

- Sec.
 1442. Withholding of tax on foreign corporations.
 1443. Foreign tax-exempt organizations.
 1444. Withholding on Virgin Islands source income.
 1445. Withholding of tax on dispositions of United States real property interests.
 1446. Withholding of tax on foreign partners' share of effectively connected income.¹

AMENDMENTS

1988—Pub. L. 100-647, title I, §1012(s)(1)(C), Nov. 10, 1988, 102 Stat. 3527, substituted “Withholding of tax on foreign partners’ share of effectively connected income” for “Withholding tax on amounts paid by partnerships to foreign partners” in item 1446.

1986—Pub. L. 99-514, title XII, §1246(c), Oct. 22, 1986, 100 Stat. 2582, added item 1446.

1984—Pub. L. 98-369, div. A, title I, §129(a)(2), July 18, 1984, 98 Stat. 659, added item 1445.

1983—Pub. L. 97-455, §1(d)(2), Jan. 12, 1983, 96 Stat. 2498, added item 1444.

§ 1441. Withholding of tax on nonresident aliens**(a) General rule**

Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except as otherwise provided in regulations prescribed by the Secretary under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

(b) Income items

The items of income referred to in subsection (a) are interest (other than original issue discount as defined in section 1273), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), and gains subject to tax under section 871(a)(1)(D). The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act and which are—

(1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or

(2) in the case of an individual who is not a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii), granted by—

(A) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

(B) a foreign government,

(C) an international organization, or a bi-national or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or

(D) the United States, or an instrumentality or agency thereof, or a State, or a possession of the United States, or any political subdivision thereof, or the District of Columbia,

as a scholarship or fellowship for study, training, or research in the United States. In the case of a nonresident alien individual who is a member of a domestic partnership, the items of income referred to in subsection (a) shall be treated as referring to items specified in this subsection included in his distributive share of the income of such partnership.

(c) Exceptions**(1) Income connected with United States business**

No deduction or withholding under subsection (a) shall be required in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year.

(2) Owner unknown

The Secretary may authorize the tax under subsection (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(3) Bonds with extended maturity dates

The deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within subsections (a), (b), and (c) of section 1451 (as in effect before its repeal by the Tax Reform Act of 1984) were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and the liability assumed by the debtor exceeds 27½ percent of the interest, shall not exceed the rate of 27½ percent per annum.

(4) Compensation of certain aliens

Under regulations prescribed by the Secretary, compensation for personal services may be exempted from deduction and withholding under subsection (a).

(5) Special items

In the case of gains described in section 631(b) or (c), and gains subject to tax under section 871(a)(1)(D), the amount required to be deducted and withheld shall, if the amount of such gain is not known to the withholding agent, be such amount, not exceeding 30 percent of the amount payable, as may be necessary to assure that the tax deducted and withheld shall not be less than 30 percent of such gain.

(6) Per diem of certain aliens

No deduction or withholding under subsection (a) shall be required in the case of

¹ So in original. Does not conform to section catchline.

amounts of per diem for subsistence paid by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended.

(7) Certain annuities received under qualified plans

No deduction or withholding under subsection (a) shall be required in the case of any amount received as an annuity if such amount is, under section 871(f), exempt from the tax imposed by section 871(a).

(8) Original issue discount

The Secretary may prescribe such regulations as may be necessary for the deduction and withholding of the tax on original issue discount subject to tax under section 871(a)(1)(C) including rules for the deduction and withholding of the tax on original issue discount from payments of interest.

(9) Interest income from certain portfolio debt investments

In the case of portfolio interest (within the meaning of section 871(h)), no tax shall be required to be deducted and withheld from such interest unless the person required to deduct and withhold tax from such interest knows, or has reason to know, that such interest is not portfolio interest by reason of section 871(h)(3) or (4).

(10) Exception for certain interest and dividends

No tax shall be required to be deducted and withheld under subsection (a) from any amount described in section 871(i)(2).

(11) Certain gambling winnings

No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(j).

(12) Certain dividends received from regulated investment companies

(A) In general

No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(k).

