

§ 582. Bad debts, losses, and gains with respect to securities held by financial institutions

(a) Securities

Notwithstanding sections 165(g)(1) and 166(e), subsections (a) and (b) of section 166 (relating to allowance of deduction for bad debts) shall apply in the case of a bank to a debt which is evidenced by a security as defined in section 165(g)(2)(C).

(b) Worthless stock in affiliated bank

For purposes of section 165(g)(1), where the taxpayer is a bank and owns directly at least 80 percent of each class of stock of another bank, stock in such other bank shall not be treated as a capital asset.

(c) Bond, etc., losses and gains of financial institutions

(1) General rule

For purposes of this subtitle, in the case of a financial institution referred to in paragraph (2), the sale or exchange of a bond, debenture, note, or certificate or other evidence of indebtedness shall not be considered a sale or exchange of a capital asset. For purposes of the preceding sentence, any regular or residual interest in a REMIC shall be treated as an evidence of indebtedness.

(2) Financial institutions to which paragraph (1) applies

(A) In general

For purposes of paragraph (1), the financial institutions referred to in this paragraph are—

- (i) any bank (and any corporation which would be a bank except for the fact it is a foreign corporation),
- (ii) any financial institution referred to in section 591,
- (iii) any small business investment company operating under the Small Business Investment Act of 1958, and
- (iv) any business development corporation.

(B) Business development corporation

For purposes of subparagraph (A), the term “business development corporation” means a corporation which was created by or pursuant to an act of a State legislature for purposes of promoting, maintaining, and assisting the economy and industry within such State on a regional or statewide basis by making loans to be used in trades and businesses which would generally not be made by banks within such region or State in the ordinary course of their business (except on the basis of a partial participation), and which is operated primarily for such purposes.

(C) Limitations on foreign banks

In the case of a foreign corporation referred to in subparagraph (A)(i), paragraph (1) shall only apply to gains and losses which are effectively connected with the conduct of a banking business in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Pub. L. 85-866, title I, § 34, Sept. 2, 1958, 72 Stat. 1632;

Pub. L. 91-172, title IV, § 433(a), (c), Dec. 30, 1969, 83 Stat. 623, 624; Pub. L. 94-455, title X, § 1044(a), title XIV, § 1402(b)(1)(G), (2), Oct. 4, 1976, 90 Stat. 1642, 1732; Pub. L. 98-369, div. A, title X, § 1001(b)(6), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99-514, title VI, § 671(b)(4), title IX, § 901(d)(3), Oct. 22, 1986, 100 Stat. 2318, 2379; Pub. L. 100-647, title I, § 1008(d)(3), Nov. 10, 1988, 102 Stat. 3439; Pub. L. 101-508, title XI, § 11801(a)(25), (c)(11), Nov. 5, 1990, 104 Stat. 1388-521, 1388-527; Pub. L. 104-188, title I, § 1621(b)(4), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108-357, title VIII, § 835(b)(3), Oct. 22, 2004, 118 Stat. 1593.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c)(2)(A)(iii), 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 the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108-357 struck out “, and any regular interest in a FASIT,” before “shall be treated”.

1996—Subsec. (c)(1). Pub. L. 104-188 inserted “, and any regular interest in a FASIT,” after “REMIC”.

1990—Subsec. (c)(1). Pub. L. 101-508, § 11801(c)(11)(A), substituted “paragraph (2)” for “paragraph (5)”.

Subsec. (c)(2). Pub. L. 101-508, § 11801(a)(25), (c)(11)(B), redesignated par. (5) as (2) and struck out former par. (2) “Transitional rule for banks” which read as follows: “In the case of a bank, if the net long-term capital gains of the taxable year from sales or exchanges of qualifying securities exceed the net short-term capital losses of the taxable year from such sales or exchanges, such excess shall be considered as gain from the sale of a capital asset held for more than 6 months to the extent it does not exceed the net gain on sales and exchanges described in paragraph (1).”

Subsec. (c)(3). Pub. L. 101-508, § 11801(a)(25), struck out par. (3) “Special rules” which read as follows: “For purposes of this subsection—

“(A) The term ‘qualifying security’ means a bond, debenture, note, or certificate or other evidence of indebtedness held by a bank on July 11, 1969.

“(B) The amount treated as capital gain or loss from the sale or exchange of a qualifying security shall be determined by multiplying the amount of capital gain or loss from the sale or exchange of such security (determined without regard to this subsection) by a fraction, the numerator of which is the number of days before July 12, 1969, that such security was held by the bank, and the denominator of which is the number of days the security was held by the bank.”

