

January 1, 1985, or such later taxable years as the Secretary of the Treasury or his delegate may prescribe.

“(3) SECTION 801(d)(10).—The amendment made by section 801(d)(10) [amending section 996 of this title] shall apply to distributions on or after June 22, 1984.

“(4) SECTION 803.—The amendments made by section 803 [amending section 441 of this title] shall apply to taxable years beginning after December 31, 1984.”

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to distributions made after Dec. 31, 1962, see section 5(d) of Pub. L. 87-834, set out as a note under section 301 of this title.

CONSTRUCTION OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title III, §326(c), Dec. 18, 2015, 129 Stat. 3104, provided that: “Nothing contained in this section [amending this section and enacting provisions set out as a note above] or the amendments made by this section shall be construed to create any inference with respect to the proper treatment under section 245 of the Internal Revenue Code of 1986 of dividends received from regulated investment companies or real estate investment trusts before the date of the enactment of this Act [Dec. 18, 2015].”

DIVIDENDS RECEIVED OR ACCRUED DURING 1987

Pub. L. 100-647, title I, §1006(b)(1), Nov. 10, 1988, 102 Stat. 3393, provided that: “In the case of dividends received or accrued during 1987—

“(A) subparagraph (B) of section 245(c)(1) of the 1986 Code shall be applied by substituting ‘80 percent’ for the percentage specified therein, and

“(B) subparagraph (B) of section 861(a)(2) of the 1986 Code shall be applied by substituting ‘100%’ for the fraction specified therein.”

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.

§ 246. Rules applying to deductions for dividends received

(a) Deduction not allowed for dividends from certain corporations

(1) In general

The deductions allowed by sections 243 and 245 shall not apply to any dividend from a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations).

(2) Subsection not to apply to certain dividends of Federal Home Loan Banks

(A) Dividends out of current earnings and profits

In the case of any dividend paid by any FHLB out of earnings and profits of the

FHLB for the taxable year in which such dividend was paid, paragraph (1) shall not apply to that portion of such dividend which bears the same ratio to the total dividend as—

- (i) the dividends received by the FHLB from the FHLMC during such taxable year, bears to
- (ii) the total earnings and profits of the FHLB for such taxable year.

(B) Dividends out of accumulated earnings and profits

In the case of any dividend which is paid out of any accumulated earnings and profits of any FHLB, paragraph (1) shall not apply to that portion of the dividend which bears the same ratio to the total dividend as—

- (i) the amount of dividends received by such FHLB from the FHLMC which are out of earnings and profits of the FHLMC—

(I) for taxable years ending after December 31, 1984, and

(II) which were not previously treated as distributed under subparagraph (A) or this subparagraph, bears to

- (ii) the total accumulated earnings and profits of the FHLB as of the time such dividend is paid.

For purposes of clause (ii), the accumulated earnings and profits of the FHLB as of January 1, 1985, shall be treated as equal to its retained earnings as of such date.

(C) Coordination with section 243

To the extent that paragraph (1) does not apply to any dividend by reason of subparagraph (A) or (B) of this paragraph, the requirement contained in section 243(a) that the corporation paying the dividend be subject to taxation under this chapter shall not apply.

(D) Definitions

For purposes of this paragraph—

(i) FHLB

The term “FHLB” means any Federal Home Loan Bank.

(ii) FHLMC

The term “FHLMC” means the Federal Home Loan Mortgage Corporation.

(iii) Taxable year of FHLB

The taxable year of an FHLB shall, except as provided in regulations prescribed by the Secretary, be treated as the calendar year.

(iv) Earnings and profits

The earnings and profits of any FHLB for any taxable year shall be treated as equal to the sum of—

(I) any dividends received by the FHLB from the FHLMC during such taxable year, and

(II) the total earnings and profits (determined without regard to dividends described in subclause (I)) of the FHLB as reported in its annual financial statement prepared in accordance with sec-

tion 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440).

(b) Limitation on aggregate amount of deductions

(1) General rule

Except as provided in paragraph (2), the aggregate amount of the deductions allowed by section 243(a)(1) and subsection (a) or (b) of section 245 shall not exceed the percentage determined under paragraph (3) of the taxable income computed without regard to the deductions allowed by sections 172, 199, 243(a)(1), and subsection (a) or (b) of section 245, without regard to any adjustment under section 1059, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1).

(2) Effect of net operating loss

Paragraph (1) shall not apply for any taxable year for which there is a net operating loss (as determined under section 172).

