

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.

§ 845. Certain reinsurance agreements

(a) Allocation in case of reinsurance agreement involving tax avoidance or evasion

In the case of 2 or more related persons (within the meaning of section 482) who are parties to a reinsurance agreement (or where one of the parties to a reinsurance agreement is, with respect to any contract covered by the agreement, in effect an agent of another party to such agreement or a conduit between related persons), the Secretary may—

- (1) allocate between or among such persons income (whether investment income, premium, or otherwise), deductions, assets, reserves, credits, and other items related to such agreement,
- (2) recharacterize any such items, or
- (3) make any other adjustment,

if he determines that such allocation, recharacterization, or adjustment is necessary to reflect the proper amount, source, or character of the taxable income (or any item described in paragraph (1) relating to such taxable income) of each such person.

(b) Reinsurance contract having significant tax avoidance effect

If the Secretary determines that any reinsurance contract has a significant tax avoidance effect on any party to such contract, the Secretary may make proper adjustments with respect to such party to eliminate such tax avoidance effect (including treating such contract with respect to such party as terminated on December 31 of each year and reinstated on January 1 of the next year).

(Added Pub. L. 98–369, div. A, title II, §212(a), July 18, 1984, 98 Stat. 757; amended Pub. L. 108–357, title VIII, §803(a), Oct. 22, 2004, 118 Stat. 1569.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357 substituted “amount, source, or character” for “source and character” in concluding provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §803(b), Oct. 22, 2004, 118 Stat. 1569, provided that: “The amendments made by this section [amending this section] shall apply to any risk reinsured after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE

Pub. L. 98–369, div. A, title II, §217(d), July 18, 1984, 98 Stat. 762, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) Subsection (a) of section 845 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this title) shall apply with respect to any risk reinsured on or after September 27, 1983.

“(2) Subsection (b) of section 845 of such Code (as so added) shall apply with respect to risks reinsured after December 31, 1984.”

§ 846. Discounted unpaid losses defined

(a) Discounted losses determined

(1) Separately computed for each accident year

The amount of the discounted unpaid losses as of the end of any taxable year shall be the sum of the discounted unpaid losses (as of such time) separately computed under this section with respect to unpaid losses in each line of business attributable to each accident year.

(2) Method of discounting

The amount of the discounted unpaid losses as of the end of any taxable year attributable to any accident year shall be the present value of such losses (as of such time) determined by using—

- (A) the amount of the undiscounted unpaid losses as of such time,
- (B) the applicable interest rate, and
- (C) the applicable loss payment pattern.

(3) Limitation on amount of discounted losses

In no event shall the amount of the discounted unpaid losses with respect to any line of business attributable to any accident year exceed the aggregate amount of unpaid losses with respect to such line of business for such accident year included on the annual statement filed by the taxpayer for the year ending with or within the taxable year.

(4) Determination of applicable factors

In determining the amount of the discounted unpaid losses attributable to any accident year—

- (A) the applicable interest rate shall be the interest rate determined under subsection (c) for the calendar year with which such accident year ends, and
- (B) the applicable loss payment pattern shall be the loss payment pattern determined under subsection (d) which is in effect for the calendar year with which such accident year ends.

(b) Determination of undiscounted unpaid losses

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term “undiscounted unpaid losses” means the unpaid losses shown in the annual statement filed by the taxpayer for the year ending with or within the taxable year of the taxpayer.

(2) Adjustment if losses discounted on annual statement

If—

- (A) the amount of unpaid losses shown in the annual statement is determined on a discounted basis, and
- (B) the extent to which the losses were discounted can be determined on the basis of information disclosed on or with the annual statement,

the amount of the unpaid losses shall be determined without regard to any reduction attributable to such discounting.

(c) Rate of interest

(1) In general

For purposes of this section, the rate of interest determined under this subsection shall

be the annual rate determined by the Secretary under paragraph (2).

(2) Determination of annual rate

(A) In general

The annual rate determined by the Secretary under this paragraph for any calendar year shall be a rate equal to the average of the applicable Federal mid-term rates (as defined in section 1274(d) but based on annual compounding) effective as of the beginning of each of the calendar months in the test period.

