

- Sec.
383. Special limitations on certain excess credits, etc.
384. Limitation on use of preacquisition losses to offset built-in gains.

Editorial Notes

AMENDMENTS

1987—Pub. L. 100-203, title X, § 10226(b), Dec. 22, 1987, 101 Stat. 1330-415, added item 384.

1986—Pub. L. 99-514, title VI, § 621(c)(2), Oct. 22, 1986, 100 Stat. 2266, substituted “Limitation on net operating loss carryforwards and certain built-in losses following ownership change” for “Special limitations on net operating loss carryovers” in item 382 and “Special limitations on certain excess credits, etc.” for “Special limitations on unused business credits, research credits, foreign taxes, and capital losses” in item 383.

1984—Pub. L. 98-369, div. A, title IV, § 474(r)(12)(C), July 18, 1984, 98 Stat. 842, substituted “unused business credits, research credits, foreign taxes, and capital losses” for “carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses” in item 383.

1981—Pub. L. 97-34, title II, § 221(b)(1)(E), title III, § 331(d)(1)(E), Aug. 13, 1981, 95 Stat. 246, 295, inserted references to alcohol fuel credits, research credits, and employee stock ownership credits in item 383. For applicability of amendment by section 221(b)(1)(E) to amounts paid or incurred after June 30, 1981, and before Jan. 1, 1986, see section 221(d) of Pub. L. 97-34, set out as an Effective Date note under section 30 of this title.

1977—Pub. L. 95-30, title II, § 202(d)(3)(D), May 23, 1977, 91 Stat. 148, inserted “new employee credits,” after “work incentive program credits,” in item 383.

1971—Pub. L. 92-178, title III, § 302(b), Dec. 10, 1971, 85 Stat. 521, added item 383.

§ 381. Carryovers in certain corporate acquisitions

(a) General rule

In the case of the acquisition of assets of a corporation by another corporation—

(1) in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies; or

(2) in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c). For purposes of the preceding sentence, a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

(b) Operating rules

Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368(a)(1)—

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

(3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss or a net capital loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

(c) Items of the distributor or transferor corporation

The items referred to in subsection (a) are:

(1) Net operating loss carryovers

The net operating loss carryovers determined under section 172, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the net operating loss carryovers of the distributor or transferor corporation are first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) In determining the net operating loss deduction, the portion of such deduction attributable to the net operating loss carryovers of the distributor or transferor corporation to the first taxable year of the acquiring corporation ending after the date of distribution or transfer shall be limited to the amount which bears the same ratio to the taxable income (determined without regard to a net operating loss deduction) of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For the purpose of determining the amount of the net operating loss carryovers under section 172(b)(2), a net operating loss for a taxable year (hereinafter in this subparagraph referred to as the “loss year”) of a distributor or transferor corporation which ends on or before the end of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. For the same purpose, the taxable income for a “prior taxable year” (as the term is used in section 172(b)(2)) shall be computed as provided in such section; except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation—

(i) such taxable year shall (for the purpose of this subparagraph only) be considered to be 2 taxable years (hereinafter in this subparagraph referred to as the “pre-acquisition part year” and the “post-acquisition part year”);

(ii) the pre-acquisition part year shall begin on the same day as such taxable year begins and shall end on the date of distribution or transfer;

(iii) the post-acquisition part year shall begin on the day following the date of distribution or transfer and shall end on the same day as the end of such taxable year;

(iv) the taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)(A) but without a net operating loss deduction) shall be divided between the pre-acquisition part year and the post-acquisition part year in proportion to the number of days in each;

(v) the net operating loss deduction for the pre-acquisition part year shall be determined as provided in section 172(b)(2)(B),¹ but without regard to a net operating loss year of the distributor or transferor corporation; and

(vi) the net operating loss deduction for the post-acquisition part year shall be determined as provided in section 172(b)(2)(B).¹

(2) Earnings and profits

In the case of a distribution or transfer described in subsection (a)—

(A) the earnings and profits or deficit in earnings and profits, as the case may be, of the distributor or transferor corporation shall, subject to subparagraph (B), be deemed to have been received or incurred by the acquiring corporation as of the close of the date of the distribution or transfer; and

