

but only if, the effect is to make the corporation a personal holding company;

(B) for purposes of section 543(a)(7) (relating to personal service contracts), of section 543(a)(6) (relating to use of property by shareholders), or of section 543(a)(4) (relating to copyright royalties), if, but only if, the effect is to make the amounts therein referred to includible under such paragraph as personal holding company income.

(5) Constructive ownership as actual ownership

Stock constructively owned by a person by reason of the application of paragraph (1) or (3), shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

(6) Option rule in lieu of family and partnership rule

If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) Convertible securities

Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) for purposes of the stock ownership requirement provided in section 542(a)(2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

(2) for purposes of section 543(a)(7) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income;

(3) for purposes of section 543(a)(6) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income; and

(4) for purposes of section 543(a)(4) (relating to copyright royalties), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income.

The requirement in paragraphs (1), (2), (3), and (4) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.

(Aug. 16, 1954, ch. 736, 68A Stat. 188; Pub. L. 86-435, §1(c), (d), Apr. 22, 1960, 74 Stat. 78; Pub. L.

88-272, title II, §225(k)(3), Feb. 26, 1964, 78 Stat. 93.)

Editorial Notes

AMENDMENTS

1964—Pub. L. 88-272 substituted “section 543(a)(7)” for “section 543(a)(5)”, and “section 543(a)(4)” for “section 543(a)(9);” wherever appearing.

1960—Subsec. (a). Pub. L. 86-435, §1(c)(1), inserted reference to section 543(a)(9) in introductory provisions.

Subsec. (a)(4)(B). Pub. L. 86-435, §1(c)(2), included reference to section 543(a)(9).

Subsec. (b). Pub. L. 86-435, §1(d), added par. (4), and inserted reference to par. (4) in last sentence.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l)(1) of Pub. L. 88-272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-435 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 2 of Pub. L. 86-435, set out as a note under section 543 of this title.

§ 545. Undistributed personal holding company income

(a) Definition

For purposes of this part, the term “undistributed personal holding company income” means the taxable income of a personal holding company adjusted in the manner provided in subsections (b), (c), and (d), minus the dividends paid deduction as defined in section 561. In the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons, the term “undistributed personal holding company income” means the amount determined by multiplying the undistributed personal holding company income (determined without regard to this sentence) by the percentage in value of its outstanding stock which is the greatest percentage in value of its outstanding stock so owned by United States persons on any one day during such period.

(b) Adjustments to taxable income

For the purposes of subsection (a), the taxable income shall be adjusted as follows:

(1) Taxes

There shall be allowed as a deduction Federal income and excess profits taxes and income, war profits and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 960 for the taxable year, but not including the accumulated earnings tax imposed by section 531 or the personal holding company tax imposed by section 541.

(2) Charitable contributions

The deduction for charitable contributions provided under section 170 shall be allowed,

but in computing such deduction the limitations in section 170(b)(1)(A), (B), (D), and (E) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term “contribution base” when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 10-percent limitation) provided in section 170(b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (6) of this subsection.

(3) Special deductions disallowed

The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss

The net operating loss deduction provided in section 172 shall not be allowed, but there shall be allowed as a deduction the amount of the net operating loss (as defined in section 172(c)) for the preceding taxable year computed without the deductions provided in part VIII (except section 248) of subchapter B.

(5) Net capital gains

There shall be allowed as a deduction the net capital gain for the taxable year, minus the taxes imposed by this subtitle attributable to such net capital gain. The taxes attributable to such net capital gain shall be an amount equal to the difference between—

(A) the taxes imposed by this subtitle (except the tax imposed by this part) for such year, and

(B) such taxes computed for such year without including such excess in taxable income.

(6) Expenses and depreciation applicable to property of the taxpayer

The aggregate of the deductions allowed under section 162 (relating to trade or business expenses) and section 167 (relating to depreciation), which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established (under regulations prescribed by the Secretary) to the satisfaction of the Secretary—

(A) that the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) that the property was held in the course of a business carried on bona fide for profit; and

(C) either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

(7) Special rule for capital gains and losses of foreign corporations

In the case of a foreign corporation, paragraph (5) shall be applied by taking into account only gains and losses which are effectively connected with the conduct of a trade

or business within the United States and are not exempt from tax under treaty.

