

section [amending this section and sections 501, 832, 834, 835, 841, 842, 844, 891, 1201, 1504, and 1563 of this title, redesignating former sections 822 and 826 of this title as sections 834 and 835 of this title, respectively, and repealing sections 821, 823, 824, and 825 of this title] (and the provisions of subsection (d) [set out below]) shall apply to taxable years beginning after December 31, 1986.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(107) 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 OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(m) of Pub. L. 89-809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87-834, set out as a note under section 501 of this title.

TRANSITIONAL RULES FOR 1984 AMENDMENT

Pub. L. 99-514, title X, §1024(d), Oct. 22, 1986, 100 Stat. 2408, as amended by Pub. L. 100-647, title I, §1010(f)(8), Nov. 10, 1988, 102 Stat. 3454, provided that:

“(1) TREATMENT OF AMOUNTS IN PROTECTION AGAINST LOSS ACCOUNT.—In the case of any insurance company which had a protection against loss account for its last taxable year beginning before January 1, 1987, there shall be included in the gross income of such company for any taxable year beginning after December 31, 1986, the amount which would have been included in gross income for such taxable year under section 824 of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]). For purposes of the preceding sentence, no addition to such account shall be made for any taxable year beginning after December 31, 1986. In the case of a company taxable under section 831(b) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any amount included in gross income under this paragraph shall be treated as gross investment income.

“(2) TRANSITIONAL RULE FOR UNUSED LOSS CARRYOVER UNDER SECTION 825.—Any unused loss carryover under section 825 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) which—

“(A) is from a taxable year beginning before January 1, 1987, and

“(B) could have been carried under such section to a taxable year beginning after December 31, 1986, but for the repeal made by subsection (a)(1) [repealing sections 821 and 823 to 825 of this title], shall be included in the net operating loss deduction under section 832(c)(10) of such Code without regard to the limitations of [former] section 844(b) of such Code.”

§ 832. Insurance company taxable income

(a) Definition of taxable income

In the case of an insurance company subject to the tax imposed by section 831, the term “taxable income” means the gross income as defined in subsection (b)(1) less the deductions allowed by subsection (c).

(b) Definitions

In the case of an insurance company subject to the tax imposed by section 831—

(1) Gross income

The term “gross income” means the sum of—

(A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Association of Insurance Commissioners,

(B) gain during the taxable year from the sale or other disposition of property,

(C) all other items constituting gross income under subchapter B, except that, in the case of a mutual fire insurance company exclusively issuing perpetual policies, the amount of single deposit premiums paid to such company shall not be included in gross income,

(D) in the case of a mutual fire or flood insurance company whose principal business is the issuance of policies—

(i) for which the premium deposits are the same (regardless of the length of the term for which the policies are written), and

(ii) under which the unabsorbed portion of such premium deposits not required for losses, expenses, or establishment of reserves is returned or credited to the policyholder on cancellation or expiration of the policy,

an amount equal to 2 percent of the premiums earned on insurance contracts during the taxable year with respect to such policies after deduction of premium deposits returned or credited during the same taxable year, and

(E) in the case of a company which writes mortgage guaranty insurance, the amount required by subsection (e)(5) to be subtracted from the mortgage guaranty account.

(2) Investment income

The term “investment income” means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows: To all interest, dividends, and rents received during the taxable year, add interest, dividends, and rents due and accrued at the end of the taxable year, and deduct all interest, dividends, and rents due and accrued at the end of the preceding taxable year.

(3) Underwriting income

The term “underwriting income” means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

(4) Premiums earned

The term “premiums earned on insurance contracts during the taxable year” means an amount computed as follows:

(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance.

(B) To the result so obtained, add 80 percent of the unearned premiums on outstanding business at the end of the preceding taxable year and deduct 80 percent of the unearned premiums on outstanding business at the end of the taxable year.

(C) To the result so obtained, in the case of a taxable year beginning after December 31, 1986, and before January 1, 1993, add an amount equal to 3½ percent of unearned premiums on outstanding business at the end of the most recent taxable year beginning before January 1, 1987.

For purposes of this subsection, unearned premiums shall include life insurance reserves, as defined in section 816(b) but determined as provided in section 807. For purposes of this subsection, unearned premiums of mutual fire or flood insurance companies described in paragraph (1)(D) means (with respect to the policies described in paragraph (1)(D)) the amount of unabsorbed premium deposits which the company would be obligated to return to its policyholders at the close of the taxable year if all of its policies were terminated at such time; and the determination of such amount shall be based on the schedule of unabsorbed premium deposit returns for each such company then in effect. Premiums paid by the subscriber of a mutual flood insurance company described in paragraph (1)(D) or issuing exclusively perpetual policies shall be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company described in subparagraph (C) or (D) of paragraph (1).

