

1966—Subsec. (a). Pub. L. 89-809, §211(a)(1), inserted reference to amounts paid to patrons as a per-unit retain allocation as defined in section 1388(f).

Subsec. (b). Pub. L. 89-809, §211(a)(2), inserted “and per-unit retain allocations” in heading, added pars. (3) and (4), and, in text following par. (4), inserted provisions making existing text applicable only to amounts described in pars. (1) and (2) and inserted text covering the treatment of amounts described in pars. (3) and (4).

Subsec. (e). Pub. L. 89-809, §211(a)(3), inserted provision that the marketing of products shall be treated as occurring during any of the taxable years in which the pool is open.

Subsec. (f). Pub. L. 89-809, §211(a)(4), substituted “paragraphs (1) and (2) of subsection (b)” for “subsection (b)”.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title IX, §911(c), Dec. 30, 1969, 83 Stat. 722, provided that: “The amendments made by this section [amending this section and section 1388 of this title] shall apply to per-unit retain allocations made after October 9, 1969.”

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-809, title II, §211(e), Nov. 13, 1966, 80 Stat. 1584, provided that:

“(1) The amendments made by subsections (a), (b), and (c) [amending this section and sections 1383, 1385, and 1388 of this title] shall apply to per-unit retain allocations made during taxable years of an organization described in section 1381(a) (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after April 30, 1966, with respect to products delivered during such years.

“(2) The amendments made by subsection (d) [amending section 6044 of this title] shall apply with respect to calendar years after 1966.”

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.

§ 1383. Computation of tax where cooperative redeems nonqualified written notices of allocation or nonqualified per-unit retain certificates

(a) General rule

If, under section 1382(b)(2) or (4), or (c)(2)(B), a deduction is allowable to an organization for the taxable year for amounts paid in redemption of nonqualified written notices of allocation or non-qualified per-unit retain certificates, then the tax imposed by this chapter on such organization for the taxable year shall be the lesser of the following:

(1) the tax for the taxable year computed with such deduction; or

(2) an amount equal to—

(A) the tax for the taxable year computed without such deduction, minus

(B) the decrease in tax under this chapter for any prior taxable year (or years) which would result solely from treating such non-qualified written notices of allocation or nonqualified per-unit retain certificates as qualified written notices of allocation or qualified per-unit retain certificates (as the case may be).

(b) Special rules

(1) If the decrease in tax ascertained under subsection (a)(2)(B) exceeds the tax for the tax-

able year (computed without the deduction described in subsection (a)) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

(2) For purposes of determining the decrease in tax under subsection (a)(2)(B), the stated dollar amount of any nonqualified written notice of allocation or nonqualified per-unit retain certificate which is to be treated under such subsection as a qualified written notice of allocation or qualified per-unit retain certificate (as the case may be) shall be the amount paid in redemption of such written notice of allocation or per-unit retain certificate which is allowable as a deduction under section 1382(b)(2) or (4), or (c)(2)(B) for the taxable year.

(3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a)(2), then the deduction described in subsection (a) shall not be taken into account for any purpose of this subtitle other than for purposes of this section.

(Added Pub. L. 87-834, §17(a), Oct. 16, 1962, 76 Stat. 1047; amended Pub. L. 89-809, title II, §211(a)(5)-(7), Nov. 13, 1966, 80 Stat. 1581.)

AMENDMENTS

1966—Pub. L. 89-809, §211(a)(5), inserted “or non-qualified per-unit retain certificates” in section catchline.

Subsec. (a). Pub. L. 89-809, §211(a)(6), substituted “section 1382(b)(2) or (4)” for “1382(b)(2)” and inserted references to per-unit retain certificates.

Subsec. (b)(2). Pub. L. 89-809, §211(a)(7), substituted “section 1382(b)(2) or (4)” for “section 1382(b)(2)” and inserted references to per-unit retain certificates.

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 II—TAX TREATMENT BY PATRONS OF PATRONAGE DIVIDENDS AND PER-UNIT RETAIN ALLOCATIONS

Sec.

1385. Amounts includible in patron's gross income.

AMENDMENTS

1962—Pub. L. 87-834, §17(a), Oct. 16, 1962, 76 Stat. 1048, added heading of part II and item 1385.

§ 1385. Amounts includible in patron's gross income

(a) General rule

Except as otherwise provided in subsection (b), each person shall include in gross income—

(1) the amount of any patronage dividend which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a),

(2) any amount, described in section 1382 (c)(2)(A) (relating to certain nonpatronage distributions by tax-exempt farmers' cooperatives), which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a)(1), and

(3) the amount of any per-unit retain allocation which is paid in qualified per-unit retain certificates and which is received by him during the taxable year from an organization described in section 1381(a).

(b) Exclusion from gross income

Under regulations prescribed by the Secretary, the amount of any patronage dividend, and any amount received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was paid as a patronage dividend, shall not be included in gross income to the extent that such amount—

(1) is properly taken into account as an adjustment to basis of property, or

(2) is attributable to personal, living, or family items.

(c) Treatment of certain nonqualified written notices of allocation and certain nonqualified per-unit retain certificates

(1) Application of subsection

This subsection shall apply to—

(A) any nonqualified written notice of allocation which—

- (i) was paid as a patronage dividend, or
- (ii) was paid by an organization described in section 1381(a)(1) on a patronage basis with respect to earnings derived from business or sources described in section 1382(c)(2)(A), and

(B) any nonqualified per-unit retain certificate which was paid as a per-unit retain allocation.

(2) Basis; amount of gain

In the case of any nonqualified written notice of allocation or nonqualified per-unit retain certificate to which this subsection applies, for purposes of this chapter—

(A) the basis of such written notice of allocation or per-unit retain certificate in the hands of the patron to whom such written notice of allocation or per-unit retain certificate was paid shall be zero,

(B) the basis of such written notice of allocation or per-unit retain certificate which was acquired from a decedent shall be its basis in the hands of the decedent, and

(C) gain on the redemption, sale, or other disposition of such written notice of allocation or per-unit retain certificate by any person shall, to the extent that the stated dollar amount of such written notice of allo-

cation or per-unit retain certificate exceeds its basis, be considered as ordinary income.

(Added Pub. L. 87-834, §17(a), Oct. 16, 1962, 76 Stat. 1048; amended Pub. L. 89-809, title II, §211(b)(1)-(4), Nov. 13, 1966, 80 Stat. 1582; Pub. L. 94-455, title XIX, §§1901(b)(3)(I), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c)(2)(C). Pub. L. 94-455, §1901(b)(3)(I), substituted “ordinary income” for “gain from the sale or exchange of property which is not a capital asset”.

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