(B) Special rule

For purposes of subparagraph (A), clause (i) of section 871(k)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause. A similar rule shall apply with respect to the exception contained in section 871(k)(2)(B).

(d) Exemption of certain foreign partnerships

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign partnership engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed

by section 871(a) on the members of such partnership who are nonresident alien individuals will not be jeopardized by the exemption.

(e) Alien resident of Puerto Rico

For purposes of this section, the term “nonresident alien individual” includes an alien resident of Puerto Rico.

(f) Continental shelf areas

For sources of income derived from, or for services performed with respect to, the exploration or exploitation of natural resources on submarine areas adjacent to the territorial waters of the United States, see section 638.

(g) Cross reference

For provision treating 85 percent of social security benefits as subject to withholding under this section, see section 871(a)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 357; Aug. 26, 1954, ch. 937, title V, § 544(f), as added July 18, 1956, ch. 627, § 11(a), 70 Stat. 563; amended Pub. L. 85-141, § 11(b)(1), Aug. 14, 1957, 71 Stat. 365; Pub. L. 85-866, title I, § 40(b), Sept. 2, 1958, 72 Stat. 1638; Pub. L. 87-256, § 110(d), Sept. 21, 1961, 75 Stat. 536; Pub. L. 88-272, title III, § 302(c), Feb. 26, 1964, 78 Stat. 146; Pub. L. 89-809, title I, § 103(h), Nov. 13, 1966, 80 Stat. 1553; Pub. L. 91-172, title V, § 505(b), Dec. 30, 1969, 83 Stat. 634; Pub. L. 92-178, title III, § 313(a), (d), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-21, title I, § 121(c)(2), Apr. 20, 1983, 97 Stat. 82; Pub. L. 98-369, div. A, title I, §§ 42(a)(13), 127(e)(1), title IV, § 474(r)(29)(G), (H), July 18, 1984, 98 Stat. 557, 652, 845; Pub. L. 99-514, title I, § 123(b)(2), title XII, § 1214(c)(3), title XVIII, § 1810(d)(3)(D), Oct. 22, 1986, 100 Stat. 2113, 2542, 2825; Pub. L. 100-647, title I, § 1001(d)(2)(A), title VI, § 6134(a)(2), Nov. 10, 1988, 102 Stat. 3350, 3721; Pub. L. 101-508, title XI, § 11704(a)(14), Nov. 5, 1990, 104 Stat. 1388-518; Pub. L. 102-318, title V, § 521(b)(32), (33), July 3, 1992, 106 Stat. 312; Pub. L. 103-66, title XIII, § 13237(c)(4), Aug. 10, 1993, 107 Stat. 508; Pub. L. 103-296, title III, § 320(a)(1)(B), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 105-34, title XVI, § 1604(g)(3), Aug. 5, 1997, 111 Stat. 1099; Pub. L. 108-357, title IV, § 411(a)(3)(A), Oct. 22, 2004, 118 Stat. 1503; Pub. L. 113-295, div. A, title II, § 221(a)(92), Dec. 19, 2014, 128 Stat. 4050.)

REFERENCES IN TEXT

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsec. (b), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

The Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (b)(2)(C), is Pub. L. 87-256, Sept. 21, 1961, 75 Stat. 527, as amended, which is classified principally to chapter 33 (§ 2451 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of Title 22 and Tables.

The Tax Reform Act of 1984, referred to in subsec. (c)(3), is division A [§§ 5 to 1082] of Pub. L. 98-369, July 18, 1984, 98 Stat. 494, which was approved July 18, 1984. For complete classification of this Act to the Code, see Short Title of 1984 Amendments note set out under section 1 of this title and Tables.