(3) Special rules

The provisions of paragraph (1) shall be applied—

(A) first separately with respect to dividends from 20-percent owned corporations (as defined in section 243(c)(2)) and the percentage determined under this paragraph shall be 80 percent, and

(B) then separately with respect to dividends not from 20-percent owned corporations and the percentage determined under this paragraph shall be 70 percent and the taxable income shall be reduced by the aggregate amount of dividends from 20-percent owned corporations (as so defined).

(c) Exclusion of certain dividends

(1) In general

No deduction shall be allowed under section 243 or 245, in respect of any dividend on any share of stock—

(A) which is held by the taxpayer for 45 days or less during the 91-day period beginning on the date which is 45 days before the date on which such share becomes ex-dividend with respect to such dividend, or

(B) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(2) 90-day rule in the case of certain preference dividends

In the case of stock having preference in dividends, if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days, paragraph (1)(A) shall be applied—

(A) by substituting “90 days” for “45 days” each place it appears, and

(B) by substituting “181-day period” for “91-day period”.

(3) Determination of holding periods

For purposes of this subsection, in determining the period for which the taxpayer has held any share of stock—

(A) the day of disposition, but not the day of acquisition, shall be taken into account, and

(B) paragraph (3) of section 1223 shall not apply.

(4) Holding period reduced for periods where risk of loss diminished

The holding periods determined for purposes of this subsection shall be appropriately reduced (in the manner provided in regulations prescribed by the Secretary) for any period (during such periods) in which—

(A) the taxpayer has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially identical stock or securities,

(B) the taxpayer is the grantor of an option to buy substantially identical stock or securities, or

(C) under regulations prescribed by the Secretary, a taxpayer has diminished his risk of loss by holding 1 or more other positions with respect to substantially similar or related property.

The preceding sentence shall not apply in the case of any qualified covered call (as defined in section 1092(c)(4) but without regard to the requirement that gain or loss with respect to the option not be ordinary income or loss), other than a qualified covered call option to which section 1092(f) applies.

(d) Dividends from a DISC or former DISC

No deduction shall be allowed under section 243 in respect of a dividend from a corporation which is a DISC or former DISC (as defined in section 992(a)) to the extent such dividend is paid out of the corporation's accumulated DISC income or previously taxed income, or is a deemed distribution pursuant to section 995(b)(1).

(e) Certain distributions to satisfy requirements

No deduction shall be allowed under section 243(a) with respect to a dividend received pursuant to a distribution described in section 936(h)(4).

(Aug. 16, 1954, ch. 736, 68A Stat. 74; Pub. L. 85-866, title I, §§18(a), 57(c)(2), Sept. 2, 1958, 72 Stat. 1614, 1646; Pub. L. 88-272, title II, §214(b)(2), Feb. 26, 1964, 78 Stat. 55; Pub. L. 91-172, title IV, §434(b)(1), title V, §512(f)(3), Dec. 30, 1969, 83 Stat. 625, 641; Pub. L. 92-178, title V, §502(a), Dec. 10, 1971, 85 Stat. 549; Pub. L. 94-455, title X, §1051(f)(3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1646, 1834; Pub. L. 97-248, title II, §213(c), Sept. 3, 1982, 96 Stat. 465; Pub. L. 98-369, div. A, title I, §§53(b), (d)(2), 177(b), title VIII, §801(b)(2)(A), July 18, 1984, 98 Stat. 567, 568, 709, 995; Pub. L. 99-514, title VI, §611(a)(3), title XII, §1275(a)(2)(B), title XVIII, §§1804(b)(1)(A), (B), 1812(d)(1), Oct. 22, 1986, 100 Stat. 2249, 2598, 2798, 2835; Pub. L. 100-203, title X, §10221(c)(1), Dec. 22, 1987, 101 Stat. 1330-409; Pub. L. 100-647, title I, §1018(u)(10), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 104-188, title I, §1616(b)(4), Aug. 20, 1996, 110 Stat. 1856; Pub. L. 105-34, title X, §1015(a), (b), Aug. 5, 1997, 111 Stat. 921, 922; Pub. L. 108-311, title IV, §406(f), Oct. 4, 2004, 118 Stat. 1190; Pub. L. 108-357, title I, §102(d)(4), title VIII, §888(d), Oct. 22, 2004,

118 Stat. 1429, 1643; Pub. L. 109-135, title IV, § 402(a)(4), Dec. 21, 2005, 119 Stat. 2610; Pub. L. 113-295, div. A, title II, § 221(a)(41)(E), Dec. 19, 2014, 128 Stat. 4044.)

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113-295, § 221(a)(41)(E)(i), struck out “, 244,” after “sections 243”.

