

July 1, 1992, by Pub. L. 101-508, title XI, § 11831(b), Nov. 5, 1990, 104 Stat. 1388-559.]

**TERMINATION OF CERTAIN EXCEPTIONS FROM RULES RELATING TO EXEMPT ORGANIZATIONS WHICH PROVIDE COMMERCIAL-TYPE INSURANCE**

Pub. L. 105-277, div. J, title IV, § 4003(g), Oct. 21, 1998, 112 Stat. 2681-910, provided that: "Rules similar to the rules of section 1.1502-75(d)(5) of the Treasury Regulations shall apply with respect to any organization described in section 1042(b) of the 1997 Act [section 1042(b) of Pub. L. 105-34, set out below]."

Pub. L. 105-34, title X, § 1042, Aug. 5, 1997, 111 Stat. 939, provided that:

"(a) **IN GENERAL.**—Subparagraphs (A) and (B) of section 1012(c)(4) of the Tax Reform Act of 1986 [Pub. L. 99-514, set out as an Effective Date note above] shall not apply to any taxable year beginning after December 31, 1997.

"(b) **SPECIAL RULES.**—In the case of an organization to which section 501(m) of the Internal Revenue Code of 1986 applies solely by reason of the amendment made by subsection (a)—

"(1) no adjustment shall be made under section 481 (or any other provision) of such Code on account of a change in its method of accounting for its first taxable year beginning after December 31, 1997, and

"(2) for purposes of determining gain or loss, the adjusted basis of any asset held on the 1st day of such taxable year shall be treated as equal to its fair market value as of such day.

"(c) **RESERVE WEAKENING AFTER JUNE 8, 1997.**—Any reserve weakening after June 8, 1997, by an organization described in subsection (b) shall be treated as occurring in such organization's 1st taxable year beginning after December 31, 1997.

"(d) **REGULATIONS.**—The Secretary of the Treasury or his delegate may prescribe rules for providing proper adjustments for organizations described in subsection (b) with respect to short taxable years which begin during 1998 by reason of section 843 of the Internal Revenue Code of 1986."

**RULES PROVIDING ADJUSTMENTS FOR CERTAIN TAXPAYERS AFFECTED BY SECTION 1012 OF PUB. L. 99-514**

Pub. L. 100-647, title I, § 1010(b)(3), Nov. 10, 1988, 102 Stat. 3451, provided that: "The Secretary of the Treasury or his delegate may prescribe rules providing proper adjustments for taxpayers which become subject to subchapter L of chapter 1 of the 1986 Code by reason of the amendments made by section 1012 of the Reform Act [Pub. L. 99-514, enacting this section and amending section 501 of this title] with respect to short taxable years which begin during 1987 by reason of section 843 of such Code."

**§ 834. Determination of taxable investment income**

**(a) General rule**

For purposes of section 831(b), the term "taxable investment income" means the gross investment income, minus the deductions provided in subsection (c).

**(b) Gross investment income**

For purposes of subsection (a), the term "gross investment income" means the sum of the following:

(1) The gross amount of income during the taxable year from—

(A) interest, dividends, rents, and royalties,

(B) the entering into of any lease, mortgage, or other instrument or agreement from which the insurance company derives interest, rents, or royalties,

(C) the alteration or termination of any instrument or agreement described in subparagraph (B), and

(D) gains from sales or exchanges of capital assets to the extent provided in subchapter P (relating to capital gains and losses).

(2) The gross income during the taxable year from any trade or business (other than an insurance business) carried on by the insurance company, or by a partnership of which the insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

**(c) Deductions**

In computing taxable investment income, the following deductions shall be allowed:

**(1) Tax-free interest**

The amount of interest which under section 103 is excluded for the taxable year from gross income.

**(2) Investment expenses**

Investment expenses paid or accrued during the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 percent of the mean of the book value of the invested assets held at the beginning and end of the taxable year plus one-fourth of the amount by which taxable investment income (computed without any deduction for investment expenses allowed by this paragraph, for tax-free interest allowed by paragraph (1), or for dividends received allowed by paragraph (7)), exceeds 3¾ percent of the book value of the mean of the invested assets held at the beginning and end of the taxable year.

**(3) Real estate expenses**

Taxes (as provided in section 164), and other expenses, paid or accrued during the taxable year exclusively on or with respect to the real estate owned by the company. No deduction shall be allowed under this paragraph for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property.

**(4) Depreciation**

The depreciation deduction allowed by section 167.

**(5) Interest paid or accrued**

All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from taxation under this subtitle.

