

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

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

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

**[§ 813. Repealed. Pub. L. 100-203, title X,
§ 10242(c)(1), Dec. 22, 1987, 101 Stat. 1330-423]**

Section, added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 743; amended Pub. L. 99-514, title X, § 1011(b)(9), title XVIII, § 1821(j), Oct. 22, 1986, 100 Stat. 2389, 2841; Pub. L. 100-647, title I, § 1010(a)(1), Nov. 10, 1988, 102 Stat. 3450, related to foreign life insurance companies.

A prior section 813, act Aug. 16, 1954, ch. 736, § 813, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, related to adjustment for certain reserves, prior to the general revision of this part by Pub. L. 86-69, § 2(a).

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100-203, set out as an Effective Date of 1987 Amendment note under section 816 of this title.

**§ 814. Contiguous country branches of domestic
life insurance companies****(a) Exclusion of items**

In the case of a domestic mutual insurance company which—

- (1) is a life insurance company,
- (2) has a contiguous country life insurance branch, and
- (3) makes the election provided by subsection (g) with respect to such branch,

there shall be excluded from each item involved in the determination of life insurance company taxable income the items separately accounted for in accordance with subsection (c).

(b) Contiguous country life insurance branch

For purposes of this section, the term contiguous country life insurance branch means a branch which—

- (1) issues insurance contracts insuring risks in connection with the lives or health of residents of a country which is contiguous to the United States,
- (2) has its principal place of business in such contiguous country, and
- (3) would constitute a mutual life insurance company if such branch were a separate domestic insurance company.

For purposes of this section, the term “insurance contract” means any life, health, accident,

or annuity contract or reinsurance contract or any contract relating thereto.

(c) Separate accounting required

Any taxpayer which makes the election provided by subsection (g) shall establish and maintain a separate account for the various income, exclusion, deduction, asset, reserve, liability, and surplus items properly attributable to the contracts described in subsection (b). Such separate accounting shall be made—

- (1) in accordance with the method regularly employed by such company, if such method clearly reflects income derived from, and the other items attributable to, the contracts described in subsection (b), and
- (2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Recognition of gain on assets in branch account

If the aggregate fair market value of all the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account established pursuant to subsection (c) exceeds the aggregate adjusted basis of such assets for purposes of determining gain, then the domestic life insurance company shall be treated as having sold all such assets on the first day of the first taxable year for which the election is in effect at their fair market value on such first day. Notwithstanding any other provision of this chapter, the net gain shall be recognized to the domestic life insurance company on the deemed sale described in the preceding sentence.

**(e) Transactions between contiguous country
branch and domestic life insurance company****(1) Reimbursement for home office services,
etc.**

Any payment, transfer, reimbursement, credit, or allowance which is made from a separate account established pursuant to subsection (c) to one or more other accounts of a domestic life insurance company as reimbursement for costs incurred for or with respect to the insurance (or reinsurance) of risks accounted for in such separate account shall be taken into account by the domestic life insurance company in the same manner as if such payment, transfer, reimbursement, credit, or allowance had been received from a separate person.

(2) Repatriation of income**(A) In general**

Except as provided in subparagraph (B), any amount directly or indirectly transferred or credited from a branch account established pursuant to subsection (c) to one or more other accounts of such company shall, unless such transfer or credit is a reimbursement to which paragraph (1) applies, be added to the income of the domestic life insurance company.

(B) Limitation

The addition provided by subparagraph (A) for the taxable year with respect to any contiguous country life insurance branch shall not exceed the amount by which—

(i) the aggregate decrease in the tentative LICTI of the domestic life insurance company for the taxable year and for all prior taxable years resulting solely from the application of subsection (a) of this section with respect to such branch, exceeds

(ii) the amount of additions to tentative LICTI pursuant to subparagraph (A) with respect to such contiguous country branch for all prior taxable years.

(C) Transitional rule

For purposes of this paragraph, in the case of a prior taxable year beginning before January 1, 1984, the term “tentative LICTI” means life insurance company taxable income determined under this part (as in effect for such year) without regard to this paragraph.

