

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

reducing the amount of such additional tax, in lieu of any credit or refund for such reduction, a special estimated tax payment shall be treated as made in an amount equal to the amount otherwise allowable as a credit or refund. To the extent that a special estimated tax payment is not used to offset additional tax due for any of the first 15 taxable years beginning after the year for which the payment was made, such special estimated tax payment shall be treated as an estimated tax payment made under section 6655 for the 16th year after the year for which the payment was made.

**(3) Special loss discount account**

Each company which is allowed a deduction under paragraph (1) shall, for purposes of this part, establish and maintain a special loss discount account.

**(4) Additions to special loss discount account**

There shall be added to the special loss discount account for each taxable year an amount equal to the amount allowed as a deduction for the taxable year under paragraph (1).

**(5) Subtractions from special loss discount account and inclusion in gross income**

After applying paragraph (4), there shall be subtracted for the taxable year from the special loss discount account and included in gross income:

(A) The excess (if any) of the amount in the special loss discount account with respect to losses incurred in each taxable year over the amount of the excess referred to in paragraph (1) with respect to losses incurred in that year, and

(B) Any amount improperly subtracted from the special loss discount account under subparagraph (A) to the extent special estimated tax payments were used with respect to such amount.

To the extent that any amount added to the special loss discount account is not subtracted from such account before the 15th year after the year for which the amount was so added, such amount shall be subtracted from such account for such 15th year and included in gross income for such 15th year.

**(6) Rules in the case of liquidation or termination of taxpayer's insurance business**

**(A) In general**

If a company liquidates or otherwise terminates its insurance business and does not transfer or distribute such business in an acquisition of assets referred to in section 381(a), the entire amount remaining in such special loss discount account shall be subtracted and included in gross income. Except in the case where a company transfers or distributes its insurance business in an acquisition of assets, referred to in section 381(a), if the company is not subject to the tax imposed by section 801 or section 831 for any taxable year, the entire amount in the account at the close of the preceding taxable year shall be subtracted from the account in such preceding taxable year and included in gross income.

**(B) Elimination of balance of payments**

In any case to which subparagraph (A) applies, any special estimated tax payment remaining after the credit attributable to the inclusion under subparagraph (A) shall be voided.

**(7) Modification of the amount of special estimated tax payments in the event of subsequent marginal rate reduction or increase**

In the event of a reduction in any tax rate provided under section 11 for any tax year after the enactment of this section, the Secretary shall prescribe regulations providing for a reduction in the amount of any special estimated tax payments made for years before the effective date of such section 11 rate reductions. Such reduction in the amount of such payments shall reduce the amount of such payments to the amount that they would have been if the special deduction permitted under paragraph (1) had occurred during a year that the lower marginal rate under section 11 applied. Similar rules shall be applied in the event of a marginal rate increase.

**(8) Tax benefit determination**

The tax benefit attributable to the deduction under paragraph (1) shall be determined under regulations prescribed by the Secretary, by taking into account tax benefits that would arise from the carryback of any net operating loss for the year, as well as current year tax benefits. Tax benefits for the current year and carryback years shall include those that would arise from the filing of a consolidated return with another insurance company required to determine discounted, unpaid losses under section 846 without regard to the limitations on consolidation contained in section 1503(c). The limitations on consolidation contained in section 1503(c) shall not apply to the deduction allowed under paragraph (1).

**(9) Effect on earnings and profits**

In determining the earnings and profits—

(A) any special estimated tax payment made for any taxable year shall be treated as a payment of income tax imposed by this title for such taxable year, and

(B) any deduction or inclusion under this section shall not be taken into account.

Nothing in the preceding sentence shall be construed to affect the application of section 56(g) (relating to adjustments based on adjusted current earnings).

**(10) Regulations**

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

(A) providing for the separate application of this section with respect to each accident year,

(B) such adjustments in the application of this section as may be necessary to take into account the tax imposed by section 55, and

(C) providing for the application of this section in cases where the deduction allowed under paragraph (1) for any taxable year is

less than the excess referred to in paragraph (1) for such year.

(Added Pub. L. 100-647, title VI, § 6077(a), Nov. 10, 1988, 102 Stat. 3707; amended Pub. L. 101-239, title VII, § 7816(n), Dec. 19, 1989, 103 Stat. 2422.)