(B) a deficit in earnings and profits of the distributor, transferor, or acquiring corporation shall be used only to offset earnings and profits accumulated after the date of transfer. For this purpose, the earnings and profits for the taxable year of the acquiring corporation in which the distribution or transfer occurs shall be deemed to have been accumulated after such distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of the acquiring corporation for such taxable year (computed without regard to any earnings and profits received from the distributor or transferor corporation, as described in subparagraph (A) of this paragraph) as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(3) Capital loss carryover

The capital loss carryover determined under section 1212, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the capital loss carryover of the distributor or transferor corporation is first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) The capital loss carryover shall be a short-term capital loss in the taxable year determined under subparagraph (A) but shall be limited to an amount which bears the same ratio to the capital gain net income (determined without regard to a short-term capital loss attributable to capital loss car-

ryover), if any, of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For purposes of determining the amount of such capital loss carryover to taxable years following the taxable year determined under subparagraph (A), the capital gain net income in the taxable year determined under subparagraph (A) shall be considered to be an amount equal to the amount determined under subparagraph (B).

(4) Method of accounting

The acquiring corporation shall use the method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of computing taxable income adopted pursuant to regulations prescribed by the Secretary.

(5) Inventories

In any case in which inventories are received by the acquiring corporation, such inventories shall be taken by such corporation (in determining its income) on the same basis on which such inventories were taken by the distributor or transferor corporation, unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of taking inventory adopted pursuant to regulations prescribed by the Secretary.

(6) Method of computing depreciation allowance

The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under sections 167 and 168 on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.

[(7) Repealed. June 15, 1955, ch. 143, § 2(1), 69 Stat. 134]

(8) Installment method

If the acquiring corporation acquires installment obligations (the income from which the distributor or transferor corporation reports on the installment basis under section 453) the acquiring corporation shall, for purposes of section 453, be treated as if it were the distributor or transferor corporation.

(9) Amortization of bond discount or premium

If the acquiring corporation assumes liability for bonds of the distributor or transferor corporation issued at a discount or premium, the acquiring corporation shall be treated as

¹ See References in Text note below.

the distributor or transferor corporation after the date of distribution or transfer for purposes of determining the amount of amortization allowable or includible with respect to such discount or premium.

(10) Treatment of certain mining development and exploration expenses of distributor or transferor corporation

The acquiring corporation shall be entitled to deduct, as if it were the distributor or transferor corporation, expenses deferred under section 616 (relating to certain development expenditures) if the distributor or transferor corporation has so elected.

(11) Contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans

The acquiring corporation shall be considered to be the distributor or transferor corporation after the date of distribution or transfer for the purpose of determining the amounts deductible under section 404 with respect to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

(12) Recovery of tax benefit items

If the acquiring corporation is entitled to the recovery of any amounts previously deducted by (or allowable as credits to) the distributor or transferor corporation, the acquiring corporation shall succeed to the treatment under section 111 which would apply to such amounts in the hands of the distributor or transferor corporation.

(13) Involuntary conversions under section 1033

The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of applying section 1033.

(14) Dividend carryover to personal holding company

The dividend carryover (described in section 564) to taxable years ending after the date of distribution or transfer.

(15) Repealed. Pub. L. 101-508, title XI, § 11801(c)(10)(A), Nov. 5, 1990, 104 Stat. 1388-526]

(16) Certain obligations of distributor or transferor corporation

If the acquiring corporation—

(A) assumes an obligation of the distributor or transferor corporation which, after the date of the distribution or transfer, gives rise to a liability, and

(B) such liability, if paid or accrued by the distributor or transferor corporation, would have been deductible in computing its taxable income,

the acquiring corporation shall be entitled to deduct such items when paid or accrued, as the case may be, as if such corporation were the distributor or transferor corporation. This paragraph shall not apply if such obligations are reflected in the amount of stock, securities, or property transferred by the acquiring

corporation to the transferor corporation for the property of the transferor corporation.

(17) Deficiency dividend of personal holding company

If the acquiring corporation pays a deficiency dividend (as defined in section 547(d)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 547.

(18) Percentage depletion on extraction of ores or minerals from the waste or residue of prior mining

The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of section 613(c)(3) (relating to extraction of ores or minerals from the ground).

