(Added Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1008; amended Pub. L. 94–455, title XVI, §§1604(h), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1752, 1834; Pub. L. 99–514, title VI, §§665(b)(2), 668(b)(1)(B), Oct. 22, 1986, 100 Stat. 2304, 2307; Pub. L. 100–647, title I, §1018(u)(27), Nov. 10, 1988, 102 Stat. 3591; Pub. L. 113–295, div. A, title II, §220(m), Dec. 19, 2014, 128 Stat. 4036.)

Editorial Notes

AMENDMENTS

2014—Subsec. (b). Pub. L. 113–295 substituted ''857(b)(9)'' for ''857(b)(8)''.

1988—Subsec. (b). Pub. L. 100–647, §1018(u)(27), made technical correction to directory language of Pub. L. 99–514, see 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–514, §668(b)(1)(B), as amended by Pub. L. 100–647, §1018(u)(27), substituted ''Except as provided in section 857(b)(8), amounts'' for ''Amounts''.

Subsec. (c). Pub. L. 99–514, §665(b)(2), inserted ''(or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)''.

1976—Subsec. (a). Pub. L. 94–455, §§1604(h), 1906(b)(13)(A), inserted ''(and specifies in dollar amounts)'' after ''to the extent the trust elects in such return'' and substituted ''paid only during such taxable year'' for ''paid during such taxable year'', and struck out ''or his delegate'' after ''Secretary''.

Statutory Notes and Related Subsidiaries

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 1986 AMENDMENT

Amendment by section 665(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, and by section 668(b)(1)(B) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1604(h) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

§859. Adoption of annual accounting period

(a) General rule

For purposes of this subtitle—

(1) a real estate investment trust shall not change to any accounting period other than the calendar year, and

(2) a corporation, trust, or association may not elect to be a real estate investment trust for any taxable year beginning after October 4, 1976, unless its accounting period is the calendar year.

Paragraph (2) shall not apply to a corporation, trust, or association which was considered to be a real estate investment trust for any taxable year beginning on or before October 4, 1976.

(b) Change of accounting period without approval

Notwithstanding section 442, an entity which has not engaged in any active trade or business may change its accounting period to a calendar year without the approval of the Secretary if such change is in connection with an election under section 856(c).

(Added Pub. L. 94–455, title XVI, §1604(i)(1), Oct. 4, 1976, 90 Stat. 1752, §860; renumbered §859 and amended Pub. L. 95–600, title III, §362(d)(6), title VII, §701(t)(1), Nov. 6, 1978, 92 Stat. 2852, 2911; Pub. L. 99–514, title VI, §661(c), Oct. 22, 1986, 100 Stat. 2300.)

Editorial Notes

PRIOR PROVISIONS

A prior section 859, added Pub. L. 94–455, title XVI, §1601(a)(1), Oct. 4, 1976, 90 Stat. 1742; amended Pub. L. 95–600, title VII, §701(t)(4), Nov. 6, 1978, 92 Stat. 2912, related to a deduction for deficiency dividends, prior to repeal by Pub. L. 95–600, title III, §362(d)(6), Nov. 6, 1978, 92 Stat. 2852. See section 860 of this title.

AMENDMENTS

1986—Pub. L. 99–514 designated existing provisions as subsec. (a) and added subsec. (b).

1978—Pub. L. 95–600, §701(t)(1), designated existing provisions as par. (1), substituted ''change to any accounting period'' for ''change to or adopt any annual accounting period'', and added par. (2) and provision for nonapplicability of par. (2) to a real estate investment trust for any taxable year beginning on or before Oct. 4, 1976.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Repeal of prior section 859 of this title and redesignation of section 860 of this title as this section by section 362(d)(6) of 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.

Pub. L. 95–600, title VII, §701(t)(5), Nov. 6, 1978, 92 Stat. 2912, provided that: ''The amendments made by this subsection [amending this section and sections 275, 856, 6212, and 6501 of this title] shall take effect on October 4, 1976.''

PART III—PROVISIONS WHICH APPLY TO BOTH REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS

Sec.
860. Deduction for deficiency dividends.

§860. Deduction for deficiency dividends

(a) General rule

If a determination with respect to any qualified investment entity results in any adjustment for any taxable year, a deduction shall be allowed to such entity for the amount of deficiency dividends for purposes of determining the deduction for dividends paid (for purposes of section 852 or 857, whichever applies) for such year.

