

Pub. L. 95-30, set out as a note under section 1 of this title.

#### SAVINGS PROVISION

For provisions that nothing in amendment by section 11801 of 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.

#### § 64. Ordinary income defined

For purposes of this subtitle, the term “ordinary income” includes any gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b). Any gain from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as “ordinary income” shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b).

(Added Pub. L. 94-455, title XIX, §1901(a)(10), Oct. 4, 1976, 90 Stat. 1765.)

#### § 65. Ordinary loss defined

For purposes of this subtitle, the term “ordinary loss” includes any loss from the sale or exchange of property which is not a capital asset. Any loss from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as “ordinary loss” shall be treated as loss from the sale or exchange of property which is not a capital asset.

(Added Pub. L. 94-455, title XIX, §1901(a)(11), Oct. 4, 1976, 90 Stat. 1765.)

#### § 66. Treatment of community income

##### (a) Treatment of community income where spouses live apart

If—

- (1) 2 individuals are married to each other at any time during a calendar year;
- (2) such individuals—
  - (A) live apart at all times during the calendar year, and
  - (B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;
- (3) one or both of such individuals have earned income for the calendar year which is community income; and
- (4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year,

then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

##### (b) Secretary may disregard community property laws where spouse not notified of community income

The Secretary may disallow the benefits of any community property law to any taxpayer with respect to any income if such taxpayer

acted as if solely entitled to such income and failed to notify the taxpayer's spouse before the due date (including extensions) for filing the return for the taxable year in which the income was derived of the nature and amount of such income.

##### (c) Spouse relieved of liability in certain other cases

Under regulations prescribed by the Secretary, if—

- (1) an individual does not file a joint return for any taxable year,
- (2) such individual does not include in gross income for such taxable year an item of community income properly includible therein which, in accordance with the rules contained in section 879(a), would be treated as the income of the other spouse,
- (3) the individual establishes that he or she did not know of, and had no reason to know of, such item of community income, and
- (4) taking into account all facts and circumstances, it is inequitable to include such item of community income in such individual's gross income,

then, for purposes of this title, such item of community income shall be included in the gross income of the other spouse (and not in the gross income of the individual). Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability.

##### (d) Definitions

For purposes of this section—

###### (1) Earned income

The term “earned income” has the meaning given to such term by section 911(d)(2).

###### (2) Community income

The term “community income” means income which, under applicable community property laws, is treated as community income.

###### (3) Community property laws

The term “community property laws” means the community property laws of a State, a foreign country, or a possession of the United States.

(Added Pub. L. 96-605, title I, §101(a), Dec. 28, 1980, 94 Stat. 3521; amended Pub. L. 98-369, div. A, title IV, §424(b)(1)-(2)(B), July 18, 1984, 98 Stat. 802, 803; Pub. L. 101-239, title VII, §7841(d)(8), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 105-206, title III, §3201(b), July 22, 1998, 112 Stat. 739.)

#### AMENDMENTS

1998—Subsec. (c). Pub. L. 105-206 inserted at end “Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available