(19) Charitable contributions in excess of prior years' limitations

Contributions made in the taxable year ending on the date of distribution or transfer and the 4 prior taxable years by the distributor or transferor corporation in excess of the amount deductible under section 170(b)(2) for such taxable years shall be deductible by the acquiring corporation for its taxable years which begin after the date of distribution or transfer, subject to the limitations imposed in section 170(b)(2). In applying the preceding sentence, each taxable year of the distributor or transferor corporation beginning on or before the date of distribution or transfer shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

(20) Carryforward of disallowed business interest

The carryover of disallowed business interest described in section 163(j)(2) to taxable years ending after the date of distribution or transfer.

[21) Repealed. Pub. L. 94-455, title XIX, § 1901(b)(16), Oct. 4, 1976, 90 Stat. 1796]

(22) Successor insurance company

If the acquiring corporation is an insurance company taxable under subchapter L, there shall be taken into account (to the extent proper to carry out the purposes of this section and of subchapter L, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter L in respect of the distributor or transferor corporation.

(23) Deficiency dividend of regulated investment company or real estate investment trust

If the acquiring corporation pays a deficiency dividend (as defined in section 860(f)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 860.

(24) Credit under section 38

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation.

(25) Credit under section 53

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 53, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 53 in respect of the distributor or transferor corporation.

(26) Enterprise zone provisions

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and subchapter U, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter U in respect of the distributor or transferor corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 124; June 15, 1955, ch. 143, §2(1), 69 Stat. 134; Jan. 28, 1956, ch. 15, §1, 70 Stat. 7; Pub. L. 85-866, title I, §29(c), Sept. 2, 1958, 72 Stat. 1628; Pub. L. 86-69, §3(c), June 25, 1959, 73 Stat. 139; Pub. L. 87-834, §2(d), Oct. 16, 1962, 76 Stat. 971; Pub. L. 88-272, title II, §§209(d)(2), 225(i)(3), Feb. 26, 1964, 78 Stat. 46, 92; Pub. L. 90-240, §5(d), Jan. 2, 1968, 81 Stat. 778; Pub. L. 91-172, title V, §§504(c)(2), 512(c), 521(f), Dec. 30, 1969, 83 Stat. 633, 639, 654; Pub. L. 92-178, title VI, §601(c)(3), Dec. 10, 1971, 85 Stat. 557; Pub. L. 94-455, title XVI, §1601(e), title XIX, §§1901(a)(54), (b)(16), (17), (21)(B), (33)(N), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1746, 1773, 1796, 1797, 1802, 1834; Pub. L. 95-30, title II, §202(d)(3)(A), May 23, 1977, 91 Stat. 148; Pub. L. 95-600, title III, §362(d)(2), Nov. 6, 1978, 92 Stat. 2851; Pub. L. 96-223, title II, §232(b)(2)(B), Apr. 2, 1980, 94 Stat. 276; Pub. L. 96-471, §2(b)(2), Oct. 19, 1980, 94 Stat. 2253; Pub. L. 96-589, §4(g), Dec. 24, 1980, 94 Stat. 3404; Pub. L. 97-34, title II, §§208, 221(b)(1)(B), title III, §331(d)(1)(B), Aug. 13, 1981, 95 Stat. 226, 246, 294; Pub. L. 97-248, title II, §224(c)(7), Sept. 3, 1982, 96 Stat. 489; Pub. L. 97-448, title I, §§102(h)(3), 103(g)(2)(F), Jan. 12, 1983, 96 Stat. 2372, 2379; Pub. L. 98-369, div. A, title II, §211(b)(4), title IV, §474(r)(11), July 18, 1984, 98 Stat. 754, 841; Pub. L. 99-514, title II, §231(d)(3)(F), title IV, §411(b)(2)(C)(iii), title VII, §701(e)(1), title XVIII, §1812(a)(3), Oct. 22, 1986, 100 Stat. 2179, 2227, 2342, 2833; Pub. L. 100-203, title X, §10202(c)(3), Dec. 22, 1987, 101 Stat. 1330-392; Pub. L. 100-647, title I, §1002(a)(13), Nov. 10, 1988, 102 Stat. 3355; Pub. L. 101-239, title VII, §7841(d)(10), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 101-508, title XI, §§11801(c)(10)(A), 11812(b)(6), Nov. 5, 1990, 104 Stat. 1388-526, 1388-535; Pub. L. 103-66, title XIII, §13302(e), Aug. 10, 1993, 107 Stat. 556; Pub. L. 104-188, title I, §1704(t)(26), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 115-97, title I, §§13301(b)(1), 13511(b)(3), Dec. 22, 2017, 131 Stat. 2121, 2142; Pub. L. 115-141, div. U, title IV, §401(b)(18), Mar. 23, 2018, 132 Stat. 1202.)

