

treated in the same manner as noncancellable life, accident, and health insurance.

(f) Amounts not involving life, accident, or health contingencies

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, amounts set aside and held at interest to satisfy obligations under contracts which do not contain permanent guarantees with respect to life, accident, or health contingencies shall not be included in reserves described in paragraph (1) or (3) of subsection (c).

(g) Burial and funeral benefit insurance companies

A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 831.

(h) Treatment of deficiency reserves

For purposes of this section and section 842(b)(2)(B)(i), the terms “life insurance reserves” and “total reserves” shall not include deficiency reserves.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 748; amended Pub. L. 99-514, title XVIII, §1821(l), Oct. 22, 1986, 100 Stat. 2841; Pub. L. 100-203, title X, §10242(c)(2), Dec. 22, 1987, 101 Stat. 1330-423; Pub. L. 100-647, title I, §1010(f)(6), title II, §2004(q)(1), Nov. 10, 1988, 102 Stat. 3454, 3608.)

Editorial Notes

PRIOR PROVISIONS

A prior section 816, act Aug. 16, 1954, ch. 736, §816, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to taxation of foreign life insurance companies, prior to the general revision of this part by Pub. L. 86-69, §2(a).

AMENDMENTS

1988—Subsec. (g). Pub. L. 100-647, §1010(f)(6), substituted “section 831” for “section 821 or section 831”.

Subsec. (h). Pub. L. 100-647, §2004(q)(1), substituted “section 842(b)(2)(B)(i)” for “section 842(c)(1)(A)”.

1987—Subsec. (h). Pub. L. 100-203 substituted “section 842(c)(1)(A)” for “section 813(a)(4)(B)”.

1986—Subsec. (h). Pub. L. 99-514 added subsec. (h).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1010(f)(6) of 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.

Amendment by section 2004(q)(1) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, §10242(d), Dec. 22, 1987, 101 Stat. 1330-423, provided that: “The amendments made by this section [amending this section and sections 842, 864, and 4371 of this title and repealing section 813 of this title] shall apply to taxable years beginning after December 31, 1987.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 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.

**SPECIAL ELECTION TO TREAT INDIVIDUAL
NONCANCELLABLE ACCIDENT AND HEALTH CONTRACTS
AS CANCELLABLE**

Pub. L. 98-369, div. A, title II, §217(i), July 18, 1984, 98 Stat. 764, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-647, title I, §1010(h)(1), Nov. 10, 1988, 102 Stat. 3455, provided that:

“(1) IN GENERAL.—A mutual life insurance company may elect to treat all individual noncancellable (or guaranteed renewable) accident and health insurance contracts as though they were cancellable for purposes of section 816 of subchapter L of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

“(2) EFFECT OF ELECTION ON SUBSIDIARIES OF ELECTING PARENT.—For purposes of determining the amount of the small life insurance company deduction of any controlled group which includes a mutual company which made an election under paragraph (1), the taxable income of such electing company shall be taken into account under [former] section 806(b)(2) of the Internal Revenue Code of 1986 (relating to phaseout of small life insurance company deduction).

“(3) ELECTION.—An election under paragraph (1) shall apply to the company's first taxable year beginning after December 31, 1983, and all taxable years thereafter.

“(4) TIME AND MANNER.—An election under paragraph (1) shall be made—

“(A) on the return of the taxpayer for its first taxable year beginning after December 31, 1983, and

“(B) in such manner as the Secretary of the Treasury or his delegate may prescribe.”

[Pub. L. 100-647, title I, §1010(h)(2), (3), Nov. 10, 1988, 102 Stat. 3455, provided that:

[“(2) EFFECTIVE DATE.—The amendment made by this subsection [amending section 217(i) of Pub. L. 98-369, set out above] shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

[“(3) REVENUE LOSS LIMITED.—The decrease in the amount of Federal revenue by reason of the amendment made by this subsection shall not exceed \$300,000 per taxable year.”]

§ 817. Treatment of variable contracts

(a) Increases and decreases in reserves

For purposes of subsections (a) and (b) of section 807, the sum of the items described in section 807(c) taken into account as of the close of the taxable year with respect to any variable contract shall, under regulations prescribed by the Secretary, be adjusted—

(1) by subtracting therefrom an amount equal to the sum of the amounts added from

time to time (for the taxable year) to the reserves separately accounted for in accordance with subsection (c) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

(2) by adding thereto an amount equal to the sum of the amounts subtracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

The deduction allowable for items described in paragraphs (1) and (6) of section 805(a) with respect to variable contracts shall be reduced to the extent that the amount of such items is increased for the taxable year by appreciation (or increased to the extent that the amount of such items is decreased for the taxable year by depreciation) not reflected in adjustments under the preceding sentence.

