

able years beginning after the date of the enactment of this Act [Oct. 22, 1986].”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-568 applicable to taxable years beginning after Oct. 20, 1976, see section 1(d) of Pub. L. 94-568, set out as a note under section 501 of this title.

#### EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1970, see section 121(g) of Pub. L. 91-172, set out as an Effective Date of 1969 Amendment note under section 511 of this title.

### [§ 278. Repealed. Pub. L. 99-514, title VIII, § 803(b)(6), Oct. 22, 1986, 100 Stat. 2356]

Section, added Pub. L. 91-172, title II, § 216(a), Dec. 30, 1969, 83 Stat. 573; amended Pub. L. 91-680, § 1(a), (b), (d), Jan. 12, 1971, 84 Stat. 2064; Pub. L. 94-455, title II, § 207(b)(1), (2), Oct. 4, 1976, 90 Stat. 1538, related to capital expenditures incurred in planting and developing citrus and almond groves, and certain capital expenditures of farming syndicates.

#### EFFECTIVE DATE OF REPEAL

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the repeal of this section is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99-514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101-239, set out as an Effective Date note under section 263A of this title.

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99-514, set out as an Effective Date note under section 263A of this title.

### § 279. Interest on indebtedness incurred by corporation to acquire stock or assets of another corporation

#### (a) General rule

No deduction shall be allowed for any interest paid or incurred by a corporation during the taxable year with respect to its corporate acquisition indebtedness to the extent that such interest exceeds—

(1) \$5,000,000, reduced by

(2) the amount of interest paid or incurred by such corporation during such year on obligations (A) issued to provide consideration for an acquisition described in paragraph (1) of subsection (b), but (B) which are not corporate acquisition indebtedness.

#### (b) Corporate acquisition indebtedness

For purposes of this section, the term “corporate acquisition indebtedness” means any obligation evidenced by a bond, debenture, note, or certificate or other evidence of indebtedness issued by a corporation (hereinafter in this section referred to as “issuing corporation”) if—

(1) such obligation is issued to provide consideration for the acquisition of—

(A) stock in another corporation (hereinafter in this section referred to as “acquired corporation”), or

(B) assets of another corporation (hereinafter in this section referred to as “acquired

corporation”) pursuant to a plan under which at least two-thirds (in value) of all the assets (excluding money) used in trades and businesses carried on by such corporation are acquired,

(2) such obligation is either—

(A) subordinated to the claims of trade creditors of the issuing corporation generally, or

(B) expressly subordinated in right of payment to the payment of any substantial amount of unsecured indebtedness, whether outstanding or subsequently issued, of the issuing corporation,

(3) the bond or other evidence of indebtedness is either—

(A) convertible directly or indirectly into stock of the issuing corporation, or

(B) part of an investment unit or other arrangement which includes, in addition to such bond or other evidence of indebtedness, an option to acquire, directly or indirectly, stock in the issuing corporation, and

(4) as of a day determined under subsection (c)(1), either—

(A) the ratio of debt to equity (as defined in subsection (c)(2)) of the issuing corporation exceeds 2 to 1, or

(B) the projected earnings (as defined in subsection (c)(3)) do not exceed 3 times the annual interest to be paid or incurred (determined under subsection (c)(4)).

#### (c) Rules for application of subsection (b)(4)

For purposes of subsection (b)(4)—

##### (1) Time of determination

Determinations are to be made as of the last day of any taxable year of the issuing corporation in which it issues any obligation to provide consideration for an acquisition described in subsection (b)(1) of stock in, or assets of, the acquired corporation.

##### (2) Ratio of debt to equity

The term “ratio of debt to equity” means the ratio which the total indebtedness of the issuing corporation bears to the sum of its money and all its other assets (in an amount equal to their adjusted basis for determining gain) less such total indebtedness.

##### (3) Projected earnings

(A) The term “projected earnings” means the “average annual earnings” (as defined in subparagraph (B)) of—

(i) the issuing corporation only, if clause (ii) does not apply, or

(ii) both the issuing corporation and the acquired corporation, in any case where the issuing corporation has acquired control (as defined in section 368(c)), or has acquired substantially all of the properties, of the acquired corporation.

(B) The average annual earnings referred to in subparagraph (A) is, for any corporation, the amount of its earnings and profits for any 3-year period ending with the last day of a taxable year of the issuing corporation described in paragraph (1), computed without reduction for—