “or his delegate” after “Secretary of the Treasury” and “or Territory” after “any State”.

Statutory Notes and Related Subsidiaries

Effective Date of 2017 Amendment
Amendment by section 11051(b)(4) of Pub. L. 115–97 applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title) as in effect before Dec. 22, 2017 executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115–97 applies to such modification, see section 11051(c) of Pub. L. 115–97, set out as a note under section 61 of this title.

Amendment by section 13304(a)(2)(F) of Pub. L. 115–97 applicable to amounts incurred or paid after Dec. 31, 2017, see section 13304(e)(1) of Pub. L. 115–97, set out as a note under section 274 of this title.

Effective Date of 2014 Amendment

Effective Date of 2010 Amendment
Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.


Effective Date of 2008 Amendment
Amendment by Pub. L. 110–245 applicable to any individual whose expatriation date is on or after June 17, 2008, see section 301(g)(1) of Pub. L. 110–245, set out as an Effective Date note under section 2801 of this title.

Effective Date of 2007 Amendment
Amendment by Pub. L. 110–28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110–28, set out as a note under section 6060 of this title.

Effective Date of 2006 Amendment

Effective Date of 2005 Amendment

Effective Date of 2004 Amendments
Amendment by section 804(b) of Pub. L. 108–357 applicable to individuals who expatriate after June 3, 2004,
see section 804(f) of Pub. L. 108-357, set out as a note under section 877 of this title.

Amendment by section 633(b)(10), (11) of Pub. L. 108-357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108-357, set out as a note under section 56 of this title.


"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section and sections 861 and 863 of this title] shall apply to partnerships formed in taxable years beginning after December 31, 1997.

"(2) FUEL TAXES.—With respect to taxes imposed under subchapter B of chapter 31 and part III of subchapter A of chapter 32, the amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."


Effective Date of 2001 Amendment


Effective Date of 1997 Amendment

Pub. L. 105-34, title XI, §1151(b), Aug. 5, 1997, 111 Stat. 986, provided that: "Any regulations issued with respect to the amendment made by subsection (a) [amending this section] shall apply to partnerships created or organized after the date determined under section 7805(b) of the Internal Revenue Code of 1986 (with out regard to paragraph (2) thereof) with respect to such regulations."

Pub. L. 105-34, title XI, §1174(c), Aug. 5, 1997, 111 Stat. 989, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 861 and 863 of this title] shall apply to remuneration for services performed in taxable years beginning after December 31, 1997.

"(2) PRESENCE.—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1997."

Amendment by section 1601(i)(3)(A) of Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(i) of Pub. L. 105-34, set out as a note under section 23 of this title.

Effective Date of 1996 Amendments

Pub. L. 105-34, title XVI, §1601(i)(4), Aug. 5, 1997, 111 Stat. 1063, provided that: "The Secretary of the Treasury may by regulations or other administrative guidance provide that the amendments made by section 1907(a) of the Small Business Job Protection Act of 1996 [Pub. L. 104-188, amending this section] shall not apply to a trust with respect to a reasonable period beginning on the date of the enactment of such Act [Aug. 20, 1996], if—

"(A) such trust is in existence on August 20, 1996, and is a United States person for purposes of the Internal Revenue Code of 1986 on such date (determined without regard to such amendments), or

"(B) no election is in effect under section 1907(a)(3)(B) of such Act [set out as a note below] with respect to such trust.

"(C) before the expiration of such reasonable period, such trust makes the modifications necessary to be treated as a United States person for purposes of such Code (determined with regard to such amendment and subsection (a)).

"(D) such trust meets such other conditions as the Secretary may require."
pealed, in which case the laws in effect before such amendments shall be deemed to be reenacted."

**Effective Date of 1988 Amendment**

Amendment by title I of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions 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 201(c), (d)(14) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 233 and 234 of Pub. L. 99–514, set out as a note under section 1 of this title. Amendment by section 201(c), (d)(14) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1984, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.


Amendment by section 673 of Pub. L. 99–514 effective Jan. 1, 1992, but not applicable to any entity in existence on Dec. 31, 1991, except with respect to any entity as of the first day after Dec. 31, 1991, on which there is a substantial transfer of cash or other property to such entity, and for purposes of applying section 860F(d) of this title, applicable to taxable years beginning after Dec. 31, 1986, see section 675(c) of Pub. L. 99–514, set out as an Effective Date note under section 866A of this title.