(B) Test period

For purposes of subparagraph (A), the test period is the most recent 60-calendar-month period ending before the beginning of the calendar year for which the determination is made; except that there shall be excluded from the test period any month beginning before August 1, 1986.

(d) Loss payment pattern

(1) In general

For each determination year, the Secretary shall determine a loss payment pattern for each line of business by reference to the historical loss payment pattern applicable to such line of business. Any loss payment pattern determined by the Secretary shall apply to the accident year ending with the determination year and to each of the 4 succeeding accident years.

(2) Method of determination

Determinations under paragraph (1) for any determination year shall be made by the Secretary—

(A) by using the aggregate experience reported on the annual statements of insurance companies,

(B) on the basis of the most recent published aggregate data from such annual statements relating to loss payment patterns available on the 1st day of the determination year,

(C) as if all losses paid or treated as paid during any year are paid in the middle of such year, and

(D) in accordance with the computational rules prescribed in paragraph (3).

(3) Computational rules

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the loss payment pattern for any line of business shall be based on the assumption that all losses are paid—

(i) during the accident year and the 3 calendar years following the accident year, or

(ii) in the case of any line of business reported in the schedule or schedules of the annual statement relating to auto liability, other liability, medical malpractice, workers' compensation, and multiple peril lines, during the accident year and the 10 calendar years following the accident year.

(B) Treatment of certain losses

Except as otherwise provided in this paragraph—

(i) in the case of any line of business not described in subparagraph (A)(ii), losses paid after the 1st year following the accident year shall be treated as paid equally in the 2nd and 3rd year following the accident year, and

(ii) in the case of a line of business described in subparagraph (A)(ii), losses paid after the close of the period applicable under subparagraph (A)(ii) shall be treated as paid in the last year of such period.

(C) Special rule for certain long-tail lines

In the case of any long-tail line of business—

(i) the period taken into account under subparagraph (A)(ii) shall be extended (but not by more than 5 years) to the extent required under clause (ii), and

(ii) the amount of losses which would have been treated as paid in the 10th year after the accident year shall be treated as paid in such 10th year and each subsequent year in an amount equal to the amount of the losses treated as paid in the 9th year after the accident year (or, if lesser, the portion of the unpaid losses not theretofore taken into account).

Notwithstanding clause (ii), to the extent such unpaid losses have not been treated as paid before the last year of the extension, they shall be treated as paid in such last year.

(D) Long-tail line of business

For purposes of subparagraph (C), the term "long-tail line of business" means any line of business described in subparagraph (A)(ii) if the amount of losses which (without regard to subparagraph (C)) would be treated as paid in the 10th year after the accident year exceeds the losses treated as paid in the 9th year after the accident year.

(E) Special rule for international and reinsurance lines of business

Except as otherwise provided by regulations, any determination made under subsection (a) with respect to unpaid losses relating to the international or reinsurance lines of business shall be made using, in lieu of the loss payment pattern applicable to the respective lines of business, a pattern determined by the Secretary under paragraphs (1) and (2) based on the combined losses for all lines of business described in subparagraph (A)(ii).

(F) Adjustments if loss experience information available for longer periods

The Secretary shall make appropriate adjustments in the application of this paragraph if annual statement data with respect to payment of losses is available for longer periods after the accident year than the periods assumed under the rules of this paragraph.

(G) Special rule for 9th year if negative or zero

If the amount of the losses treated as paid in the 9th year after the accident year is

zero or a negative amount, subparagraphs (C)(ii) and (D) shall be applied by substituting the average of the losses treated as paid in the 7th, 8th, and 9th years after the accident year for the losses treated as paid in the 9th year after the accident year.

(4) Determination year

For purposes of this section, the term “determination year” means calendar year 1987 and each 5th calendar year thereafter.

