

respect to any category of specified insurance contracts, the percentage (applicable under subsection (c)(1) to such category) of the amount (if any) by which—

(A) the amount determined under subparagraph (B) of subsection (d)(1) with respect to such category, exceeds

(B) the amount determined under subparagraph (A) of subsection (d)(1) with respect to such category.

**(g) Treatment of certain ceding commissions**

Nothing in any provision of law (other than this section or section 197) shall require the capitalization of any ceding commission incurred on or after September 30, 1990, under any contract which reinsures a specified insurance contract.

**(h) Secretarial authority to adjust capitalization amounts**

**(1) In general**

Except as provided in paragraph (2), the Secretary may provide that a type of insurance contract will be treated as a separate category for purposes of this section (and prescribe a percentage applicable to such category) if the Secretary determines that the deferral of acquisition expenses for such type of contract which would otherwise result under this section is substantially greater than the deferral of acquisition expenses which would have resulted if actual acquisition expenses (including indirect expenses) and the actual useful life for such type of contract had been used.

**(2) Adjustment to other contracts**

If the Secretary exercises his authority with respect to any type of contract under paragraph (1), the Secretary shall adjust the percentage which would otherwise have applied under subsection (c)(1) to the category which includes such type of contract so that the exercise of such authority does not result in a decrease in the amount of revenue received under this chapter by reason of this section for any fiscal year.

**(i) Treatment of qualified foreign contracts under adjusted current earnings preference**

For purposes of determining adjusted current earnings under section 56(g), acquisition expenses with respect to contracts described in clause (iii) of subsection (e)(1)(B) shall be capitalized and amortized in accordance with the treatment generally required under generally accepted accounting principles as if this subsection applied to such contracts for all taxable years.

(Added Pub. L. 101-508, title XI, §11301(a), Nov. 5, 1990, 104 Stat. 1388-445; amended Pub. L. 103-66, title XIII, §13261(d), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104-191, title III, §301(h), Aug. 21, 1996, 110 Stat. 2052; Pub. L. 106-554, §1(a)(7) [title II, §202(a)(5), (b)(10)], Dec. 21, 2000, 114 Stat. 2763, 2763A-628, 2763A-629; Pub. L. 108-173, title XII, §1201(h), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 109-280, title VIII, §844(e), Aug. 17, 2006, 120 Stat. 1013; Pub. L. 113-295, div. A, title II, §221(a)(70), Dec. 19, 2014, 128 Stat. 4048.)

AMENDMENTS

2014—Subsec. (j). Pub. L. 113-295 struck out subsec. (j). Text read as follows: “In the case of any taxable

year which includes September 30, 1990, the amount taken into account as the net premiums (or negative capitalization amount) with respect to any category of specified insurance contracts shall be the amount which bears the same ratio to the amount which (but for this subsection) would be so taken into account as the number of days in such taxable year on or after September 30, 1990, bears to the total number of days in such taxable year.”

2006—Subsec. (e)(6). Pub. L. 109-280 added par. (6).

2003—Subsec. (e)(1)(B)(v). Pub. L. 108-173 added cl. (v).

2000—Subsec. (e)(1)(B)(iv). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10)], substituted “an Archer MSA” for “a Archer MSA”.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(5)], substituted “Archer MSA” for “medical savings account”.

1996—Subsec. (e)(1)(B)(iv). Pub. L. 104-191 added cl. (iv).

1993—Subsec. (g). Pub. L. 103-66 substituted “this section or section 197” for “this section”.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to contracts issued after Dec. 31, 1996, but only with respect to taxable years beginning after Dec. 31, 2009, and to specified policy acquisition expenses determined for taxable years beginning after Dec. 31, 2009, see section 844(g)(1), (4) of Pub. L. 109-280, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108-173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104-191, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103-66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE

Pub. L. 101-508, title XI, §11301(d)(1), Nov. 5, 1990, 104 Stat. 1388-449, provided that: “The amendments made by subsections (a) and (c) [enacting this section] shall apply to taxable years ending on or after September 30, 1990. Any capitalization required by reason of such amendments shall not be treated as a change in method of accounting for purposes of the Internal Revenue Code of 1986.”