Editorial Notes

REFERENCES IN TEXT

Section 172(b)(2)(B), referred to in subsec. (c)(1)(C)(v), (vi), was amended by Pub. L. 115-97, title I, §13302(a)(2), Dec. 22, 2017, 131 Stat. 2121, and, as so amended, no longer relates to net operating loss deductions. Provisions similar to those contained in former subpar. (B) of section 172(b)(2) of this title are now contained in subpar. (A) of section 172(b)(2) of this title.

AMENDMENTS

2018—Subsec. (c)(16). Pub. L. 115-141, in concluding provisions, struck out “A corporation which would have been an acquiring corporation under this section if the date of distribution or transfer had occurred on or after the effective date of the provisions of this subchapter applicable to a liquidation or reorganization, as the case may be, shall be entitled, even though the date of distribution or transfer occurred before such effective date, to apply this paragraph with respect to amounts paid or accrued in taxable years beginning after December 31, 1953, on account of such obligations of the distributor or transferor corporation.” before “This paragraph”.

2017—Subsec. (c)(20). Pub. L. 115-97, §13301(b)(1), added par. (20).

Subsec. (d). Pub. L. 115-97, §13511(b)(3), struck out subsec. (d). Text read as follows: “For application of this part to operations loss carrybacks and carryovers of life insurance companies, see section 810.”

1996—Subsec. (c)(26), (27). Pub. L. 104-188 amended directory language of Pub. L. 101-239. See 1989 Amendment note below.

1993—Subsec. (c)(26). Pub. L. 103-66 added par. (26).

1990—Subsec. (c)(6). Pub. L. 101-508, §11812(b)(6)(A), substituted “sections 167 and 168” for “subsections (b), (j), and (k) of section 167”.

Subsec. (c)(15). Pub. L. 101-508, §11801(c)(10)(A), struck out par. (15) “Indebtedness of certain personal holding companies” which read as follows: “The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of subsection (c) of section 545, relating to deduction with respect to payment of certain indebtedness.”

Subsec. (c)(24) to (26). Pub. L. 101-508, §11812(b)(6)(B), redesignated pars. (25) and (26) as (24) and (25), respectively, and struck out former par. (24) “Method of computing depreciation deduction” which read as follows: “The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the deduction allowable under section 168(a) on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.”

1989—Subsec. (c)(26), (27). Pub. L. 101-239, as amended by Pub. L. 104-188, redesignated par. (27) as (26).

1988—Subsec. (c)(24). Pub. L. 100-647 substituted “depreciation deduction” for “recovery allowance for recovery property” in heading.

1987—Subsec. (c)(8). Pub. L. 100-203 struck out “or 453A” after “section 453” in two places.

1986—Subsec. (c)(10). Pub. L. 99-514, §411(b)(2)(C)(iii), struck out last sentence which read: “For the purpose of applying the limitation provided in section 617(h), if, for any taxable year, the distributor or transferor corporation was allowed a deduction under section 617(a), the acquiring corporation shall be deemed to have been allowed such deduction.”

Subsec. (c)(12). Pub. L. 99-514, §1812(a)(3), amended par. (12) generally. Prior to amendment, par. (12), recovery of bad debts, prior taxes, or delinquency amounts, read as follows: “If the acquiring corporation is entitled to the recovery of bad debts, prior taxes, or delinquency amounts previously deducted or credited by the distributor or transferor corporation, the acquiring corporation shall include in its income such

amounts as would have been includible by the distributor or transferor corporation in accordance with section 111 (relating to the recovery of bad debts, prior taxes, and delinquency amounts)."

Subsec. (c)(25), (26). Pub. L. 99-514, §231(d)(3)(F), redesignated par. (26) as (25). Former par. (25), relating to credit under section 30, was struck out.

Subsec. (c)(27). Pub. L. 99-514, §701(e)(1), added par. (27).

1984—Subsec. (c)(23). Pub. L. 98-369, §474(r)(11)(B), redesignated par. (25) as (23). Former par. (23), relating to credit under section 38 for investment in certain depreciable property, was struck out.