(b) Adjustment to basis of assets held in segregated asset account

In the case of variable contracts, the basis of each asset in a segregated asset account shall (in addition to all other adjustments to basis) be—

- (1) increased by the amount of any appreciation in value, and
- (2) decreased by the amount of any depreciation in value,

to the extent such appreciation and depreciation are from time to time reflected in the increases and decreases in reserves or other items referred to in subsection (a) with respect to such contracts.

(c) Separate accounting

For purposes of this part, a life insurance company which issues variable contracts shall separately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such variable contracts. For such items as are not accounted for directly, separate accounting shall be made—

- (1) in accordance with the method regularly employed by such company, if such method is reasonable, and
- (2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Variable contract defined

For purposes of this part, the term “variable contract” means a contract—

- (1) which provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company,
- (2) which—
 - (A) provides for the payment of annuities,
 - (B) is a life insurance contract, or
 - (C) provides for funding of insurance on retired lives as described in section 807(c)(6), and
- (3) under which—
 - (A) in the case of an annuity contract, the amounts paid in, or the amount paid out, reflect the investment return and the market value of the segregated asset account,

(B) in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account, or

(C) in the case of funds held under a contract described in paragraph (2)(C), the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account.

If a contract ceases to reflect current investment return and current market value, such contract shall not be considered as meeting the requirements of paragraph (3) after such cessation. Paragraph (3) shall be applied without regard to whether there is a guarantee, and obligations under such guarantee which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company’s general account.

(e) Pension plan contracts treated as paying annuity

A pension plan contract which is not a life, accident, or health, property, casualty, or liability insurance contract shall be treated as a contract which provides for the payments of annuities for purposes of subsection (d).

(f) Other special rules

(1) Life insurance reserves

For purposes of subsection (b)(1)(A) of section 816, the reflection of the investment return and the market value of the segregated asset account shall be considered an assumed rate of interest.

(2) Additional separate computations

Under regulations prescribed by the Secretary, such additional separate computations shall be made, with respect to the items separately accounted for in accordance with subsection (c), as may be necessary to carry out the purposes of this section and this part.

(g) Variable annuity contracts treated as annuity contracts

For purposes of this part, the term “annuity contract” includes a contract which provides for the payment of a variable annuity computed on the basis of—

- (1) recognized mortality tables, and
- (2)(A) the investment experience of a segregated asset account, or
- (B) the company-wide investment experience of the company.

Paragraph (2)(B) shall not apply to any company which issues contracts which are not variable contracts.

(h) Treatment of certain nondiversified contracts

(1) In general

For purposes of subchapter L, section 72 (relating to annuities), and section 7702(a) (relating to definition of life insurance contract), a variable contract (other than a pension plan contract) which is otherwise described in this section and which is based on a segregated asset account shall not be treated as an annuity, endowment, or life insurance contract for any period (and any subsequent period) for

which the investments made by such account are not, in accordance with regulations prescribed by the Secretary, adequately diversified.

(2) Safe harbor for diversification

A segregated asset account shall be treated as meeting the requirements of paragraph (1) for any quarter of a taxable year if as of the close of such quarter—

(A) it meets the requirements of section 851(b)(3), and

(B) no more than 55 percent of the value of the total assets of the account are assets described in section 851(b)(3)(A)(i).

(3) Special rule for investments in United States obligations

To the extent that any segregated asset account with respect to a variable life insurance contract is invested in securities issued by the United States Treasury, the investments made by such account shall be treated as adequately diversified for purposes of paragraph (1).

(4) Look-through in certain cases

For purposes of this subsection, if all of the beneficial interests in a regulated investment company or in a trust are held by 1 or more—

(A) insurance companies (or affiliated companies) in their general account or in segregated asset accounts, or

(B) fund managers (or affiliated companies) in connection with the creation or management of the regulated investment company or trust,

the diversification requirements of paragraph (1) shall be applied by taking into account the assets held by such regulated investment company or trust.