(e) Election to use company’s historical payment pattern

(1) In general

The taxpayer may elect to apply subsection (a)(2)(C) with respect to all lines of business by using a loss payment pattern determined by reference to the taxpayer’s loss payment pattern for the most recent calendar year for which an annual statement was filed before the beginning of the accident year. Any such determination shall be made with the application of the rules of paragraphs (2)(C) and (3) of subsection (d).

(2) Election

(A) In general

An election under paragraph (1) shall be made separately with respect to each determination year under subsection (d).

(B) Period for which election in effect

Unless revoked with the consent of the Secretary, an election under paragraph (1) with respect to any determination year shall apply to accident years ending with the determination year and to each of the 4 succeeding accident years.

(C) Time for making election

An election under paragraph (1) with respect to any determination year shall be made on the taxpayer’s return for the taxable year in which (or with which) the determination year ends.

(3) No election for international or reinsurance business

No election under this subsection shall apply to any international or reinsurance line of business.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection including—

(A) regulations providing that a taxpayer may not make an election under this subsection if such taxpayer does not have sufficient historical experience for the line of business to determine a loss payment pattern, and

(B) regulations to prevent the avoidance (through the use of separate corporations or otherwise) of the requirement of this subsection that an election under this subsection applies to all lines of business of the taxpayer.

(f) Other definitions and special rules

For purposes of this section—

(1) Accident year

The term “accident year” means the calendar year in which the incident occurs which gives rise to the related unpaid loss.

(2) Unpaid loss adjustment expenses

The term “unpaid losses” includes any unpaid loss adjustment expenses shown on the annual statement.

(3) Annual statement

The term “annual statement” means the annual statement approved by the National Association of Insurance Commissioners which the taxpayer is required to file with insurance regulatory authorities of a State.

(4) Line of business

The term “line of business” means a category for the reporting of loss payment patterns determined on the basis of the annual statement for fire and casualty insurance companies for the calendar year ending with or within the taxable year, except that the multiple peril lines shall be treated as a single line of business.

(5) Multiple peril lines

The term “multiple peril lines” means the lines of business relating to farmowners multiple peril, homeowners multiple peril, commercial multiple peril, ocean marine, aircraft (all perils) and boiler and machinery.

(6) Special rule for certain accident and health insurance lines of business

Any determination under subsection (a) with respect to unpaid losses relating to accident and health insurance lines of businesses (other than credit disability insurance) shall be made—

(A) in the case of unpaid losses relating to disability income, by using the general rules prescribed under section 807(d) applicable to noncancellable accident and health insurance contracts and using a mortality or morbidity table reflecting the taxpayer’s experience; except that—

(i) the prevailing State assumed interest rate shall be the rate in effect for the year in which the loss occurred rather than the year in which the contract was issued, and

(ii) the limitation of subsection (a)(3) shall apply in lieu of the limitation of the last sentence of section 807(d)(1), and

(B) in all other cases, by using an assumption (in lieu of a loss payment pattern) that unpaid losses are paid in the middle of the year following the accident year.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(1) regulations providing proper treatment of allocated reinsurance, and

(2) regulations providing appropriate adjustments in the application of this section to a taxpayer having a taxable year which is not the calendar year.

(Added Pub. L. 99-514, title X, §1023(c), Oct. 22, 1986, 100 Stat. 2399; amended Pub. L. 100-647, title

I, §1010(e)(1), (2), Nov. 10, 1988, 102 Stat. 3453; Pub. L. 101-508, title XI, §11305(b), Nov. 5, 1990, 104 Stat. 1388-451.)

AMENDMENTS

1990—Subsec. (g). Pub. L. 101-508 inserted “and” at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which required regulations providing proper treatment of salvage and reinsurance recoverable attributable to unpaid losses.

1988—Subsec. (f)(6)(B). Pub. L. 100-647, §1010(e)(1), substituted “paid in the middle of the year” for “paid during the year”.

Subsec. (g)(3). Pub. L. 100-647, §1010(e)(2), added par. (3).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to taxable years beginning after Dec. 31, 1989, see section 11305(c)(1) of Pub. L. 101-508, set out as a note under section 832 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

Pub. L. 99-514, title X, §1023(e), Oct. 22, 1986, 100 Stat. 2404, as amended by Pub. L. 100-647, title I, §1010(e)(3), Nov. 10, 1988, 102 Stat. 3453, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 807 and 832 of this title] shall apply to taxable years beginning after December 31, 1986.