(c) Certain foreign corporations

In the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), the taxable income for purposes of subsection (a) shall be the income which constitutes personal holding company income under section 543(a)(7), reduced by the deductions attributable to such income, and adjusted, with respect to such income, in the manner provided in subsection (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 189; Pub. L. 85-866, title I, § 32(a), (b), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 87-403, § 3(d), Feb. 2, 1962, 76 Stat. 7; Pub. L. 87-834, § 9(d)(2), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 88-272, title II, §§ 207(b)(5), 209(c)(2), 225(i)(1), (2), Feb. 26, 1964, 78 Stat. 42, 46, 90; Pub. L. 89-719, title I, § 101(b)(2), Nov. 2, 1966, 80 Stat. 1132; Pub. L. 89-809, title I, § 104(h)(3), Nov. 13, 1966, 80 Stat. 1560; Pub. L. 91-172, title II, § 201(a)(2)(B), Dec. 30, 1969, 83 Stat. 558; Pub. L. 94-455, title X, § 1033(b)(4), title XIX, §§ 1901(a)(77), (b)(20)(B), (32)(E), (33)(D), 1906(b)(13)(A), 1951(b)(9)(A), Oct. 4, 1976, 90 Stat. 1628, 1777, 1797, 1800, 1801, 1834, 1839; Pub. L. 97-448, title I, § 102(m)(2), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 99-514, title XII, § 1225(b), Oct. 22, 1986, 100 Stat. 2559; Pub. L. 101-508, title XI, § 11801(a)(24), (c)(10)(B), Nov. 5, 1990, 104 Stat. 1388-521, 1388-527; Pub. L. 109-280, title XII, § 1206(b)(2), Aug. 17, 2006, 120 Stat. 1070; Pub. L. 113-295, div. A, title II, § 221(a)(64), Dec. 19, 2014, 128 Stat. 4048; Pub. L. 115-97, title I, § 14301(c)(4), Dec. 22, 2017, 131 Stat. 2222.)

Editorial Notes

AMENDMENTS

2017—Subsec. (b)(1). Pub. L. 115-97 substituted “section 960” for “section 902(a) or 960(a)(1)”.

2014—Subsec. (b)(1). Pub. L. 113-295 substituted “section 531 or the personal holding company tax imposed by section 541.” for “section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.”

2006—Subsec. (b)(2). Pub. L. 109-280, which directed the substitution of “(D), and (E)” for “and (D)” in section 545(b)(2), without specifying the act to be amended, was executed by making the substitution in subsec. (b)(2) of this section, which is section 545 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1990—Subsecs. (c), (d). Pub. L. 101-508 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to a special adjustment to taxable income for amounts used or set aside to pay or retire qualified indebtedness.

1986—Subsec. (b)(7). Pub. L. 99-514 added par. (7).

1983—Subsec. (b)(2). Pub. L. 97-448 substituted “10-percent” for “5-percent”.

1976—Subsec. (b)(1). Pub. L. 94-455, §§ 1033(b)(4), 1901(a)(77)(A), struck out “(other than excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940)” after “Federal income and excess profits taxes”; substituted “902(a) or 960(a)(1)” for “902(a)(1) or 960(a)(1)(C)” after “corporation under section”; and struck out provisions after “prior income

tax law” relating to election by taxpayer who paid Federal income and excess profits taxes to deduct payments, when made, for purposes of computing subchapter A net income or, for a taxable year ending after June 30, 1954, to deduct such taxes when accrued, such election being irrevocable and applied to taxable year for which election was made and to all subsequent taxable years.

Subsec. (b)(2). Pub. L. 94-455, § 1901(b)(20)(B)(ii), substituted “paragraph (6)” for “paragraph (8)” after “amount disallowed under”.