Subsec. (c)(24). Pub. L. 98-369, §474(r)(11)(B), redesignated par. (28) as (24). Former par. (24), relating to credit under section 40 for work incentive program expenses, was struck out.

Subsec. (c)(25). Pub. L. 98-369, §474(r)(11)(B), (C), redesignated par. (29) as (25), and substituted "30" for "44F" wherever appearing in heading and text. Former par. (25) redesignated (23).

Subsec. (c)(26). Pub. L. 98-369, §474(r)(11)(D), added par. (26). Former par. (26), relating to credit under section 44B for employment of certain new employees, was struck out.

Subsec. (c)(27). Pub. L. 98-369, §474(r)(11)(A), struck out par. (27) relating to credit under section 44E for alcohol used as fuel.

Subsec. (c)(28), (29). Pub. L. 98-369, §474(r)(11)(B), redesignated pars. (28) and (29) as (24) and (25), respectively.

Subsec. (c)(30). Pub. L. 98-369, §474(r)(11)(A), struck out par. (30) relating to credit under section 44G.

Subsec. (d). Pub. L. 98-369, §211(b)(4), substituted "section 810" for "section 812(f)".

1983—Subsec. (c)(28), (29). Pub. L. 97-448, §102(h)(3), redesignated par. (28), relating to credit under section 44F, as (29). Former par. (29) redesignated (30).

Subsec. (c)(30). Pub. L. 97-448, §103(g)(2)(F), redesignated former par. (29), relating to credit under section 44G, as (30).

1982—Subsec. (a)(1). Pub. L. 97-248 struck out "except in a case in which the basis of the assets distributed is determined under section 334(b)(2)" after "applies".

1981—Subsec. (c)(28). Pub. L. 97-34, §208, added par. (28) relating to recovery allowance for recovery property.

Pub. L. 97-34, §221(b)(1)(B), added par. (28) relating to credit under section 44F.

Subsec. (c)(29). Pub. L. 97-34, §331(d)(1)(B), added par. (29).

1980—Subsec. (a). Pub. L. 96-589, §4(g)(2), inserted provisions that a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

Subsec. (a)(2). Pub. L. 96-589, §4(g)(1), substituted "subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1)" for "subparagraph (A), (C), (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met), or (F) of section 368(a)(1)".

Subsec. (c)(8). Pub. L. 96-471 substituted "reports on the installment basis under section 453 or 453A" for "has elected, under section 453, to report on the installment basis" and "for purposes of section 453 or 453A" for "for purposes of section 453."

Subsec. (c)(27). Pub. L. 96-223 added par. (27).

1978—Subsec. (c)(25). Pub. L. 95-600 substituted "regulated investment company or real estate investment trust" for "real estate investment trust" in heading, and in text "section 860(f)" for "section 859(d)" and "section 860" for "section 859".

1977—Subsec. (c)(26). Pub. L. 95-30 added par. (26).

1976—Subsec. (b)(2). Pub. L. 94-455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(3). Pub. L. 94-455, §1901(b)(33)(N), substituted in subpars. (B) and (C) "capital gain net income" for "net capital gain".

Subsec. (c)(4), (5). Pub. L. 94-455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(10). Pub. L. 94-455, §1901(b)(21)(B), among other changes, substituted reference to section 616 (relating to certain development expenditures) if the distributor or transferor corporation has so elected for reference to sections 615 and 616 (relating to pre-1970 exploration expenditures and development expenditures, respectively) if the distributor or transferor corporation has so elected and struck out provisions that if, for any taxable year, the distributor or transferor corporation was allowed or made the election of the deduction under section 615 of this title, the acquiring corporation shall be deemed to have been allowed or to have made such election of the deduction under section 615 of this title.

Subsec. (c)(15). Pub. L. 94-455, §1901(b)(17), substituted "subsection (c)" for "subsections (b)(7) and (c)".

Subsec. (c)(20). Pub. L. 94-455, §1901(a)(54), struck out par. (20) which related to carry-over of unused pension trust deductions in certain cases.

Subsec. (c)(21). Pub. L. 94-455, §1901(b)(16), struck out par. (21) which related to pre-1954 adjustments resulting from change in method of accounting.

