

spect to a payment pursuant to the derivative as ordinary.

(B) Reporting requirement

No payments shall be treated as qualified derivative payments under subparagraph (A) for any taxable year unless the taxpayer includes in the information required to be reported under section 6038B(b)(2) with respect to such taxable year such information as is necessary to identify the payments to be so treated and such other information as the Secretary determines necessary to carry out the provisions of this subsection.

(3) Exceptions for payments otherwise treated as base erosion payments

This subsection shall not apply to any qualified derivative payment if—

(A) the payment would be treated as a base erosion payment if it were not made pursuant to a derivative, including any interest, royalty, or service payment, or

(B) in the case of a contract which has derivative and nonderivative components, the payment is properly allocable to the non-derivative component.

(4) Derivative defined

For purposes of this subsection—

(A) In general

The term “derivative” means any contract (including any option, forward contract, futures contract, short position, swap, or similar contract) the value of which, or any payment or other transfer with respect to which, is (directly or indirectly) determined by reference to one or more of the following:

- (i) Any share of stock in a corporation.
- (ii) Any evidence of indebtedness.
- (iii) Any commodity which is actively traded.
- (iv) Any currency.
- (v) Any rate, price, amount, index, formula, or algorithm.

Such term shall not include any item described in clauses (i) through (v).

(B) Treatment of American depository receipts and similar instruments

Except as otherwise provided by the Secretary, for purposes of this part, American depository receipts (and similar instruments) with respect to shares of stock in foreign corporations shall be treated as shares of stock in such foreign corporations.

(C) Exception for certain contracts

Such term shall not include any insurance, annuity, or endowment contract issued by an insurance company to which subchapter L applies (or issued by any foreign corporation to which such subchapter would apply if such foreign corporation were a domestic corporation).

(i) Regulations

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

- (1) providing for such adjustments to the application of this section as are necessary to

prevent the avoidance of the purposes of this section, including through—

(A) the use of unrelated persons, conduit transactions, or other intermediaries, or

(B) transactions or arrangements designed, in whole or in part—

(i) to characterize payments otherwise subject to this section as payments not subject to this section, or

(ii) to substitute payments not subject to this section for payments otherwise subject to this section and

(2) for the application of subsection (g), including rules to prevent the avoidance of the exceptions under subsection (g)(3).

(Added Pub. L. 115–97, title I, §14401(a), Dec. 22, 2017, 131 Stat. 2226.)

REFERENCES IN TEXT

Section 15(a) of the Securities Exchange Act of 1934, referred to in subsec. (b)(3)(B)(ii), is classified to section 780(a) of Title 15, Commerce and Trade.

The date of the enactment of the Tax Cuts and Jobs Act, referred to in subsec. (c)(2)(B)(ii), probably means the date of enactment of title I of Pub. L. 115–97, which was approved Dec. 22, 2017. Prior versions of the bill that was enacted into law as Pub. L. 115–97 included such Short Title, but it was not enacted as part of title I of Pub. L. 115–97.

PRIOR PROVISIONS

A prior section 59A, added Pub. L. 99–499, title V, §516(a), Oct. 17, 1986, 100 Stat. 1770; amended Pub. L. 100–647, title II, §2001(c)(1), (3)(B), Nov. 10, 1988, 102 Stat. 3594; Pub. L. 101–508, title XI, §§11231(a)(1)(A), 11531(b)(3), 11801(c)(2)(E), Nov. 5, 1990, 104 Stat. 1388–444, 1388–490, 1388–523; Pub. L. 102–486, title XIX, §1915(c)(4), Oct. 24, 1992, 106 Stat. 3024, related to environmental tax, prior to repeal by Pub. L. 113–295, div. A, title II, §221(a)(12)(A), Dec. 19, 2014, 128 Stat. 4038.

EFFECTIVE DATE

Section applicable to base erosion payments (as defined in subsec. (d) of this section) paid or accrued in taxable years beginning after Dec. 31, 2017, see section 14401(e) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 26 of this title.

[PART VIII—REPEALED]

[§ 59B. Repealed. Pub. L. 101–234, title I, § 102(a), Dec. 13, 1989, 103 Stat. 1980]

Section, added Pub. L. 100–360, title I, §111(a), July 1, 1988, 102 Stat. 690, provided for imposition of a supplemental medicare premium.

EFFECTIVE DATE OF REPEAL

Pub. L. 101–234, title I, §102(d), Dec. 13, 1989, 103 Stat. 1981, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the provisions of this section [repealing section 1395i–1a of Title 42, The Public Health and Welfare, enacting provisions set out as notes under section 6050F of this title and section 1395t of Title 42, and repealing provisions set out as a note under section 1395i–1a of Title 42] shall take effect January 1, 1990.