(b) Qualified investment entity defined

For purposes of this section, the term ''qualified investment entity'' means—

(1) a regulated investment company, and

(2) a real estate investment trust.

(c) Rules for application of section

(1) Interest and additions to tax determined with respect to the amount of deficiency dividend deduction allowed

For purposes of determining interest, additions to tax, and additional amounts—

(A) the tax imposed by this chapter (after taking into account the deduction allowed by subsection (a)) on the qualified investment entity for the taxable year with respect to which the determination is made shall be deemed to be increased by an amount equal to the deduction allowed by subsection (a) with respect to such taxable year,

(B) the last date prescribed for payment of such increase in tax shall be deemed to have been the last date prescribed for the payment of tax (determined in the manner provided by section 6601(b)) for the taxable year with respect to which the determination is made, and

(C) such increase in tax shall be deemed to be paid 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 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 limitations on the filing of claim for refund for the taxable year to which the overpayment relates.

(d) Adjustment

For purposes of this section—

(1) Adjustment in the case of regulated investment company

In the case of any regulated investment company, the term ''adjustment'' means—

(A) any increase in the investment company taxable income of the regulated investment company (determined without regard to the deduction for dividends paid (as defined in section 561)),

(B) any increase in the amount of the excess described in section 852(b)(3)(A) (relating to the excess of the net capital gain over the deduction for capital gain dividends paid), and

(C) any decrease in the deduction for dividends paid (as defined in section 561) determined without regard to capital gains dividends.

(2) Adjustment in the case of real estate investment trust

In the case of any real estate investment trust, the term ''adjustment'' means—

(A) any increase in the sum of—

(i) the real estate investment trust taxable income of the real estate investment trust (determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain), and

(ii) the excess of the net income from foreclosure property (as defined in section 857(b)(4)(B)) over the tax on such income imposed by section 857(b)(4)(A),

(B) any increase in the amount of the excess described in section 857(b)(3)(A)(ii)[1] (relating to the excess of the net capital gain over the deduction for capital gains dividends paid), and

(C) any decrease in the deduction for dividends paid (as defined in section 561) determined without regard to capital gains dividends.

(e) 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;

(3) under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the qualified investment entity relating to the liability of such entity for tax; or

(4) a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.

(f) Deficiency dividends

(1) Definition

For purposes of this section, the term ''deficiency dividends'' means a distribution of property made by the qualified investment entity on or after the date of the determination and before filing claim under subsection (g), 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 tax resulting from the determination exists if distributed during such taxable year. No distribution of property shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determination, and unless a claim for a deficiency dividend deduction with respect to such distribution is filed pursuant to subsection (g).

(2) Limitations

(A) Ordinary dividends

The amount of deficiency dividends (other than deficiency dividends qualifying as capital gain dividends) paid by a qualified investment entity for the taxable year with respect to which the liability for tax resulting from the determination exists shall not exceed the sum of—

(i) the excess of the amount of increase referred to in subparagraph (A) of paragraph (1) or (2) of subsection (d) (whichever applies) over the amount of any increase

[1] See References in Text note below.

in the deduction for dividends paid (computed without regard to capital gain dividends) for such taxable year which results from such determination, and

(ii) the amount of decrease referred to in subparagraph (C) of paragraph (1) or (2) of subsection (d) (whichever applies).

(B) Capital gain dividends

The amount of deficiency dividends qualifying as capital gain dividends paid by a qualified investment entity for the taxable year with respect to which the liability for tax resulting from the determination exists shall not exceed the amount by which (i) the increase referred to in subparagraph (B) of paragraph (1) or (2) of subsection (d) (whichever applies), exceeds (ii) the amount of any dividends paid during such taxable year which are designated or reported (as the case may be) as capital gain dividends after such determination.

(3) Effect on dividends paid deduction

(A) For taxable year in which paid

Deficiency dividends paid in any taxable year shall not be included in the amount of dividends paid for such year for purposes of computing the dividends paid deduction for such year.

(B) For prior taxable year

Deficiency dividends paid in any taxable year shall not be allowed for purposes of section 855(a) or 858(a) in the computation of the dividends paid deduction for the taxable year preceding the taxable year in which paid.

