

in the ordinary course of business shall be treated as engaged in over-the-counter sales of property.”

TRANSITIONAL RULE FOR DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING AIRLINE

Pub. L. 99-272, title XIII, §13207(c), Apr. 7, 1986, 100 Stat. 320, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “If, as of September 12, 1984—

“(1) an individual—

“(A) was an employee (within the meaning of section 132 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], including subsection (f) [now (h)] thereof) of one member of an affiliated group (as defined in section 1504 of such Code), hereinafter referred to as the ‘first corporation’, and

“(B) was eligible for no-additional-cost service in the form of air transportation provided by another member of such affiliated group, hereinafter referred to as the ‘second corporation’,

“(2) at least 50 percent of the individuals performing service for the first corporation were or had been employees of, or had previously performed services for, the second corporation, and

“(3) the primary business of the affiliated group was air transportation of passengers, then, for purposes of applying paragraphs (1) and (2) of section 132(a) of the Internal Revenue Code of 1986, with respect to no-additional-cost services and qualified employee discounts provided after December 31, 1984, for such individual by the second corporation, the first corporation shall be treated as engaged in the same air transportation line of business as the second corporation. For purposes of the preceding sentence, an employee of the second corporation who is performing services for the first corporation shall also be treated as an employee of the first corporation.”

SPECIAL RULE FOR SERVICES RELATED TO PROVIDING AIR TRANSPORTATION

Pub. L. 98-369, div. A, title V, §531(g), as added by Pub. L. 99-272, title XIII, §13207(d), Apr. 7, 1986, 100 Stat. 320; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—If—

“(A) an individual performs services for a qualified air transportation organization, and

“(B) such services are performed primarily for persons engaged in providing air transportation and are of the kind which (if performed on September 12, 1984) would qualify such individual for no-additional-cost services in the form of air transportation,

then, with respect to such individual, such qualified air transportation organization shall be treated as engaged in the line of business of providing air transportation.

“(2) QUALIFIED AIR TRANSPORTATION ORGANIZATION.—For purposes of paragraph (1), the term ‘qualified air transportation organization’ means any organization—

“(A) if such organization (or a predecessor) was in existence on September 12, 1984,

“(B) if—

“(i) such organization is described in section 501(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and the membership of such organization is limited to entities engaged in the transportation by air of individuals or property for compensation or hire, or

“(ii) such organization is a corporation all the stock of which is owned entirely by entities referred to in clause (i), and

“(C) if such organization is operated in furtherance of the activities of its members or owners.”

DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING RETAIL DEPARTMENT STORES

Pub. L. 98-369, div. A, title V, §531(f), July 18, 1984, 98 Stat. 886, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “If—

“(1) as of October 5, 1983, the employees of one member of an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] without regard to subsections (b)(2) and (b)(4) thereof) were entitled to employee discounts at the retail department stores operated by another member of such affiliated group, and

“(2) the primary business of the affiliated group is the operation of retail department stores, then, for purpose of applying section 132(a)(2) of the Internal Revenue Code of 1986, with respect to discounts provided for such employees at the retail department stores operated by such other member, the employer shall be treated as engaged in the same line of business as such other member.”

[§ 133. Repealed. Pub. L. 104-188, title I, § 1602(a), Aug. 20, 1996, 110 Stat. 1833]

Section, added Pub. L. 98-369, div. A, title V, §543(a), July 18, 1984, 98 Stat. 891; amended Pub. L. 99-514, title XI, §1173(b)(1)(A), (2), title XVIII, §1854(c)(2)(A), (C), (D), Oct. 22, 1986, 100 Stat. 2515, 2879; Pub. L. 100-647, title I, §1011B(h)(1), (2), Nov. 10, 1988, 102 Stat. 3490; Pub. L. 101-239, title VII, §7301(a)-(c), Dec. 19, 1989, 103 Stat. 2346, 2347, prior to repeal, read as follows:

§ 133. Interest on certain loans used to acquire employer securities

(a) IN GENERAL

Gross income does not include 50 percent of the interest received by—

(1) a bank (within the meaning of section 581),

(2) an insurance company to which subchapter L applies,

(3) a corporation actively engaged in the business of lending money, or

(4) a regulated investment company (as defined in section 851),

with respect to a securities acquisition loan.

