

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.

OPERATIONS LOSS DEDUCTION OF INSOLVENT COMPANIES MAY OFFSET DISTRIBUTIONS FROM POLICYHOLDERS SURPLUS ACCOUNT

Pub. L. 99-514, title X, §1013, Oct. 22, 1986, 100 Stat. 2395, provided that:

“(a) IN GENERAL.—If—

“(1) on November 15, 1985, a life insurance company was insolvent,

“(2) pursuant to the order of any court of competent jurisdiction in a title 11 or similar case (as defined in section 368(a)(3) of the Internal Revenue Code of 1954 [now 1986]), such company is liquidated, and

“(3) as a result of such liquidation, the tax imposed by section 801 of such Code for any taxable year (hereinafter in this subsection referred to as the ‘liquidation year’) would (but for this subsection) be increased under section 815(a) of such Code,

then the amount described in section 815(a)(2) of such Code shall be reduced by the loss from operations (if any) for the liquidation year, and by the unused operations loss carryovers (if any) to the liquidation year (determined after the application of section 810 of such Code for such year). No carryover of any loss from operations of such company arising during the liquidation year (or any prior taxable year) shall be allowable for any taxable year succeeding the liquidation year.

“(b) DEFINITIONS.—For purposes of subsection (a)—

“(1) INSOLVENT.—The term ‘insolvent’ means the excess of liabilities over the fair market value of assets.

“(2) LOSS FROM OPERATIONS.—The term ‘loss from operations’ has the meaning given such term by section 810(c) of such Code.

“(c) EFFECTIVE DATE.—This section shall apply to liquidations on or after November 15, 1985, in taxable years ending after such date.”

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.

AMOUNT OF INDIRECT DISTRIBUTION FOR LOANS BEFORE MARCH 1, 1986; DETERMINATION; EXCEPTION

Pub. L. 99-514, title XVIII, §1821(k)(3), Oct. 22, 1986, 100 Stat. 2841, provided that: “In the case of any loan made before March 1, 1986 (other than a loan which is renegotiated, extended, renewed, or revised after February 28, 1986), which does not meet the requirements of the last sentence of section 815(a) of the Internal Revenue Code of 1954 [now 1986] (as added by paragraph (2)), the amount of the indirect distribution for purposes of such section 815(a) shall be the foregone interest on the loan (determined by using the lowest rate which would have met the arms-length requirements of such sentence for such a loan).”

SUBPART E—DEFINITIONS AND SPECIAL RULES

Sec.

816. Life insurance company defined.

817. Treatment of variable contracts.

817A. Special rules for modified guaranteed contracts.

Sec.

818. Other definitions and special rules.

AMENDMENTS

1996—Pub. L. 104-188, title I, §1612(b), Aug. 20, 1996, 110 Stat. 1847, added item 817A.

§ 816. Life insurance company defined

(a) Life insurance company defined

For purposes of this subtitle, the term “life insurance company” means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with accident and health insurance), or noncancellable contracts of health and accident insurance, if—

(1) its life insurance reserves (as defined in subsection (b)), plus

(2) unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, accident, or health policies not included in life insurance reserves,

comprise more than 50 percent of its total reserves (as defined in subsection (c)). For purposes of the preceding sentence, the term “insurance company” means any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

(b) Life insurance reserves defined

(1) In general

For purposes of this part, the term “life insurance reserves” means amounts—

(A) which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and

(B) which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable accident and health insurance contracts (including life insurance or annuity contracts combined with noncancellable accident and health insurance) involving, at the time with respect to which the reserve is computed, life, accident, or health contingencies.

(2) Reserves must be required by law

Except—

(A) in the case of policies covering life, accident, and health insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, and

(B) as provided in paragraph (3),

in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

(3) Assessment companies

In the case of an assessment life insurance company or association, the term “life insurance reserves” includes—

(A) sums actually deposited by such company or association with State officers pursuant to law as guaranty or reserve funds, and

(B) any funds maintained, under the charter or articles of incorporation or associa-

tion (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

(4) Amount of reserves

For purposes of this subsection, subsection (a), and subsection (c), the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or portion thereof) at the beginning and end of the taxable year.

(c) Total reserves defined

For purposes of subsection (a), the term “total reserves” means—

- (1) life insurance reserves,
- (2) unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and
- (3) all other insurance reserves required by law.

(d) Adjustments in reserves for policy loans

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, the life insurance reserves, and the total reserves, shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained.

(e) Guaranteed renewable contracts

For purposes of this part, guaranteed renewable life, accident, and health insurance shall be treated in the same manner as noncancellable life, accident, and health insurance.

(f) Amounts not involving life, accident, or health contingencies

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, amounts set aside and held at interest to satisfy obligations under contracts which do not contain permanent guarantees with respect to life, accident, or health contingencies shall not be included in reserves described in paragraph (1) or (3) of subsection (c).

(g) Burial and funeral benefit insurance companies

A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 831.

(h) Treatment of deficiency reserves

For purposes of this section and section 842(b)(2)(B)(i), the terms “life insurance reserves” and “total reserves” shall not include deficiency reserves.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 748; amended Pub. L. 99-514, title XVIII, §1821(l), Oct. 22, 1986, 100 Stat. 2841; Pub. L. 100-203, title X, §10242(c)(2), Dec. 22, 1987, 101 Stat. 1330-423; Pub. L. 100-647, title I, §1010(f)(6), title II, §2004(q)(1), Nov. 10, 1988, 102 Stat. 3454, 3608.)