(f) Other rules

(1) Treatment of foreign taxes

(A) In general

No income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States which is attributable to income excluded under subsection (a) shall be taken into account for purposes of subpart A of part III of subchapter N (relating to foreign tax credit) or allowable as a deduction.

(B) Treatment of repatriated amounts

For purposes of sections 78 and 902, where any amount is added to the life insurance company taxable income of the domestic life insurance company by reason of subsection (e)(2), the contiguous country life insurance branch shall be treated as a foreign corporation. Any amount so added shall be treated as a dividend paid by a foreign corporation, and the taxes paid to any foreign country or possession of the United States with respect to such amount shall be deemed to have been paid by such branch.

(2) United States source income allocable to contiguous country branch

For purposes of sections 881, 882, and 1442, each contiguous country life insurance branch shall be treated as a foreign corporation. Such sections shall be applied to each such branch in the same manner as if such sections contained the provisions of any treaty to which the United States and the contiguous country are parties, to the same extent such provisions would apply if such branch were incorporated in such contiguous country.

(g) Election

A taxpayer may make the election provided by this subsection with respect to any contiguous country for any taxable year. An election made under this subsection for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary. The election provided by this subsection shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made,

and such election and any approved revocation thereof shall be made in the manner provided by the Secretary.

(h) Special rule for domestic stock life insurance companies

At the election of a domestic stock life insurance company which has a contiguous country life insurance branch described in subsection (b) (without regard to the mutual requirement in subsection (b)(3)), the assets of such branch may be transferred to a foreign corporation organized under the laws of the contiguous country without the application of section 367. Subsection (a) shall apply to the stock of such foreign corporation as if such domestic company were a mutual company and as if the stock were an item described in subsection (c). Subsection (e)(2) shall apply to amounts transferred or credited to such domestic company as if such domestic company and such foreign corporation constituted one domestic mutual life insurance company. The insurance contracts which may be transferred pursuant to this subsection shall include only those which are similar to the types of insurance contracts issued by a mutual life insurance company. Notwithstanding the first sentence of this subsection, if the aggregate fair market value of the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account exceeds the aggregate adjusted basis of such assets for purposes of determining gain, the domestic life insurance company shall be deemed to have sold all such assets on the first day of the taxable year for which the election under this subsection applies and the net gain shall be recognized to the domestic life insurance company on the deemed sale, but not in excess of the proportion of such net gain which equals the proportion which the aggregate fair market value of such assets which are transferred pursuant to this subsection is of the aggregate fair market value of all such assets.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 744; amended Pub. L. 105-34, title XI, §1131(c)(1), Aug. 5, 1997, 111 Stat. 980.)

AMENDMENTS

1997—Subsec. (h). Pub. L. 105-34 struck out “or 1491” after “section 367”.

NEW SECTION 814 TREATED AS CONTINUATION OF SECTION 819A

Pub. L. 98-369, div. A, title II, §217(a), July 18, 1984, 98 Stat. 762, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “For purposes of section 814 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to contiguous country branches of domestic life insurance companies)—

“(1) any election under section 819A of such Code (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) shall be treated as an election under such section 814, and

“(2) any reference to a provision of such section 814 shall be treated as including a reference to the corresponding provision of such section 819A.”

EFFECTIVE DATE

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

§ 815. Distributions to shareholders from pre-1984 policyholders surplus account

(a) General rule

In the case of a stock life insurance company which has an existing policyholders surplus account, the tax imposed by section 801 for any taxable year shall be the amount which would be imposed by such section for such year on the sum of—

- (1) life insurance company taxable income for such year (but not less than zero), plus
- (2) the amount of direct and indirect distributions during such year to shareholders from such account.

For purposes of the preceding sentence, the term “indirect distribution” shall not include any bona fide loan with arms-length terms and conditions.

(b) Ordering rule

For purposes of this section, any distribution to shareholders shall be treated as made—

- (1) first out of the shareholders surplus account, to the extent thereof,
- (2) then out of the policyholders surplus account, to the extent thereof, and
- (3) finally, out of other accounts.

