

“(i) submit to the Secretary of the Treasury or his delegate a written statement regarding the proposed adjustment, and

“(ii) meet with the Secretary of the Treasury or his delegate with respect to such proposed adjustment.

The Secretary of the Treasury or his delegate may discuss such proposed adjustment with the Native Corporation or its designated representative.

“(B) EXTENSION OF STATUTE OF LIMITATIONS.—Subparagraph (A) shall not apply if the Secretary of the Treasury or his delegate determines that an extension of the statute of limitation[s] is necessary to permit the participation described in subparagraph (A) and the taxpayer and the Secretary or his delegate have not agreed to such extension.

“(3) JUDICIAL PROCEEDINGS.—In the case of any proceeding in a Federal court or the United States Tax Court involving a proposed adjustment under paragraph (1), the Native Corporation, subject to the rules of such court, may file an amicus brief concerning such adjustment.

“(4) FAILURES.—For purposes of the 1986 Code, any failure by the Secretary of the Treasury or his delegate to comply with the provisions of this subsection shall not affect the validity of the determination of the Internal Revenue Service of any adjustment of tax liability of any taxpayer described in paragraph (1).

“(d) DISQUALIFIED INCOME DEFINED.—For purposes of subsection (a), the term ‘disqualified income’ means any income assigned (or attributable to property contributed) after April 26, 1988, by a person who is not a Native Corporation or a corporation all the stock of which is owned directly by a Native Corporation.

“(e) BASIS DETERMINATION.—For purposes of determining basis for Federal tax purposes, no provision in any law enacted after the date of the enactment of this Act [Nov. 10, 1988] shall affect the date on which the transfer to the Native Corporation is made. The preceding sentence shall apply to all taxable years whether beginning before, on, or after such date of enactment.”

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.

TRANSACTION RULES

Pub. L. 94–455, title XV, § 1507(c)(2), Oct. 4, 1976, 90 Stat. 1740, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) LIMITATIONS ON CARRYOVERS OR CARRYBACKS FOR GROUPS ELECTING UNDER SECTION 1504(c)(2).—If an affiliated group elects to file a consolidated return pursuant to section 1501(c)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] a carryover of a loss or credit from a taxable year ending before January 1, 1981, and losses or credits which may be carried back to taxable years ending before such date, shall be taken into account as if this section had not been enacted.

“(B) NONTERMINATION OF AFFILIATED GROUP.—The mere election to file a consolidated return pursuant to such section 1504(c)(2) shall not cause the termination of an affiliated group filing consolidated returns.”

§ 1505. Cross references

(1) For suspension of running of statute of limitations when notice in respect of a deficiency is mailed to one corporation, see section 6503(a)(1).

(2) For allocation of income and deductions of related trades or businesses, see section 482.

(Aug. 16, 1954, ch. 736, 68A Stat. 370.)

Subchapter B—Related Rules

Part		Sec. ¹
I.	In general	1551
II.	Certain controlled corporations	1561

PART I—IN GENERAL

Sec.	
1551.	Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit.
1552.	Earnings and profits.

AMENDMENTS

1978—Pub. L. 95–600, title III, § 301(b)(18)(C), Nov. 6, 1978, 92 Stat. 2823, in item 1551 substituted “the benefits of the graduated corporate rates” for “surtax exemption”.

1964—Pub. L. 88–272, title II, § 235(c)(4), Feb. 26, 1964, 78 Stat. 127, inserted table of parts, and heading for part I.

§ 1551. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit

(a) In general

If—

(1) any corporation transfers, directly or indirectly, all or part of its property (other than money) to a transferee corporation, or

(2) five or fewer individuals who are in control of a corporation transfer, directly or indirectly, property (other than money) to a transferee corporation,

and the transferee corporation was created for the purpose of acquiring such property or was not actively engaged in business at the time of such acquisition, and if after such transfer the transferor or transferors are in control of such transferee corporation during any part of the taxable year of such transferee corporation, then for such taxable year of such transferee corporation the Secretary may (except as may be otherwise determined under subsection (c)) disallow the benefits of the rates contained in section 11(b) which are lower than the highest rate specified in such section, or the accumulated earnings credit provided in paragraph (2) or (3) of section 535(c), unless such transferee corporation shall establish by the clear preponderance of the evidence that the securing of such benefits or credit was not a major purpose of such transfer.

(b) Control

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

(1) With respect to a transferee corporation described in subsection (a)(1), the ownership by the transferor corporation, its shareholders, or both, of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock; or

(2) With respect to each corporation described in subsection (a)(2), the ownership by the five or fewer individuals described in such subsection of stock possessing—

¹ Section numbers editorially supplied.