Subsec. (b)(5). Pub. L. 94-455, § 1901(b)(33)(D), substituted “Net” for “Long-term” after “(5)”.

Subsec. (b)(6). Pub. L. 94-455, §§ 1901(b)(20)(B)(i), 1906(b)(13)(A), struck out par. (6) relating to deduction allowed to bank affiliates, redesignated former par. (8) as (6) and, as redesignated, struck out “or his delegate” in two places after “Secretary”.

Subsec. (b)(7). Pub. L. 94-455, § 1901(a)(77)(B), struck out par. (7) relating to payment of indebtedness incurred prior to January 1, 1934.

Subsec. (b)(8). Pub. L. 94-455, § 1901(b)(20)(B)(i), redesignated par. (8) as (6).

Subsec. (b)(9). Pub. L. 94-455, § 1951(b)(9)(A), struck out par. (9) relating to the deduction of the amount of a lien in favor of the United States.

Subsec. (b)(10), (11). Pub. L. 94-455, § 1901(b)(32)(E), struck out par. (10) relating to deduction for distributions of divested stock, and struck out par. (11) relating to special adjustment on the disposition of antitrust stock received as a dividend.

Subsec. (c)(2)(A). Pub. L. 94-455, § 1901(a)(77)(C), substituted “February 26, 1964” for “the date of enactment of this subsection” after “years ending before”.

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

Subsec. (c)(5). Pub. L. 94-455, § 1901(b)(20)(B)(iii), substituted “subsection (b)(6)” for “subsection (b)(8)” after “company income under”.

1969—Subsec. (b)(2). Pub. L. 91-172 substituted “section 170(b)(1)(A), (B), and (D)”, “section 170(b)(2) and (d)(1)” for “section 170(b)(1)(A) and (B)” and “section 170(b)(2) and (5)”, respectively, in provisions of first sentence setting out the sections appropriate to the computation of the deduction, and in provisions of second sentence describing applicability of terms for purposes of this paragraph, substituted “contribution base” and “section 170(b)(2) and (d)(1)” for “adjusted gross income” and “the first sentence of section 170(b)(2) and (5),” respectively.

1966—Subsec. (a). Pub. L. 89-809, § 104(h)(3)(A), substituted “in the manner provided in subsections (b), (c), and (d)” for “in the manner provided in subsection (b) and (c)” and inserted provisions governing the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons.

Subsec. (b)(9). Pub. L. 89-719 substituted “section 6323(f)” for “section 6323(a)(1), (2), or (3)”.

Subsec. (d). Pub. L. 89-809, § 104(h)(3)(B), added subsec. (d).

1964—Subsec. (a). Pub. L. 88-272, § 225(i)(1), inserted reference to subsection (c).

Subsec. (b)(1), (2). Pub. L. 88-272, §§ 207(b)(5), 209(c)(2), substituted “section 275(a)(4)” for “section 164(b)(6)” in par. (1), and inserted reference to section 170(b)(5) in par. (2).

Subsec. (c). Pub. L. 88-272, § 225(i)(2), added subsec. (c).

1962—Subsec. (b)(1). Pub. L. 87-834 substituted “accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year” for “accrued during the taxable year”.

Subsec. (b)(10), (11). Pub. L. 87-403 added pars. (10) and (11).

1958—Subsec. (b)(2). Pub. L. 85-866, § 32(a), substituted in first sentence “, but in computing such deduction the limitations in section 170(b)(1)(A) and (B) shall

apply, and section 170(b) shall not apply” for “but with the limitations in section 170(b)(1)(A) and (B) (in lieu of the limitation in section 170(b)(2))”, and inserted in second sentence “(other than the 5-percent limitation)” and “the first sentence” after “with the adjustments” and “provided in”, respectively.