(5) Losses incurred

(A) In general

The term “losses incurred” means losses incurred during the taxable year on insurance contracts computed as follows:

(i) To losses paid during the taxable year, deduct salvage and reinsurance recovered during the taxable year.

(ii) To the result so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in section 846) outstanding at the end of the taxable year and deduct all unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year.

(iii) To the results so obtained, add estimated salvage and reinsurance recoverable as of the end of the preceding taxable year and deduct estimated salvage and reinsurance recoverable as of the end of the taxable year.

The amount of estimated salvage recoverable shall be determined on a discounted basis in accordance with procedures established by the Secretary.

(B) Reduction of deduction

The amount which would (but for this subparagraph) be taken into account under subparagraph (A) shall be reduced by an amount equal to the applicable percentage of the sum of—

(i) tax-exempt interest received or accrued during such taxable year,

(ii) the aggregate amount of deductions provided by sections 243 and 245 for—

(I) dividends (other than 100 percent dividends) received during the taxable year, and

(II) 100 percent dividends received during the taxable year to the extent attributable (directly or indirectly) to prorated amounts, and

(iii) 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.

In the case of a 100 percent dividend paid by an insurance company, the portion attributable to prorated amounts shall be determined under subparagraph (E)(ii). For purposes of this subparagraph, the applicable percentage is 5.25 percent divided by the highest rate in effect under section 11(b).

(C) Exception for investments made before August 8, 1986

(i) In general

Except as provided in clause (ii), subparagraph (B) shall not apply to any dividend or interest received or accrued on any stock or obligation acquired before August 8, 1986.

(ii) Special rule for 100 percent dividends

For purposes of clause (i), the portion of any 100 percent dividend which is attributable to prorated amounts shall be treated as received with respect to stock acquired on the later of—

(I) the date the payor acquired the stock or obligation to which the prorated amounts are attributable, or

(II) the 1st day on which the payor and payee were members of the same affiliated group (as defined in section 243(b)(2)).

(D) Definitions

For purposes of this paragraph—

(i) Prorated amounts

The term “prorated amounts” means tax-exempt interest and dividends with respect to which a deduction is allowable under section 243 or 245 (other than 100 percent dividends).

(ii) 100 percent dividend

(I) In general

The term “100 percent dividend” means any dividend if the percentage used for purposes of determining the deduction allowable under section 243 or 245(b) is 100 percent.

(II) Certain dividends received by foreign corporations

A dividend received by a foreign corporation from a domestic corporation which would be a 100 percent dividend if section 1504(b)(3) did not apply for purposes of applying section 243(b)(2) shall be treated as a 100 percent dividend.

(E) Special rules for dividends subject to proration at subsidiary level

(i) In general

In the case of any 100 percent dividend paid to an insurance company to which

this part applies by any insurance company, the amount of the decrease in the deductions of the payee company by reason of the portion of such dividend attributable to prorated amounts shall be reduced (but not below zero) by the amount of the decrease in the deductions (or increase in income) of the payor company attributable to the application of this section or section 805(a)(4)(A) to such amounts.

(ii) Portion of dividend attributable to prorated amounts

For purposes of this subparagraph, in determining the portion of any dividend attributable to prorated amounts—

(I) any dividend by the paying corporation shall be treated as paid first out of earnings and profits attributable to prorated amounts (to the extent thereof), and

(II) by determining the portion of earnings and profits so attributable without any reduction for the tax imposed by this chapter.

(6) Expenses incurred

The term “expenses incurred” means all expenses shown on the annual statement approved by the National Association of Insurance Commissioners, and shall be computed as follows: To all expenses paid during the taxable year, add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of the preceding taxable year. For purposes of this subchapter, the term “expenses unpaid” shall not include any unpaid loss adjustment expenses shown on the annual statement, but such unpaid loss adjustment expenses shall be included in unpaid losses. For the purpose of computing the taxable income subject to the tax imposed by section 831, there shall be deducted from expenses incurred (as defined in this paragraph) all expenses incurred which are not allowed as deductions by subsection (c).

(7) Special rules for applying paragraph (4)

(A) Reduction not to apply to life insurance reserves

Subparagraph (B) of paragraph (4) shall be applied with respect to insurance contracts described in section 816(b)(1)(B) by substituting “100 percent” for “80 percent” each place it appears in such subparagraph (B), and subparagraph (C) of paragraph (4) shall be applied by not taking such contracts into account.

