

ginning after Dec. 31, 2017, see section 13511(c) of Pub. L. 115-97, set out as a note under section 381 of this title.

Amendment by section 13512(b)(5), (6) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 13512(c) of Pub. L. 115-97, set out as a note under section 453B of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 not applicable to preferred stock issued before Oct. 1, 1942 (determined in the same manner as under section 247 of this title as in effect before its repeal by Pub. L. 113-295), see section 221(a)(41)(K) of Pub. L. 113-295, set out as a note under section 172 of this title.

Except as otherwise provided in section 221(a) of Pub. L. 113-295, 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 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105-34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 31, 1987, see section 10221(e)(2) of Pub. L. 100-203, as amended, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 611(a)(5) of Pub. L. 99-514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b)(1) of Pub. L. 99-514, set out as a note under section 246 of this title.

Amendment by section 805(c)(6) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99-514, set out as a note under section 166 of this title.

Amendment by section 1011(b)(4) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99-514, set out as a note under section 453B of this title.

Amendment by section 1821(p) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 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.

[§ 806. Repealed. Pub. L. 115-97, title I, § 13512(a), Dec. 22, 2017, 131 Stat. 2142]

Section, added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 724; amended Pub. L. 99-514, title X, § 1011(a), (b)(5)-(8), (11)(A), Oct. 22, 1986, 100 Stat. 2388, 2389, related to small life insurance company deduction.

A prior section 806, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 120; amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to certain changes in reserves and assets, prior to the general revision of this part by Pub. L. 98-369, § 211(a).

Another prior section 806, act Aug. 16, 1954, ch. 736, 68A Stat. 258, related to adjustment for certain reserves, prior to the general revision of this part by act Mar. 13, 1956, ch. 83, § 2, 70 Stat. 36.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2017, see section 13512(c) of Pub. L. 115-97, set out as an Effective Date of 2017 Amendment note under section 453B of this title.

§ 807. Rules for certain reserves

(a) Decrease treated as gross income

If for any taxable year—

(1) the opening balance for the items described in subsection (c), exceeds

(2)(A) the closing balance for such items, reduced by

(B) the amount of the policyholders' share of tax-exempt interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,

such excess shall be included in gross income under section 803(a)(2).

(b) Increase treated as deduction

If for any taxable year—

(1)(A) the closing balance for the items described in subsection (c), reduced by

(B) the amount of the policyholders' share of tax-exempt interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, exceeds

(2) the opening balance for such items,

such excess shall be taken into account as a deduction under section 805(a)(2).

(c) Items taken into account

The items referred to in subsections (a) and (b) are as follows:

(1) The life insurance reserves (as defined in section 816(b)).

(2) The unearned premiums and unpaid losses included in total reserves under section 816(c)(2).

(3) The amounts (discounted at the appropriate rate of interest) necessary to satisfy the obligations under insurance and annuity contracts, but only if such obligations do not involve (at the time with respect to which the computation is made under this paragraph) life, accident, or health contingencies.

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance and annuity contracts.

(5) Premiums received in advance, and liabilities for premium deposit funds.

(6) Reasonable special contingency reserves under contracts of group term life insurance or group accident and health insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

For purposes of paragraph (3), the appropriate rate of interest is the highest rate or rates permitted to be used to discount the obligations by the National Association of Insurance Commissioners as of the date the reserve is determined. In no case shall the amount determined under paragraph (3) for any contract be less than the net surrender value of such contract. For purposes of paragraph (2) and section 805(a)(1), the amount of the unpaid losses (other than losses on life insurance contracts) shall be the amount of the discounted unpaid losses as defined in section 846.

(d) Method of computing reserves for purposes of determining income

(1) Determination of reserve

(A) In general

For purposes of this part (other than section 816), the amount of the life insurance reserves for any contract (other than a contract to which subparagraph (B) applies) shall be the greater of—

- (i) the net surrender value of such contract, or
- (ii) 92.81 percent of the reserve determined under paragraph (2).

(B) Variable contracts

For purposes of this part (other than section 816), the amount of the life insurance reserves for a variable contract shall be equal to the sum of—

- (i) the greater of—
 - (I) the net surrender value of such contract, or
 - (II) the portion of the reserve that is separately accounted for under section 817, plus
- (ii) 92.81 percent of the excess (if any) of the reserve determined under paragraph (2) over the amount in clause (i).

