

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—

(A) the gross amount of premiums and other consideration on such contracts, over

(B) return premiums on such contracts and premiums and other consideration incurred for reinsurance of such contracts.

The rules of section 803(b) shall apply for purposes of the preceding sentence.

**(2) Amounts determined on accrual basis**

In the case of an insurance company subject to tax under part II of this subchapter, all computations entering into determinations of net premiums for any taxable year shall be made in the manner required under section 811(a) for life insurance companies.

**(3) Treatment of certain policyholder dividends and similar amounts**

Net premiums shall be determined without regard to section 808(e) and without regard to other similar amounts treated as paid to, and returned by, the policyholder.

**(4) Special rules for reinsurance**

(A) Premiums and other consideration incurred for reinsurance shall be taken into account under paragraph (1)(B) only to the extent such premiums and other consideration are includible in the gross income of an insurance company taxable under this subchapter or are subject to tax under this chapter by reason of subpart F of part III of subchapter N.

(B) The Secretary shall prescribe such regulations as may be necessary to ensure that premiums and other consideration with respect to reinsurance are treated consistently by the ceding company and the reinsurer.

**(e) Classification of contracts**

For purposes of this section—

**(1) Specified insurance contract**

**(A) In general**

Except as otherwise provided in this paragraph, the term “specified insurance contract” means any life insurance, annuity, or noncancellable accident and health insurance contract (or any combination thereof).

**(B) Exceptions**

The term “specified insurance contract” shall not include—

(i) any pension plan contract (as defined in section 818(a)),

(ii) any flight insurance or similar contract,

(iii) any qualified foreign contract (as defined in section 807(e)(4) without regard to paragraph (5) of this subsection),

(iv) any contract which is an Archer MSA (as defined in section 220(d)), and

(v) any contract which is a health savings account (as defined in section 223(d)).

**(2) Group life insurance contract**

The term “group life insurance contract” means any life insurance contract—

(A) which covers a group of individuals defined by reference to employment relationship, membership in an organization, or similar factor,

(B) the premiums for which are determined on a group basis, and

(C) the proceeds of which are payable to (or for the benefit of) persons other than the employer of the insured, an organization to which the insured belongs, or other similar person.

**(3) Treatment of annuity contracts combined with noncancellable accident and health insurance**

Any annuity contract combined with noncancellable accident and health insurance shall be treated as a noncancellable accident and health insurance contract and not as an annuity contract.

**(4) Treatment of guaranteed renewable contracts**

The rules of section 816(e) shall apply for purposes of this section.

**(5) Treatment of reinsurance contract**

A contract which reinsures another contract shall be treated in the same manner as the insured contract.

**(6) Treatment of certain qualified long-term care insurance contract arrangements**

An annuity or life insurance contract which includes a qualified long-term care insurance contract as a part of or a rider on such annuity or life insurance contract shall be treated as a specified insurance contract not described in subparagraph (A) or (B) of subsection (c)(1).

**(f) Special rule where negative net premiums**

**(1) In general**

If for any taxable year there is a negative capitalization amount with respect to any category of specified insurance contracts set forth in subsection (c)(1)—

(A) the amount otherwise required to be capitalized under this section for such taxable year with respect to any other category of specified insurance contracts shall be reduced (but not below zero) by such negative capitalization amount, and

(B) such negative capitalization amount (to the extent not taken into account under subparagraph (A))—

(i) shall reduce (but not below zero) the unamortized balance (as of the beginning of such taxable year) of the amounts previously capitalized under subsection (a) (beginning with the amount capitalized for the most recent taxable year), and

(ii) to the extent taken into account as such a reduction, shall be allowed as a deduction for such taxable year.

**(2) Negative capitalization amount**

For purposes of paragraph (1), the term “negative capitalization amount” means, with respect to any category of specified insurance contracts, the percentage (applicable under subsection (c)(1) to such category) of the amount (if any) by which—

(A) the amount determined under subparagraph (B) of subsection (d)(1) with respect to such category, exceeds

(B) the amount determined under subparagraph (A) of subsection (d)(1) with respect to such category.

**(g) Treatment of certain ceding commissions**

Nothing in any provision of law (other than this section or section 197) shall require the cap-

italization of any ceding commission incurred on or after September 30, 1990, under any contract which reinsures a specified insurance contract.