(B) Special treatment of premiums attributable to insuring certain securities

In the case of premiums attributable to insurance against default in the payment of principal or interest on securities described in section 165(g)(2)(C) with maturities of more than 5 years—

(i) subparagraph (B) of paragraph (4) shall be applied by substituting “90 percent” for “80 percent” each place it appears, and

(ii) subparagraph (C) of paragraph (4) shall be applied by substituting “1½ percent” for “3½ percent”.

(C) Termination as insurance company taxable under section 831(a)

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if, for any taxable year beginning before January 1, 1993, the taxpayer ceases to be an insurance company taxable under section 831(a), the aggregate adjustments which would be made under paragraph (4)(C) for such taxable year and subsequent taxable years but for such cessation shall be made for the taxable year preceding such cessation year.

(D) Treatment of companies which become taxable under section 831(a)

(i) Exception to phase-in for companies which were not taxable, etc., before 1987

Subparagraph (C) of paragraph (4) shall not apply to any insurance company which, for each taxable year beginning before January 1, 1987, was not subject to the tax imposed by section 821(a)¹ or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) by reason of being—

(I) subject to tax under section 821(c)¹ (as so in effect), or

(II) described in section 501(c) (as so in effect) and exempt from tax under section 501(a).

(ii) Phase-in beginning at later date for companies not 1st taxable under section 831(a) in 1987

In the case of an insurance company—

(I) which was not subject to the tax imposed by section 831(a) for its 1st taxable year beginning after December 31, 1986, by reason of being subject to tax under section 831(b), or described in section 501(c) and exempt from tax under section 501(a), and

(II) which, for any taxable year beginning before January 1, 1987, was subject to the tax imposed by section 821(a)¹ or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986),

subparagraph (C) of paragraph (4) shall apply beginning with the 1st taxable year beginning after December 31, 1986, for which such company is subject to the tax imposed by section 831(a) and shall be applied by substituting the last day of the preceding taxable year for “December 31, 1986” and the 1st day of the 7th succeeding taxable year for “January 1, 1993”.

(E) Treatment of certain reciprocal insurers

In the case of a reciprocal (within the meaning of section 835(a)) which reports (as required by State law) on its annual statement reserves on unearned premiums net of premium acquisition expenses—

(i) subparagraph (B) of paragraph (4) shall be applied by treating unearned premiums as including an amount equal to such expenses, and

¹ See References in Text note below.

(ii) appropriate adjustments shall be made under subparagraph (c) of paragraph (4) to reflect the amount by which—

(I) such reserves at the close of the most recent taxable year beginning before January 1, 1987, are greater or less than,

(II) 80 percent of the sum of the amount under subclause (I) plus such premium acquisition expenses,²

(8) Special rules for applying paragraph (4) to title insurance premiums

(A) In general

In the case of premiums attributable to title insurance—

(i) subparagraph (B) of paragraph (4) shall be applied by substituting “the discounted unearned premiums” for “80 percent of the unearned premiums” each place it appears, and

(ii) subparagraph (C) of paragraph (4) shall not apply.

(B) Method of discounting

For purposes of subparagraph (A), the amount of the discounted unearned premiums as of the end of any taxable year shall be the present value of such premiums (as of such time and separately with respect to premiums received in each calendar year) determined by using—

(i) the amount of the undiscounted unearned premiums at such time,

(ii) the applicable interest rate, and

(iii) the applicable statutory premium recognition pattern.

(C) Determination of applicable factors

In determining the amount of the discounted unearned premiums as of the end of any taxable year—

(i) Undiscounted unearned premiums

The term “undiscounted unearned premiums” means the unearned premiums shown in the yearly statement filed by the taxpayer for the year ending with or within such taxable year.

(ii) Applicable interest rate

The term “applicable interest rate” means the annual rate determined under 846(c)(2) for the calendar year in which the premiums are received.

(iii) Applicable statutory premium recognition pattern

The term “applicable statutory premium recognition pattern” means the statutory premium recognition pattern—

(I) which is in effect for the calendar year in which the premiums are received, and

(II) which is based on the statutory premium recognition pattern which applies to premiums received by the taxpayer in such calendar year.

For purposes of the preceding sentence, premiums received during any calendar

year shall be treated as received in the middle of such year.