(C) Statutory cap

In no event shall the reserves determined under subparagraphs (A) or (B) for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining statutory reserves (as defined in paragraph (4)).

(D) No double counting

In no event shall any amount or item be taken into account more than once in determining any reserve under this subchapter.

(2) Amount of reserve

The amount of the reserve determined under this paragraph with respect to any contract

shall be determined by using the tax reserve method applicable to such contract.

(3) Tax reserve method

For purposes of this subsection—

(A) In general

The term “tax reserve method” means—

(i) Life insurance contracts

The CRVM in the case of a contract covered by the CRVM.

(ii) Annuity contracts

The CARVM in the case of a contract covered by the CARVM.

(iii) Noncancellable accident and health insurance contracts

In the case of any noncancellable accident and health insurance contract, the reserve method prescribed by the National Association of Insurance Commissioners which covers such contract as of the date the reserve is determined.

(iv) Other contracts

In the case of any contract not described in clause (i), (ii), or (iii)—

(I) the reserve method prescribed by the National Association of Insurance Commissioners which covers such contract (as of the date the reserve is determined), or

(II) if no reserve method has been prescribed by the National Association of Insurance Commissioners which covers such contract, a reserve method which is consistent with the reserve method required under clause (i), (ii), or (iii) or under subclause (I) of this clause as of the date the reserve is determined for such contract (whichever is most appropriate).

(B) Definition of CRVM and CARVM

For purposes of this paragraph—

(i) CRVM

The term “CRVM” means the Commissioners’ Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is applicable to the contract and in effect as of the date the reserve is determined.

(ii) CARVM

The term “CARVM” means the Commissioners’ Annuities Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is applicable to the contract and in effect as of the date the reserve is determined.

(C) No additional reserve deduction allowed for deficiency reserves

Nothing in any reserve method described under this paragraph shall permit any increase in the reserve because the net premium (computed on the basis of assumptions required under this subsection) exceeds the actual premiums or other consideration charged for the benefit.

(4) Statutory reserves

The term “statutory reserves” means the aggregate amount set forth in the annual

statement with respect to items described in section 807(c). Such term shall not include any reserve attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under section 811(c).

(e) Special rules for computing reserves

(1) Net surrender value

For purposes of this section—

(A) In general

The net surrender value of any contract shall be determined—

- (i) with regard to any penalty or charge which would be imposed on surrender, but
- (ii) without regard to any market value adjustment on surrender.

(B) Special rule for pension plan contracts

In the case of a pension plan contract, the balance in the policyholder's fund shall be treated as the net surrender value of such contract. For purposes of the preceding sentence, such balance shall be determined with regard to any penalty or forfeiture which would be imposed on surrender but without regard to any market value adjustment.

(2) Qualified supplemental benefits

(A) Qualified supplemental benefits treated separately

For purposes of this part, the amount of the life insurance reserve for any qualified supplemental benefit shall be computed separately as though such benefit were under a separate contract.

(B) Qualified supplemental benefit

For purposes of this paragraph, the term “qualified supplemental benefit” means any supplemental benefit described in subparagraph (C) if—

- (i) there is a separately identified premium or charge for such benefit, and
- (ii) any net surrender value under the contract attributable to any other benefit is not available to fund such benefit.

(C) Supplemental benefits

For purposes of this paragraph, the supplemental benefits described in this subparagraph are any—

- (i) guaranteed insurability,
- (ii) accidental death or disability benefit,
- (iii) convertibility,
- (iv) disability waiver benefit, or
- (v) other benefit prescribed by regulations,

which is supplemental to a contract for which there is a reserve described in subsection (c).

(3) Certain contracts issued by foreign branches of domestic life insurance companies

(A) In general

In the case of any qualified foreign contract, the amount of the reserve shall be not less than the minimum reserve required by the laws, regulations, or administrative guidance of the regulatory authority of the

foreign country referred to in subparagraph (B) (but not to exceed the net level reserves for such contract).