Subsec. (b)(1). Pub. L. 113-295, § 221(a)(41)(E)(ii), substituted “section 243(a)(1)” for “sections 243(a)(1), 244(a),” and “and subsection (a) or (b) of section 245,” for “244(a), subsection (a) or (b) of section 245, and 247.”

Subsec. (c)(1). Pub. L. 113-295, § 221(a)(41)(E)(iii), struck out “, 244,” after “section 243” in introductory provisions.

2005—Subsec. (c)(3)(B). Pub. L. 109-135 substituted “paragraph (3) of section 1223” for “paragraph (4) of section 1223”.

2004—Subsec. (b)(1). Pub. L. 108-357, § 102(d)(4), inserted “199,” after “172.”

Subsec. (c)(1)(A). Pub. L. 108-311, § 406(f)(1), substituted “91-day period” for “90-day period”.

Subsec. (c)(2)(B). Pub. L. 108-311, § 406(f)(2), substituted “181-day period” for “180-day period” and “91-day period” for “90-day period”.

Subsec. (c)(4). Pub. L. 108-357, § 888(d), inserted “, other than a qualified covered call option to which section 1092(f) applies” before period at end of concluding provisions.

1997—Subsec. (c)(1)(A). Pub. L. 105-34, § 1015(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “which is held by the taxpayer for 45 days or less, or”.

Subsec. (c)(2). Pub. L. 105-34, § 1015(b)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “In the case of any stock having preference in dividends, the holding period specified in paragraph (1)(A) shall be 90 days in lieu of 45 days if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days.”

Subsec. (c)(3). Pub. L. 105-34, § 1015(b)(2), inserted “and” at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “there shall not be taken into account any day which is more than 45 days (or 90 days in the case of stock to which paragraph (2) applies) after the date on which such share becomes ex-dividend, and”.

1996—Subsec. (f). Pub. L. 104-188 struck out subsec. (f) which provided a cross reference to section 596 of this title for special rule relating to mutual savings banks, etc., to which section 593 applies.

1988—Subsec. (c)(1)(A). Pub. L. 100-647 substituted “which” for “Which”.

1987—Subsec. (b)(1). Pub. L. 100-203, § 10221(c)(1)(A), substituted “the percentage determined under paragraph (3)” for “80 percent”.

Subsec. (b)(3). Pub. L. 100-203, § 10221(c)(1)(B), added par. (3).

1986—Subsec. (a)(2)(B). Pub. L. 99-514, § 1812(d)(1)(A), substituted “In” for “For purposes of subparagraph (A), in” in introductory provisions and substituted cl. (i)(II) for former cl. (i)(I) which read as follows: “which were not taken into account under subparagraph (A), bears to”.

Subsec. (a)(2)(C), (D). Pub. L. 99-514, § 1812(d)(1)(B), (C), added subpar. (C), redesignated former subpar. (C) as (D), and added cl. (iv) to subpar. (D).

Subsec. (b)(1). Pub. L. 99-514, § 611(a)(3), substituted “80 percent” for “85 percent”.

Subsec. (c)(1)(A). Pub. L. 99-514, § 1804(b)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “which is sold or otherwise disposed of in any case in which the taxpayer has held such share for 45 days or less, or”.

Subsec. (c)(4). Pub. L. 99-514, § 1804(b)(1)(B), substituted “determined for purposes of this subsection” for “determined under paragraph (3)”.

Subsec. (e). Pub. L. 99-514, § 1275(a)(2)(B), struck out “or 934(e)(3)” after “936(h)(4)”.

1984—Subsec. (a). Pub. L. 98-369, § 177(b), amended subsec. (a) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (b)(1). Pub. L. 98-369, § 801(b)(2)(A), substituted “subsection (a) or (b) of section 245” for “245” in two places.

Pub. L. 98-369, § 53(d)(2), substituted “without regard to any adjustment under section 1059, and without regard” for “and without regard”.

Subsec. (c)(1)(A). Pub. L. 98-369, § 53(b)(1), substituted “45” for “15”.

Subsec. (c)(1)(B). Pub. L. 98-369, § 53(b)(3), substituted “to make related payments with respect to positions in substantially similar or related property” for “to make corresponding payments with respect to substantially identical stock or securities”.

Subsec. (c)(2). Pub. L. 98-369, § 53(b)(1), substituted “45” for “15”.

Subsec. (c)(3). Pub. L. 98-369, § 53(b)(4), struck out last sentence which directed that the holding periods determined under the preceding provisions of this paragraph be appropriately reduced (in the manner provided in regulations prescribed by the Secretary) for any period (during such holding periods) in which the taxpayer had an option to sell, was under a contractual obligation to sell, or had made (and not closed) a short sale of, substantially identical stock or securities.