Subsec. (b)(4). Pub. L. 85-866, § 32(b), inserted “computed without the deductions provided in part VIII (except section 248) of subchapter B”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115-97, set out as a note under section 78 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to contributions made in taxable years beginning after Dec. 31, 2005, see section 1206(c) of Pub. L. 109-280, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to gains and losses realized on or after Jan. 1, 1986, see section 1225(c) of Pub. L. 99-514, as amended, set out as a note under section 535 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 provision 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 1976 AMENDMENT

For effective date of amendment by section 1033(b)(4) of Pub. L. 94-455, see section 1033(c) of Pub. L. 94-455, set out as a note under section 960 of this title.

Amendment by section 1901(a)(77), (b)(20)(B), (32)(E), (33)(D) of Pub. L. 94-455 applicable with respect to 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.

Amendment by section 1951(b)(9)(A) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94-455 set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 201(g) of Pub. L. 91-172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the

amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)–(e) of Pub. L. 89-719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 207(b)(5) of Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88-272, set out as a note under section 164 of this title.

Amendment by section 209(c)(2) of Pub. L. 88-272 applicable to contributions paid in taxable years beginning after Dec. 31, 1963, see section 209(f)(1) of Pub. L. 88-272, set out as a note under section 170 of this title.

Amendment by section 225(i)(1), (2) of Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l)(1) of Pub. L. 88-272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87-834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87-834, set out as an Effective Date note under section 78 of this title.

Amendment by Pub. L. 87-403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87-403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 32(a) of Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

Pub. L. 85-866, title I, §32(c), Sept. 2, 1958, 72 Stat. 1632, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (b) of this section [amending this section] shall apply with respect to adjustments under section 545(b)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for taxable years beginning after December 31, 1957."

SAVINGS PROVISION

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.

Pub. L. 94-455, title XIX, §1951(b)(9)(B), Oct. 4, 1976, 90 Stat. 1839, provided that: "Notwithstanding subparagraph (A) [amending this section], if any amount was deducted under paragraph (9) of section 545(b) in a taxable year beginning before January 1, 1977, on account of a lien which is satisfied or released in a taxable year beginning on or after such date, the amount so deducted shall be included in income, for purposes of section 545, as provided in the second sentence of such paragraph. Shareholders of any corporation which has amounts included in its income by reason of the preceding sentence may elect to compute the income tax on dividends attributable to amounts so included as provided in the third sentence of such paragraph."

§ 546. Income not placed on annual basis

Section 443(b) (relating to computation of tax on change of annual accounting period) shall not

apply in the computation of the personal holding company tax imposed by section 541.

(Aug. 16, 1954, ch. 736, 68A Stat. 191.)

§ 547. Deduction for deficiency dividends

(a) General rule

If a determination (as defined in subsection (c)) with respect to a taxpayer establishes liability for personal holding company tax imposed by section 541 (or by a corresponding provision of a prior income tax law) for any taxable year, a deduction shall be allowed to the taxpayer for the amount of deficiency dividends (as defined in subsection (d)) for the purpose of determining the personal holding company tax for such year, but not for the purpose of determining interest, additional amounts, or assessable penalties computed with respect to such personal holding company tax.

(b) Rules for application of section

(1) Allowance of deduction

The deficiency dividend deduction shall be allowed as of the date the claim for the deficiency dividend deduction is filed.

(2) Credit or refund

If the allowance of a deficiency dividend deduction results in an overpayment of personal holding company tax for any taxable year, credit or refund with respect to such overpayment shall be made as if on the date of the determination 2 years remained before the expiration of the period of limitation on the filing of claim for refund for the taxable year to which the overpayment relates. No interest shall be allowed on a credit or refund arising from the application of this section.

(c) Determination

For purposes of this section, the term "determination" means—

(1) a decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121; or

(3) under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the taxpayer relating to the liability of such taxpayer for personal holding company tax.

(d) Deficiency dividends

(1) Definition

For purposes of this section, the term "deficiency dividends" means the amount of the dividends paid by the corporation on or after the date of the determination and before filing claim under subsection (e), which would have been includible in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for personal holding company tax exists, if distributed during such taxable year. No dividends shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determination.