(g) Claim required

No deficiency dividend deduction shall be allowed under subsection (a) unless (under regulations prescribed by the Secretary) claim therefore is filed within 120 days after the date of the determination.

(h) Suspension of statute of limitations and stay of collection

(1) Suspension of running of statute

If the qualified investment entity files a claim as provided in subsection (g), the running of the statute of limitations provided in section 6501 on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency established by a determination under this section, and all interest, additions to tax, additional amounts, or assessable penalties in respect thereof, shall be suspended for a period of 2 years after the date of the determination.

(2) Stay of collection

In the case of any deficiency established by a determination under this section—

(A) the collection of the deficiency, and all interest, additions to tax, additional amounts, and assessable penalties in respect thereof, shall, except in cases of jeopardy, be stayed until the expiration of 120 days after the date of the determination, and

(B) if claim for a deficiency dividend deduction is filed under subsection (g), the collection of such part of the deficiency as is not reduced by the deduction for deficiency dividends provided in subsection (a) shall be stayed until the date the claim is disallowed (in whole or in part), and if disallowed in part collection shall be made only with respect to the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A) or (B) during the period for which the collection of such amount is stayed.

(i) Deduction denied in case of fraud

No deficiency dividend deduction shall be allowed under subsection (a) if the determination contains a finding that any part of any deficiency attributable to an adjustment with respect to the taxable year is due to fraud with intent to evade tax or to willful failure to file an income tax return within the time prescribed by law or prescribed by the Secretary in pursuance of law.

(Added Pub. L. 95–600, title III, §362(a), Nov. 6, 1978, 92 Stat. 2848; amended Pub. L. 96–222, title I, §103(a)(11)(B), (C), Apr. 1, 1980, 94 Stat. 213; Pub. L. 99–514, title VI, §667(b)(1), Oct. 22, 1986, 100 Stat. 2306; Pub. L. 108–357, title II, §243(f)(5), Oct. 22, 2004, 118 Stat. 1445; Pub. L. 111–325, title III, §301(a)(2), title V, §501(b), Dec. 22, 2010, 124 Stat. 3542, 3554; Pub. L. 115–141, div. U, title IV, §401(a)(149), (150), Mar. 23, 2018, 132 Stat. 1191.)

Editorial Notes

REFERENCES IN TEXT

Section 857(b)(3)(A), referred to in subsec. (d)(2)(B), relating to alternative tax in case of capital gains, was repealed by Pub. L. 115–97, title I, §13001(b)(2)(K)(i), Dec. 22, 2017, 131 Stat. 2096. Subsec. (b)(3)(B) of section 857, relating to treatment of capital gain dividends by shareholders, was redesignated subsec. (b)(3)(A) of that section.

PRIOR PROVISIONS

A prior section 860 was renumbered section 859 of this title.

AMENDMENTS

2018—Subsec. (f)(2)(A)(ii). Pub. L. 115–141, §401(a)(149), substituted ''decrease'' for ''decreased''.

Subsec. (i). Pub. L. 115–141, §401(a)(150), substituted ''willful'' for ''willfull''.

2010—Subsec. (f)(2)(B). Pub. L. 111–325, §301(a)(2), inserted ''or reported (as the case may be)'' after ''designated''.

Subsec. (j). Pub. L. 111–325, §501(b), struck out subsec. (j). Text read as follows: ''For assessable penalty with respect to liability for tax of a regulated investment company which is allowed a deduction under subsection (a), see section 6697.''

2004—Subsec. (e)(4). Pub. L. 108–357 added par. (4).

1986—Subsec. (j). Pub. L. 99–514 substituted ''regulated investment company'' for ''qualified investment entity''.

1980—Subsec. (f). Pub. L. 96–222 substituted in heading ''Deficiency'' for ''Efficiency'' and in par. (2)(A)(i) ''(computed without regard'' for ''computed without regard''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(a)(2) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010,

see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

Pub. L. 111–325, title V, § 501(c), Dec. 22, 2010, 124 Stat. 3554, provided that: ''The amendments made by this section [amending this section and repealing section 6697 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to statements filed after Oct. 22, 2004, see section 243(g)(4)(E) of Pub. L. 108–357, set out as a note under section 856 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 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE

Pub. L. 95–600, title III, § 362(e), Nov. 6, 1978, 92 Stat. 2852, as amended by Pub. L. 96–222, title I, § 103(a)(11)(A), Apr. 1, 1980, 94 Stat. 212; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting this section, amending sections 316, 381, 852, 857, 6422, 6503, 6515, and 6697 of this title, repealing section 859 of this title, and redesignating prior section 860 as 859 of this title] shall apply with respect to determinations (as defined in section 860(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) after the date of the enactment of this Act [Nov. 6, 1978].''