(B) Qualified foreign contract

For purposes of subparagraph (A), the term “qualified foreign contract” means any contract issued by a foreign life insurance branch (which has its principal place of business in a foreign country) of a domestic life insurance company if—

- (i) such contract is issued on the life or health of a resident of such country,
- (ii) such domestic life insurance company was required by such foreign country (as of the time it began operations in such country) to operate in such country through a branch, and
- (iii) such foreign country is not contiguous to the United States.

(4) Special rules for contracts issued before January 1, 1989, under existing plans of insurance, with term insurance or annuity benefits

For purposes of this part—

(A) In general

In the case of a life insurance contract issued before January 1, 1989, under an existing plan of insurance, the life insurance reserve for any benefit to which this paragraph applies shall be computed separately under subsection (d)(1) from any other reserve under the contract.

(B) Benefits to which this paragraph applies

This paragraph applies to any term insurance or annuity benefit with respect to which the requirements of clauses (i) and (ii) of paragraph (3)(C) are met.

(C) Existing plan of insurance

For purposes of this paragraph, the term “existing plan of insurance” means, with respect to any contract, any plan of insurance which was filed by the company using such contract in one or more States before January 1, 1984, and is on file in the appropriate State for such contract.

(5) Special rules for treatment of certain nonlife reserves

(A) In general

The amount taken into account for purposes of subsections (a) and (b) as—

- (i) the opening balance of the items referred to in subparagraph (C),¹ and
- (ii) the closing balance of such items,

shall be 80 percent of the amount which (without regard to this subparagraph) would have been taken into account as such opening or closing balance, as the case may be.

(B) Description of items

For purposes of this paragraph, the items referred to in this subparagraph are the items described in subsection (c) which consist of unearned premiums and premiums received in advance under insurance contracts not described in section 816(b)(1)(B).

¹So in original. Probably should be “subparagraph (B).”. See 2014 Amendment note below.

(6) Reporting rules

The Secretary shall require reporting (at such time and in such manner as the Secretary shall prescribe) with respect to the opening balance and closing balance of reserves and with respect to the method of computing reserves for purposes of determining income.

(f) Adjustment for change in computing reserves**(1) Treatment as change in method of accounting**

If the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

(A) the amount of the item at the close of the taxable year, computed on the new basis, and

(B) the amount of the item at the close of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account under section 481 as adjustments attributable to a change in method of accounting initiated by the taxpayer and made with the consent of the Secretary.

(2) Termination as life insurance company

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this subsection shall be taken into account for the preceding taxable year.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 726; amended Pub. L. 99-514, title X, §1023(b), title XVIII, §1821(a), (s), Oct. 22, 1986, 100 Stat. 2399, 2837, 2843; Pub. L. 100-203, title X, §10241(a)–(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330-419, 1330-420; Pub. L. 101-508, title XI, §11302(a), Nov. 5, 1990, 104 Stat. 1388-449; Pub. L. 104-188, title I, §1704(t)(61), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 104-191, title III, §321(b), Aug. 21, 1996, 110 Stat. 2058; Pub. L. 105-34, title X, §1084(b)(2), Aug. 5, 1997, 111 Stat. 954; Pub. L. 108-218, title II, §205(b)(1), (2), Apr. 10, 2004, 118 Stat. 610; Pub. L. 113-295, div. A, title II, §221(a)(68), Dec. 19, 2014, 128 Stat. 4048; Pub. L. 115-97, title I, §§13513(a), 13517(a)(1)–(3), Dec. 22, 2017, 131 Stat. 2143–2145.)

CODIFICATION

Another section 1084(b) of Pub. L. 105-34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 807, act Aug. 16, 1954, ch. 736, 68A Stat. 259, related to adjustment for certain reserves, prior to the general revision of this part by act Mar. 13, 1956, ch. 83, §2, 70 Stat. 36.

AMENDMENTS

2017—Subsec. (c). Pub. L. 115-97, §13517(a)(1), directed the general amendment of the second sentence of subsec. (c), which was executed by substituting “For purposes of paragraph (3), the appropriate rate of interest is the highest rate or rates permitted to be used to dis-

count the obligations by the National Association of Insurance Commissioners as of the date the reserve is determined.” for “For purposes of paragraph (3), the appropriate rate of interest for any obligation is whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit.” in concluding provisions.