Subsec. (c)(22) to (24). Pub. L. 94-455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(25). Pub. L. 94-455, §1601(e), added par. (25). 1971—Subsec. (c)(24). Pub. L. 92-178 added par. (24).

1969—Subsec. (b)(3). Pub. L. 91-172, §512(c), substituted "a net operating loss or a net capital loss" for "a net operating loss".

Subsec. (c)(6). Pub. L. 91-172, §521(f), substituted "subsections (b), (j) and (k) of section 167" for "paragraphs (2), (3) and (4) of section 167(b)" and inserted reference to adjusted basis in the hand of the distributor or transferor corporation.

Subsec. (c)(10). Pub. L. 91-172, §504(c)(2), substituted "Treatment of certain mining exploration and development expenses of distributor or transferor corporation" for "Treatment of certain expenses deferred by the election of distributor or transferor corporation" in heading, limited deduction of expenses deferred under sections 615 and 616 of this title by the acquiring corporation as if it were the distributor or transferor corporation to pre-1970 exploration and development expenditures, and inserted provision that if distributor or transferor corporation, for any taxable year, was allowed the deduction in sections 615(a) or 617(a) of this title or made the election provided in section 615(b) of this title, acquiring corporation shall be deemed to have been allowed such deduction or deductions or to have made such election, as the case may be, for the purpose of applying the limitation provided in section 617 of this title.

1968—Subsec. (c)(22). Pub. L. 90-240 substituted successor insurance companies for successor life insurance companies as the business enterprise covered, substituted reference to insurance companies taxable under subchapter L for reference to life insurance companies as defined in section 801(a), and substituted reference to the purposes of this section and of subchapter L for reference to the purposes of this section and part I of subchapter L.

1964—Subsec. (c)(15). Pub. L. 88-272, §225(i)(3), substituted "subsections (b)(7) and (c) of section 545, relating to deductions with respect to payment of certain indebtedness" for "section 545(b)(7), relating to a deduction for payment of certain indebtedness incurred before Jan. 1, 1934".

Subsec. (c)(19). Pub. L. 88-272, §209(d)(2), permitted deductions for contributions made in the taxable year and in 4 prior taxable years, instead of one prior taxable year, and provided that each taxable year beginning on or before the distribution or transfer date shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

1962—Subsec. (c)(23). Pub. L. 87-834 added par. (23).

1959—Subsec. (c)(22). Pub. L. 86-69, §3(c)(1), added par. (22).

Subsec. (d). Pub. L. 86-69, §3(c)(2), added subsec. (d).

1958—Subsec. (c)(21). Pub. L. 85-866 added par. (21).

1956—Subsec. (c)(20). Act Jan. 28, 1956 added par. (20).
1955—Subsec. (c)(7). Act June 15, 1955, repealed par. (7)
which related to carryover of prepaid income.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13301 of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 13301(c) of Pub. L. 115-97, set out as a note under section 163 of this title.

Pub. L. 115-97, title I, §13511(c), Dec. 22, 2017, 131 Stat. 2142, provided that: “The amendments made by this section [amending this section and sections 805, 831, 953, and 1351 of this title and repealing sections 810 and 844 of this title] shall apply to losses arising in taxable years beginning after December 31, 2017.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(6) of Pub. L. 101-508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99-514, see section 11812(c) of Pub. L. 101-508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for nondealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100-203, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(F) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99-514, set out as a note under section 41 of this title.

Amendment by section 411(b)(2)(C)(iii) of Pub. L. 99-514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99-514, set out as a note under section 263 of this title.

Amendment by section 701(e)(1) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1812(a)(3) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 211(b)(4) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(11) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provi-

sion of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97-248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 208 of Pub. L. 97-34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

Amendment by section 221(b)(1)(B) of Pub. L. 97-34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97-34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(1)(B) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97-34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-589 applicable to bankruptcy cases or similar judicial proceeding commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceeding commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

For effective date of amendment by Pub. L. 96-471, see section 6(a)(1) of Pub. L. 96-471, set out as an Effective Date note under section 453 of this title.

Amendment by Pub. L. 96-223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96-223, set out as an Effective Date note under section 40 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date note under section 860 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95-30, set out as an Effective Date note under section 51 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(e) of Pub. L. 94-455, see section 1608(a) of Pub. L. 94-455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(54), (b)(16), (17), (21)(B), (33)(N) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92-178, title VI, §601(f), Dec. 10, 1971, 85 Stat. 560, provided that: “The amendments made by this section [enacting sections 40, 50A, and 50B of this title and amending this section and sections 56, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply to taxable years beginning after December 31, 1971.”