The Mutual Security Act of 1954, referred to in subsec. (c)(6), is act Aug. 26, 1954, ch. 937, 68 Stat. 832, as amended by acts July 8, 1955, ch. 301, 69 Stat. 283; July 18, 1956, ch. 627, §§ 2 to 11, 70 Stat. 555; Aug. 14, 1957, Pub. L. 85-141, 71 Stat. 355; June 30, 1958, Pub. L. 85-477, ch. 1, §§ 101 to 103, ch. II, §§ 201 to 205, ch. III, § 301, ch. IV,

§ 401, ch. V, § 501, 72 Stat. 261; July 24, 1959, Pub. L. 86-108, § 2, ch. 1, § 101, ch. II, §§ 201 to 205(a) to (i), (k) to (n), ch. III, § 301, ch. IV, § 401(a) to (k), (m), 73 Stat. 246; May 14, 1960, Pub. L. 86-472, ch. I to V, 74 Stat. 134, which was principally classified to chapter 24 (§ 1750 et seq.) of Title 22, Foreign Relations and Intercourse, and which was repealed by act July 18, 1956, ch. 627, § 8(m), 70 Stat. 559, Pub. L. 85-141, §§ 2(e), 3, 4(b), 11(d), Aug. 14, 1957, 71 Stat. 356, Pub. L. 86-108, ch. II, §§ 205(j), ch. IV, 401(i), July 24, 1959, 73 Stat. 250, Pub. L. 86-472, ch. II, §§ 203(d), 204(k), May 14, 1960, 74 Stat. 138, Pub. L. 87-195, pt. III, § 642(a)(2), Sept. 4, 1961, 75 Stat. 460, Pub. L. 94-329, title II, § 212(b)(1), June 30, 1976, 90 Stat. 745, except for sections 1754, 1783, 1796, 1853, 1922, 1928, and 1937 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 1754 of Title 22 and Tables.

AMENDMENTS

2014—Subsecs. (b), (c)(5). Pub. L. 113-295 substituted “and gains subject to tax under section 871(a)(1)(D)” for “gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966”.

2004—Subsec. (c)(12). Pub. L. 108-357 added par. (12).

1997—Subsec. (g). Pub. L. 105-34 substituted “85 percent” for “one-half”.

1994—Subsec. (b). Pub. L. 103-296 substituted “(J), (M), or (Q)” for “(J), or (M)”.

1993—Subsec. (c)(9). Pub. L. 103-66 substituted “section 871(h)(3) or (4)” for “section 871(h)(3)”.

1992—Subsecs. (b), (c)(5). Pub. L. 102-318 struck out “402(a)(2), 403(a)(2), or” before “631(b)”.

1990—Subsec. (b)(2). Pub. L. 101-508 inserted “section” before “170(b)(1)(A)(ii)”.

1988—Subsec. (b). Pub. L. 100-647, § 1001(d)(2)(A), amended second sentence generally. Prior to amendment, second sentence read as follows: “The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act and which are incident to a qualified scholarship to which section 117(a) applies, but only to the extent such amounts are includible in gross income.”

Subsec. (c)(11). Pub. L. 100-647, § 6134(a)(2), added par. (11).

1986—Subsec. (b). Pub. L. 99-514, § 123(b)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: “The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are—

“(1) that portion of any scholarship or fellowship grant which is received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is not excluded from gross income under section 117(a)(1) solely by reason of section 117(b)(2)(B); and

“(2) amounts described in subparagraphs (A), (B), (C), and (D) of section 117(a)(2) which are received by any such nonresident alien individual and which are incident to a scholarship or fellowship grant to which section 117(a)(1) applies, but only to the extent such amounts are includible in gross income.”

Subsec. (c)(9). Pub. L. 99-514, § 1810(d)(3)(D), substituted “section 871(h)” for “871(h)(2)”.

Subsec. (c)(10). Pub. L. 99-514, § 1214(c)(3), added par. (10).

1984—Subsec. (a). Pub. L. 98-369, § 474(r)(29)(G), struck out “except in the cases provided for in section 1451 and” before “except as otherwise provided in regulations”.

Subsec. (b). Pub. L. 98-369, § 42(a)(13), substituted “section 1273” for “section 1232(b)”.

Subsec. (c)(3). Pub. L. 98-369, § 474(r)(29)(H), inserted “(as in effect before its repeal by the Tax Reform Act of 1984)”.

Subsec. (c)(9). Pub. L. 98-369, § 127(e)(1), added par. (9).

1983—Subsec. (g). Pub. L. 98-21 added subsec. (g).

