

(B) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

(2) Applicable percentage

The term “applicable percentage” means the percentage (not in excess of 95 percent) determined by dividing—

(A) the applicable amounts paid or incurred during the 3 taxable years immediately preceding the taxable year, by

(B) the adjusted taxable income of such corporation for such 3 taxable years.

(d) Maximum deductible amount

For purposes of this section, the term “maximum deductible amount” means the sum of—

(1) the applicable amounts paid during the deferral period, plus

(2) an amount equal to the product of—

(A) the amount determined under paragraph (1), divided by the number of months in the deferral period, multiplied by

(B) the number of months in the nondeferral period.

(e) Disallowance of net operating loss carrybacks

No net operating loss carryback shall be allowed to (or from) any taxable year of a personal service corporation to which an election under section 444 applies.

(f) Other definitions and special rules

For purposes of this section—

(1) Applicable amount

The term “applicable amount” means any amount paid to an employee-owner which is includible in the gross income of such employee, other than—

(A) any gain from the sale or exchange of property between the owner-employee and the corporation, or

(B) any dividend paid by the corporation.

(2) Employee-owner

The term “employee-owner” has the meaning given such term by section 269A(b)(2) (as modified by section 441(i)(2)).

(3) Nondeferral and deferral periods

(A) Deferral period

The term “deferral period” has the meaning given to such term by section 444(b)(4).

(B) Nondeferral period

The term “nondeferral period” means the portion of the taxable year of the personal service corporation which occurs after the portion of such year constituting the deferral period.

(4) Adjusted taxable income

The term “adjusted taxable income” means taxable income determined without regard to—

(A) any amount paid to an employee-owner which is includible in the gross income of such employee-owner, and

(B) any net operating loss carryover to the extent such carryover is attributable to amounts described in subparagraph (A).

(5) Personal service corporation

The term “personal service corporation” has the meaning given to such term by section 441(i)(2).

(Added Pub. L. 100-203, title X, § 10206(c)(1), Dec. 22, 1987, 101 Stat. 1330-401; amended Pub. L. 100-647, title II, § 2004(e)(2)(B), (3), (14)(A), (C), Nov. 10, 1988, 102 Stat. 3600, 3602.)

AMENDMENTS

1988—Subsecs. (c)(1)(A)(i), (d)(1). Pub. L. 100-647, § 2004(e)(14)(C), substituted “amounts paid” for “amounts paid or incurred”.

Subsec. (f)(2). Pub. L. 100-647, § 2004(e)(3), substituted “section 269A(b)(2) (as modified by section 441(i)(2))” for “section 296A(b)(2)”.

Subsec. (f)(4). Pub. L. 100-647, § 2004(e)(14)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The term ‘adjusted taxable income’ means taxable income increased by any amount paid or incurred to an employee-owner which was includible in the gross income of such employee-owner.”

Subsec. (f)(5). Pub. L. 100-647, § 2004(e)(2)(B), added par. (5).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 10206(d)(1) of Pub. L. 100-203, set out as a note under section 444 of this title.

PART X—TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS

Sec.

281. Terminal railroad corporations and their shareholders.

AMENDMENTS

1962—Pub. L. 87-870, § 1(a), Oct. 23, 1962, 76 Stat. 1158, added part X and item 281.

§ 281. Terminal railroad corporations and their shareholders

(a) Computation of taxable income of terminal railroad corporations

(1) In general

In computing the taxable income of a terminal railroad corporation—

(A) such corporation shall not be considered to have received or accrued—

(i) the portion of any liability of any railroad corporation, with respect to related terminal services provided by such corporation, which is discharged by crediting such liability with an amount of related terminal income, or

(ii) the portion of any charge which would be made by such corporation for related terminal services provided by it, but which is not made as a result of taking related terminal income into account in computing such charge; and

(B) no deduction otherwise allowable under this chapter shall be disallowed as a result of any discharge of liability described in subparagraph (A)(i) or as a result of any computation of charges in the manner described in subparagraph (A)(ii).