Subsec. (d)(1), (2). Pub. L. 115-97, §13517(a)(2)(A), (C), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) IN GENERAL.—For purposes of this part (other than section 816), the amount of the life insurance reserves for any contract shall be the greater of—

“(A) the net surrender value of such contract, or

“(B) the reserve determined under paragraph (2).

In no event shall the reserve determined under the preceding sentence for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining statutory reserves (as defined in paragraph (6)).

“(2) AMOUNT OF RESERVE.—The amount of the reserve determined under this paragraph with respect to any contract shall be determined by using—

“(A) the tax reserve method applicable to such contract,

“(B) the greater of—

“(i) the applicable Federal interest rate, or

“(ii) the prevailing State assumed interest rate, and

“(C) the prevailing commissioners’ standard tables for mortality and morbidity adjusted as appropriate to reflect the risks (such as substandard risks) incurred under the contract which are not otherwise taken into account.”

Subsec. (d)(3)(A)(iii). Pub. L. 115-97, §13517(a)(2)(D), substituted “, the reserve method prescribed by the National Association of Insurance Commissioners which covers such contract as of the date the reserve is determined” for “(other than a qualified long-term care insurance contract, as defined in section 7702B(b)), a 2-year full preliminary term method”.

Subsec. (d)(3)(A)(iv)(I). Pub. L. 115-97, §13517(a)(2)(E), substituted “(as of the date the reserve is determined)” for “(as of the date of issuance)”.

Subsec. (d)(3)(A)(iv)(II). Pub. L. 115-97, §13517(a)(2)(F), substituted “as of the date the reserve is determined for” for “as of the date of the issuance of”.

Subsec. (d)(3)(B). Pub. L. 115-97, §13517(a)(2)(G), (H), substituted “applicable to the contract and in effect as of the date the reserve is determined” for “in effect on the date of the issuance of the contract” in cls. (i) and (ii).

Subsec. (d)(4) to (6). Pub. L. 115-97, §13517(a)(2)(A), (B), redesignated par. (6) as (4) and struck out former pars. (4) and (5) which related to applicable Federal and prevailing State assumed interest rates and prevailing commissioners’ standard tables, respectively.

Subsec. (e)(2). Pub. L. 115-97, §13517(a)(3)(C), amended par. (2) generally. Prior to amendment, par. (2) related to supplemental benefits.

Pub. L. 115-97, §13517(a)(3)(A), (B), redesignated par. (3) as (2) and struck out former par. (2) which related to issuance date in case of group contracts.

Subsec. (e)(3), (4). Pub. L. 115-97, §13517(a)(3)(B), redesignated pars. (4) and (6) as (3) and (4), respectively. Former par. (3) redesignated (2).

Subsec. (e)(5). Pub. L. 115-97, §13517(a)(3)(A), (B), redesignated par. (7) as (5) and struck out former par. (5) which related to treatment of substandard risks.

Subsec. (e)(6). Pub. L. 115-97, §13517(a)(3)(D), added par. (6). Former par. (6) redesignated (4).

Subsec. (e)(7). Pub. L. 115-97, §13517(a)(3)(B), redesignated par. (7) as (5).

Subsec. (f)(1). Pub. L. 115-97, §13513(a), amended par. (1) generally. Prior to amendment, par. (1) related to 10-year spread method of computation.

2014—Subsec. (e)(7)(B), (C). Pub. L. 113-295 redesignated subpar. (C) as (B) and struck out former subpar. (B) which related to transitional rule.

2004—Subsecs. (a)(2)(B), (b)(1)(B). Pub. L. 108-218, § 205(b)(1), struck out “the sum of (i)” before “the amount” and struck out “plus (ii) any excess described in section 809(a)(2) for the taxable year,” after “to which section 264(f) applies.”

Subsec. (d)(1). Pub. L. 108-218, § 205(b)(2)(A), substituted “paragraph (6)” for “section 809(b)(4)(B)” in concluding provisions.

Subsec. (d)(6). Pub. L. 108-218, § 205(b)(2)(B), added par. (6).

1997—Subsec. (a)(2)(B). Pub. L. 105-34, § 1084(b)(2)(A), substituted “interest and the amount of the policyholder’s share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,” for “interest.”

Subsec. (b)(1)(B). Pub. L. 105-34, § 1084(b)(2)(B), substituted “interest and the amount of the policyholder’s share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,” for “interest.”

