

**§ 110. Qualified lessee construction allowances for short-term leases**

**(a) In general**

Gross income of a lessee does not include any amount received in cash (or treated as a rent reduction) by a lessee from a lessor—

- (1) under a short-term lease of retail space, and
- (2) for the purpose of such lessee's constructing or improving qualified long-term real property for use in such lessee's trade or business at such retail space,

but only to the extent that such amount does not exceed the amount expended by the lessee for such construction or improvement.

**(b) Consistent treatment by lessor**

Qualified long-term real property constructed or improved in connection with any amount excluded from a lessee's income by reason of subsection (a) shall be treated as nonresidential real property of the lessor (including for purposes of section 168(i)(8)(B)).

**(c) Definitions**

For purposes of this section—

**(1) Qualified long-term real property**

The term "qualified long-term real property" means nonresidential real property which is part of, or otherwise present at, the retail space referred to in subsection (a) and which reverts to the lessor at the termination of the lease.

**(2) Short-term lease**

The term "short-term lease" means a lease (or other agreement for occupancy or use) of retail space for 15 years or less (as determined under the rules of section 168(i)(3)).

**(3) Retail space**

The term "retail space" means real property leased, occupied, or otherwise used by a lessee in its trade or business of selling tangible personal property or services to the general public.

**(d) Information required to be furnished to Secretary**

Under regulations, the lessee and lessor described in subsection (a) shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary—

- (1) information concerning the amounts received (or treated as a rent reduction) and expended as described in subsection (a), and
- (2) any other information which the Secretary deems necessary to carry out the provisions of this section.

(Added Pub. L. 105-34, title XII, § 1213(a), Aug. 5, 1997, 111 Stat. 1000.)

PRIOR PROVISIONS

A prior section 110, act Aug. 16, 1954, ch. 736, 68A Stat. 33, related to income taxes paid by lessee corporations, prior to repeal by Pub. L. 101-508, title XI, § 11801(a)(6), Nov. 5, 1990, 104 Stat. 1388-520.

EFFECTIVE DATE

Pub. L. 105-34, title XII, § 1213(e), Aug. 5, 1997, 111 Stat. 1001, provided that: "The amendments made by

this section [enacting this section and amending sections 168 and 6724 of this title] shall apply to leases entered into after the date of the enactment of this Act [Aug. 5, 1997]."

**§ 111. Recovery of tax benefit items**

**(a) Deductions**

Gross income does not include income attributable to the recovery during the taxable year of any amount deducted in any prior taxable year to the extent such amount did not reduce the amount of tax imposed by this chapter.

**(b) Credits**

**(1) In general**

If—

(A) a credit was allowable with respect to any amount for any prior taxable year, and

(B) during the taxable year there is a downward price adjustment or similar adjustment,

the tax imposed by this chapter for the taxable year shall be increased by the amount of the credit attributable to the adjustment.

**(2) Exception where credit did not reduce tax**

Paragraph (1) shall not apply to the extent that the credit allowable for the recovered amount did not reduce the amount of tax imposed by this chapter.

**(3) Exception for investment tax credit and foreign tax credit**

This subsection shall not apply with respect to the credit determined under section 46 and the foreign tax credit.

**(c) Treatment of carryovers**

For purposes of this section, an increase in a carryover which has not expired before the beginning of the taxable year in which the recovery or adjustment takes place shall be treated as reducing tax imposed by this chapter.

**(d) Special rules for accumulated earnings tax and for personal holding company tax**

In applying subsection (a) for the purpose of determining the accumulated earnings tax under section 531 or the tax under section 541 (relating to personal holding companies)—

(1) any excluded amount under subsection (a) allowed for the purposes of this subtitle (other than section 531 or section 541) shall be allowed whether or not such amount resulted in a reduction of the tax under section 531 or the tax under section 541 for the prior taxable year; and

(2) where any excluded amount under subsection (a) was not allowable as a deduction for the prior taxable year for purposes of this subtitle other than of section 531 or section 541 but was allowable for the same taxable year under section 531 or section 541, then such excluded amount shall be allowable if it did not result in a reduction of the tax under section 531 or the tax under section 541.

(Aug. 16, 1954, ch. 736, 68A Stat. 33; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-589, § 2(c), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 98-369, div. A, title I, § 171(a), July 18, 1984, 98 Stat. 698; Pub. L. 99-514, title XVIII, § 1812(a)(1), (2), Oct. 22, 1986, 100 Stat. 2833.)