(c) Deductions allowed

In computing the taxable income of an insurance company subject to the tax imposed by section 831, there shall be allowed as deductions:

(1) all ordinary and necessary expenses incurred, as provided in section 162 (relating to trade or business expenses);

(2) all interest, as provided in section 163;

(3) taxes, as provided in section 164;

(4) losses incurred, as defined in subsection (b)(5) of this section;

(5) capital losses to the extent provided in subchapter P (relating to capital gains and losses) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders in their capacity as such, losses paid, and expenses paid over the sum of the items described in section 834(b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(A) the taxable income (computed without regard to gains or losses from sales or exchanges of capital assets); or

(B) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders;

(6) debts in the nature of agency balances and bills receivable which become worthless within the taxable year;

(7) the amount of interest earned during the taxable year which under section 103 is excluded from gross income;

(8) the depreciation deduction allowed by section 167 and the deduction allowed by section 611 (relating to depletion);

(9) charitable, etc., contributions, as provided in section 170;

(10) deductions (other than those specified in this subsection) as provided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions for individuals and corporations) and in part I of subchapter D (sec. 401 and following, relating to pension, profit-sharing, stock bonus plans, etc.);

(11) dividends and similar distributions paid or declared to policyholders in their capacity as such, except in the case of a mutual fire insurance company described in subsection

²So in original. The comma probably should be a period.

(b)(1)(C). For purposes of the preceding sentence, the term “dividends and similar distributions” includes amounts returned or credited to policyholders on cancellation or expiration of policies described in subsection (b)(1)(D). For purposes of this paragraph, the term “paid or declared” shall be construed according to the method of accounting regularly employed in keeping the books of the insurance company;

(12) the special deductions allowed by part VIII of subchapter B (sec. 241 and following, relating to dividends received); and

(13) in the case of a company which writes mortgage guaranty insurance, the deduction allowed by subsection (e).

(d) Double deductions

Nothing in this section shall permit the same item to be deducted more than once.

(e) Special deduction and income account

In the case of a company which writes mortgage guaranty insurance—

(1) Additional deduction

There shall be allowed as a deduction for the taxable year, if bonds are purchased as required by paragraph (2), the sum of—

(A) an amount representing the amount required by State law or regulation to be set aside in a reserve for mortgage guaranty insurance losses resulting from adverse economic cycles; and

(B) an amount representing the aggregate of amounts so set aside in such reserve for the 8 preceding taxable years to the extent such amounts were not deducted under this paragraph in such preceding taxable years,

except that the deduction allowable for the taxable year under this paragraph shall not exceed the taxable income for the taxable year computed without regard to this paragraph or to any carryback of a net operating loss. For purposes of this paragraph, the amount required by State law or regulation to be so set aside in any taxable year shall not exceed 50 percent of premiums earned on insurance contracts (as defined in subsection (b)(4)) with respect to mortgage guaranty insurance for such year. For purposes of this subsection, all amounts shall be taken into account on a first-in-time basis. The computation and deduction under this section of losses incurred (including losses resulting from adverse economic cycles) shall not be affected by the provisions of this subsection. For purposes of this subsection, the terms “preceding taxable years” and “preceding taxable year” shall not include taxable years which began before January 1, 1967.

(2) Purchase of bonds

The deduction under paragraph (1) shall be allowed only to the extent that tax and loss bonds are purchased in an amount equal to the tax benefit attributable to such deduction, as determined under regulations prescribed by the Secretary, on or before the date that any taxes (determined without regard to this subsection) due for the taxable year for which the deduction is allowed are due to be paid. If a de-

duction would be allowed but for the fact that tax and loss bonds were not timely purchased, such deduction shall be allowed to the extent such purchases are made within a reasonable time, as determined by the Secretary, if all interest and penalties, computed as if this sentence did not apply, are paid.

(3) Mortgage guaranty account

Each company which writes mortgage guaranty insurance shall, for purposes of this part, establish and maintain a mortgage guaranty account.

(4) Additions to account

There shall be added to the mortgage guaranty account for each taxable year an amount equal to the amount allowed as a deduction for the taxable year under paragraph (1).

(5) Subtractions from account and inclusion in gross income

After applying paragraph (4), there shall be subtracted for the taxable year from the mortgage guaranty account and included in gross income—

(A) the amount (if any) remaining which was added to the account for the tenth preceding taxable year,

(B) the excess (if any) of the aggregate amount in the mortgage guaranty account over the aggregate amount in the reserve referred to in paragraph (1)(A). For purposes of determining such excess, the aggregate amount in the mortgage guaranty account shall be determined after applying subparagraph (A), and the aggregate amount in the reserve referred to in paragraph (1)(A) shall be determined by disregarding any amounts remaining in such reserve added for taxable years beginning before January 1, 1967,

(C) an amount (if any) equal to the net operating loss for the taxable year computed without regard to this subparagraph, and

(D) any amount improperly subtracted from the account under subparagraph (A), (B), or (C) to the extent that tax and loss bonds were redeemed with respect to such amount.