(5) Independent investment advisors permitted

Nothing in this subsection shall be construed as prohibiting the use of independent investment advisors.

(6) Government securities funds

In determining whether a segregated asset account is adequately diversified for purposes of paragraph (1), each United States Government agency or instrumentality shall be treated as a separate issuer.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 750; amended Pub. L. 99-514, title XVIII, §1821(m), (t)(1), Oct. 22, 1986, 100 Stat. 2841, 2844; Pub. L. 100-647, title VI, §6080(a), Nov. 10, 1988, 102 Stat. 3710; Pub. L. 104-188, title I, §1611(a), Aug. 20, 1996, 110 Stat. 1845; Pub. L. 105-34, title XII, §1271(b)(8), Aug. 5, 1997, 111 Stat. 1037; Pub. L. 108-218, title II, §205(b)(5), Apr. 10, 2004, 118 Stat. 610.)

Editorial Notes

PRIOR PROVISIONS

A prior section 817, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 132; amended Pub. L. 94-455, title XIV, §1402(b)(1)(M), (2), title XIX, §§1901(a)(100), 1951(b)(11)(A), Oct. 4, 1976, 90 Stat. 1732, 1781, 1839, related to rules regarding certain gains and losses, prior to the general revision of this part by Pub. L. 98-369, §211(a).

Another prior section 817, act Aug. 16, 1954, ch. 736, §817, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, re-

lated to denial of double deductions, prior to the general revision of this part by Pub. L. 86-69, §2(a).

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-218, in introductory provisions, struck out “(other than section 809)” after “For purposes of this part”.

1997—Subsec. (h)(2)(A). Pub. L. 105-34, §1271(b)(8)(A), substituted “851(b)(3)” for “851(b)(4)”.

Subsec. (h)(2)(B). Pub. L. 105-34, §1271(b)(8)(B), substituted “851(b)(3)(A)(i)” for “851(b)(4)(A)(i)”.

1996—Subsec. (d)(2)(C). Pub. L. 104-188, §1611(a)(1), added subpar. (C).

Subsec. (d)(3)(C). Pub. L. 104-188, §1611(a)(2), added subpar. (C).

1988—Subsec. (h)(6). Pub. L. 100-647 added par. (6).

1986—Subsec. (d). Pub. L. 99-514, §1821(t)(1), inserted at end “Paragraph (3) shall be applied without regard to whether there is a guarantee, and obligations under such guarantee which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company’s general account.”

Subsec. (h)(1). Pub. L. 99-514, §1821(m)(2), struck out last sentence which read as follows: “For purposes of this paragraph and paragraph (2), beneficial interests in a regulated investment company or in a trust shall not be treated as 1 investment if all of the beneficial interests in such company or trust are held by 1 or more segregated asset accounts of 1 or more insurance companies.”

Subsec. (h)(3) to (5). Pub. L. 99-514, §1821(m)(1), added pars. (3) and (4), redesignated former par. (4) as (5), and struck out former par. (3) which read as follows: “In the case of a segregated asset account with respect to variable life insurance contracts, paragraph (1) shall not apply in the case of securities issued by the United States Treasury which are owned by a regulated investment company or by a trust all the beneficial interests in which are held by 1 or more segregated asset accounts of the company issuing the contract.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108-218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XII, §1271(c), Aug. 5, 1997, 111 Stat. 1037, provided that: “The amendments made by this section [amending this section and sections 851 and 1092 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1611(b), Aug. 20, 1996, 110 Stat. 1846, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VI, §6080(b), Nov. 10, 1988, 102 Stat. 3710, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XVIII, §1821(t)(2), Oct. 22, 1986, 100 Stat. 2844, provided that: “The amendment made by paragraph (1) [amending this section] shall apply—

“(A) to contracts issued after December 31, 1986, and

“(B) to contracts issued before January 1, 1987, if such contract was treated as a variable contract on the taxpayer’s return.”

Amendment by section 1821(m) 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

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

DELAY IN EFFECTIVE DATE FOR DIVERSIFICATION REQUIREMENTS WITH RESPECT TO ACCOUNTS FOR CERTAIN IMMEDIATE ANNUITIES

Pub. L. 100-647, title I, § 1010(i), Nov. 10, 1988, 102 Stat. 3455, provided that: “Section 817(h) of the 1986 Code shall not apply until January 1, 1989, with respect to a variable contract (as defined in section 817(d) of the 1986 Code) if—

“(1) such contract provides for the payment of an immediate annuity (as defined in section 72(u)(4) of the 1986 Code),

“(2) such contract was outstanding on September 12, 1986, and

“(3) the segregated asset account on which such contract is based was, on September 12, 1986, wholly invested in deposits insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.”