(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and

(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such individual only to the extent such stock ownership is identical with respect to each such corporation.

For purposes of this subsection, section 1563(e) shall apply in determining the ownership of stock.

(c) Authority of the Secretary under this section

The provisions of section 269(c) and the authority of the Secretary under such section, shall, to the extent not inconsistent with the provisions of this section, be applicable to this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 371; Pub. L. 85-866, title II, §205(a), Sept. 2, 1958, 72 Stat. 1680; Pub. L. 88-272, title II, §235(b), Feb. 26, 1964, 78 Stat. 125; Pub. L. 94-12, title III, §304(b), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94-455, title XIX, §§1901(a)(158), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1790, 1834; Pub. L. 95-600, title III, §301(b)(18)(A), (B), Nov. 6, 1978, 92 Stat. 2823; Pub. L. 97-34, title II, §232(b)(2), Aug. 13, 1981, 95 Stat. 250; Pub. L. 99-514, title XVIII, §1899A(36), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 113-295, div. A, title II, §221(a)(94), Dec. 19, 2014, 128 Stat. 4051.)

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-295, §221(a)(94)(A), redesignated pars. (2) and (3) as (1) and (2), respectively, struck out “after June 12, 1963,” after “indirectly,” in pars. (1) and (2), as so redesignated, and struck out former par. (1) which read as follows: “any corporation transfers, on or after January 1, 1951, and on or before June 12, 1963, all or part of its property (other than money) to a transferee corporation.”

Subsec. (b)(1). Pub. L. 113-295, §221(a)(94)(B)(i), struck out “or (2)” after “(a)(1)”.

Subsec. (b)(2). Pub. L. 113-295, §221(a)(94)(B)(ii), substituted “(a)(2)” for “(a)(3)” in introductory provisions. 1986—Subsec. (c). Pub. L. 99-514 substituted “section 269(c)” for “section 269(b)”.

1981—Subsec. (a). Pub. L. 97-34 struck out “\$150,000” before “accumulated earnings credit”.

1978—Pub. L. 95-600, §301(b)(18)(B), substituted “the benefits of the graduated corporate rates” for “surtax exemption” in section catchline.

Subsec. (a). Pub. L. 95-600, §301(b)(18)(A), in provisions following par. (3) substituted “disallow the benefits of the rates contained in section 11(b) which are lower than the highest rate specified in such section” for “disallow the surtax exemption (as defined in section 11(d))” and “such benefits or” for “such exemption or”.

1976—Subsec. (a). Pub. L. 94-455 §§1901(a)(158), 1906(b)(13)(A), substituted “subsection (c)” for “subsection (d)” after “determined under” and struck out “or his delegate” after “Secretary”.

1975—Subsec. (a). Pub. L. 94-12 substituted “\$150,000” for “\$100,000”.

1964—Pub. L. 88-272 amended section generally, and among other changes, designated provisions as subsecs. (a) to (c), included among corporations who are disallowed surtax exemption and accumulated earnings credit, corporations, and five or fewer individuals in charge of a corporation who, directly or indirectly,

transfer property in contravention of subsec. (a) after June 12, 1963, substituted provisions permitting the Secretary or his delegate to disallow the exemption or the earnings credit, for provisions which disallowed the exemption and the credit except as otherwise determined by the Secretary of his delegate, provisions that for purposes of determining ownership of stock, section 1563(e) shall apply, for provisions which determined ownership in accordance with section 544, and defined control, with respect to corporations described in subsec. (a)(3), to include the additional test as stated in subsec. (b)(2)(B).

1958—Pub. L. 85-866 substituted “\$100,000” for “\$60,000”.

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 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 232(c) of Pub. L. 97-34, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(158) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-12 applicable to taxable years beginning after Dec. 31, 1974, see section 305(c) of Pub. L. 94-12, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88-272, title II, §235(d), Feb. 26, 1964, 78 Stat. 127, provided that: “The amendments made by subsections (a) and (c) [enacting sections 1561 to 1563 of this title and amending sections 269, 441, and 802 of this title] shall apply with respect to taxable years ending after December 31, 1963. The amendment made by subsection (b) [amending this section] shall apply with respect to transfers made after June 12, 1963.”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable with respect to taxable years beginning after Dec. 31, 1957, see section 205(b) of Pub. L. 85-866, set out as a note under section 535 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.

§ 1552. Earnings and profits

(a) General rule

Pursuant to regulations prescribed by the Secretary the earnings and profits of each member of an affiliated group required to be included in