If a company liquidates or otherwise terminates its mortgage guaranty insurance business and does not transfer or distribute such business in an acquisition of assets referred to in section 381(a), the entire amount remaining in such account shall be subtracted. Except in the case where a company transfers or distributes its mortgage guaranty insurance in an acquisition of assets referred to in section 381(a), if the company is not subject to the tax imposed by section 831 for any taxable year, the entire amount in the account at the close of the preceding taxable year shall be subtracted from the account in such preceding taxable year.

(6) Lease guaranty insurance; insurance of State and local obligations

The provisions of this subsection shall also apply in all respects to a company which writes lease guaranty insurance or insurance on obligations the interest on which is excludable from gross income under section 103. In

applying this subsection to such a company, any reference to mortgage guaranty insurance contained in this section shall be deemed to be a reference also to lease guaranty insurance and to insurance on obligations the interest on which is excludable from gross income under section 103; and in the case of insurance on obligations the interest on which is excludable from gross income under section 103, the references in paragraph (1) to “losses resulting from adverse economic cycles” include losses from declining revenues related to such obligations (as well as losses resulting from adverse economic cycles), and the time specified in subparagraph (A) of paragraph (5) shall be the twentieth preceding taxable year.

(f) Interinsurers

In the case of a mutual insurance company which is an interinsurer or reciprocal underwriter—

(1) there shall be allowed as a deduction the increase for the taxable year in savings credited to subscriber accounts, or

(2) there shall be included as an item of gross income the decrease for the taxable year in savings credited to subscriber accounts.

For purposes of the preceding sentence, the term “savings credited to subscriber accounts” means such portion of the surplus as is credited to the individual accounts of subscribers before the 16th day of the 3rd month following the close of the taxable year, but only if the company would be obligated to pay such amount promptly to such subscriber if he terminated his contract at the close of the company’s taxable year. For purposes of determining his taxable income, the subscriber shall treat any such savings credited to his account as a dividend paid or declared.

(g) Dividends within group

In the case of an insurance company subject to tax under section 831(a) filing or required to file a consolidated return under section 1501 with respect to any affiliated group for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group were not filing a consolidated return.

(Aug. 16, 1954, ch. 736, 68A Stat. 264; Mar. 13, 1956, ch. 83, §3(b), 70 Stat. 48; Pub. L. 87-834, §8(e)(2)-(5), Oct. 16, 1962, 76 Stat. 997, 998; Pub. L. 88-272, title II, §228(c), Feb. 26, 1964, 78 Stat. 99; Pub. L. 89-809, title I, §104(i)(7), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 90-240, §5(a)-(c), Jan. 2, 1968, 81 Stat. 776, 777; Pub. L. 93-483, §5, Oct. 26, 1974, 88 Stat. 1458; Pub. L. 94-455, title XIX, §§1901(a)(108), (b)(1)(T), (U), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1792, 1834; Pub. L. 97-248, title II, §234(b)(2)(A), Sept. 3, 1982, 96 Stat. 503; Pub. L. 98-369, div. A, title II, §211(b)(9), July 18, 1984, 98 Stat. 755; Pub. L. 99-514, title X, §§1021(a), (b), 1022(a), 1023(a), 1024(c)(1)-(6), Oct. 22, 1986, 100 Stat. 2395, 2397, 2399, 2406, 2407; Pub. L. 100-647, title I, §1010(c), (d)(1), (2), Nov. 10, 1988, 102 Stat. 3451-3453; Pub. L. 101-508, title XI, §§11303(a), (b), 11305(a), Nov. 5, 1990, 104 Stat. 1388-450, 1388-451; Pub. L. 104-188, title I, §§1702(h)(3), 1704(t)(45), Aug. 20, 1996, 110 Stat. 1873, 1889; Pub. L. 105-34, title X, §1084(b)(4), Aug. 5, 1997, 111 Stat. 955;

Pub. L. 113-295, div. A, title II, §221(a)(41)(G), (69), Dec. 19, 2014, 128 Stat. 4044, 4048; Pub. L. 115-97, title I, §§13001(b)(2)(I), 13515(a), Dec. 22, 2017, 131 Stat. 2096, 2144.)

REFERENCES IN TEXT

Section 821, referred to in subsec. (b)(7)(D), was repealed by Pub. L. 99-514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(7)(D), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

CODIFICATION

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

AMENDMENTS

2017—Subsec. (b)(5)(B). Pub. L. 115-97, §13515(a), substituted “the applicable percentage” for “15 percent” in introductory provisions and inserted “For purposes of this subparagraph, the applicable percentage is 5.25 percent divided by the highest rate in effect under section 11(b).” at end of concluding provisions.