(2) Limitation

In the case of any taxable year ending after the date of the enactment of this section,

paragraph (1) shall not apply to the extent that it would (but for this paragraph) operate to create (or increase) a net operating loss for the terminal railroad corporation for the taxable year.

(b) Computation of taxable income of shareholders

Subject to the limitation in subsection (a)(2), in computing the taxable income of any shareholder of a terminal railroad corporation, no amount shall be considered to have been received or accrued or paid or incurred by such shareholder as a result of any discharge of liability described in subsection (a)(1)(A)(i) or as a result of any computation of charges in the manner described in subsection (a)(1)(A)(ii).

(c) Agreement required

In the case of any taxable year, subsections (a) and (b) shall apply with respect to any discharge of liability described in subsection (a)(1)(A)(i), and to any computation of charges in the manner described in subsection (a)(1)(A)(ii), only if such discharge or computation (as the case may be) was provided for in a written agreement, to which all of the shareholders of the terminal railroad corporation were parties, entered into before the beginning of such taxable year.

(d) Definitions

For purposes of this section—

(1) Terminal railroad corporation

The term “terminal railroad corporation” means a domestic railroad corporation which is not a member, other than as a common parent corporation, of an affiliated group (as defined in section 1504) and—

(A) all of the shareholders of which are rail carriers subject to part A of subtitle IV of title 49;

(B) the primary business of which is the providing of railroad terminal and switching facilities and services to rail carriers subject to part A of subtitle IV of title 49 and to the shippers and passengers of such railroad corporations;

(C) a substantial part of the services of which for the taxable year is rendered to one or more of its shareholders; and

(D) each shareholder of which computes its taxable income on the basis of a taxable year beginning or ending on the same day that the taxable year of the terminal railroad corporation begins or ends.

(2) Related terminal income

The term “related terminal income” means the income (determined in accordance with regulations prescribed by the Secretary) of a terminal railroad corporation derived—

(A) from services or facilities of a character ordinarily and regularly provided by terminal railroad corporations for railroad corporations or for the employees, passengers, or shippers of railroad corporations;

(B) from the use by persons other than railroad corporations of portions of a facility, or a service, which is used primarily for railroad purposes;

(C) from any railroad corporation for services or facilities provided by such terminal

railroad corporation in connection with railroad operations; and

(D) from the United States in payment for facilities or services in connection with mail handling.

For purposes of subparagraph (B), a substantial addition, constructed after the date of the enactment of this section, to a facility shall be treated as a separate facility.

(3) Related terminal services

The term “related terminal services” includes only services, and the use of facilities, taken into account in computing related terminal income.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Added Pub. L. 87-870, §1(a), Oct. 23, 1962, 76 Stat. 1158; amended Pub. L. 94-455, title XIX, §§1901(a)(40), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1771, 1834; Pub. L. 95-473, §2(a)(2)(D), (E), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 104-88, title III, §304(b), Dec. 29, 1995, 109 Stat. 943.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (a)(2), (d)(2), refers to the date of enactment of Pub. L. 87-870, which was approved Oct. 23, 1962.

AMENDMENTS

1995—Subsec. (d)(1)(A), (B). Pub. L. 104-88 substituted “rail carriers subject to part A of subtitle IV” for “domestic railroad corporations providing transportation subject to subchapter I of chapter 105”.

1978—Subsec. (d)(1)(A). Pub. L. 95-473, §2(a)(2)(D), substituted “providing transportation subject to subchapter I of chapter 105 of title 49” for “subject to part I of the Interstate Commerce Act (49 U.S.C. 1 and following)”.

Subsec. (d)(1)(B). Pub. L. 95-473, §2(a)(2)(E), substituted “providing transportation subject to subchapter I of chapter 105 of title 49” for “subject to part I of the Interstate Commerce Act”.

1976—Subsec. (d)(1)(A). Pub. L. 94-455, §1901(a)(40)(A), inserted “(49 U.S.C. 1 and following)” after “Interstate Commerce Act”.