“(2) REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM.—The repeal of section 111 of MCCA [Pub. L. 100–360, which enacted this section, amended section 6050F of this title, and enacted provisions set out as notes below] shall apply to taxable years beginning after December 31, 1988.”

EFFECTIVE DATE

Pub. L. 100–360, title I, §111(e), July 1, 1988, 102 Stat. 698, which provided that the enactment of this section

and the amendment of section 6050F of this title applied to taxable years beginning after December 31, 1988, and that in case of a taxable year beginning in 1989, the premium imposed by this section should not be treated as a tax for purposes of applying section 6654 of this title, was repealed by Pub. L. 101-234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980.

ANNOUNCEMENT OF SUPPLEMENTAL PREMIUM RATE

Pub. L. 100-360, title I, §111(d), July 1, 1988, 102 Stat. 697, which provided that in the case of calendar year 1993 or any calendar year thereafter (1) not later than July 1 of such calendar year, the Secretary of the Treasury or his delegate was required to make an announcement of the estimated supplemental premium rate under this section for taxable years beginning in the following calendar year, and (2) not later than October 1 of such calendar year, the Secretary of the Treasury or his delegate was required to make an announcement of the actual supplemental premium rate under this section for such taxable years, was repealed by Pub. L. 101-234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980.

Subchapter B—Computation of Taxable Income

Part

- I. Definition of gross income, adjusted gross income, taxable income, etc.
- II. Items specifically included in gross income.
- III. Items specifically excluded from gross income.
- IV. Determination of marital status.¹
- V. Deductions for personal exemptions.
- VI. Itemized deductions for individuals and corporations.
- VII. Additional itemized deductions for individuals.
- VIII. Special deductions for corporations.
- IX. Items not deductible.
- X. Terminal railroad corporations and their shareholders.
- XI. Special rules relating to corporate preference items.

AMENDMENTS

1982—Pub. L. 97-248, title II, §204(c)(2), Sept. 3, 1982, 96 Stat. 427, added item for part XI.

1977—Pub. L. 95-30, title I, §101(e)(3), May 23, 1977, 91 Stat. 135, substituted “Determination of marital status” for “Standard deduction for individuals” in item for part IV.

1976—Pub. L. 94-455, title XIX, §1901(b)(4)(C), Oct. 4, 1976, 90 Stat. 1793, substituted “taxable income, etc.” for “and taxable income.” in item for part I.

1962—Pub. L. 87-870, §1(b), Oct. 23, 1962, 76 Stat. 1160, added item for part X.

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

Sec.

- 61. Gross income defined.
- 62. Adjusted gross income defined.
- 63. Taxable income defined.
- 64. Ordinary income defined.
- 65. Ordinary loss defined.
- 66. Treatment of community income.
- 67. 2-percent floor on miscellaneous itemized deductions.
- 68. Overall limitation on itemized deductions.

AMENDMENTS

1990—Pub. L. 101-508, title XI, §11103(d), Nov. 5, 1990, 104 Stat. 1388-407, added item 68.

¹Part heading amended by Pub. L. 99-514 without corresponding amendment of analysis.

1986—Pub. L. 99-514, title I, §132(d), Oct. 22, 1986, 100 Stat. 2116, added item 67.

1984—Pub. L. 98-369, div. A, title IV, §424(b)(2)(C), July 18, 1984, 98 Stat. 803, struck out “where spouses live apart” in item 66.

1980—Pub. L. 96-605, title I, §101(b), Dec. 28, 1980, 94 Stat. 3522, added item 66.

1976—Pub. L. 94-455, title XIX, §1901(b)(4)(A), (B), Oct. 4, 1976, 90 Stat. 1793, substituted “TAXABLE INCOME, ETC.” for “AND TAXABLE INCOME” in part heading, and added items 64 and 65.

§ 61. Gross income defined

(a) General definition

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8)¹ Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

(b) Cross references

For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 17; Pub. L. 98-369, div. A, title V, §531(c), July 18, 1984, 98 Stat. 884; Pub. L. 115-97, title I, §11051(b)(1)(A), Dec. 22, 2017, 131 Stat. 2089.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 115-97, title I, §11051(b)(1)(A), (c), Dec. 22, 2017, 131 Stat. 2089, 2090, provided that, applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115-97 applies to such modification, subsection (a) of this section is amended by striking par. (8) and redesignating pars. (9) to (15) as (8) to (14), respectively. See 2017 Amendment note below.

AMENDMENTS

2017—Subsec. (a)(8) to (15). Pub. L. 115-97 redesignated pars. (9) to (15) as (8) to (14), respectively, and struck out former par. (8) which read as follows: “Alimony and separate maintenance payments;”.

¹ See Amendment of Subsection (a) note below.