

§ 542. Definition of personal holding company**(a) General rule**

For purposes of this subtitle, the term “personal holding company” means any corporation (other than a corporation described in subsection (c)) if—

(1) Adjusted ordinary gross income requirement

At least 60 percent of its adjusted ordinary gross income (as defined in section 543(b)(2)) for the taxable year is personal holding company income (as defined in section 543(a)), and

(2) Stock ownership requirement

At any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than 5 individuals. For purposes of this paragraph, an organization described in section 401(a), 501(c)(17), or 509(a) or a portion of a trust permanently set aside or to be used exclusively for the purposes described in section 642(c) or a corresponding provision of a prior income tax law shall be considered an individual.

(b) Corporations filing consolidated returns**(1) General rule**

In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, the adjusted ordinary gross income requirement of subsection (a)(1) of this section shall, except as provided in paragraphs (2) and (3), be applied for such year with respect to the consolidated adjusted ordinary gross income and the consolidated personal holding company income of the affiliated group. No member of such an affiliated group shall be considered to meet such adjusted ordinary gross income requirement unless the affiliated group meets such requirement.

(2) Ineligible affiliated group

Paragraph (1) shall not apply to an affiliated group of corporations if—

(A) any member of the affiliated group of corporations (including the common parent corporation) derived 10 percent or more of its adjusted ordinary gross income for the taxable year from sources outside the affiliated group, and

(B) 80 percent or more of the amount described in subparagraph (A) consists of personal holding company income (as defined in section 543).

For purposes of this paragraph, section 543 shall be applied as if the amount described in subparagraph (A) were the adjusted ordinary gross income of the corporation.

(3) Excluded corporations

Paragraph (1) shall not apply to an affiliated group of corporations if any member of the affiliated group (including the common parent corporation) is a corporation excluded from the definition of personal holding company under subsection (c).

(4) Certain dividend income received by a common parent

In applying paragraph (2) (A) and (B), personal holding company income and adjusted

ordinary gross income shall not include dividends received by a common parent corporation from another corporation if—

(A) the common parent corporation owns, directly or indirectly, more than 50 percent of the outstanding voting stock of such other corporation, and

(B) such other corporation is not a personal holding company for the taxable year in which the dividends are paid.

(5) Certain dividend income received from a nonincludible life insurance company

In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, there shall be excluded from consolidated personal holding company income and consolidated adjusted ordinary gross income for purposes of this part dividends received by a member of the affiliated group from a life insurance company taxable under section 801 that is not a member of the affiliated group solely by reason of the application of paragraph (2) of subsection (b) of section 1504.

(c) Exceptions

The term “personal holding company” as defined in subsection (a) does not include—

(1) a corporation exempt from tax under subchapter F (sec. 501 and following);

(2) a bank as defined in section 581, or a domestic building and loan association within the meaning of section 7701(a)(19);

(3) a life insurance company;

(4) a surety company;

(5) a foreign corporation,¹

(6) a lending or finance company if—

(A) 60 percent or more of its ordinary gross income (as defined in section 543(b)(1)) is derived directly from the active and regular conduct of a lending or finance business;

(B) the personal holding company income for the taxable year (computed without regard to income described in subsection (d)(3) and income derived directly from the active and regular conduct of a lending or finance business, and computed by including as personal holding company income the entire amount of the gross income from rents, royalties, produced film rents, and compensation for use of corporate property by shareholders) is not more than 20 percent of the ordinary gross income;

(C) the sum of the deductions which are directly allocable to the active and regular conduct of its lending or finance business equals or exceeds the sum of—

(i) 15 percent of so much of the ordinary gross income derived therefrom as does not exceed \$500,000, plus

(ii) 5 percent of so much of the ordinary gross income derived therefrom as exceeds \$500,000; and

(D) the loans to a person who is a shareholder in such company during the taxable year by or for whom 10 percent or more in value of its outstanding stock is owned directly or indirectly (including, in the case of

¹ So in original. The comma probably should be a semicolon.

an individual, stock owned by members of his family as defined in section 544(a)(2)), outstanding at any time during such year do not exceed \$5,000 in principal amount;

(7) A² small business investment company which is licensed by the Small Business Administration and operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following) and which is actively engaged in the business of providing funds to small business concerns under that Act. This paragraph shall not apply if any shareholder of the small business investment company owns at any time during the taxable year directly or indirectly (including, in the case of an individual, ownership by the members of his family as defined in section 544(a)(2)) a 5 per centum or more proprietary interest in a small business concern to which funds are provided by the investment company or 5 per centum or more in value of the outstanding stock of such concern; and

(8) a corporation which is subject to the jurisdiction of the court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) unless a major purpose of instituting or continuing such case is the avoidance of the tax imposed by section 541.