Subsec. (c)(5). Pub. L. 115-97, §13001(b)(2)(I), struck out “sec. 1201 and following,” before “relating to capital gains and losses” in introductory provisions.

2014—Subsec. (b)(5)(B)(ii), (D)(i), (ii)(I). Pub. L. 113-295, §221(a)(41)(G), struck out “, 244,” after “sections 243” in subpar. (B)(ii) and after “section 243” in subpar. (D)(i), (ii)(I).

Subsec. (e). Pub. L. 113-295, §221(a)(69)(A), struck out “of taxable years beginning after December 31, 1966,” after “In the case” in introductory provisions.

Subsec. (e)(6). Pub. L. 113-295, §221(a)(69)(B), substituted “The” for “In the case of any taxable year beginning after December 31, 1970, the”.

1997—Subsec. (b)(5)(B)(iii). Pub. L. 105-34, which directed amendment of subpar. (B) by adding cl. (iii) at the end, was executed by adding cl. (iii) after cl. (ii) to reflect the probable intent of Congress.

1996—Subsec. (b)(5)(C)(ii)(II), (D)(ii)(II). Pub. L. 104-188, §1702(h)(3), substituted “243(b)(2)” for “243(b)(5)”.

Subsec. (b)(7)(A). Pub. L. 104-188, §1704(t)(45), provided that section 11303(b)(1) of Pub. L. 101-508 shall be applied as if “paragraph” appeared instead of “subparagraph” in the material proposed to be stricken. See 1990 Amendment note below.

1990—Subsec. (b)(4). Pub. L. 101-508, §11303(a), substituted “section 807.” for “section 807, pertaining to the life, burial, or funeral insurance, or annuity business of an insurance company subject to the tax imposed by section 831 and not qualifying as a life insurance company under section 816.” in first sentence after subpar. (C).

Subsec. (b)(5)(A). Pub. L. 101-508, §11305(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “The term ‘losses incurred’ means losses incurred during the taxable year on insurance contracts, computed as follows:

“(i) To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year.

“(ii) To the result so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in section 846) outstanding at the end of the taxable year and deduct unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year.”

Subsec. (b)(7)(A). Pub. L. 101-508, §11303(b)(2), substituted “such contracts into account” for “such amounts into account”.

Pub. L. 101-508, §11303(b)(1), which directed the substitution of “insurance contracts described in section

816(b)(1)(B)” for “amounts included in unearned premiums under the 2nd sentence of such subparagraph”, was executed by making the substitution for “amounts included in unearned premiums under the 2nd sentence of such paragraph”. See 1996 Amendment note above.

1988—Subsec. (b)(5)(B)(ii)(II). Pub. L. 100-647, §1010(d)(2), inserted “(directly or indirectly)” after “attributable”.

Subsec. (b)(7)(C). Pub. L. 100-647, §1010(c)(1), substituted “insurance company taxable under section 831(a)” for “nonlife insurance company” in heading and “section 831(a)” for “this part” in text.

Subsec. (b)(7)(D), (E). Pub. L. 100-647, §1010(c)(2), added subpars. (D) and (E).

Subsec. (e)(5)(A). Pub. L. 100-647, §1010(c)(3), struck out “and” after “preceding taxable year;”.

Subsec. (e)(5)(B). Pub. L. 100-647, §1010(c)(3), which directed amendment of subpar. (B) by substituting a comma for the period at end, could not be executed because there was no period at end of subpar. (B).

Subsec. (g). Pub. L. 100-647, §1010(d)(1), added subsec. (g).

1986—Subsec. (b)(1)(C). Pub. L. 99-514, §1024(c)(1), substituted “exclusively issuing perpetual policies” for “described in section 831(a)(3)(A)”.

Subsec. (b)(1)(D). Pub. L. 99-514, §1024(c)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “in the case of a mutual fire or flood insurance company described in section 831(a)(3)(B), an amount equal to 2 percent of the premiums earned on insurance contracts during the taxable year with respect to policies described in section 831(a)(3)(B) after deduction of premium deposits returned or credited during the same taxable year, and”.

Subsec. (b)(4). Pub. L. 99-514, §1024(c)(3), substituted “paragraph (1)(D)” for “section 831(a)(3)(B)” in two places and amended last sentence generally, substituting “described in paragraph (1)(D) or issuing exclusively perpetual policies” for “referred to in paragraph (3) of section 831(a)” and “described in subparagraph (C) or (D) of paragraph (1)” for “referred to in such paragraph (3)”.