(b) SECURITIES ACQUISITION LOAN

(1) IN GENERAL

For purposes of this section, the term “securities acquisition loan” means—

(A) any loan to a corporation or to an employee stock ownership plan to the extent that the proceeds are used to acquire employer securities for the plan, or

(B) any loan to a corporation to the extent that, within 30 days, employer securities are transferred to the plan in an amount equal to the proceeds of such loan and such securities are allocable to accounts of plan participants within 1 year of the date of such loan.

For purposes of this paragraph, the term “employer securities” has the meaning given such term by section 409(f). The term “securities acquisition loan” shall not include a loan with a term greater than 15 years.

(2) LOANS BETWEEN RELATED PERSONS

The term “securities acquisition loan” shall not include—

(A) any loan made between corporations which are members of the same controlled group of corporations, or

(B) any loan made between an employee stock ownership plan and any person that is—

(i) the employer of any employees who are covered by the plan; or

(ii) a member of a controlled group of corporations which includes such employer.

For purposes of this paragraph, subparagraphs (A) and (B) shall not apply to any loan which, but for such subparagraphs, would be a securities acquisition loan if such loan was not originated by the employer of any employees who are covered by the plan or by any member of the controlled group of corporations which includes such employer, except that this section shall not apply to any interest received on such loan during such time as such loan is held by such employer (or any member of such controlled group).

(3) TERMS APPLICABLE TO CERTAIN SECURITIES ACQUISITION LOANS

A loan to a corporation shall not fail to be treated as a securities acquisition loan merely because the proceeds of such loan are lent to an employee stock ownership plan sponsored by such corporation (or by any member of the controlled group of corporations which includes such corporation) if such loan includes—

(A) repayment terms which are substantially similar to the terms of the loan of such corporation from a lender described in subsection (a), or

(B) repayment terms providing for more rapid repayment of principal or interest on such loan, but only if allocations under the plan attributable to such repayment do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)).

(4) CONTROLLED GROUP OF CORPORATIONS

For purposes of this paragraph, the term “controlled group of corporations” has the meaning given such term by section 409(l)(4).

(5) TREATMENT OF REFINANCINGS

The term “securities acquisition loan” shall include any loan which—

(A) is (or is part of a series of loans) used to refinance a loan described in subparagraph (A) or (B) of paragraph (1), and

(B) meets the requirements of paragraphs (2) and (3).

(6) PLAN MUST HOLD MORE THAN 50 PERCENT OF STOCK AFTER ACQUISITION OR TRANSFER

(A) IN GENERAL

A loan shall not be treated as a securities acquisition loan for purposes of this section unless, immediately after the acquisition or transfer referred to in subparagraph (A) or (B) of paragraph (1), respectively, the employee stock ownership plan owns more than 50 percent of—

(i) each class of outstanding stock of the corporation issuing the employer securities, or

(ii) the total value of all outstanding stock of the corporation.

(B) FAILURE TO RETAIN MINIMUM STOCK INTEREST

(i) IN GENERAL

Subsection (a) shall not apply to any interest received with respect to a securities acquisition loan which is allocable to any period during which the employee stock ownership plan does not own stock meeting the requirements of subparagraph (A).

(ii) EXCEPTION

To the extent provided by the Secretary, clause (i) shall not apply to any period if, within 90 days of the first date on which the failure occurred (or such longer period not in excess of 180 days as the Secretary may prescribe), the plan acquires stock which results in its meeting the requirements of subparagraph (A).

(C) STOCK

For purposes of subparagraph (A)—

(i) IN GENERAL

The term “stock” means stock other than stock described in section 1504(a)(4).

(ii) TREATMENT OF CERTAIN RIGHTS

The Secretary may provide that warrants, options, contracts to acquire stock, convertible debt interests and other similar interests be treated as stock for 1 or more purposes under subparagraph (A).

