

1966—Subsec. (a)(3). Pub. L. 89-809, §211(b)(1), added par. (3).

Subsec. (c). Pub. L. 89-809, §211(b)(2)-(4), inserted “and certain nonqualified per-unit retain certificates” in heading, inserted provisions to par. (1) for the application of the subsection to any nonqualified per-unit retain certificates which were paid as per-unit retain allocations, and inserted references to per-unit retain certificates in par. (2).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(I) of Pub. L. 94-455 effective for 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 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) of this title (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89-809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87-834, set out as a note under section 1381 of this title.

PART III—DEFINITIONS; SPECIAL RULES

Sec. 1388. Definitions; special rules.

AMENDMENTS

1962—Pub. L. 87-834, §17(a), Oct. 16, 1962, 76 Stat. 1049, added heading of part III and item 1388.

§ 1388. Definitions; special rules

(a) Patronage dividend

For purposes of this subchapter, the term “patronage dividend” means an amount paid to a patron by an organization to which part I of this subchapter applies—

- (1) on the basis of quantity or value of business done with or for such patron,
- (2) under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount so paid, and
- (3) which is determined by reference to the net earnings of the organization from business done with or for its patrons.

Such term does not include any amount paid to a patron to the extent that (A) such amount is out of earnings other than from business done with or for patrons, or (B) such amount is out of earnings from business done with or for other patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions. For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.

(b) Written notice of allocation

For purposes of this subchapter, the term “written notice of allocation” means any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice, which discloses to the recipient the stated dollar amount allocated to him by the organization and the portion thereof, if any, which constitutes a patronage dividend.

(c) Qualified written notice of allocation

(1) Defined

For purposes of this subchapter, the term “qualified written notice of allocation” means—

(A) a written notice of allocation which may be redeemed in cash at its stated dollar amount at any time within a period beginning on the date such written notice of allocation is paid and ending not earlier than 90 days from such date, but only if the distributee receives written notice of the right of redemption at the time he receives such written notice of allocation; and

(B) a written notice of allocation which the distributee has consented, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385(a).

Such term does not include any written notice of allocation which is paid as part of a patronage dividend or as part of a payment described in section 1382(c)(2)(A), unless 20 percent or more of the amount of such patronage dividend, or such payment, is paid in money or by qualified check.

(2) Manner of obtaining consent

A distributee shall consent to take a written notice of allocation into account as provided in paragraph (1)(B) only by—

- (A) making such consent in writing,
- (B) obtaining or retaining membership in the organization after—
 - (i) such organization has adopted (after October 16, 1962) a bylaw providing that membership in the organization constitutes such consent, and
 - (ii) he has received a written notification and copy of such bylaw, or

(C) if neither subparagraph (A) nor (B) applies, endorsing and cashing a qualified check, paid as a part of the patronage dividend or payment of which such written notice of allocation is also a part, on or before the 90th day after the close of the payment period for the taxable year of the organization for which such patronage dividend or payment is paid.

(3) Period for which consent is effective

(A) General rule

Except as provided in subparagraph (B)—

- (i) a consent described in paragraph (2) (A) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined with the application of section 1382(e)) during the taxable year of the organization during