**Subchapter M—Regulated Investment Companies and Real Estate Investment Trusts**

Part

- I. Regulated investment companies.
- II. Real estate investment trusts.
- III. Provisions which apply to both regulated investment companies and real estate investment trusts.
- IV. Real estate mortgage investment conduits.
- V. Repealed.]

AMENDMENTS

2004—Pub. L. 108-357, title VIII, §835(b)(12), Oct. 22, 2004, 118 Stat. 1594, struck out item for part V “Financial asset securitization investment trusts”.

1996—Pub. L. 104-188, title I, §1621(c), Aug. 20, 1996, 110 Stat. 1867, added item for part V.

1988—Pub. L. 100-647, title I, §1018(u)(30), Nov. 10, 1988, 102 Stat. 3591, added item for part IV.

1978—Pub. L. 95-600, title III, §362(d)(8), Nov. 6, 1978, 92 Stat. 2852, added item for part III.

**PART I—REGULATED INVESTMENT COMPANIES**

- Sec. 851. Definition of regulated investment company.
- 852. Taxation of regulated investment companies and their shareholders.
- 853. Foreign tax credit allowed to shareholders.
- 853A. Credits from tax credit bonds allowed to shareholders.
- 854. Limitations applicable to dividends received from regulated investment company.
- 855. Dividends paid by regulated investment company after close of taxable year.

**AMENDMENTS**

2009—Pub. L. 111-5, div. B, title I, §1541(b)(3), Feb. 17, 2009, 123 Stat. 362, added item 853A.

1980—Pub. L. 96-223, title IV, §404(b)(7), Apr. 2, 1980, 94 Stat. 307, inserted “and taxable interest” after “dividends” in item 854 for taxable years after Dec. 31, 1980, and before Jan. 1, 1982.

1960—Pub. L. 86-779, §10(b)(1), Sept. 14, 1960, 74 Stat. 1008, inserted “and Real Estate Investment Trusts” in subchapter M heading, part I and part II designations thereunder and part I designation preceding table of sections numbered 851 to 855.

**§ 851. Definition of regulated investment company**

**(a) General rule**

For purposes of this subtitle, the term “regulated investment company” means any domestic corporation—

(1) which, at all times during the taxable year—

(A) is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2) as a management company or unit investment trust, or

(B) has in effect an election under such Act to be treated as a business development company, or

(2) which is a common trust fund or similar fund excluded by section 3(c)(3) of such Act (15 U.S.C. 80a-3(c)) from the definition of “investment company” and is not included in the definition of “common trust fund” by section 584(a).

**(b) Limitations**

A corporation shall not be considered a regulated investment company for any taxable year unless—

(1) it files with its return for the taxable year an election to be a regulated investment company or has made such election for a previous taxable year;

(2) at least 90 percent of its gross income is derived from—

(A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but

not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and

(B) net income derived from an interest in a qualified publicly traded partnership (as defined in subsection (h)); and

(3) at the close of each quarter of the taxable year—

(A) at least 50 percent of the value of its total assets is represented by—

(i) cash and cash items (including receivables), Government securities and securities of other regulated investment companies, and

(ii) other securities for purposes of this calculation limited, except and to the extent provided in subsection (e), in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the taxpayer and to not more than 10 percent of the outstanding voting securities of such issuer, and

(B) not more than 25 percent of the value of its total assets is invested in—

(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or

(iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).

For purposes of paragraph (2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included. For purposes of paragraph (2), the Secretary may by regulation exclude from qualifying income foreign currency gains which are not directly related to the company’s principal business of investing in stock or securities (or options and futures with respect to stock or securities). For purposes of paragraph (2), amounts excludable from gross income under section 103(a) shall be treated as included in gross income. Income derived from a partnership (other than a qualified publicly traded partnership as defined in subsection (h)) or trust shall be treated as described in paragraph (2) only to the extent such income is attributable to items of income of the partnership or trust (as the case may be) which would be described in paragraph (2) if realized by the regulated investment company in the same manner as realized by the partnership or trust.

**(c) Rules applicable to subsection (b)(3)**

For purposes of subsection (b)(3) and this subsection—