(c) Shareholders surplus account

(1) In general

Each stock life insurance company which has an existing policyholders surplus account shall continue its shareholders surplus account for purposes of this part.

(2) Additions to account

The amount added to the shareholders surplus account for any taxable year beginning after December 31, 1983, shall be the excess of—

- (A) the sum of—
 - (i) the life insurance company’s taxable income (but not below zero),
 - (ii) the small life insurance company deduction provided by section 806, and
 - (iii) the deductions for dividends received provided by sections 243 and 245 (as modified by section 805(a)(4)) and the amount of interest excluded from gross income under section 103, over
- (B) the taxes imposed for the taxable year by section 801 (determined without regard to this section).

If for any taxable year a tax is imposed by section 55, under regulations proper adjustments shall be made for such year and all subsequent taxable years in the amounts taken into account under subparagraphs (A) and (B) of this paragraph and subparagraph (B) of subsection (d)(3).

(3) Subtractions from account

There shall be subtracted from the shareholders surplus account for any taxable year the amount which is treated under this section as distributed out of such account.

(d) Policyholders surplus account

(1) In general

Each stock life insurance company which has an existing policyholders surplus account shall continue such account.

(2) No additions to account

No amount shall be added to the policyholders surplus account for any taxable year beginning after December 31, 1983.

(3) Subtractions from account

There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

- (A) the amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and
- (B) the amount by which the tax imposed for the taxable year by section 801 is increased by reason of this section.

(e) Existing policyholders surplus account

For purposes of this section, the term “existing policyholders surplus account” means any policyholders surplus account which has a balance as of the close of December 31, 1983.

(f) Other rules applicable to policyholders surplus account continued

Except to the extent inconsistent with the provisions of this part, the provisions of subsections (d), (e), (f), and (g) of section 815 (and of sections 819(b), 6501(c)(6), 6501(k), 6511(d)(6), 6601(d)(3), and 6611(f)(4)) as in effect before the enactment of the Tax Reform Act of 1984 are hereby made applicable in respect of any policyholders surplus account for which there was a balance as of December 31, 1983.

(g) Special rules applicable during 2005 and 2006

In the case of any taxable year of a stock life insurance company beginning after December 31, 2004, and before January 1, 2007—

- (1) the amount under subsection (a)(2) for such taxable year shall be treated as zero, and
- (2) notwithstanding subsection (b), in determining any subtractions from an account under subsections (c)(3) and (d)(3), any distribution to shareholders during such taxable year shall be treated as made first out of the policyholders surplus account, then out of the shareholders surplus account, and finally out of other accounts.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 747; amended Pub. L. 99-514, title X, §1011(b)(10), title XVIII, §1821(k)(1), (2), Oct. 22, 1986, 100 Stat. 2389, 2841; Pub. L. 100-647, title I, §1010(j)(1), Nov. 10, 1988, 102 Stat. 3456; Pub. L. 108-357, title VII, §705(a), Oct. 22, 2004, 118 Stat. 1549; Pub. L. 113-295, div. A, title II, §221(a)(41)(G), Dec. 19, 2014, 128 Stat. 4044.)

REFERENCES IN TEXT

The enactment of the Tax Reform Act of 1984, referred to in subsec. (f), means the enactment of division A of Pub. L. 98-369, which was approved July 18, 1984.

PRIOR PROVISIONS

A prior section 815, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 129; amended Pub. L. 87-790, §3(b), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87-858, §3(b)(4), (e), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88-571, §§2, 3(a), 4(a), Sept. 2, 1964, 78 Stat. 857, 859; Pub. L. 90-225, §4(a), (b), Dec. 27, 1967, 81 Stat. 733, 734; Pub. L. 91-172, title IX, §907(b), Dec. 30, 1969, 83 Stat. 715; Pub. L. 94-331, §1(a), June 30, 1976, 90 Stat. 781; Pub. L. 94-455, title XIX,