

subject to a tax imposed by this subchapter shall be the calendar year. Under regulations prescribed by the Secretary, an insurance company which joins in the filing of a consolidated return (or is required to so file) may adopt the taxable year of the common parent corporation even though such year is not a calendar year.

(Added Mar. 13, 1956, ch. 83, §4(a), 70 Stat. 48; amended Pub. L. 94-455, title XV, §1507(b)(2), Oct. 4, 1976, 90 Stat. 1740.)

AMENDMENTS

1976—Pub. L. 94-455 inserted provision permitting an insurance company which joins in the filing of a consolidated return to adopt the taxable year of the common parent corporation even though such year is not a calendar year.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1980, see section 1507(c)(1) of Pub. L. 94-455, set out as a note under section 1504 of this title.

EFFECTIVE DATE

Section applicable only to taxable years beginning after Dec. 31, 1954, see Effective Date of 1956 Amendment note set out under section 316 of this title.

§ 844. Special loss carryover rules

(a) General rule

If an insurance company—

- (1) is subject to the tax imposed by part I or II of this subchapter for the taxable year, and
- (2) was subject to the tax imposed by a different part of this subchapter for a prior taxable year,

then any operations loss carryover under section 810 (or the corresponding provisions of prior law) or net operating loss carryover under section 172 (as the case may be) arising in such prior taxable year shall be included in its operations loss deduction under section 810(a) or net operating loss deduction under section 832(c)(10), as the case may be.

(b) Limitation

The amount included under section 810(a) or 832(c)(10) (as the case may be) by reason of the application of subsection (a) shall not exceed the amount that would have constituted the loss carryover under such section if for all relevant taxable years the company had been subject to the tax imposed by the part referred to in subsection (a)(1) rather than the part referred to in subsection (a)(2). For purposes of applying the preceding sentence, section 810(b)(1)(C) (relating to additional years to which losses may be carried by new life insurance companies) shall not apply.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Added Pub. L. 91-172, title IX, §907(c)(1), Dec. 30, 1969, 83 Stat. 716; amended Pub. L. 94-455, title XIX, §§1901(b)(25), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1798, 1834; Pub. L. 98-369, div. A, title II, §211(b)(11), July 18, 1984, 98 Stat. 755; Pub. L. 99-514, title X, §1024(c)(12), title XVIII,

§1899A(20), Oct. 22, 1986, 100 Stat. 2408, 2959; Pub. L. 101-239, title VII, §7841(d)(16), Dec. 19, 1989, 103 Stat. 2429.)

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101-239 substituted “a prior taxable year” for “the taxable year”.

1986—Subsec. (a). Pub. L. 99-514, §1024(c)(12), added subsec. (a) and struck out former subsec. (a) which read as follows: “If an insurance company—

- “(1) is subject to the tax imposed by part I, II, or III of this subchapter for the taxable year, and
- “(2) was subject to the tax imposed by a different part of this subchapter for a prior taxable year beginning after December 31, 1962,

then any operations loss carryover under section 810 (or the corresponding provisions of prior law), unused loss carryover under section 825, or net operating loss carryover under section 172, as the case may be, arising in such prior taxable year shall be included in its operations loss deduction under section 810(a), unused loss deduction under section 825(a), or net operating loss deduction under section 832(c)(10), as the case may be.”

Pub. L. 99-514, §1899A(20), substituted “prior law), unused loss” for “prior law),, unused loss” in concluding provisions.

Subsec. (b). Pub. L. 99-514, §1024(c)(12), added subsec. (b) and struck out former subsec. (b) which read as follows: “The amount included under section 810(a), 825(a), or 832(c)(10), as the case may be, by reason of the application of subsection (a) shall not exceed the amount that would have constituted the loss carryover under such section if for all relevant taxable years such company had been subject to the tax imposed by the part referred to in subsection (a)(1) rather than the part referred to in subsection (a)(2). For purposes of applying the preceding sentence—

- “(1) in the case of a mutual insurance company which becomes a stock insurance company, an amount equal to 25 percent of the deduction under section 832(c)(11) (relating to dividends to policyholders) shall not be allowed, and
- “(2) section 810(b)(1)(C) (relating to additional years to which losses may be carried by new life insurance companies) shall not apply.”

1984—Subsec. (a). Pub. L. 98-369, §211(b)(11)(A), substituted “section 810 (or the corresponding provisions of prior law),” for “section 812” and “section 810(a)” for “section 812(a)” in provisions following par. (2).