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 504(c)(2) of Pub. L. 91-172 applicable with respect to exploration expenditures paid

or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91-172, set out as a note under section 243 of this title.

Amendment by section 512(c) of Pub. L. 91-172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91-172, set out as a note under section 1212 of this title.

Amendment by section 521(f) of Pub. L. 91-172 applicable with respect to taxable years ending after July 24, 1969, see section 521(g) of Pub. L. 91-172, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-240 applicable to taxable years beginning after Dec. 31, 1966, see section 5(e) of Pub. L. 90-240, set out as a note under section 832 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 225(i)(3) of Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88-272 set out as a note under section 316 of this title.

Amendment by section 209(d)(2) of Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, with respect to contributions paid or treated as paid under section 170(a)(2) of this title, in taxable years beginning after Dec. 31, 1961, see section 209(f)(2) of Pub. L. 88-272, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87-834, set out as an Effective Date note under section 46 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-69, § 4, June 25, 1959, 73 Stat. 141, provided that: "Except as otherwise provided in this Act, the amendments made by this Act [amending this section, part I (§801 et seq.) of subchapter L, and sections 841, 842, 891, 1016, 1201, 1232, 1504, 4371, and 6501 of this title] shall apply only with respect to taxable years beginning after December 31, 1957."

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85-866, see section 29(d) of Pub. L. 85-866, set out as a note under section 481 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Act Jan. 28, 1956, ch. 15, § 2, 70 Stat. 7, provided that: "The amendments made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

EFFECTIVE DATE OF 1955 AMENDMENT

Act June 15, 1955, ch. 143, § 3, 69 Stat. 135, provided that: "The amendments made by this Act [amending this section and repealing sections 452 and 462 of this title] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

SAVINGS PROVISION

For provisions that nothing in 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 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.

For provisions that nothing in amendment by Pub. L. 101-508 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.

Act June 15, 1955, ch. 143, § 4, 69 Stat. 135, as amended by act Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095, provided:

"(a) FILING OF STATEMENT.—If—

"(1) the amount of any tax required to be paid for any taxable year ending on or before the date of the enactment of this Act [June 15, 1955] is increased by reason of the enactment of this Act [amending this section and repealing sections 452 and 462], and

"(2) the last date prescribed for payment of such tax (or any installment thereof) is before December 15, 1955, then the taxpayer shall, on or before December 15, 1955, file a statement which shows the increase in the amount of such tax required to be paid by reason of the enactment of this Act.

"(b) FORM AND EFFECT OF STATEMENT.—

"(1) FORM OF STATEMENT, ETC.—The statement required by subsection (a) shall be filed at the place fixed for filing the return. Such statement shall be in such form, and shall include such information necessary or appropriate to show the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act, as the Secretary of the Treasury or his delegate shall by regulations prescribe.

"(2) TREATMENT AS AMOUNT SHOWN ON RETURN.—The amount shown on a statement filed under subsection (a) as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act shall, for all purposes of the internal revenue laws, be treated as tax shown on the return. Notwithstanding the preceding sentence, that portion of the amount of increase in tax for any taxable year which is attributable to a decrease (by reason of the enactment of this Act) in the net operating loss for a succeeding taxable year shall not be treated as tax shown on the return.

"(3) WAIVER OF INTEREST IN CASE OF PAYMENT ON OR BEFORE DECEMBER 15, 1955.—If the taxpayer, on or before December 15, 1955, files the statement referred to in subsection (a) and pays in full that portion of the amount shown thereon for which the last date prescribed for payment is before December 15, 1955, then for purposes of computing interest (other than interest on overpayments) such portion shall be treated as having been paid on the last date prescribed for payment. This paragraph shall not apply if the amount shown on the statement as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act is greater than the actual increase unless the taxpayer establishes, to the satisfaction of the Secretary of the Treasury or his delegate, that his computation of the greater amount was based upon a reasonable interpretation and application of sections 452 and 462 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [sections 452 and 462 of this title], as those sections existed before the enactment of this Act.