INSURANCE-DEDICATED EXCHANGE-TRADED FUNDS

Pub. L. 117-328, div. T, title II, § 203, Dec. 29, 2022, 136 Stat. 5333, provided that:

“(a) IN GENERAL.—Not later than the date which is 7 years after the date of the enactment of this Act [Dec. 29, 2022], the Secretary of the Treasury (or the Secretary’s delegate) shall amend the regulation issued by the Department of the Treasury relating to ‘Income Tax; Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts’, 54 Fed. Reg. 8728 (March 2, 1989), and make any necessary corresponding amendments to other regulations, in order to facilitate the use of exchange-traded funds as investment options under variable contracts within the meaning of section 817(d) of the Internal Revenue Code of 1986, in accordance with subsections (b) and (c) of this section.

“(b) DESIGNATE CERTAIN AUTHORIZED PARTICIPANTS AND MARKET MAKERS AS ELIGIBLE INVESTORS.—The Secretary of the Treasury (or the Secretary’s delegate) shall amend Treas. Reg. section 1.817-5(f)(3) to provide that satisfaction of the requirements in Treas. Reg. section 1.817-5(f)(2)(i) with respect to an exchange-traded fund shall not be prevented by reason of beneficial interests in such a fund being held by 1 or more authorized participants or market makers.

“(c) DEFINE RELEVANT TERMS.—In amending Treas. Reg. section 1.817-5(f)(3) in accordance with subsection (b), the Secretary of the Treasury (or the Secretary’s delegate) shall provide definitions consistent with the following:

“(1) EXCHANGE-TRADED FUND.—The term ‘exchange-traded fund’ means a regulated investment company, partnership, or trust—

“(A) that is registered with the Securities and Exchange Commission as an open-end investment company or a unit investment trust;

“(B) the shares of which can be purchased or redeemed directly from the fund only by an authorized participant; and

“(C) the shares of which are traded throughout the day on a national stock exchange at market prices that may or may not be the same as the net asset value of the shares.

“(2) AUTHORIZED PARTICIPANT.—The term ‘authorized participant’ means a financial institution that is a member or participant of a clearing agency registered under section 17A(b) of the Securities Ex-

change Act of 1934 [15 U.S.C. 78q-1(b)] that enters into a contractual relationship with an exchange-traded fund pursuant to which the financial institution is permitted to purchase and redeem shares directly from the fund and to sell such shares to third parties, but only if the contractual arrangement or applicable law precludes the financial institution from—

“(A) purchasing the shares for its own investment purposes rather than for the exclusive purpose of creating and redeeming such shares on behalf of third parties; and

“(B) selling the shares to third parties who are not market makers or otherwise described in Treas. Reg. section 1.817-5(f)(1) and (3).

“(3) MARKET MAKER.—The term ‘market maker’ means a financial institution that is a registered broker or dealer under section 15(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(b)] that maintains liquidity for an exchange-traded fund on a national stock exchange by being always ready to buy and sell shares of such fund on the market, but only if the financial institution is contractually or legally precluded from selling or buying such shares to or from persons who are not authorized participants or otherwise described in Treas. Reg. section 1.817-5(f)(2) and (3).

“(d) EFFECTIVE DATE.—This section shall apply to segregated asset account investments made on or after the date which is 7 years after the date of the enactment of this Act.”

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.

§ 817A. Special rules for modified guaranteed contracts

(a) Computation of reserves

In the case of a modified guaranteed contract, clause (ii) of section 807(e)(1)(A) shall not apply.

(b) Segregated assets under modified guaranteed contracts marked to market

(1) In general

In the case of any life insurance company, for purposes of this subtitle—

(A) Any gain or loss with respect to a segregated asset shall be treated as ordinary income or loss, as the case may be.

(B) If any segregated asset is held by such company as of the close of any taxable year—

(i) such company shall recognize gain or loss as if such asset were sold for its fair market value on the last business day of such taxable year, and

(ii) any such gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

(2) Segregated asset

For purposes of paragraph (1), the term “segregated asset” means any asset held as part of