

er of \$1,000,000 or 5 percent of the aggregate cost of such improvement has been incurred or committed before such date.
The preceding sentence shall not apply to any expenditure with respect to an improvement placed in service after December 31, 1987.”

§ 186. Recoveries of damages for antitrust violations, etc.

(a) Allowance of deduction

If a compensatory amount which is included in gross income is received or accrued during the taxable year for a compensable injury, there shall be allowed as a deduction for the taxable year an amount equal to the lesser of—

- (1) the amount of such compensatory amount, or
- (2) the amount of the unrecovered losses sustained as a result of such compensable injury.

(b) Compensable injury

For purposes of this section, the term “compensable injury” means—

- (1) injuries sustained as a result of an infringement of a patent issued by the United States,
- (2) injuries sustained as a result of a breach of contract or a breach of fiduciary duty or relationship, or
- (3) injuries sustained in business, or to property, by reason of any conduct forbidden in the antitrust laws for which a civil action may be brought under section 4 of the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes”, approved October 15, 1914 (commonly known as the Clayton Act).

(c) Compensatory amount

For purposes of this section, the term “compensatory amount” means the amount received or accrued during the taxable year as damages as a result of an award in, or in settlement of, a civil action for recovery for a compensable injury, reduced by any amounts paid or incurred in the taxable year in securing such award or settlement.

(d) Unrecovered losses

(1) In general

For purposes of this section, the amount of any unrecovered loss sustained as a result of any compensable injury is—

- (A) the sum of the amount of the net operating losses (as determined under section 172) for each taxable year in whole or in part within the injury period, to the extent that such net operating losses are attributable to such compensable injury, reduced by
 - (B) the sum of—
 - (i) the amount of the net operating losses described in subparagraph (A) which were allowed for any prior taxable year as a deduction under section 172 as a net operating loss carryback or carryover to such taxable year, and
 - (ii) the amounts allowed as a deduction under subsection (a) for any prior taxable year for prior recoveries of compensatory amounts for such compensable injury.

(2) Injury period

For purposes of paragraph (1), the injury period is—

(A) with respect to any infringement of a patent, the period in which such infringement occurred,

(B) with respect to a breach of contract or breach of fiduciary duty or relationship, the period during which amounts would have been received or accrued but for the breach of contract or breach of fiduciary duty or relationship, and

(C) with respect to injuries sustained by reason of any conduct forbidden in the antitrust laws, the period in which such injuries were sustained.

(3) Net operating losses attributable to compensable injuries

For purposes of paragraph (1)—

(A) a net operating loss for any taxable year shall be treated as attributable to a compensable injury to the extent of the compensable injury sustained during such taxable year, and

(B) if only a portion of a net operating loss for any taxable year is attributable to a compensable injury, such portion shall (in applying section 172 for purposes of this section) be considered to be a separate net operating loss for such year to be applied after the other portion of such net operating loss.

(e) Effect on net operating loss carryovers

If for the taxable year in which a compensatory amount is received or accrued any portion of a net operating loss carryover to such year is attributable to the compensable injury for which such amount is received or accrued, such portion of such net operating loss carryover shall be reduced by an amount equal to—

- (1) the deduction allowed under subsection (a) with respect to such compensatory amount, reduced by
- (2) any portion of the unrecovered losses sustained as a result of the compensable injury with respect to which the period for carryover under section 172 has expired.

(Added Pub. L. 91-172, title IX, §904(a), Dec. 30, 1969, 83 Stat. 711.)

Editorial Notes

REFERENCES IN TEXT

Section 4 of the Clayton Act, referred to in subsec. (b)(3), is classified to section 15 of Title 15.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 91-172, title IX, §904(c), Dec. 30, 1969, 83 Stat. 712, provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1968.”

[§ 187. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(31), Oct. 4, 1976, 90 Stat. 1769]

Section, added Pub. L. 91-172, title VII, §707(a), Dec. 30, 1969, 83 Stat. 674; amended Pub. L. 93-625, §3(d), Jan. 3, 1975, 88 Stat. 2109, provided for an allowance of an amortization deduction for certain coal mine safety equipment, the method of election and termination of such deduction, the definition of term “certified coal mine safety equipment”, and special rules applicable to the amortization deduction.