Subsecs. (e), (f). Pub. L. 94-455, §§1901(a)(40)(B), 1906(b)(13)(A), redesignated subsec. (f) as (e) and struck out “or his delegate” after “Secretary”. Former subsec. (e), which made special provision for the application of this section to taxable years ending before Oct. 23, 1962, was struck out.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(40) of Pub. L. 94-455 effective for 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

Pub. L. 87-870, §2(a), Oct. 23, 1962, 76 Stat. 1160, provided that: “The amendments made by the first section of this Act [enacting this section] shall apply with re-

spect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.”

INTERNAL REVENUE CODE OF 1939; INCLUSION OF TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS PROVISION

Pub. L. 87-870, §2(b), Oct. 23, 1962, 76 Stat. 1160, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Provisions having the same effect as section 281 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the first section of this Act) shall be deemed to be included in the Internal Revenue Code of 1939, effective with respect to all taxable years to which such Code applies.”

PART XI—SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS

Sec. 291. Special rules relating to corporate preference items.

AMENDMENTS

1982—Pub. L. 97-248, title II, §204(a), Sept. 3, 1982, 96 Stat. 423, added part XI heading and analysis of sections consisting of item 291.

§ 291. Special rules relating to corporate preference items

(a) Reduction in certain preference items, etc.

For purposes of this subtitle, in the case of a corporation—

(1) Section 1250 capital gain treatment

In the case of section 1250 property which is disposed of during the taxable year, 20 percent of the excess (if any) of—

(A) the amount which would be treated as ordinary income if such property was section 1245 property, over

(B) the amount treated as ordinary income under section 1250 (determined without regard to this paragraph),

shall be treated as gain which is ordinary income under section 1250 and shall be recognized notwithstanding any other provision of this title. Under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent section 1250(a) does not apply to such disposition by reason of section 1250(d).

(2) Reduction in percentage depletion

In the case of iron ore and coal (including lignite), the amount allowable as a deduction under section 613 with respect to any property (as defined in section 614) shall be reduced by 20 percent of the amount of the excess (if any) of—

(A) the amount of the deduction allowable under section 613 for the taxable year (determined without regard to this paragraph), over

(B) the adjusted basis of the property at the close of the taxable year (determined without regard to the depletion deduction for the taxable year).

(3) Certain financial institution preference items

The amount allowable as a deduction under this chapter (determined without regard to

this section) with respect to any financial institution preference item shall be reduced by 20 percent.

(4) Amortization of pollution control facilities

If an election is made under section 169 with respect to any certified pollution control facility, the amortizable basis of such facility for purposes of such section shall be reduced by 20 percent.

(b) Special rules for treatment of intangible drilling costs and mineral exploration and development costs

For purposes of this subtitle, in the case of a corporation—

(1) In general

The amount allowable as a deduction for any taxable year (determined without regard to this section)—

(A) under section 263(c) in the case of an integrated oil company, or

(B) under section 616(a) or 617(a),

shall be reduced by 30 percent.

(2) Amortization of amounts not allowable as deductions under paragraph (1)

The amount not allowable as a deduction under section 263(c), 616(a), or 617(a) (as the case may be) for any taxable year by reason of paragraph (1) shall be allowable as a deduction ratably over the 60-month period beginning with the month in which the costs are paid or incurred.

(3) Dispositions

For purposes of section 1254, any deduction under paragraph (2) shall be treated as a deduction allowable under section 263(c), 616(a), or 617(a) (whichever is appropriate).

(4) Integrated oil company defined

For purposes of this subsection, the term “integrated oil company” means, with respect to any taxable year, any producer of crude oil to whom subsection (c) of section 613A does not apply by reason of paragraph (2) or (4) of section 613A(d).

(5) Coordination with cost depletion

The portion of the adjusted basis of any property which is attributable to amounts to which paragraph (1) applied shall not be taken into account for purposes of determining depletion under section 611.

(c) Special rules relating to pollution control facilities

For purposes of this subtitle—

(1) Accelerated cost recovery deduction

Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(4).

(2) 1250 Recapture

Subsection (a)(1) shall not apply to any section 1250 property which is part of a certified pollution control facility (within the meaning of section 169(d)(1)) with respect to which an election under section 169 was made.

(d) Special rule for real estate investment trusts

In the case of a real estate investment trust (as defined in section 856), the difference be-