Subsec. (c)(4). Pub. L. 101-508, § 11801(a)(25), struck out par. (4) “Transitional rule for banks” which read as follows: “In the case of a corporation which would be a bank except for the fact that it is a foreign corporation, the net gain, if any, for the taxable year on sales and exchanges described in paragraph (1) shall be considered as gain from the sale or exchange of a capital asset to the extent such net gain does not exceed the portion of any capital loss carryover to such taxable year which is attributable to capital losses on sales or exchanges described in paragraph (1) for a taxable year beginning before July 12, 1969. For purposes of the preceding sentence, the portion of a net capital loss for a taxable year which is attributable to capital losses on sales or exchanges described in paragraph (1) is the amount of the net capital loss on such sales or exchanges for such taxable year (but not in excess of the net capital loss for such taxable year).”

Subsec. (c)(5). Pub. L. 101-508, § 11801(c)(11)(B), redesignated par. (5) as (2).

1988—Subsec. (a). Pub. L. 100-647 substituted “subsections (a) and (b) of section 166” for “subsections (a), (b), and (c) of section 166”.

1986—Subsec. (c)(1). Pub. L. 99-514, §901(d)(3)(A), substituted “referred to in paragraph (5)” for “to which section 585, 586, or 593 applies”.

Pub. L. 99-514, §671(b)(4), inserted “For purposes of the preceding sentence, any regular or residual interest in a REMIC shall be treated as an evidence of indebtedness.”

Subsec. (c)(5). Pub. L. 99-514, §901(d)(3)(B), added par. (5).

1984—Subsec. (c)(2). Pub. L. 98-369 substituted “6 months” for “1 year”, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsec. (c)(2). Pub. L. 94-455, §1402(b)(2), provided that “9 months” would be changed to “1 year”.

Pub. L. 94-455, §1402(b)(1)(G), (2), provided that “6 months” would be changed to “9 months” for taxable years beginning in 1977.

Subsec. (c)(4). Pub. L. 94-455, §1044(a), added par. (4). 1969—Pub. L. 91-172, §433(c), substituted “Bad debts, losses, and gains with respect to securities held by financial institutions” for “Bad debt and loss deduction with respect to securities held by banks” in section catchline.

Subsec. (c). Pub. L. 91-172, §433(a), redesignated existing provisions as par. (1), inserted reference to sections 585, 586 and 593, and added pars. (2) and (3).

1958—Subsec. (c). Pub. L. 85-866 struck out “with interest coupons or in registered form,” before “exceed the gains”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108-357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104-188, set out as a note under section 26 of this title.

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 671(b)(4) of Pub. L. 99-514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99-514, as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 901(d)(3) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99-514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title X, §1044(b), Oct. 4, 1976, 90 Stat. 1643, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after July 11, 1969.

“(2) If the refund or credit of any overpayment attributable to the application of the amendment made by subsection (a) to any taxable year is otherwise prevented by the operation of any law or rule of law (other than section 7122 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], relating to compromises) on the day which is one year after the date of the enactment of this Act [Oct. 4, 1976], such credit or refund shall be nevertheless allowed or made if claim therefor is filed on or before such day.”

Pub. L. 94-455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94-455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title IV, §433(d), Dec. 30, 1969, 83 Stat. 624, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 1243 of this title] shall apply to taxable years beginning after July 11, 1969.

“(2) ELECTION FOR SMALL BUSINESS INVESTMENT COMPANIES AND BUSINESS DEVELOPMENT CORPORATIONS.—Notwithstanding paragraph (1), in the case of a financial institution described in section 586(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by this section [amending this section and section 1243 of this title] shall not apply for its taxable years beginning after July 11, 1969, and before July 11, 1974, unless the taxpayer so elects at such time and in such manner as shall be prescribed by the Secretary of the Treasury or his delegate. Such election shall be irrevocable and shall apply to all such taxable years.”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by 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.

[§ 583. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(82), Oct. 4, 1976, 90 Stat. 1778]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 202, related to deductions by certain taxpayers of dividends paid to the United States or any instrumentality thereof exempt from Federal income taxes on the preferred stock of the corporation owned by the United States or such instrumentality.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§ 584. Common trust funds

(a) Definitions

For purposes of this subtitle, the term “common trust fund” means a fund maintained by a bank—