1996—Subsec. (d)(3)(A)(iii). Pub. L. 104-191 inserted “(other than a qualified long-term care insurance contract, as defined in section 7702B(b))” after “insurance contract”.

Subsec. (d)(3)(B)(ii). Pub. L. 104-188 substituted “Commissioners’ Annuities” for “Commissioners’ Annuities”.

1990—Subsec. (e)(7). Pub. L. 101-508 added par. (7).

1987—Subsec. (c). Pub. L. 100-203, § 10241(b)(2)(A), substituted “whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit.” for “the higher of the prevailing State assumed interest rate as of the time such obligation first did not involve life, accident, or health contingencies or the rate of interest assumed by the company (as of such time) in determining the guaranteed benefit.” in third to last sentence.

Subsec. (d)(2)(B). Pub. L. 100-203, § 10241(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the prevailing State assumed interest rate, and”.

Subsec. (d)(4). Pub. L. 100-203, § 10241(b)(1), substituted “Applicable Federal interest rate; prevailing State assumed interest rate” for “Prevailing State assumed interest rate” in heading and amended text generally, revising and restating as subpars. (A) and (B) provisions of former subpars. (A) to (D).

1986—Subsec. (c). Pub. L. 99-514, § 1023(b), inserted at end “For purposes of paragraph (2) and section 805(a)(1), the amount of the unpaid losses (other than losses on life insurance contracts) shall be the amount of the discounted unpaid losses as defined in section 846.”

Pub. L. 99-514, § 1821(a), inserted at end “In no case shall the amount determined under paragraph (3) for any contract be less than the net surrender value of such contract.”

Subsec. (d)(5)(C). Pub. L. 99-514, § 1821(s), inserted at end “When the Secretary by regulation changes the table applicable to a type of contract, the new table shall be treated (for purposes of subparagraph (B) and for purposes of determining the issue dates of contracts for which it shall be used) as if it were a new prevailing commissioner’s standard table adopted by the twenty-sixth State as of a date (no earlier than the date the regulation is issued) specified by the Secretary.”

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, § 13513(b), Dec. 22, 2017, 131 Stat. 2143, provided that: “The amendments made by this

section [amending this section] shall apply to taxable years beginning after December 31, 2017.”

Pub. L. 115-97, title I, § 13517(c), Dec. 22, 2017, 131 Stat. 2147, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 808, 811, 846, 848, 954, and 7702 of this title] shall apply to taxable years beginning after December 31, 2017.

“(2) TRANSITION RULE.—For the first taxable year beginning after December 31, 2017, the reserve with respect to any contract (as determined under section 807(d) of the Internal Revenue Code of 1986) at the end of the preceding taxable year shall be determined as if the amendments made by this section had applied to such reserve in such preceding taxable year.

“(3) TRANSITION RELIEF.—

“(A) IN GENERAL.—If—

“(i) the reserve determined under section 807(d) of the Internal Revenue Code of 1986 (determined after application of paragraph (2)) with respect to any contract as of the close of the year preceding the first taxable year beginning after December 31, 2017, differs from

“(ii) the reserve which would have been determined with respect to such contract as of the close of such taxable year under such section determined without regard to paragraph (2),

then the difference between the amount of the reserve described in clause (i) and the amount of the reserve described in clause (ii) shall be taken into account under the method provided in subparagraph (B).

“(B) METHOD.—The method provided in this subparagraph is as follows:

“(i) If the amount determined under subparagraph (A)(i) exceeds the amount determined under subparagraph (A)(ii), 1/8 of such excess shall be taken into account, for each of the 8 succeeding taxable years, as a deduction under section 805(a)(2) or 832(c)(4) of such Code, as applicable.

“(ii) If the amount determined under subparagraph (A)(i) exceeds the amount determined under subparagraph (A)(i), 1/8 of such excess shall be included in gross income, for each of the 8 succeeding taxable years, under section 803(a)(2) or 832(b)(1)(C) of such Code, as applicable.”