PRIOR PROVISIONS

A prior section 816, act Aug. 16, 1954, ch. 736, §816, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to taxation of foreign life insurance companies, prior to the general revision of this part by Pub. L. 86-69, §2(a).

AMENDMENTS

1988—Subsec. (g). Pub. L. 100-647, §1010(f)(6), substituted “section 831” for “section 821 or section 831”.

Subsec. (h). Pub. L. 100-647, §2004(q)(1), substituted “section 842(b)(2)(B)(i)” for “section 842(c)(1)(A)”.

1987—Subsec. (h). Pub. L. 100-203 substituted “section 842(c)(1)(A)” for “section 813(a)(4)(B)”.

1986—Subsec. (h). Pub. L. 99-514 added subsec. (h).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1010(f)(6) 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.

Amendment by section 2004(q)(1) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, §10242(d), Dec. 22, 1987, 101 Stat. 1330-423, provided that: “The amendments made by this section [amending this section and sections 842, 864, and 4371 of this title and repealing section 813 of this title] shall apply to taxable years beginning after December 31, 1987.”

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.

SPECIAL ELECTION TO TREAT INDIVIDUAL
NONCANCELLABLE ACCIDENT AND HEALTH CONTRACTS
AS CANCELLABLE

Pub. L. 98-369, div. A, title II, §217(i), July 18, 1984, 98 Stat. 764, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-647, title I, §1010(h)(1), Nov. 10, 1988, 102 Stat. 3455, provided that:

“(1) IN GENERAL.—A mutual life insurance company may elect to treat all individual noncancellable (or guaranteed renewable) accident and health insurance contracts as though they were cancellable for purposes of section 816 of subchapter L of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

“(2) EFFECT OF ELECTION ON SUBSIDIARIES OF ELECTING PARENT.—For purposes of determining the amount of the small life insurance company deduction of any controlled group which includes a mutual company which made an election under paragraph (1), the taxable in-

come of such electing company shall be taken into account under section 806(b)(2) of the Internal Revenue Code of 1986 (relating to phaseout of small life insurance company deduction).

“(3) ELECTION.—An election under paragraph (1) shall apply to the company’s first taxable year beginning after December 31, 1983, and all taxable years thereafter.

“(4) TIME AND MANNER.—An election under paragraph (1) shall be made—

“(A) on the return of the taxpayer for its first taxable year beginning after December 31, 1983, and

“(B) in such manner as the Secretary of the Treasury or his delegate may prescribe.”

[Pub. L. 100-647, title I, §1010(h)(2), (3), Nov. 10, 1988, 102 Stat. 3455, provided that:

[“(2) EFFECTIVE DATE.—The amendment made by this subsection [amending section 217(i) of Pub. L. 98-369, set out above] shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

[“(3) REVENUE LOSS LIMITED.—The decrease in the amount of Federal revenue by reason of the amendment made by this subsection shall not exceed \$300,000 per taxable year.”]

§ 817. Treatment of variable contracts

(a) Increases and decreases in reserves

For purposes of subsections (a) and (b) of section 807, the sum of the items described in section 807(c) taken into account as of the close of the taxable year with respect to any variable contract shall, under regulations prescribed by the Secretary, be adjusted—

(1) by subtracting therefrom an amount equal to the sum of the amounts added from time to time (for the taxable year) to the reserves separately accounted for in accordance with subsection (c) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

(2) by adding thereto an amount equal to the sum of the amounts subtracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

The deduction allowable for items described in paragraphs (1) and (6) of section 805(a) with respect to variable contracts shall be reduced to the extent that the amount of such items is increased for the taxable year by appreciation (or increased to the extent that the amount of such items is decreased for the taxable year by depreciation) not reflected in adjustments under the preceding sentence.

(b) Adjustment to basis of assets held in segregated asset account

In the case of variable contracts, the basis of each asset in a segregated asset account shall (in addition to all other adjustments to basis) be—

(1) increased by the amount of any appreciation in value, and

(2) decreased by the amount of any depreciation in value,

to the extent such appreciation and depreciation are from time to time reflected in the increases and decreases in reserves or other items referred to in subsection (a) with respect to such contracts.

(c) Separate accounting

For purposes of this part, a life insurance company which issues variable contracts shall sep-

arately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such variable contracts. For such items as are not accounted for directly, separate accounting shall be made—

(1) in accordance with the method regularly employed by such company, if such method is reasonable, and

(2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Variable contract defined

For purposes of this part, the term “variable contract” means a contract—

(1) which provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company,

(2) which—

(A) provides for the payment of annuities,

(B) is a life insurance contract, or

(C) provides for funding of insurance on retired lives as described in section 807(c)(6), and

(3) under which—

(A) in the case of an annuity contract, the amounts paid in, or the amount paid out, reflect the investment return and the market value of the segregated asset account,

(B) in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account, or

(C) in the case of funds held under a contract described in paragraph (2)(C), the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account.

If a contract ceases to reflect current investment return and current market value, such contract shall not be considered as meeting the requirements of paragraph (3) after such cessation. Paragraph (3) shall be applied without regard to whether there is a guarantee, and obligations under such guarantee which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company’s general account.

(e) Pension plan contracts treated as paying annuity

A pension plan contract which is not a life, accident, or health, property, casualty, or liability insurance contract shall be treated as a contract which provides for the payments of annuities for purposes of subsection (d).

(f) Other special rules

(1) Life insurance reserves

For purposes of subsection (b)(1)(A) of section 816, the reflection of the investment return and the market value of the segregated asset account shall be considered an assumed rate of interest.

(2) Additional separate computations

Under regulations prescribed by the Secretary, such additional separate computations