1976—Pub. L. 94-455 struck out in subsecs. (a), (c)(2), (4), (8), (d), “or his delegate” after “Secretary”.

1971—Subsec. (b). Pub. L. 92-178, § 313(a), inserted “(other than original issue discount as defined in section 1232(b))” after “interest”.

Subsec. (c)(8). Pub. L. 92-178, § 313(d), added par. (8).

1969—Subsec. (f). Pub. L. 91-172 added subsec. (f).

1966—Subsec. (a). Pub. L. 89-809, § 103(h)(1), substituted “or of any foreign partnership” for “, or of any partnership not engaged in trade or business within the United States and composed in whole or in part of non-resident aliens.”

Subsec. (b). Pub. L. 89-809, § 103(h)(2)-(4), struck out “(except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States)” after “The items of income referred to in subsection (a) are interest” and substituted “gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966” for “and amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets” in text preceding par. (1), and inserted provision for treatment of items of income referred to in subsec. (a) in the case of nonresident alien individuals who are members of domestic partnerships.

Subsec. (c)(1). Pub. L. 89-809, § 103(h)(5), substituted “in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year” for “in the case of dividends paid by a foreign corporation unless (A) such corporation is engaged in trade or business within the United States, and (B) more than 85 percent of the gross income of such corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under part I of subchapter N of chapter 1” after “shall be required”.

Subsec. (c)(4). Pub. L. 89-809, § 103(h)(6), struck out provisions which had served to limit to compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals and of nonresident alien individuals for the period they are temporarily present in the United States as a nonimmigrant under subparagraph (F) and (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, the application of the exemption from deduction and withholding under subsec. (a), leaving the exemption under subsec. (a) applicable to compensation for personal services without further limitation.

Subsec. (c)(5). Pub. L. 89-809, § 103(h)(7), substituted “gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), gains subject to tax under section 871 (a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966,” for “amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets,” and “amounts payable,” for “proceeds from such sale or exchange.”

Subsec. (c)(7). Pub. L. 89-809, § 103(h)(8), added par. (7).

Subsecs. (d), (e). Pub. L. 89-809, § 103(h)(9), added subsec. (d) and redesignated former subsec. (d) as (e).

1964—Subsecs. (a), (b). Pub. L. 88-272 reduced the withholding rate from 18% to 14%.

1961—Subsec. (a). Pub. L. 87-256, § 110(d)(1), required a tax equal to 18 percent of the item in the case of any item of income specified in second sentence of subsection (b).

Subsec. (b). Pub. L. 87-256, § 110(d)(2), inserted provisions listing items of income from which tax shall be deducted and withheld at the rate of 18 percent.

Subsec. (c)(4). Pub. L. 87-256, §110(d)(3), authorized the exemption from deduction and withholding of the compensation for personal services of a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subpar. (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended.

1958—Subsecs. (b), (c)(5). Pub. L. 85-866 inserted “section 403(a)(2),” after “section 402(a)(2),”.

1956—Subsec. (c)(6). Act July 18, 1956, added section 544(f) to act Aug. 26, 1954, which section amended this subsection by adding par. (6).

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 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, see section 411(d)(1) of Pub. L. 108-357, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103-296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103-66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(A) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 123(b)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1214(c)(3) of Pub. L. 99-514 applicable to payments made in a taxable year of the payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99-514, as amended, set out as a note under section 861 of this title.

Amendment by section 1810(d)(3)(D) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(13) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 127(e)(1) of Pub. L. 98-369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98-369, set out as a note under section 871 of this title.

Amendment by section 474(r)(29)(G), (H) of Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98-21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to payments occurring on or after Apr. 1, 1972, see section 313(f) of Pub. L. 92-178, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to payments made in taxable years of recipients beginning after Dec. 31, 1966, see section 103(n)(2) of Pub. L. 89-809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to payments made after seventh day following Feb. 24, 1964, see section 302(d) of Pub. L. 88-272, set out as a note under section 3402 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87-256, §110(h)(2), Sept. 21, 1961, 75 Stat. 537, provided that: “The amendments made by subsection (d) of this section [amending this section] shall apply with respect to payments made after December 31, 1961.”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 effective Sept. 3, 1958, see section 40(c) of Pub. L. 85-866, set out as a note under section 871 of this title.