Subsec. (b)(4)(B), (C). Pub. L. 99-514, §1021(a), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: “To the result so obtained, add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year.”

Subsec. (b)(5)(A). Pub. L. 99-514, §1022(a), in amending par. (5) generally, designated existing provisions of par. (5) as subpar. (A), inserted subpar. heading “In general”, and redesignated former subpars. (A) and (B) as cls. (i) and (ii).

Subsec. (b)(5)(A)(ii). Pub. L. 99-514, §1023(a)(1), amended cl. (ii) generally, inserting “on life insurance contracts plus all discounted unpaid losses (as defined in section 846)” and “on life insurance contracts plus all discounted unpaid losses”.

Subsec. (b)(5)(B) to (E). Pub. L. 99-514, §1022(a), in amending par. (5) generally, added subpars. (B) to (E). Former subpar. (B) redesignated (A)(ii).

Subsec. (b)(6). Pub. L. 99-514, §1023(a)(2), inserted second sentence defining “expenses unpaid”.

Subsec. (b)(7), (8). Pub. L. 99-514, §1021(b), added pars. (7) and (8).

Subsec. (c)(5). Pub. L. 99-514, §1024(c)(4), substituted “section 834(b)” for “section 822(b)”.

Subsec. (c)(11). Pub. L. 99-514, §1024(c)(5), substituted “subsection (b)(1)(C)” for “section 831(a)(3)(A)” and “subsection (b)(1)(D)” for “section 831(a)(3)(B)”.

Subsec. (f). Pub. L. 99-514, §1024(c)(6), added subsec. (f).

1984—Subsec. (b)(4). Pub. L. 98-369, in provisions following subpar. (B), substituted “section 816(b) but determined as provided in section 807” and “section 816” for “section 801(b)” and “section 801”, respectively.

1982—Subsec. (e)(2). Pub. L. 97-248 struck out “, as if no election to make installment payments under section 6152 is made” after “due to be paid”.

1976—Subsec. (b)(1), (6). Pub. L. 94-455, §1901(a)(108), substituted “Association” for “Convention”.

Subsec. (c)(5)(A). Pub. L. 94-455, §1901(b)(1)(T), struck out “or to the deductions provided in section 242 for partially tax-exempt interest” after “exchanges of capital assets”.

Subsec. (c)(12). Pub. L. 94-455, §1901(b)(1)(U), struck out “partially tax-exempt interest and to” after “and following, relating to”.

Subsec. (e)(2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1974—Subsec. (e)(6). Pub. L. 93-483 added par. (6).

1968—Subsec. (b)(1)(E). Pub. L. 90-240, §5(a), added subpar. (E).

Subsec. (c)(13). Pub. L. 90-240, §5(b), added par. (13).

Subsec. (e). Pub. L. 90-240, §5(c), added subsec. (e).

1966—Subsec. (d). Pub. L. 89-809 redesignated subsec. (e) as (d). Former subsec. (d), having reference to the taxable income of foreign insurance companies other than life or mutual and foreign mutual marine, was struck out.

Subsec. (e). Pub. L. 89-809 redesignated subsec. (e) as (d).

1964—Subsec. (c)(10). Pub. L. 88-272 inserted reference to part I of subchapter D.

1962—Subsec. (b)(1)(C). Pub. L. 87-834, §8(e)(3), (5), substituted “section 831(a)(3)(A)” for “section 831(a)”.

Subsec. (b)(1)(D). Pub. L. 87-834, §8(e)(5), added subpar. (D).

Subsec. (b)(4). Pub. L. 87-834, §8(e)(2), inserted provisions defining unearned premiums of mutual fire or flood insurance companies, and which require premiums paid by the subscriber of a mutual flood insurance company to be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company referred to in par. (3) of section 831(a) of this title.

Subsec. (c)(11). Pub. L. 87-834, §8(e)(4), substituted “section 831(a)(3)(A)” for “section 831(a)”, and inserted definition of “dividends and similar distributions”.

1956—Subsec. (b)(4). Act Mar. 13, 1956, §3(b)(1), substituted “section 801(b)” for “section 806”.

Subsec. (c). Act Mar. 13, 1956, §3(b)(2), (3), substituted “the items described in section 822(b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212” for “interest, dividends, rents, and net premiums received. In the application of section 1211” in par. (5), and authorized the deduction for depletion in par. (8).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13001(b)(2)(I) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115-97, set out as a note under section 11 of this title.