(D) AGGREGATION RULE

For purposes of determining whether the requirements of subparagraph (A) are met, an employee stock ownership plan shall be treated as owning stock in the corporation issuing the employer securities which is held by any other employee stock ownership plan which is maintained by—

(i) the employer maintaining the plan, or

(ii) any member of a controlled group of corporations (within the meaning of section 409(l)(4))

of which the employer described in clause (i) is a member.

(7) VOTING RIGHTS OF EMPLOYER SECURITIES

A loan shall not be treated as a securities acquisition loan for purposes of this section unless—

(A) the employee stock ownership plan meets the requirements of section 409(e)(2) with respect to all employer securities acquired by, or transferred to, the plan in connection with such loan (without regard to whether or not the employer has a registration-type class of securities), and

(B) no stock described in section 409(l)(3) is acquired by, or transferred to, the plan in connection with such loan unless—

(i) such stock has voting rights equivalent to the stock to which it may be converted, and

(ii) the requirements of subparagraph (A) are met with respect to such voting rights.

(c) EMPLOYEE STOCK OWNERSHIP PLAN

For purposes of this section, the term “employee stock ownership plan” has the meaning given to such term by section 4975(e)(7).

(d) APPLICATION WITH SECTION 483 AND ORIGINAL ISSUE DISCOUNT RULES

In applying section 483 and subpart A of part V of subchapter P to any obligation to which this section applies, appropriate adjustments shall be made to the applicable Federal rate to take into account the exclusion under subsection (a).

(e) PERIOD TO WHICH INTEREST EXCLUSION APPLIES

(1) IN GENERAL

In the case of—

(A) an original securities acquisition loan, and

(B) any securities acquisition loan (or series of such loans) used to refinance the original securities acquisition loan,

subsection (a) shall apply only to interest accruing during the excludable period with respect to the original securities acquisition loan.

(2) EXCLUDABLE PERIOD

For purposes of this subsection, the term “excludable period” means, with respect to any original securities acquisition loan—

(A) IN GENERAL

The 7-year period beginning on the date of such loan.

(B) LOANS DESCRIBED IN SUBSECTION (b)(1)(A)

If the term of an original securities acquisition loan described in subsection (b)(1)(A) is greater than 7 years, the term of such loan. This subparagraph shall not apply to a loan described in subsection (b)(3)(B).

(3) ORIGINAL SECURITIES ACQUISITION LOAN

For the purposes of this subsection, the term “original securities acquisition loan” means a securities acquisition loan described in subparagraph (A) or (B) of subsection (b)(1).

Editorial Notes

PRIOR PROVISIONS

A prior section 133 was renumbered section 140 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Pub. L. 104-188, title I, §1602(c), Aug. 20, 1996, 110 Stat. 1834, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending sections 291, 812, 852, 4978, 6047, and 7872 of this title and repealing this section and section 4978B of this title] shall apply to loans made after the date of the enactment of this Act [Aug. 20, 1996].

“(2) REFINANCINGS.—The amendments made by this section shall not apply to loans made after the date of the enactment of this Act to refinance securities acquisition loans (determined without regard to section 133(b)(1)(B) of the Internal Revenue Code of 1986, as in

effect on the day before the date of the enactment of this Act) [set out above] made on or before such date or to refinance loans described in this paragraph if—

“(A) the refinancing loans meet the requirements of section 133 of such Code (as so in effect),

“(B) immediately after the refinancing the principal amount of the loan resulting from the refinancing does not exceed the principal amount of the refinanced loan (immediately before the refinancing), and

“(C) the term of such refinancing loan does not extend beyond the last day of the term of the original securities acquisition loan.

For purposes of this paragraph, the term ‘securities acquisition loan’ includes a loan from a corporation to an employee stock ownership plan described in section 133(b)(3) of such Code (as so in effect).