Subsec. (c)(3)(B). Pub. L. 98-369, § 53(b)(1), substituted “45” for “15”.

Subsec. (c)(4). Pub. L. 98-369, § 53(b)(2), added par. (4). 1982—Subsecs. (e), (f). Pub. L. 97-248 added subsec. (e) and redesignated former subsec. (e) as (f).

1976—Subsec. (a). Pub. L. 94-455, § 1051(f)(3), struck out references to dividends from corporations organized under the China Trade Act, 1922, and corporations to which section 931 (relating to income from sources within possessions of the United States) applies.

Subsec. (c)(3). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1971—Subsecs. (d), (e). Pub. L. 92-178 added subsec. (d) and redesignated former subsec. (d) as (e).

1969—Subsec. (b)(1). Pub. L. 91-172, § 512(f)(3), substituted “and 247, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1)” for “and 247”.

Subsec. (d). Pub. L. 91-172, § 434(b)(1), added subsec. (d).

1964—Subsec. (b). Pub. L. 88-272 substituted “243(a)(1), 244(a)” for “243(a), 244” wherever appearing.

1958—Subsec. (b)(1). Pub. L. 85-866, § 57(c)(2), substituted “243(a)” for “243” wherever appearing.

Subsec. (c). Pub. L. 85-866, § 18(a), added subsec. (c).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 not applicable to preferred stock issued before Oct. 1, 1942 (determined in the same manner as under section 247 of this title as in effect before its repeal by Pub. L. 113-295, see section 221(a)(41)(K) of Pub. L. 113-295, set out as a note under section 172 of this title.

Except as otherwise provided in section 221(a) of Pub. L. 113-295, 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 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109-135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 102(d)(4) of Pub. L. 108-357 applicable to taxable years beginning after Dec. 31, 2004,

see section 102(e) of Pub. L. 108-357, set out as a note under section 56 of this title.

Pub. L. 108-357, title VIII, §888(e), Oct. 22, 2004, 118 Stat. 1643, provided that: “The amendments made by this section [amending this section and sections 1092 and 1258 of this title] shall apply to positions established on or after the date of the enactment of this Act [Oct. 22, 2004].”

Amendment by Pub. L. 108-311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 406(h) of Pub. L. 108-311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, §1015(c), Aug. 5, 1997, 111 Stat. 922, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to dividends received or accrued after the 30th day after the date of the enactment of this Act [Aug. 5, 1997].

“(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to dividends received or accrued during the 2-year period beginning on the date of the enactment of this Act if—

“(A) the dividend is paid with respect to stock held by the taxpayer on June 8, 1997, and all times thereafter until the dividend is received,

“(B) such stock is continuously subject to a position described in section 246(c)(4) of the Internal Revenue Code of 1986 on June 8, 1997, and all times thereafter until the dividend is received, and

“(C) such stock and position are clearly identified in the taxpayer’s records within 30 days after the date of the enactment of this Act.

Stock shall not be treated as meeting the requirement of subparagraph (B) if the position is sold, closed, or otherwise terminated and reestablished.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104-188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 31, 1987, see section 10221(e)(2) of Pub. L. 100-203, as amended, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title VI, §611(b), Oct. 22, 1986, 100 Stat. 2249, provided that:

“(1) IN GENERAL.—The amendments made by subsection (a) [amending this section and sections 243, 244, 246A, and 805 of this title] shall apply to dividends received or accrued after December 31, 1986, in taxable years ending after such date.

“(2) AMENDMENT RELATING TO LIMITATION ON DEDUCTIONS.—The amendment made by subsection (a) to section 246(b) of the Internal Revenue Code of 1986 shall apply to taxable years beginning after December 31, 1986.”

Amendment by section 1275(a)(2)(B) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

Pub. L. 99-514, title XVIII, §1804(b)(1)(C), Oct. 22, 1986, 100 Stat. 2798, provided that: “The amendments made by this paragraph [amending this section] shall apply to stock acquired after March 1, 1986.”

Amendment by section 1812(d)(1) 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 53(d)(2) of Pub. L. 98-369 applicable to distributions after Mar. 1, 1984, in taxable years ending after such date, and amendment of subsec. (c) of this section by section 53(b) of Pub. L. 98-369, applicable to stock acquired after July 18, 1984, in taxable years ending after such date, see section 53(e)(1), (2) of Pub. L. 98-369, set out as an Effective Date note under section 1059 of this title.

Amendment by section 177(b) of Pub. L. 98-369, effective Jan. 1, 1985, see section 177(d) of Pub. L. 98-369, set out as a note under section 172 of this title.