"(c) SPECIAL RULES.—

"(1) INTEREST FOR PERIOD BEFORE ENACTMENT.—Interest shall not be imposed on the amount of any increase in tax resulting from the enactment of this Act for any period before the day after the date of the enactment of this Act [June 15, 1955].

"(2) ESTIMATED TAX.—Any addition to the tax under section 294(d) of the Internal Revenue Code of 1939 [section 294(d) of former Title 26, Internal Revenue Code], shall be computed as if this Act had not been enacted. In the case of any installment for which the last date prescribed for payment is before December 15, 1955, any addition to the tax under section 6654 of the Internal Revenue Code of 1986 [section 6654 of this title], shall be computed as if this Act had not been enacted.

“(3) TREATMENT OF CERTAIN PAYMENTS WHICH TAXPAYER IS REQUIRED TO MAKE.—If—

“(A) the taxpayer is required to make a payment (or an additional payment) to another person by reason of the enactment of this Act, and

“(B) the Internal Revenue Code of 1986 [this title] prescribes a period, which expires after the close of the taxable year, within which the taxpayer must make such payment (or additional payment) if the amount thereof is to be taken into account (as a deduction or otherwise) in computing taxable income for such taxable year,

then, subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, if such payment (or additional payment) is made on or before December 15, 1955, it shall be treated as having been made within the period prescribed by such Code.

“(4) TREATMENT OF CERTAIN DIVIDENDS.—Subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, for purposes of section 561(a)(1) of the Internal Revenue Code of 1986 [section 561(a)(1) of this title], dividends paid after the 15th day of the third month following the close of the taxable year and on or before December 15, 1955, may be treated as having been paid on the last day of the taxable year, but only to the extent (A) that such dividends are attributable to an increase in taxable income for the taxable year resulting from the enactment of this Act, and (B) elected by the taxpayer.

“(5) DETERMINATION OF DATE PRESCRIBED.—For purposes of this section, the determination of the last date prescribed for payment or for filing a return shall be made without regard to any extension of time therefor and without regard to any provision of this section.

“(6) REGULATIONS.—For requirement that the Secretary of the Treasury or his delegate shall prescribe all rules and regulations as may be necessary by reason of the enactment of this Act, see section 7805(a) of the Internal Revenue Code of 1986 [section 7805(a) of this title].”

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(1) of Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

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

§ 382. Limitation on net operating loss carryforwards and certain built-in losses following ownership change

(a) General rule

The amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the section 382 limitation for such year.

(b) Section 382 limitation

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the section 382 limitation for any post-change year is an amount equal to—

(A) the value of the old loss corporation, multiplied by

(B) the long-term tax-exempt rate.

(2) Carryforward of unused limitation

If the section 382 limitation for any post-change year exceeds the taxable income of the new loss corporation for such year which was offset by pre-change losses, the section 382 limitation for the next post-change year shall be increased by the amount of such excess.

(3) Special rule for post-change year which includes change date

In the case of any post-change year which includes the change date—

(A) Limitation does not apply to taxable income before change

Subsection (a) shall not apply to the portion of the taxable income for such year which is allocable to the period in such year on or before the change date. Except as provided in subsection (h)(5) and in regulations, taxable income shall be allocated ratably to each day in the year.

(B) Limitation for period after change

For purposes of applying the limitation of subsection (a) to the remainder of the taxable income for such year, the section 382 limitation shall be an amount which bears the same ratio to such limitation (determined without regard to this paragraph) as—

(i) the number of days in such year after the change date, bears to

(ii) the total number of days in such year.

(c) Carryforwards disallowed if continuity of business requirements not met

(1) In general

Except as provided in paragraph (2), if the new loss corporation does not continue the business enterprise of the old loss corporation at all times during the 2-year period beginning on the change date, the section 382 limitation for any post-change year shall be zero.

(2) Exception for certain gains

The section 382 limitation for any post-change year shall not be less than the sum of—

(A) any increase in such limitation under—

(i) subsection (h)(1)(A) for recognized built-in gains for such year, and

(ii) subsection (h)(1)(C) for gain recognized by reason of an election under section 338, plus

(B) any increase in such limitation under subsection (b)(2) for amounts described in subparagraph (A) which are carried forward to such year.

(d) Pre-change loss and post-change year

For purposes of this section—

(1) Pre-change loss

The term “pre-change loss” means—

(A) any net operating loss carryforward of the old loss corporation to the taxable year