REPEALS

Section 544(f) of act Aug. 26, 1954, cited as a credit to this section, was repealed by Pub. L. 85-141, except insofar as such section 544(f) affected this section.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 123(b)(2) and 1214(c)(3) of Pub. L. 99-514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 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, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

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.

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND
FOREIGN CORPORATIONS

Pub. L. 97-248, title III, §342, Sept. 3, 1982, 96 Stat. 635, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Not later than 2 years after the date of the enactment of this Act [Sept. 3, 1982], the Secretary of the Treasury or his delegate shall prescribe regulations establishing certification procedures, refund procedures, or other procedures which ensure that any benefit of any treaty relating to withholding of tax under sections 1441 and 1442 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is available only to persons entitled to such benefit.”

§ 1442. Withholding of tax on foreign corporations

(a) General rule

In the case of foreign corporations subject to taxation under this subtitle, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in section 1441 a tax equal to 30 percent thereof. For purposes of the preceding sentence, the references in section 1441(b) to sections 871(a)(1)(C) and (D) shall be treated as referring to sections 881(a)(3) and (4), the reference in section 1441(c)(1) to section 871(b)(2) shall be treated as referring to section 842 or section 882(a)(2), as the case may be, the reference in section 1441(c)(5) to section 871(a)(1)(D) shall be treated as referring to section 881(a)(4), the reference in section 1441(c)(8) to section 871(a)(1)(C) shall be treated as referring to section 881(a)(3), the references in section 1441(c)(9) to sections 871(h) and 871(h)(3) or (4) shall be treated as referring to sections 881(c) and 881(c)(3) or (4), the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d), and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause).

(b) Exemption

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign corporation engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 881 on such corporation will not be jeopardized by the exemption.

(c) Exception for certain possessions corporations

(1) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands

For purposes of this section, the term “foreign corporation” does not include a corpora-

tion created or organized in Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands or under the law of any such possession if the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met with respect to such corporation.

(2) Commonwealth of Puerto Rico

(A) In general

If dividends are received during a taxable year by a corporation—

(i) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

(ii) with respect to which the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting “10 percent” for “30 percent”.

(B) Applicability

If, on or after the date of the enactment of this paragraph, an increase in the rate of the Commonwealth of Puerto Rico’s withholding tax which is generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent takes effect, this paragraph shall not apply to dividends received on or after the effective date of the increase.

(Aug. 16, 1954, ch. 736, 68A Stat. 358; Pub. L. 89-809, title I, §104(c), Nov. 13, 1966, 80 Stat. 1557; Pub. L. 92-178, title III, §313(e), Dec. 10, 1971, 85 Stat. 528; Pub. L. 92-606, §1(e)(2), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, §127(e)(2), 130(b), title IV, §474(r)(29)(I), July 18, 1984, 98 Stat. 652, 661, 845; Pub. L. 99-514, title XII, §1273(b)(2)(B), title XVIII, §1810(d)(3)(E), Oct. 22, 1986, 100 Stat. 2596, 2825; Pub. L. 100-647, title I, §1012(g)(7), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 103-66, title XIII, §13237(c)(5), Aug. 10, 1993, 107 Stat. 508; Pub. L. 108-357, title IV, §§411(a)(3)(B), 420(b), Oct. 22, 2004, 118 Stat. 1504, 1513.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (c)(2)(B), is the date of enactment of Pub. L. 108-357, which was approved Oct. 22, 2004.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-357, §411(a)(3)(B), substituted “the reference in section 1441(c)(10)” for “and the reference in section 1441(c)(10)” and inserted before period at end “, and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause)”.

Subsec. (c). Pub. L. 108-357, §420(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

1993—Subsec. (a). Pub. L. 103-66 substituted “871(h)(3) or (4)” for “871(h)(3)” and “881(c)(3) or (4)” for “881(c)(3)”.

1988—Subsec. (a). Pub. L. 100-647 struck out “and” after “to section 881(a)(3),” and inserted before period