**(h) Secretarial authority to adjust capitalization amounts**

**(1) In general**

Except as provided in paragraph (2), the Secretary may provide that a type of insurance contract will be treated as a separate category for purposes of this section (and prescribe a percentage applicable to such category) if the Secretary determines that the deferral of acquisition expenses for such type of contract which would otherwise result under this section is substantially greater than the deferral of acquisition expenses which would have resulted if actual acquisition expenses (including indirect expenses) and the actual useful life for such type of contract had been used.

**(2) Adjustment to other contracts**

If the Secretary exercises his authority with respect to any type of contract under paragraph (1), the Secretary shall adjust the percentage which would otherwise have applied under subsection (c)(1) to the category which includes such type of contract so that the exercise of such authority does not result in a decrease in the amount of revenue received under this chapter by reason of this section for any fiscal year.

**(i) Treatment of qualified foreign contracts under adjusted current earnings preference**

For purposes of determining adjusted current earnings under section 56(g), acquisition expenses with respect to contracts described in clause (iii) of subsection (e)(1)(B) shall be capitalized and amortized in accordance with the treatment generally required under generally accepted accounting principles as if this subsection applied to such contracts for all taxable years.

(Added Pub. L. 101-508, title XI, §11301(a), Nov. 5, 1990, 104 Stat. 1388-445; amended Pub. L. 103-66, title XIII, §13261(d), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104-191, title III, §301(h), Aug. 21, 1996, 110 Stat. 2052; Pub. L. 106-554, §1(a)(7) [title II, §202(a)(5), (b)(10)], Dec. 21, 2000, 114 Stat. 2763, 2763A-628, 2763A-629; Pub. L. 108-173, title XII, §1201(h), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 109-280, title VIII, §844(e), Aug. 17, 2006, 120 Stat. 1013; Pub. L. 113-295, div. A, title II, §221(a)(70), Dec. 19, 2014, 128 Stat. 4048.)

AMENDMENTS

2014—Subsec. (j). Pub. L. 113-295 struck out subsec. (j). Text read as follows: “In the case of any taxable year which includes September 30, 1990, the amount taken into account as the net premiums (or negative capitalization amount) with respect to any category of specified insurance contracts shall be the amount which bears the same ratio to the amount which (but for this subsection) would be so taken into account as the number of days in such taxable year on or after September 30, 1990, bears to the total number of days in such taxable year.”

2006—Subsec. (e)(6). Pub. L. 109-280 added par. (6).

2003—Subsec. (e)(1)(B)(v). Pub. L. 108-173 added cl. (v).

2000—Subsec. (e)(1)(B)(iv). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10)], substituted “an Archer MSA” for “a Archer MSA”.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(5)], substituted “Archer MSA” for “medical savings account”.

1996—Subsec. (e)(1)(B)(iv). Pub. L. 104-191 added cl. (iv).

1993—Subsec. (g). Pub. L. 103-66 substituted “this section or section 197” for “this section”.

EFFECTIVE DATE OF 2014 AMENDMENT

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 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to contracts issued after Dec. 31, 1996, but only with respect to taxable years beginning after Dec. 31, 2009, and to specified policy acquisition expenses determined for taxable years beginning after Dec. 31, 2009, see section 844(g)(1), (4) of Pub. L. 109-280, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108-173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104-191, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103-66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE

Pub. L. 101-508, title XI, §11301(d)(1), Nov. 5, 1990, 104 Stat. 1388-449, provided that: “The amendments made by subsections (a) and (c) [enacting this section] shall apply to taxable years ending on or after September 30, 1990. Any capitalization required by reason of such amendments shall not be treated as a change in method of accounting for purposes of the Internal Revenue Code of 1986.”

**Subchapter M—Regulated Investment Companies and Real Estate Investment Trusts**

Part

- I. Regulated investment companies.
- II. Real estate investment trusts.
- III. Provisions which apply to both regulated investment companies and real estate investment trusts.
- IV. Real estate mortgage investment conduits.
- V. Repealed.]

AMENDMENTS

2004—Pub. L. 108-357, title VIII, §835(b)(12), Oct. 22, 2004, 118 Stat. 1594, struck out item for part V “Financial asset securitization investment trusts”.

1996—Pub. L. 104-188, title I, §1621(c), Aug. 20, 1996, 110 Stat. 1867, added item for part V.

1988—Pub. L. 100-647, title I, §1018(u)(30), Nov. 10, 1988, 102 Stat. 3591, added item for part IV.

1978—Pub. L. 95-600, title III, §362(d)(8), Nov. 6, 1978, 92 Stat. 2852, added item for part III.

**PART I—REGULATED INVESTMENT COMPANIES**

Sec.

- 851. Definition of regulated investment company.