#### REFERENCES IN TEXT

Enactment of this section, referred to in par. (7), means enactment of Pub. L. 100-647, which enacted this section and was approved Nov. 10, 1988.

#### AMENDMENTS

1989—Par. (1). Pub. L. 101-239, § 7816(n)(1), substituted “special estimated tax” for “separate estimated tax” in introductory provisions and inserted “in taxable years beginning” after “attributable to losses incurred” in subpar. (A).

Par. (2). Pub. L. 101-239, § 7816(n)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: “The deduction under paragraph (1) shall be allowed 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 date that any taxes (determined without regard to this section) for the taxable year for which the deduction is allowed are due to be paid.”

Par. (5). Pub. L. 101-239, § 7816(n)(3), inserted at end “To the extent that any amount added to the special loss discount account is not subtracted from such account before the 15th year after the year for which the amount was so added, such amount shall be subtracted from such account for such 15th year and included in gross income for such 15th year.”

Par. (8). Pub. L. 101-239, § 7816(n)(6), inserted at end “The limitations on consolidation contained in section 1503(c) shall not apply to the deduction allowed under paragraph (1).”

Par. (9). Pub. L. 101-239, § 7816(n)(5), added par. (9). Former par. (9) redesignated (10).

Pub. L. 101-239, § 7816(n)(4), added subpar. (C).

Par. (10). Pub. L. 101-239, § 7816(n)(5), redesignated par. (9) as (10).

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Pub. L. 100-647, title VI, § 6077(c), Nov. 10, 1988, 102 Stat. 3709, provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1987.”

### § 848. Capitalization of certain policy acquisition expenses

#### (a) General rule

In the case of an insurance company—

(1) specified policy acquisition expenses for any taxable year shall be capitalized, and

(2) such expenses shall be allowed as a deduction ratably over the 120-month period beginning with the first month in the second half of such taxable year.

#### (b) 5-year amortization for first \$5,000,000 of specified policy acquisition expenses

##### (1) In general

Paragraph (2) of subsection (a) shall be applied with respect to so much of the specified policy acquisition expenses of an insurance company for any taxable year as does not ex-

ceed \$5,000,000 by substituting “60-month” for “120-month”.

#### (2) Phase-out

If the specified policy acquisition expenses of an insurance company exceed \$10,000,000 for any taxable year, the \$5,000,000 amount under paragraph (1) shall be reduced (but not below zero) by the amount of such excess.

#### (3) Special rule for members of controlled group

In the case of any controlled group—

(A) all insurance companies which are members of such group shall be treated as 1 company for purposes of this subsection, and

(B) the amount to which paragraph (1) applies shall be allocated among such companies in such manner as the Secretary may prescribe.

For purposes of the preceding sentence, the term “controlled group” means any controlled group of corporations as defined in section 1563(a); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply, and subsection (b)(2)(C) of section 1563 shall not apply to the extent it excludes a foreign corporation to which section 842 applies.

#### (4) Exception for acquisition expenses attributable to certain reinsurance contracts

Paragraph (1) shall not apply to any specified policy acquisition expenses for any taxable year which are attributable to premiums or other consideration under any reinsurance contract.

#### (c) Specified policy acquisition expenses

For purposes of this section—

##### (1) In general

The term “specified policy acquisition expenses” means, with respect to any taxable year, so much of the general deductions for such taxable year as does not exceed the sum of—

(A) 1.75 percent of the net premiums for such taxable year on specified insurance contracts which are annuity contracts,

(B) 2.05 percent of the net premiums for such taxable year on specified insurance contracts which are group life insurance contracts, and

(C) 7.7 percent of the net premiums for such taxable year on specified insurance contracts not described in subparagraph (A) or (B).

##### (2) General deductions

The term “general deductions” means the deductions provided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions) and in part I of subchapter D (sec. 401 and following, relating to pension, profit sharing, stock bonus plans, etc.).

##### (d) Net premiums

For purposes of this section—

##### (1) In general

The term “net premiums” means, with respect to any category of specified insurance contracts set forth in subsection (c)(1), the excess (if any) of—