Subsec. (b). Pub. L. 98-369, §211(b)(11)(B), substituted “section 810(a)” for “section 812(a)” in introductory provisions, and “section 810(b)(1)(C)” for “section 812(b)(1)(C)” in par. (2).

1976—Subsec. (b)(2). Pub. L. 94-455, §1901(b)(25), substituted “section 812(b)(1)(C)” for “section 812(b)(1)(A)(iii)”.

Subsec. (c). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1024(c)(12) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99-514, set out as a note under section 831 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 1976 AMENDMENT

Amendment by section 1901(b)(25) 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

Pub. L. 91-172, title IX, §907(d), Dec. 30, 1969, 83 Stat. 717, provided that: “The amendments made by sub-

section (a) [amending sections 805 and 810 of this title] shall apply to taxable years beginning after December 31, 1957. The amendments made by subsection (b) [amending section 815 of this title] shall apply to taxable years beginning after December 31, 1968. The amendments made by subsection (c) [enacting this section and amending sections 809, 823, and 825 of this title] shall apply with respect to losses incurred in taxable years beginning after December 31, 1962, but shall not affect any tax liability for any taxable year beginning before January 1, 1967.”

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.

§ 845. Certain reinsurance agreements

(a) Allocation in case of reinsurance agreement involving tax avoidance or evasion

In the case of 2 or more related persons (within the meaning of section 482) who are parties to a reinsurance agreement (or where one of the parties to a reinsurance agreement is, with respect to any contract covered by the agreement, in effect an agent of another party to such agreement or a conduit between related persons), the Secretary may—

- (1) allocate between or among such persons income (whether investment income, premium, or otherwise), deductions, assets, reserves, credits, and other items related to such agreement,
- (2) recharacterize any such items, or
- (3) make any other adjustment,

if he determines that such allocation, recharacterization, or adjustment is necessary to reflect the proper amount, source, or character of the taxable income (or any item described in paragraph (1) relating to such taxable income) of each such person.

(b) Reinsurance contract having significant tax avoidance effect

If the Secretary determines that any reinsurance contract has a significant tax avoidance effect on any party to such contract, the Secretary may make proper adjustments with respect to such party to eliminate such tax avoidance effect (including treating such contract with respect to such party as terminated on December 31 of each year and reinstated on January 1 of the next year).

(Added Pub. L. 98–369, div. A, title II, § 212(a), July 18, 1984, 98 Stat. 757; amended Pub. L. 108–357, title VIII, § 803(a), Oct. 22, 2004, 118 Stat. 1569.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357 substituted “amount, source, or character” for “source and character” in concluding provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 803(b), Oct. 22, 2004, 118 Stat. 1569, provided that: “The amendments made by this section [amending this section] shall apply to any

risk reinsured after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE

Pub. L. 98–369, div. A, title II, § 217(d), July 18, 1984, 98 Stat. 762, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) Subsection (a) of section 845 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this title) shall apply with respect to any risk reinsured on or after September 27, 1983.

“(2) Subsection (b) of section 845 of such Code (as so added) shall apply with respect to risks reinsured after December 31, 1984.”

§ 846. Discounted unpaid losses defined

(a) Discounted losses determined

(1) Separately computed for each accident year

The amount of the discounted unpaid losses as of the end of any taxable year shall be the sum of the discounted unpaid losses (as of such time) separately computed under this section with respect to unpaid losses in each line of business attributable to each accident year.

(2) Method of discounting

The amount of the discounted unpaid losses as of the end of any taxable year attributable to any accident year shall be the present value of such losses (as of such time) determined by using—

- (A) the amount of the undiscounted unpaid losses as of such time,
- (B) the applicable interest rate, and
- (C) the applicable loss payment pattern.

(3) Limitation on amount of discounted losses

In no event shall the amount of the discounted unpaid losses with respect to any line of business attributable to any accident year exceed the aggregate amount of unpaid losses with respect to such line of business for such accident year included on the annual statement filed by the taxpayer for the year ending with or within the taxable year.

(4) Determination of applicable factors

In determining the amount of the discounted unpaid losses attributable to any accident year—

- (A) the applicable interest rate shall be the interest rate determined under subsection (c) for the calendar year with which such accident year ends, and
- (B) the applicable loss payment pattern shall be the loss payment pattern determined under subsection (d) which is in effect for the calendar year with which such accident year ends.

(b) Determination of undiscounted unpaid losses

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term “undiscounted unpaid losses” means the unpaid losses shown in the annual statement filed by the taxpayer for the year ending with or within the taxable year of the taxpayer.

(2) Adjustment if losses discounted on annual statement

If—