(d) Special rules for applying subsection (c)(6)

(1) Lending or finance business defined

(A) In general

Except as provided in subparagraph (B), for purposes of subsection (c)(6), the term "lending or finance business" means a business of—

- (i) making loans,
- (ii) purchasing or discounting accounts receivable, notes, or installment obligations,
- (iii) rendering services or making facilities available in connection with activities described in clauses (i) and (ii) carried on by the corporation rendering services or making facilities available, or
- (iv) rendering services or making facilities available to another corporation which is engaged in the lending or finance business (within the meaning of this paragraph), if such services or facilities are related to the lending or finance business (within such meaning) of such other corporation and such other corporation and the corporation rendering services or making facilities available are members of the same affiliated group (as defined in section 1504).

(B) Exceptions

For purposes of subparagraph (A), the term "lending or finance business" does not include the business of—

- (i) making loans, or purchasing or discounting accounts receivable, notes, or installment obligations, if (at the time of the loan, purchase, or discount) the remaining maturity exceeds 144 months; unless—

(I) the loans, notes, or installment obligations are evidenced or secured by contracts of conditional sale, chattel mortgages, or chattel lease agreements arising out of the sale of goods or services in the course of the borrower's or transferor's trade or business, or

(II) the loans, notes, or installment obligations are made or acquired by the taxpayer and meet the requirements of subparagraph (C), or

- (ii) making loans evidenced by, or purchasing, certificates of indebtedness issued in a series, under a trust indenture, and in registered form or with interest coupons attached.

For purposes of clause (i), the remaining maturity shall be treated as including any period for which there may be a renewal or extension under the terms of an option exercisable by the borrower.

(C) Indefinite maturity credit transactions

For purposes of subparagraph (B)(i), a loan, note, or installment obligation meets the requirements of this subparagraph if it is made under an agreement—

- (i) under which the creditor agrees to make loans or advances (not in excess of an agreed upon maximum amount) from time to time to or for the account of the debtor upon request, and
- (ii) under which the debtor may repay the loan or advance in full or in installments.

(2) Business deductions

For purposes of subsection (c)(6)(C), the deductions which may be taken into account shall include only—

(A) deductions which are allowable only by reason of section 162 or section 404, except there shall not be included any such deduction in respect of compensation for personal services rendered by shareholders (including members of the shareholder's family as described in section 544(a)(2)), and

(B) deductions allowable under section 167, and deductions allowable under section 164 for real property taxes, but in either case only to the extent that the property with respect to which such deductions are allowable is used directly in the active and regular conduct of the lending or finance business.

(3) Income received from certain affiliated corporations

For purposes of subsection (c)(6)(B), in the case of a lending or finance company which meets the requirements of subsection (c)(6)(A), there shall not be treated as personal holding company income the lawful income received from a corporation which meets the requirements of subsection (c)(6) and which is a member of the same affiliated group (as defined in section 1504) of which such company is a member.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; ch. 871, § 3, Aug. 12, 1955, 69 Stat. 718; Pub. L. 86-376, § 3(a), Sept. 23, 1959, 73 Stat. 700; Pub. L. 87-768, § 1, Oct. 9, 1962, 76 Stat. 766; Pub. L. 88-272, title II,

² So in original. Probably should not be capitalized.

§ 225(b), (c), (k)(1), Feb. 26, 1964, 78 Stat. 79, 93; Pub. L. 89-809, title I, § 104(h)(1), Nov. 13, 1966, 80 Stat. 1559; Pub. L. 91-172, title I, § 101(j)(16), Dec. 30, 1969, 83 Stat. 528; Pub. L. 93-480, § 3(a), Oct. 26, 1974, 88 Stat. 1454; Pub. L. 94-455, title XIX, § 1901(a)(76), Oct. 4, 1976, 90 Stat. 1777; Pub. L. 96-589, § 5(a), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 97-248, title II, § 293(a)-(c), Sept. 3, 1982, 96 Stat. 575; Pub. L. 98-369, div. A, title II, § 211(b)(7), July 18, 1984, 98 Stat. 755; Pub. L. 99-514, title XII, § 1235(f)(2), Oct. 22, 1986, 100 Stat. 2575; Pub. L. 105-34, title XI, § 1122(d)(1), Aug. 5, 1997, 111 Stat. 977; Pub. L. 108-357, title IV, § 413(b)(1), Oct. 22, 2004, 118 Stat. 1506.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c)(7), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to this Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2004—Subsec. (c)(5). Pub. L. 108-357, § 413(b)(1)(A), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “a foreign personal holding company as defined in section 552;”.