Amendment by sections 1802(a)(9)(C), 1810(h)(1)-(4), 1842(d) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 1 of this title.


**Effective Date of 1984 Amendments**


Amendment by section 31(e) of Pub. L. 98–369 effective, except as otherwise provided in section 31(g) of Pub. L. 98–369, as to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before May 22, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983, except that in the case of a service contract or other arrangement described in section 7701(e) of this title with respect to which no party is a tax-exempt entity, section 7701(e) shall not apply to (A) such contract or other arrangement if such contract or other arrangement was entered into before Nov. 5, 1983, or (B) any renewal or other extension of such contract or other arrangement pursuant to an option contained in such contract or other arrangement on Nov. 5, 1983, see section 31(g)(1), (3) of Pub. L. 98–369, set out as a note under section 1 of this title.

Amendment by section 43a(1) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title. Amendment by section 53(c) of Pub. L. 98–369 effective July 18, 1984, except as otherwise provided, see section 53(c)(2)(A) of Pub. L. 98–369, as amended, set out as an Effective Date note under section 1059 of this title.

Amendment by section 75(c) of Pub. L. 98–369 applicable to distributions, sales, and exchanges made after Mar. 31, 1984, in taxable years ending after such date, see section 75(e) of Pub. L. 98–369, set out as an Effective Date note under section 386 of this title.


"(1) In general.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.

"(2) Transitional rule for applying substantial presence test.—"(A) If an alien individual was not a resident of the United States as of the close of calendar year 1984, the determination of whether such individual meets the substantial presence test of section 7701(b)(3) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (as added by this section) shall be made by only taking into account presence after 1984.

"(B) If an alien individual was a resident of the United States as of the close of calendar year 1984, but was not a resident of the United States as of the close of calendar year 1983, the determination of whether such individual meets such substantial presence test shall be made by only taking into account presence in the United States after 1983.

"(3) Transitional rule for applying lawful presence test.—In the case of any individual who—

" "(A) was a lawful permanent resident of the United States (within the meaning of section 7701(b)(5) of the Internal Revenue Code of 1986, as added by this section) throughout calendar year 1984, or

" "(B) was present in the United States at any time during 1984 while such individual was a lawful permanent resident of the United States (within the meaning of such section 7701(b)(5)), for purposes of section 7701(b)(2)(A) of such Code (as so added), such individual shall be treated as a resident of the United States during 1984."


Amendment by section 422(d)(3) of Pub. L. 98–369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification, see section 422(e)(1), (2) of Pub. L. 98–369, set out as a note under section 219 of this title.

Amendment by section 491(f)(1) of Pub. L. 98–369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98–369, set out as a note under section 866A of this title.


Effective Date of 1983 Amendments


For effective date of amendment by Pub. L. 97–473, see section 204 of Pub. L. 97–473, set out as an Effective Date note under section 7671 of this title.

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Respon-
sibility Act of 1962, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

**Effective Date of 1982 Amendment**

Amendment by section 201(d)(10) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Pub. L. 97–248, title III, § 338(b), Sept. 3, 1982, 96 Stat. 629, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

**Effective Date of 1981 Amendment**

Amendment by Pub. L. 97–34 applicable to estimated tax for taxable years beginning after Dec. 31, 1980, see section 725(d) of Pub. L. 97–34, set out as a note under section 5 of this title.

**Effective Date of 1978 Amendment**

Amendment by section 157(k)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1974, see section 157(k)(3) of Pub. L. 95–600, set out as a note under section 6058 of this title.

Amendment by section 701(cc)(2) of Pub. L. 95–600 applicable to documents prepared after Dec. 31, 1976, see section 701(cc)(3) of Pub. L. 95–600, set out as a note under section 6095 of this title.

**Effective Date of 1976 Amendment**

Pub. L. 94–455, title XII, § 1203(j), Oct. 4, 1976, 90 Stat. 1695, provided that: "The amendments made by this section [enacting sections 6060, 6107, 6694, 6695, 6696, 7407, and 7427 of this title, renumbering former sections 7407 and 7427 as 7408 and 7428 of this title, respectively, and amending this section and sections 6109, 6693, 6694, and 6511 of this title] shall apply to documents prepared after December 31, 1976."

Amendment by section 1906(a)(57), (b)(13)(A), (c)(3) of Pub. L. 94–455 effective on first day of first month which begins more than ninety days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

**Effective Date of 1972 Amendment**

Amendment by Pub. L. 92–608 applicable with respect to taxable years beginning after Dec. 31, 1972, see section 2 of Pub. L. 92–608, set out in part as an Effective Date note under section 931 of this title.