PART IV—REAL ESTATE MORTGAGE INVESTMENT CONDUITS

Sec.
860A. Taxation of REMIC's.
860B. Taxation of holders of regular interests.
860C. Taxation of residual interests.
860D. REMIC defined.
860E. Treatment of income in excess of daily accruals on residual interests.
860F. Other rules.
860G. Other definitions and special rules.

§ 860A. Taxation of REMIC's

(a) General rule

Except as otherwise provided in this part, a REMIC shall not be subject to taxation under this subtitle (and shall not be treated as a corporation, partnership, or trust for purposes of this subtitle).

(b) Income taxable to holders

The income of any REMIC shall be taxable to the holders of interests in such REMIC as provided in this part.

(Added Pub. L. 99–514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2309; amended Pub. L. 100–647, title I, § 1006(t)(20), Nov. 10, 1988, 102 Stat. 3426.)

Editorial Notes

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted ''this subtitle'' for ''this chapter'' in two places.

Statutory Notes and Related Subsidiaries

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

Pub. L. 99–514, title VI, § 675(a)–(c), Oct. 22, 1986, 100 Stat. 2320, as amended by Pub. L. 100–647, title I, § 1006(w)(1), Nov. 10, 1988, 102 Stat. 3427, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle H (§§ 671–675) of title VI of Pub. L. 99–514, enacting this part and amending sections 582, 593, 856, 1272, 6049, and 7701 of this title] shall take effect on January 1, 1987.

''(b) RULES FOR ACCRUING ORIGINAL ISSUE DISCOUNT.—The amendment made by section 672 [amending section 1272 of this title] shall apply to debt instruments issued after December 31, 1986, in taxable years ending after such date.

''(c) TREATMENT OF TAXABLE MORTGAGE POOLS.—

''(1) IN GENERAL.—The amendment made by section 673 [amending section 7701 of this title] shall take effect on January 1, 1992.

''(2) TREATMENT OF EXISTING ENTITIES.—The amendment made by section 673 shall not apply to any entity in existence on December 31, 1991. The preceding sentence shall cease to apply with respect to any entity as of the 1st day after December 31, 1991, on which there is a substantial transfer of cash or other property to such entity.

''(3) SPECIAL RULE FOR COORDINATION WITH WASH-SALE RULES.—Notwithstanding paragraphs (1) and (2), for purposes of applying section 860F(d) of the Internal Revenue Code of 1986 (as added by this part [this subtitle]), the amendment made by section 673 shall apply to taxable years beginning after December 31, 1986.''

STUDY OF AMENDMENTS BY PUB. L. 99–514

Pub. L. 99–514, title VI, § 675(d), as added by Pub. L. 100–647, title I, § 1006(w)(2), Nov. 10, 1988, 102 Stat. 3427, directed Secretary of the Treasury to conduct a study of the operation of the amendments made by this part [this subtitle] and their competitive impact on savings and loan institutions and similar financial institutions and, not later than Jan. 1, 1990, report to Congress, prior to repeal by Pub. L. 101–508, title XI, § 11832(5), Nov. 5, 1990, 104 Stat. 1388–559.

§ 860B. Taxation of holders of regular interests

(a) General rule

In determining the tax under this chapter of any holder of a regular interest in a REMIC, such interest (if not otherwise a debt instrument) shall be treated as a debt instrument.

(b) Holders must use accrual method

The amounts includible in gross income with respect to any regular interest in a REMIC shall be determined under the accrual method of accounting.

(c) Portion of gain treated as ordinary income

Gain on the disposition of a regular interest shall be treated as ordinary income to the extent such gain does not exceed the excess (if any) of—

(1) the amount which would have been includible in the gross income of the taxpayer with respect to such interest if the yield on such interest were 110 percent of the applicable Federal rate (as defined in section 1274(d) without regard to paragraph (2) thereof) as of the beginning of the taxpayer's holding period, over

(2) the amount actually includible in gross income with respect to such interest by the taxpayer.