

§ 808. Policyholder dividends deduction**(a) Policyholder dividend defined**

For purposes of this part, the term “policyholder dividend” means any dividend or similar distribution to policyholders in their capacity as such.

(b) Certain amounts included

For purposes of this part, the term “policyholder dividend” includes—

- (1) any amount paid or credited (including as an increase in benefits) where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management,
- (2) excess interest,
- (3) premium adjustments, and
- (4) experience-rated refunds.

(c) Amount of deduction

The deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

(d) Definitions

For purposes of this section—

(1) Excess interest

The term “excess interest” means any amount in the nature of interest—

- (A) paid or credited to a policyholder in his capacity as such, and
- (B) in excess of interest determined at the prevailing State assumed rate for such contract.

(2) Premium adjustment

The term “premium adjustment” means any reduction in the premium under an insurance or annuity contract which (but for the reduction) would have been required to be paid under the contract.

(3) Experience-rated refund

The term “experience-rated refund” means any refund or credit based on the experience of the contract or group involved.

(e) Treatment of policyholder dividends

For purposes of this part, any policyholder dividend which—

- (1) increases the cash surrender value of the contract or other benefits payable under the contract, or
- (2) reduces the premium otherwise required to be paid,

shall be treated as paid to the policyholder and returned by the policyholder to the company as a premium.

(f) Coordination of 1984 fresh-start adjustment with acceleration of policyholder dividends deduction through change in business practice**(1) In general**

The amount determined under paragraph (1) of subsection (c) for the year of change shall (before any reduction under paragraph (2) of subsection (c)) be reduced by so much of the accelerated policyholder dividends deduction for such year as does not exceed the 1984 fresh-

start adjustment for policyholder dividends (to the extent such adjustment was not previously taken into account under this subsection).

(2) Year of change

For purposes of this subsection, the term “year of change” means the taxable year in which the change in business practices which results in the accelerated policyholder dividends deduction takes effect.

(3) Accelerated policyholder dividends deduction defined

For purposes of this subsection, the term “accelerated policyholder dividends deduction” means the amount which (but for this subsection) would be determined for the taxable year under paragraph (1) of subsection (c) but which would have been determined (under such paragraph) for a later taxable year under the business practices of the taxpayer as in effect at the close of the preceding taxable year.

(4) 1984 fresh-start adjustment for policyholder dividends

For purposes of this subsection, the term “1984 fresh-start adjustment for policyholder dividends” means the amounts held as of December 31, 1983, by the taxpayer as reserves for dividends to policyholders under section 811(b) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) other than for dividends which accrued before January 1, 1984. Such amounts shall be properly reduced to reflect the amount of previously nondeductible policyholder dividends (as determined under section 809(f) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984).

(5) Separate application with respect to lines of business

This subsection shall be applied separately with respect to each line of business of the taxpayer.

(6) Subsection not to apply to mere change in dividend amount

This subsection shall not apply to a mere change in the amount of policyholder dividends.

(7) Subsection not to apply to policies issued after December 31, 1983**(A) In general**

This subsection shall not apply to any policyholder dividend paid or accrued with respect to a policy issued after December 31, 1983.

(B) Exchanges of substantially similar policies

For purposes of subparagraph (A), any policy issued after December 31, 1983, in exchange for a substantially similar policy issued on or before such date shall be treated as issued before January 1, 1984. A similar rule shall apply in the case of a series of exchanges.

(8) Subsection to apply to policies provided under employee benefit plans

This subsection shall not apply to any policyholder dividend paid or accrued with re-

spect to a group policy issued in connection with a plan to provide welfare benefits to employees (within the meaning of section 419(e)(2)).

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 732; amended Pub. L. 99-514, title XVIII, §1821(b), (c), Oct. 22, 1986, 100 Stat. 2838; Pub. L. 108-218, title II, §205(b)(3), Apr. 10, 2004, 118 Stat. 610.)

REFERENCES IN TEXT

The date of enactment of the Tax Reform Act of 1984, referred to in subsec. (f)(4), is the date of enactment of Pub. L. 98-369, div. A, which was approved July 18, 1984.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-218 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

“(1) IN GENERAL.—Except as limited by paragraph (2), the deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

“(2) REDUCTION IN CASE OF MUTUAL COMPANIES.—In the case of a mutual life insurance company, the deduction for policyholder dividends for any taxable year shall be reduced by the amount determined under section 809.”

1986—Subsec. (d)(1)(B). Pub. L. 99-514, §1821(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “determined at a rate in excess of the prevailing State assumed interest rate for such contract.”

Subsec. (f). Pub. L. 99-514, §1821(c), added subsec. (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108-218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 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.

[§ 809. Repealed. Pub. L. 108-218, title II, § 205(a), Apr. 10, 2004, 118 Stat. 610]

Section, added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 733; amended Pub. L. 99-514, title XVIII, §1821(d)-(h), (r), Oct. 22, 1986, 100 Stat. 2839, 2840, 2843; Pub. L. 100-647, title I, §1018(u)(47), Nov. 10, 1988, 102 Stat. 3593; Pub. L. 107-147, title VI, §611(a), Mar. 9, 2002, 116 Stat. 61, related to reduction in certain deductions of mutual life insurance companies.

A prior section 809, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 121; amended Pub. L. 87-59, §2(a), (b), June 27, 1961, 75 Stat. 120; Pub. L. 87-790, §3(a), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87-858, §3(b)(3), (c), Oct. 23, 1962, 76

Stat. 1137; Pub. L. 88-272, title II, §§214(b)(4), 228(a), Feb. 26, 1964, 78 Stat. 55, 98; Pub. L. 91-172, title II, §201(a)(2)(C), title IX, §907(c)(2)(B), Dec. 30, 1969, 83 Stat. 558, 717; Pub. L. 94-455, title XV, §1508(a), title XIX, §§1901(a)(98), (b)(1)(J)(iv), (L)-(N), 33(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1741, 1781, 1791, 1801, 1834; Pub. L. 97-248, title II, §§255(b)(2)-(4), 259(a), 264(c)(2), (3), Sept. 3, 1982, 96 Stat. 534, 538, 544; Pub. L. 97-448, title I, §102(m)(1), Jan. 12, 1983, 96 Stat. 2374, related to general provisions regarding gain and loss from operations, prior to the general revision of this part by Pub. L. 98-369, §211(a).

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108-218, set out as an Effective Date of 2004 Amendment note under section 807 of this title.

§ 810. Operations loss deduction

(a) Deduction allowed

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of—

- (1) the operations loss carryovers to such year, plus
- (2) the operations loss carrybacks to such year.

For purposes of this part, the term “operations loss deduction” means the deduction allowed by this subsection.

(b) Operations loss carrybacks and carryovers

(1) Years to which loss may be carried

The loss from operations for any taxable year (hereinafter in this section referred to as the “loss year”) shall be—

(A) an operations loss carryback to each of the 3 taxable years preceding the loss year,

(B) an operations loss carryover to each of the 15 taxable years following the loss year, and

(C) if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 15 taxable years described in subparagraph (B).

(2) Amount of carrybacks and carryovers

The entire amount of the loss from operations for any loss year shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (d)) for each of the prior taxable years to which such loss may be carried.

(3) Election for operations loss carrybacks

In the case of a loss from operations for any taxable year, the taxpayer may elect to relinquish the entire carryback period for such loss. Such election shall be made by the due date (including extensions of time) for filing the return for the taxable year of the loss from operations for which the election is to be in effect, and, once made for any taxable year, such election shall be irrevocable for that taxable year.