“(2) TRANSITIONAL RULE.—For the first taxable year beginning after December 31, 1986—

“(A) the unpaid losses and the expenses unpaid (as defined in paragraphs (5)(B) and (6) of section 832(b) of the Internal Revenue Code of 1986) at the end of the preceding taxable year, and

“(B) the unpaid losses as defined in sections 807(c)(2) and 805(a)(1) of such Code at the end of the preceding taxable year,

shall be determined as if the amendments made by this section had applied to such unpaid losses and expenses unpaid in the preceding taxable year and by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 1987. For subsequent taxable years, such amendments shall be applied with respect to such unpaid losses and expenses unpaid by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 1987.

“(3) FRESH START.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, any difference between—

“(i) the amount determined to be the unpaid losses and expenses unpaid for the year preceding the 1st taxable year of an insurance company beginning after December 31, 1986, determined without regard to paragraph (2), and

“(ii) such amount determined with regard to paragraph (2),

shall not be taken into account for purposes of the Internal Revenue Code of 1986.

“(B) RESERVE STRENGTHENING IN YEARS AFTER 1985.—Subparagraph (A) shall not apply to any reserve strengthening in a taxable year beginning in 1986, and such strengthening shall be treated as occurring in the taxpayer's 1st taxable year beginning after December 31, 1986.

“(C) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of the difference deter-

mined under subparagraph (A) with respect to such company.

“(4) APPLICATION OF FRESH START TO COMPANIES WHICH BECOME SUBJECT TO SECTION 831(a) TAX IN LATER TAXABLE YEAR.—If—

“(A) an insurance company was not subject to tax under section 831(a) of the Internal Revenue Code of 1986 for its 1st taxable year beginning after December 31, 1986, by reason of being—

“(i) subject to tax under section 831(b) of such Code, or

“(ii) described in section 501(c) of such Code and exempt from tax under section 501(a) of such Code, and

“(B) such company becomes subject to tax under such section 831(a) for any later taxable year, paragraph (2) and subparagraphs (A) and (C) of paragraph (3) shall be applied by treating such later taxable year as its 1st taxable year beginning after December 31, 1986, and by treating the calendar year in which such later taxable year begins as 1987; and paragraph (3)(B) shall not apply.”

§ 847. Special estimated tax payments

In the case of taxable years beginning after December 31, 1987, of an insurance company required to discount unpaid losses (as defined in section 846)—

(1) Additional deduction

There shall be allowed as a deduction for the taxable year, if special estimated tax payments are made as required by paragraph (2), an amount not to exceed the excess of—

(A) the amount of the undiscounted, unpaid losses (as defined in section 846(b)) attributable to losses incurred in taxable years beginning after December 31, 1986, over

(B) the amount of the related discounted, unpaid losses determined under section 846,

to the extent such amount was not deducted under this paragraph in a preceding taxable year. Section 6655 shall be applied to any taxable year without regard to the deduction allowed under the preceding sentence.

(2) Special estimated tax payments

The deduction under paragraph (1) shall be allowed only to the extent that such deduction would result in a tax benefit for the taxable year for which such deduction is allowed or any carryback year and only to the extent that special estimated tax payments are made in an amount equal to the tax benefit attributable to such deduction on or before the due date (determined without regard to extensions) for filing the return for the taxable year for which the deduction is allowed. If a deduction would be allowed but for the fact that special estimated tax payments were not timely made, such deduction shall be allowed to the extent such payments are made within a reasonable time, as determined by the Secretary, if all interest and penalties, computed as if this sentence did not apply, are paid. If amounts are included in gross income under paragraph (5) or (6) for any taxable year and an additional tax is due for such year (or any other year) as a result of such inclusion, an amount of special estimated tax payments equal to such additional tax shall be applied against such additional tax. If, after any such payment is so applied, there is an adjustment