Subsec. (c)(7) to (10). Pub. L. 108-357, § 413(b)(1)(B)-(D), redesignated pars. (8) and (9) as (7) and (8), respectively, inserted “and” at end of par. (7), substituted period for “; and” at end of par. (8), and struck out former pars. (7) and (10) relating to foreign corporations whose outstanding stock during the last half of the taxable year is owned, directly or indirectly, by nonresident aliens and passive foreign investment companies, respectively.

1997—Subsec. (c)(10). Pub. L. 105-34 substituted “section 1297” for “section 1296”.

1986—Subsec. (c)(10). Pub. L. 99-514 added par. (10).

1984—Subsec. (b)(5). Pub. L. 98-369 substituted “section 801” for “section 802”.

1982—Subsec. (c)(6)(C)(ii). Pub. L. 97-248, § 293(a), struck out “but not \$1,000,000” after “exceeds \$500,000”.

Subsec. (d)(1)(B)(i). Pub. L. 97-248, § 293(b), substituted “144 months” for “60 months” after “remaining maturity exceeds”, designated existing provisions from “the loans” through “transferor’s trade or business, or” as subcl. (I), and added subcl. (II).

Subsec. (d)(1)(C). Pub. L. 97-248, § 293(c), added subpar. (C).

1980—Subsec. (c)(9). Pub. L. 96-589, added par. (9).

1976—Subsec. (a)(2). Pub. L. 94-455, § 1901(a)(76)(A), struck out last sentence providing that the preceding sentence shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

Subsec. (b)(2). Pub. L. 94-455, § 1901(a)(76)(B), struck out “other than an affiliated group of railroad corporations the common parent of which would be eligible to file a consolidated return under section 141 of the Internal Revenue Act of 1942” after “group of corporations”.

Subsec. (c)(2). Pub. L. 94-455, § 1901(a)(76)(C), struck out “without regard to subparagraphs (D) and (E) thereof” after “meaning of section 7701(a)(19)”.

Subsec. (c)(8). Pub. L. 94-455, § 1901(a)(76)(D), inserted “(15 U.S.C. 661 and following)” after “Small Business Investment Act of 1958”.

1974—Subsec. (b)(5). Pub. L. 93-480 added par. (5).

1969—Subsec. (a)(2). Pub. L. 91-172 substituted “section 401(a), 501(c)(17), or 509(a)” for “section 503(b)” in the list of sections that contain the description of organizations that may be considered as individuals for the

purpose of establishing stock ownership, and struck out provisions which would have kept an organization or trust created before July 1, 1950, from being so designated if it had been denied exemption under section 504 or an unlimited charitable deduction under section 681(c) of this title.

1966—Subsec. (c)(7). Pub. L. 89-809 substituted requirement that the foreign corporation be other than a corporation which has income to which section 543(a)(7) applies for the taxable year for requirement that the foreign corporation’s gross income from sources within the United States for the period specified in section 861(a)(2)(B) be less than 50 percent of its total gross income from all sources, and expanded the devices included in methods of indirect ownership to encompass foreign estates, foreign trusts, and foreign partnerships.

1964—Subsec. (a)(1). Pub. L. 88-272, § 225(b), substituted “60 percent of its adjusted ordinary gross income (as defined in section 543(b)(2)) for the taxable year is personal holding company income (as defined in section 543(a))” for “80 percent of its gross income for the taxable year is personal holding company income as defined in section 543”.

Subsec. (b). Pub. L. 88-272, § 225(k)(1), substituted “adjusted ordinary gross income” for “gross income”, wherever appearing.

Subsec. (c)(2), (6) to (11). Pub. L. 88-272, § 225(c)(1), (2), inserted among the exceptions, domestic building and loan associations within section 7701(a)(19) without regard to subpars. (D) and (E) thereof, added par. (6), redesignated former pars. (10) and (11) as (7) and (8), respectively, and omitted former pars. (6) to (9) which related to licensed personal finance companies, lending companies, loan or investment corporations, and finance companies, respectively.