**Effective Date of 1969 Amendment**

Amendment by section 432(c), (d) of Pub. L. 91–172 effective for taxable years beginning after July 11, 1969, see section 432(e) of Pub. L. 91–172, set out as a note under section 501 of this title.


**Effective Date of 1968 Amendment**


**Effective Date of 1966 Amendments**

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 106(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Aug. 12, 1966, see section 102(d) of Pub. L. 89–388, set out as a note under section 665a of this title.

**Effective Date of 1961 Amendment**

Amendment by section 204(a)(3) of Pub. L. 88–272 applicable to group-term life insurance provided after Dec. 31, 1963, in taxable years ending after such date, see section 204(d) of Pub. L. 88–272, set out as an Effective Date note under section 79 of this title.

Amendment by section 234(b)(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

**Effective Date of 1962 Amendments**

Pub. L. 87–670, § 8(b), Oct. 23, 1962, 76 Stat. 1162, provided that: "The amendment made by subsection (a) of this section (amending this section) shall apply with respect to taxable years beginning after the date of the enactment of the Revenue Act of 1962 [Oct. 16, 1962]."

Pub. L. 87–831, § 6(g)(3), Oct. 16, 1962, 76 Stat. 985, provided that: "The amendment made by subsection (c) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 16, 1962]."

**Effective Date of 1960 Amendments**


Amendment by Pub. L. 86–624 effective August 21, 1959, see section 18(k) of Pub. L. 86–624, set out as a note under section 3121 of this title.

**Effective Date of 1959 Amendment**

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(l) of Pub. L. 86–70, set out as a note under section 3122 of this title.

**Savings Provision**

For provisions that nothing in amendment by section 401(b)(54), (55) of Pub. L. 89–114 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115–141, set out as a note under section 23 of this title.

Amendment by Pub. L. 115–141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

**Transfer of Functions**

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 406(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation and all functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of other offices and officers of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 8(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in former section 3 (now 103) of Title 14, Coast Guard.

**Plan Amendments Not Required Until January 1, 1998**

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title 1 of Pub. L.
§ 7702. Life insurance contract defined

(a) General rule

For purposes of this title, the term ‘life insurance contract’ means any contract which is a life insurance contract under the applicable law, but only if such contract—

(1) meets the cash value accumulation test of subsection (b), or

(2)(A) meets the guideline premium requirements of subsection (c), and

(B) falls within the cash value corridor of subsection (d).

(b) Cash value accumulation test for subsection (a)(1)

(1) In general

A contract meets the cash value accumulation test of this subsection if, by the terms of the contract, the cash surrender value of such contract may not at any time exceed the net single single premium which would have to be paid at such time to fund future benefits under the contract.

(2) Rules for applying paragraph (1)

Determinations under paragraph (1) shall be made—

(A) on the basis of interest at the greater of the applicable accumulation test minimum rate or the rate or rates guaranteed on issuance of the contract,

(B) on the basis of the rules of subparagraph (B)(i) (and, in the case of qualified additional benefits, subparagraph (B)(ii) of subsection (c)(3)), and

(C) by taking into account under subparagraphs (A) and (D) of subsection (e)(1) only current and future death benefits and qualified additional benefits.

(3) Applicable accumulation test minimum rate

For purposes of paragraph (2)(A), the term ‘applicable accumulation test minimum rate’ means the lesser of—

(A) an annual effective rate of 4 percent, or

(B) the insurance interest rate (as defined in subsection (f)(11)) in effect at the time the contract is issued.

(c) Guideline premium requirements

For purposes of this section—

(1) In general

A contract meets the guideline premium requirements of this subsection if the sum of the premiums paid under such contract does not at any time exceed the guideline premium limitation as of such time.

(2) Guideline premium limitation

The term ‘guideline premium limitation’ means, as of any date, the greater of—

(A) the guideline single premium, or

(B) the sum of the guideline level premiums to such date.

(3) Guideline single premium

(A) In general

The term ‘guideline single premium’ means the premium at issue with respect to future benefits under the contract.

(B) Basis on which determination is made

The determination under subparagraph (A) shall be based on—

(1) reasonable mortality charges which meet the requirements prescribed in regulations to be promulgated by the Secretary or that do not exceed the mortality charges specified in the prevailing commissioners’ standard tables as defined in subsection (f)(10),