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 2004 AMENDMENT

Pub. L. 108-218, title II, § 205(c), Apr. 10, 2004, 118 Stat. 610, provided that: “The amendments made by this section [amending this section and sections 808, 812, 817, and 842 of this title and repealing section 809 of this title] shall apply to taxable years beginning after December 31, 2004.”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105-34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to contracts issued after Dec. 31, 1997, see section 321(f) of Pub. L. 104-191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, § 11302(b), Nov. 5, 1990, 104 Stat. 1388-450, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after September 30, 1990.”

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, §10241(c), Dec. 22, 1987, 101 Stat. 1330-420, provided that: “The amendments made by this section [amending this section and section 812 of this title] shall apply to contracts issued in taxable years beginning after December 31, 1987.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1023(b) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1023(e) of Pub. L. 99-514, set out as an Effective Date note under section 846 of this title.

Amendment by section 1821(a), (s) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 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.

TREATMENT OF CERTAIN ASSESSMENT LIFE INSURANCE
COMPANIES

Pub. L. 98-369, div. A, title II, §217(f), July 18, 1984, 98 Stat. 763, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) MORTALITY AND MORBIDITY TABLES.—In the case of a contract issued by an assessment life insurance company, the mortality and morbidity tables used in computing statutory reserves for such contract shall be used for purposes of paragraph (2)(C) of section 807(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle [subtitle A (§§211-219)] of title II of div. A of Pub. L. 98-369) if such tables were—

“(A) in use since 1965, and

“(B) developed on the basis of the experience of assessment life insurance companies in the State in which such assessment life insurance company is domiciled.

“(2) TREATMENT OF CERTAIN MUTUAL ASSESSMENT LIFE INSURANCE COMPANIES.—In the case of any contract issued by a mutual assessment life insurance company which—

“(A) has been in existence since 1965, and

“(B) operates under chapter 13 or 14 of the Texas Insurance Code,

for purposes of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986, the amount of the life insurance reserves for such contract shall be equal to the amount taken into account with respect to such contract in determining statutory reserves.

“(3) STATUTORY RESERVES.—For purposes of this subsection, the term ‘statutory reserves’ has the meaning given to such term by [former] section 809(b)(4)(B) of such Code.”

SPECIAL RULE FOR COMPANIES USING NET LEVEL RE-
SERVE METHOD FOR NONCANCELLABLE ACCIDENT AND
HEALTH INSURANCE CONTRACTS

Pub. L. 98-369, div. A, title II, §217(n), July 18, 1984, 98 Stat. 766, as amended by Pub. L. 99-514, §2, title XVIII, §1823, Oct. 22, 1986, 100 Stat. 2095, 2845, provided that: “A company shall be treated as meeting the requirements

of section 807(d)(3)(A)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this Act, with respect to any directly-written noncancellable accident and health insurance contract (whether under existing or new plans of insurance) for any taxable year if—

“(1) such company—

“(A) was using the net level reserve method to compute at least 99 percent of its statutory reserves on such contracts as of December 31, 1982, and

“(B) received more than half its total direct premiums in 1982 from directly-written noncancellable accident and health insurance,

“(2) after December 31, 1983, and through such taxable year, such company has continuously used the net level reserve method for computing at least 99 percent of its tax and statutory reserves on such contracts, and

“(3) for any such contract for which the company does not use the net level reserve method, such company uses the same method for computing tax reserves as such company uses for computing its statutory reserves.”

§ 808. Policyholder dividends deduction

(a) Policyholder dividend defined

For purposes of this part, the term “policyholder dividend” means any dividend or similar distribution to policyholders in their capacity as such.

(b) Certain amounts included

For purposes of this part, the term “policyholder dividend” includes—

(1) any amount paid or credited (including as an increase in benefits) where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management,

(2) excess interest,

(3) premium adjustments, and

(4) experience-rated refunds.

(c) Amount of deduction

The deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

(d) Definitions

For purposes of this section—

(1) Excess interest

The term “excess interest” means any amount in the nature of interest—

(A) paid or credited to a policyholder in his capacity as such, and

(B) in excess of interest determined at the prevailing State assumed rate for such contract.

(2) Premium adjustment

The term “premium adjustment” means any reduction in the premium under an insurance or annuity contract which (but for the reduction) would have been required to be paid under the contract.

(3) Experience-rated refund

The term “experience-rated refund” means any refund or credit based on the experience of the contract or group involved.

(e) Treatment of policyholder dividends

For purposes of this part, any policyholder dividend which—