Subsec. (d). Pub. L. 88-272, § 225(c)(3), added subsec. (d).

1962—Subsec. (c)(7). Pub. L. 87-768 substituted “authorized to engage in and actively and regularly engaged in the small loan business (consumer finance business)” for “authorized to engage in the small loan business”, inserted provisions excepting from the definition of “personal holding company” a lending company that received 80 percent or more of its gross income from lawful income from domestic subsidiary corporations (of which stock possessing at least 80 percent of the voting power of all classes of stock and of which at least 80 percent of each class of the nonvoting stock is owned directly by such lending company), which are themselves excepted under pars. (6), (7), (8), or (9) of this subsection, increased the maximum amount of the loan where no limit is prescribed from \$500 to \$1,500, and eliminated provisions which required loans to mature in not more than 36 months, and which limited interest, discount and other charges to not more than an amount equal to simple interest at 3 percent per month payable in advance and computed only on unpaid balances.

1959—Subsec. (c)(11). Pub. L. 86-376 added par. (11).

1955—Subsec. (a)(2). Act Aug. 12, 1955, § 3, inserted sentence at end excepting from consideration as “individuals” certain charitable foundations created before July 1, 1950.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States

persons, see section 1124 of Pub. L. 105-34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99-514, set out as an Effective Date note under section 1291 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §293(d), Sept. 3, 1982, 96 Stat. 575, provided that:

“(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1981.

“(2) SUBSECTIONS (b) AND (c).—The amendments made by subsections (b) and (c) [amending this section] shall apply to taxable years beginning after December 31, 1980.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to bankruptcy cases or similar judicial proceedings commenced after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or judicial proceedings commenced after Sept. 30, 1979, see section 7(d)(1), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-480, §3(b), Oct. 26, 1974, 88 Stat. 1454, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1973.”

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 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 1964 AMENDMENT

Amendment by section 225(b), (c)(2), (3), (k)(1) of Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, and amendment by section 225(c)(1) of Pub. L. 88-272 applicable to taxable years beginning after Oct. 16, 1962, see section 225(l) of Pub. L. 88-272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-768, §2, Oct. 9, 1962, 76 Stat. 766, provided that: “The amendment made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1961.”

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-376, §3(b), Sept. 23, 1959, 73 Stat. 700, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1958.”

EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 12, 1955, ch. 871, §4, 69 Stat. 718, provided that: “The amendment made by section 3 of this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1954.”

STOCK OWNERSHIP REQUIREMENT; ORGANIZATION OR TRUST ORGANIZED OR CREATED BEFORE JULY 1, 1950

Pub. L. 95-600, title VII, §701(o), Nov. 6, 1978, 92 Stat. 2907, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The last sentence of section 542(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to stock ownership requirement) shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

“(2) EFFECTIVE DATE.—The provisions of paragraph (1) shall apply with respect to taxable years beginning after December 31, 1976.”

§ 543. Personal holding company income

(a) General rule

For purposes of this subtitle, the term “personal holding company income” means the portion of the adjusted ordinary gross income which consists of:

(1) Dividends, etc.

Dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), and annuities. This paragraph shall not apply to—

(A) interest constituting rent (as defined in subsection (b)(3)),

(B) interest on amounts set aside in a reserve fund under chapter 533 or 535 of title 46, United States Code,

(C) dividends received by a United States shareholder (as defined in section 951(b)) from a controlled foreign corporation (as defined in section 957(a)),

(D) active business computer software royalties (within the meaning of subsection (d)), and

(E) interest received by a broker or dealer (within the meaning of section 3(a)(4) or (5) of the Securities and Exchange Act of 1934) in connection with—

(i) any securities or money market instruments held as property described in section 1221(a)(1),

(ii) margin accounts, or

(iii) any financing for a customer secured by securities or money market instruments.

(2) Rents

The adjusted income from rents; except that such adjusted income shall not be included if—

(A) such adjusted income constitutes 50 percent or more of the adjusted ordinary gross income, and

(B) the sum of—

(i) the dividends paid during the taxable year (determined under section 562),

(ii) the dividends considered as paid on the last day of the taxable year under section 563(d)¹ (as limited by the second sentence of section 563(b)), and

¹ See References in Text note below.