**(6) Capital losses**

Capital losses to the extent provided in subchapter P (sec. 1201 and following) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as

sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders, losses paid, and expenses paid over the sum of the items described in subsection (b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(A) the taxable investment income (computed without regard to gains or losses from sales or exchanges of capital assets); or

(B) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders.

### **(7) Special deductions**

The special deductions allowed by part VIII (except section 248) of subchapter B (sec. 241 and following, relating to dividends received). In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of this paragraph, the reference in such section to “taxable income” shall be treated as a reference to “taxable investment income”.

### **(8) Trade or business deductions**

The deductions allowed by this subtitle (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the insurance company, or by a partnership of which the insurance company is a partner; except that for purposes of this paragraph—

(A) any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account, and

(B) the deduction for net operating losses provided in section 172 shall not be allowed.

### **(9) Depletion**

The deduction allowed by section 611 (relating to depletion).

### **(d) Other applicable rules**

#### **(1) Rental value of real estate**

The deduction under subsection (c)(3) or (4) on account of any real estate owned and occupied in whole or in part by a mutual insurance company subject to the tax imposed by section 831 shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this paragraph) as the rental value of the space not so occupied bears to the rental value of the entire property.

#### **(2) Amortization of premium and accrual of discount**

The gross amount of income during the taxable year from interest and the deduction pro-

vided in subsection (c)(1) shall each be decreased to reflect the appropriate amortization of premium and increased to reflect the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a mutual insurance company subject to the tax imposed by section 831. Such amortization and accrual shall be determined—

(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

(B) in all other cases, in accordance with regulations prescribed by the Secretary.

No accrual of discount shall be required under this paragraph on any bond (as defined in section 171(d)) except in the case of discount which is original issue discount (as defined in section 1273).

### **(3) Double deductions**

Nothing in this part shall permit the same item to be deducted more than once.

### **(e) Definitions**

For purposes of this part—

#### **(1) Net premiums**

The term “net premiums” means gross premiums (including deposits and assessments) written or received on insurance contracts during the taxable year less return premiums and premiums paid or incurred for reinsurance. Amounts returned where the amount is not fixed in the insurance contract but depends on the experience of the company or the discretion of the management shall not be included in return premiums but shall be treated as dividends to policyholders under paragraph (2).

#### **(2) Dividends to policyholders**

The term “dividends to policyholders” means dividends and similar distributions paid or declared to policyholders. For purposes of the preceding sentence, the term “paid or declared” shall be construed according to the method regularly employed in keeping the books of the insurance company.

(Aug. 16, 1954, ch. 736, 68A Stat. 261, § 822; Mar. 13, 1956, ch. 83, § 3(a)(3)–(8), 70 Stat. 47, 48; Pub. L. 87–834, § 8(b), Oct. 16, 1962, 76 Stat. 991; Pub. L. 88–272, title II, § 228(b)(2), Feb. 26, 1964, 78 Stat. 99; Pub. L. 89–809, title I, § 104(i)(5), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94–455, title XIX, §§ 1901(a)(105), (b)(1)(P)–(S), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1792, 1834; renumbered § 834 and amended Pub. L. 99–514, title X, § 1024(a)(3), (c)(7), (8), Oct. 22, 1986, 100 Stat. 2405, 2407; Pub. L. 115–97, title I, § 13001(b)(2)(I), Dec. 22, 2017, 131 Stat. 2096.)

### **Editorial Notes**

#### **AMENDMENTS**

2017—Subsec. (b)(1)(D). Pub. L. 115–97 struck out “sec. 1201 and following,” before “relating to capital gains and losses”.

1986—Pub. L. 99–514, § 1024(a)(3), renumbered section 822 of this title as this section.

Subsec. (a). Pub. L. 99–514, § 1024(c)(7), amended subsec. (a) generally. Prior to amendment, subsec. (a),

definitions, read as follows: “For purposes of this part—

“(1) The term ‘taxable investment income’ means the gross investment income, minus the deductions provided in subsection (c).

“(2) The term ‘investment loss’ means the amount by which the deductions provided in subsection (c) exceed the gross investment income.”

Subsec. (d). Pub. L. 99-514, §1024(c)(8), substituted “section 831” for “section 821” in pars. (1) and (2), and inserted “except in the case of discount which is original issue discount (as defined in section 1273)” at end of last sentence in par.

1976—Subsec. (c)(2). Pub. L. 94-455, §1901(b)(1)(P), struck out “partially tax-exempt interest and” before “dividends received allowed by”.

Subsec. (c)(5). Pub. L. 94-455, §1901(a)(105)(A), struck out “(other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer)” after “purchase or carry obligations”.