Amendment by section 801(b)(2)(A) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to taxable years beginning after Dec. 31, 1982, see section 213(e)(1) of Pub. L. 97-248, set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1051(f)(3) of Pub. L. 94-455, see section 1051(i) of Pub. L. 94-455, set out as a note under section 27 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94-455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92-178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 512(f)(3) of Pub. L. 91-172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91-172, set out as a note under section 1212 of this title.

Pub. L. 91-172, title IV, §434(c), Dec. 30, 1969, 83 Stat. 625, provided that: “The amendments made by this section [enacting section 596 of this title and amending this section] shall apply to taxable years beginning after July 11, 1969.”

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to dividends received in taxable years ending after Dec. 31, 1963, see section 214(c) of Pub. L. 88-272, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-866, title I, §18(b), Sept. 2, 1958, 72 Stat. 1615, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to shares of stock acquired or short sales made after December 31, 1957.”

Amendment by section 57(c)(2) of Pub. L. 85-866 applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85-866, set out as a note under section 243 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.

§ 246A. Dividends received deduction reduced where portfolio stock is debt financed

(a) General rule

In the case of any dividend on debt-financed portfolio stock, there shall be substituted for the percentage which (but for this subsection) would be used in determining the amount of the deduction allowable under section 243 or 245(a) a percentage equal to the product of—

- (1) 70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2)), and
- (2) 100 percent minus the average indebtedness percentage.

(b) Section not to apply to dividends for which 100 percent dividends received deduction allowable

Subsection (a) shall not apply to—

- (1) qualifying dividends (as defined in section 243(b) without regard to section 243(d)(4)),¹ and
- (2) dividends received by a small business investment company operating under the Small Business Investment Act of 1958.

(c) Debt financed portfolio stock

For purposes of this section—

(1) In general

The term “debt financed portfolio stock” means any portfolio stock if at some time during the base period there is portfolio indebtedness with respect to such stock.

(2) Portfolio stock

The term “portfolio stock” means any stock of a corporation unless—

(A) as of the beginning of the ex-dividend date, the taxpayer owns stock of such corporation—

- (i) possessing at least 50 percent of the total voting power of the stock of such corporation, and
- (ii) having a value equal to at least 50 percent of the total value of the stock of such corporation, or

(B) as of the beginning of the ex-dividend date—

- (i) the taxpayer owns stock of such corporation which would meet the requirements of subparagraph (A) if “20 percent” were substituted for “50 percent” each place it appears in such subparagraph, and
- (ii) stock meeting the requirements of subparagraph (A) is owned by 5 or fewer corporate shareholders.

(3) Special rule for stock in a bank or bank holding company

(A) In general

If, as of the beginning of the ex-dividend date, the taxpayer owns stock of any bank or bank holding company having a value

equal to at least 80 percent of the total value of the stock of such bank or bank holding company, for purposes of paragraph (2)(A)(i), the taxpayer shall be treated as owning any stock of such bank or bank holding company which the taxpayer has an option to acquire.

(B) Definitions

For purposes of subparagraph (A)—

(i) Bank

The term “bank” has the meaning given such term by section 581.

(ii) Bank holding company

The term “bank holding company” means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956).

(4) Treatment of certain preferred stock

For purposes of determining whether the requirements of subparagraph (A) or (B) of paragraph (2) or of subparagraph (A) of paragraph (3) are met, stock described in section 1504(a)(4) shall not be taken into account.

(d) Average indebtedness percentage

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term “average indebtedness percentage” means the percentage obtained by dividing—

(A) the average amount (determined under regulations prescribed by the Secretary) of the portfolio indebtedness with respect to the stock during the base period, by

(B) the average amount (determined under regulations prescribed by the Secretary) of the adjusted basis of the stock during the base period.

(2) Special rule where stock not held throughout base period

In the case of any stock which was not held by the taxpayer throughout the base period, paragraph (1) shall be applied as if the base period consisted only of that portion of the base period during which the stock was held by the taxpayer.

(3) Portfolio indebtedness

(A) In general

The term “portfolio indebtedness” means any indebtedness directly attributable to investment in the portfolio stock.

(B) Certain amounts received from short sale treated as indebtedness

For purposes of subparagraph (A), any amount received from a short sale shall be treated as indebtedness for the period beginning on the day on which such amount is received and ending on the day the short sale is closed.

(4) Base period

The term “base period” means, with respect to any dividend, the shorter of—

(A) the period beginning on the ex-dividend date for the most recent previous dividend on the stock and ending on the day before the ex-dividend date for the dividend involved, or

¹ See References in Text note below.