“(3) EXCEPTION.—Any loan made pursuant to a binding written contract in effect before June 10, 1996, and at all times thereafter before such loan is made, shall be treated for purposes of paragraphs (1) and (2) as a loan made on or before the date of the enactment of this Act.”

§ 134. Certain military benefits

(a) General rule

Gross income shall not include any qualified military benefit.

(b) Qualified military benefit

For purposes of this section—

(1) In general

The term “qualified military benefit” means any allowance or in-kind benefit (other than personal use of a vehicle) which—

(A) is received by any member or former member of the uniformed services of the United States or any dependent of such member by reason of such member’s status or service as a member of such uniformed services, and

(B) was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice which was in effect on such date (other than a provision of this title).

(2) No other benefit to be excludable except as provided by this title

Notwithstanding any other provision of law, no benefit shall be treated as a qualified military benefit unless such benefit—

(A) is a benefit described in paragraph (1), or

(B) is excludable from gross income under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

(3) Limitations on modifications

(A) In general

Except as provided in subparagraphs (B) and (C) and paragraphs (4) and (5), no modification or adjustment of any qualified military benefit after September 9, 1986, shall be taken into account.

(B) Exception for certain adjustments to cash benefits

Subparagraph (A) shall not apply to any adjustment to any qualified military benefit payable in cash which—

(i) is pursuant to a provision of law or regulation (as in effect on September 9, 1986), and

(ii) is determined by reference to any fluctuation in cost, price, currency, or other similar index.

(C) Exception for death gratuity adjustments made by law

Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted after September 9, 1986.

(4) Clarification of certain benefits

For purposes of paragraph (1), such term includes any dependent care assistance program (as in effect on the date of the enactment of this paragraph) for any individual described in paragraph (1)(A).

(5) Travel benefits under operation hero miles

The term “qualified military benefit” includes a travel benefit provided under section 2613 of title 10, United States Code (as in effect on the date of the enactment of this paragraph).

(6) Certain State payments

The term “qualified military benefit” includes any bonus payment by a State or political subdivision thereof to any member or former member of the uniformed services of the United States or any dependent of such member only by reason of such member’s service in a combat zone (as defined in section 112(c)(2), determined without regard to the parenthetical).

(Added Pub. L. 99-514, title XI, § 1168(a), Oct. 22, 1986, 100 Stat. 2512; amended Pub. L. 100-647, title I, § 1011B(f)(1), (2)(A), (3), Nov. 10, 1988, 102 Stat. 3489, 3490; Pub. L. 108-121, title I, §§ 102(b)(1), (2), 106(a), (b)(1), Nov. 11, 2003, 117 Stat. 1337-1339; Pub. L. 108-375, div. A, title V, § 585(b)(1), (2)(A), Oct. 28, 2004, 118 Stat. 1931, 1932; Pub. L. 110-245, title I, § 112(a), June 17, 2008, 122 Stat. 1635; Pub. L. 115-141, div. U, title IV, § 401(a)(39), Mar. 23, 2018, 132 Stat. 1186.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(4), is the date of enactment of Pub. L. 108-121, which was approved Nov. 11, 2003.

The date of the enactment of this paragraph, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 108-375, which was approved Oct. 28, 2004.

PRIOR PROVISIONS

A prior section 134 was renumbered section 140 of this title.

AMENDMENTS

2018—Subsec. (b)(6). Pub. L. 115-141 substituted “a combat” for “an combat”.

2008—Subsec. (b)(6). Pub. L. 110-245 added par. (6).

2004—Subsec. (b)(3)(A). Pub. L. 108-375, § 585(b)(2)(A), substituted “paragraphs (4) and (5)” for “paragraph (4)”.

Subsec. (b)(5). Pub. L. 108-375, § 585(b)(1), added par. (5).

2003—Subsec. (b)(3)(A). Pub. L. 108-121, § 106(b)(1), inserted “and paragraph (4)” after “subparagraphs (B) and (C)”.

Pub. L. 108-121, § 102(b)(2), substituted “subparagraphs (B) and (C)” for “subparagraph (B)”.