Subsec. (c)(6)(A). Pub. L. 94-455, §1901(b)(1)(Q), struck out “or to the deduction provided in section 242 for partially tax-exempt interest” after “exchanges of capital assets”.

Subsec. (c)(7). Pub. L. 94-455, §1901(b)(1)(R), struck out “partially tax-exempt interest and to” after “and following, relating to”.

Subsec. (d)(2). Pub. L. 94-455, §§1901(a)(105)(B), (b)(1)(S), 1906(b)(13)(A), struck out in subpar. (B) “or his delegate” after “Secretary” and substituted in provisions preceding subpar. (A) “and the deduction provided in subsection (c)(1)” for “the deduction provided in subsection (c)(1), and the deduction allowed by section 242 (relating to partially tax-exempt interest)” and in provisions following subpar. (B) “No accrual” for “For taxable years beginning after December 31, 1962, no accrual”.

1966—Subsecs. (e), (f). Pub. L. 89-809 redesignated subsec. (f) as (e). Former subsec. (e), dealing with foreign mutual insurance companies other than life or marine, was struck out.

1964—Subsec. (d)(2). Pub. L. 88-272 provided that for taxable years beginning after Dec. 31, 1962, no accrual of discount shall be required under par. (2) on any bond.

1962—Pub. L. 87-834, §8(b)(1), substituted “Determination of taxable investment income” for “Determination of mutual insurance company taxable income” in section catchline.

Subsec. (a). Pub. L. 87-834, §8(b)(1), defined “taxable investment income” and “investment loss” for purposes of this part, and struck out provisions which defined “mutual insurance company taxable income” for purposes of section 821 of this title, which provisions are now contained in section 821(b) of this title.

Subsec. (c). Pub. L. 87-834, §8(b)(2), (3), substituted “taxable investment income” for “mutual insurance company taxable income” in opening provisions and in pars. (2) and (6)(A), and inserted sentence in par. (7) providing that in applying section 246(b) (relating to limitations on aggregate amount of deductions for dividends received) for purposes of par. (7), reference in such section to “taxable income” shall be treated as a reference to “taxable investment income”.

Subsec. (e). Pub. L. 87-834, §8(b)(2), substituted “taxable investment income” for “mutual insurance company taxable income”.

Subsec. (f). Pub. L. 87-834, §8(b)(4), added subsec. (f). Provisions of subsec. (f) were formerly contained in section 823 of this title.

1956—Subsec. (b). Act Mar. 13, 1956, §3(a)(3), principally included royalties, and the income from a trade or business other than the insurance business carried on by the insurance company in “gross investment income”.

Subsec. (c). Act Mar. 13, 1956, §3(a)(4), (5), (6), clarified the deduction for real estate expenses in par. (3), substituted in par. (6) “the sum of the items described in subsection (b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section

1212” for “the sum of interest, dividends, rents, and net premiums received. In the application of section 1211”, and inserted pars. (8) and (9).

Subsec. (d)(1). Act Mar. 13, 1956, §3(a)(7), substituted “subsection (c)(3) or (4)” for “subsection (e)(3) or (4)”.

Subsec. (e). Act Mar. 13, 1956, §3(a)(8), substituted “items described in subsection (b) (other than paragraph (1)(D) thereof)” for “interest, dividends, rents,”.

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115-97, set out as a note under section 11 of this title.

### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99-514, set out as a note under section 831 of this title.

### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(105), (b)(1)(P)–(S) 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 1966 AMENDMENT

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.

### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87-834, set out as a note under section 501 of this title.

### EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note set out under section 316 of this title.

## § 835. Election by reciprocal

### (a) In general

Except as otherwise provided in this section, any mutual insurance company which is an interinsurer or reciprocal underwriter (hereinafter in this section referred to as a “reciprocal”) subject to the taxes imposed by section 831(a) may, under regulations prescribed by the Secretary, elect to be subject to the limitation provided in subsection (b). Such election shall be effective for the taxable year for which made and for all succeeding taxable years, and shall not be revoked except with the consent of the Secretary.

### (b) Limitation

The deduction for amounts paid or incurred in the taxable year to the attorney-in-fact by a reciprocal making the election provided in subsection (a) shall be limited to, but in no case increased by, the deductions of the attorney-in-fact allocable, in accordance with regulations prescribed by the Secretary, to the income received by the attorney-in-fact from the reciprocal.

### (c) Exception

An election may not be made by a reciprocal under subsection (a) unless the attorney-in-fact of such reciprocal—