Pub. L. 115-97, title I, §13515(b), Dec. 22, 2017, 131 Stat. 2144, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.”

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section (a)(41)(G) of 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 section 1702(h)(3) of 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 1990 AMENDMENT

Pub. L. 101-508, title XI, §11303(c), Nov. 5, 1990, 104 Stat. 1388-450, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning on or after September 30, 1990.

“(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing reserves—

“(A) such change shall be treated as a change in a method of accounting,

“(B) such change shall be treated as initiated by the taxpayer,

“(C) such change shall be treated as having been made with the consent of the Secretary, and

“(D) the net adjustments which are required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's first taxable year beginning on or after September 30, 1990.

“(3) COORDINATION WITH SECTION 832(b)(4)(C).—The amendments made by this section shall not affect the application of section 832(b)(4)(C) of the Internal Revenue Code of 1986.”

Pub. L. 101-508, title XI, §11305(c), Nov. 5, 1990, 104 Stat. 1388-451, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 846 of this title] shall apply to taxable years beginning after December 31, 1989.

“(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—

“(A) IN GENERAL.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing losses incurred—

“(i) such change shall be treated as a change in a method of accounting,

“(ii) such change shall be treated as initiated by the taxpayer, and

“(iii) such change shall be treated as having been made with the consent of the Secretary.

“(B) ADJUSTMENTS.—In applying section 481 of the Internal Revenue Code of 1986 with respect to the change referred to in subparagraph (A)—

“(i) only 13 percent of the net amount of adjustments (otherwise required by such section 481 to be taken into account by the taxpayer) shall be taken into account, and

“(ii) the portion of such net adjustments which is required to be taken into account by the taxpayer (after the application of clause (i)) shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's 1st taxable year beginning after December 31, 1989.

“(3) TREATMENT OF COMPANIES WHICH TOOK INTO ACCOUNT SALVAGE RECOVERABLE.—In the case of any insurance company which took into account salvage recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, 87 percent of the discounted amount of estimated salvage recoverable as of the close of such last taxable year shall be allowed as a deduction ratably over its 1st 4 taxable years beginning after December 31, 1989.

“(4) SPECIAL RULE FOR OVERESTIMATES.—If for any taxable year beginning after December 31, 1989—

“(A) the amount of the section 481 adjustment which would have been required without regard to paragraph (2) and any discounting, exceeds

“(B) the sum of the amount of salvage recovered taken into account under section 832(b)(5)(A)(i) for the taxable year and any preceding taxable year beginning after December 31, 1989, attributable to losses incurred with respect to any accident year beginning before 1990 and the undiscounted amount of estimated salvage recoverable as of the close of the taxable year on account of such losses,

87 percent of such excess (adjusted for discounting used in determining the amount of salvage recoverable as of the close of the last taxable year of the taxpayer beginning before January 1, 1990) shall be included in gross income for such taxable year.

“(5) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1989, shall be increased by the amount of the section 481 adjustment which would have been required but for paragraph (2). For purposes of applying sections 56, [former] 902, 952(c)(1), and 960 of the Internal Revenue Code of 1986, earnings and profits of a corporation shall be determined by applying the principles of paragraph (2)(B).”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title X, §1021(c), Oct. 22, 1986, 100 Stat. 2397, provided that:

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

“(2) SPECIAL TRANSITIONAL RULE FOR TITLE INSURANCE COMPANIES.—For the 1st taxable year beginning after December 31, 1986, in the case of premiums attributable to title insurance—

“(A) IN GENERAL.—The unearned premiums at the end of the preceding taxable year as defined in paragraph (4) of section 832(b) [of the Internal Revenue Code of 1986] shall be determined as if the amendments made by this section had applied to such unearned premiums in the preceding taxable year and by using the interest rate and premium recognition pattern applicable to years ending in calendar year 1987.

“(B) FRESH START.—Except as provided in subparagraph (C), any difference between—

“(i) the amount determined to be unearned premiums for the year preceding the first taxable year of a title insurance company beginning after December 31, 1986, determined without regard to subparagraph (A), and

“(ii) such amount determined with regard to subparagraph (A), shall not be taken into account for purposes of the Internal Revenue Code of 1986.

“(C) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of the difference determined under subparagraph (A) with respect to such company.”

Pub. L. 99-514, title X, §1022(b), Oct. 22, 1986, 100 Stat. 2399, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.”

Amendment by section 1023(a) 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 1024(c)(1)-(6) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31,

1986, see section 1024(e) of Pub. L. 99-514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to taxable years beginning after Dec. 31, 1982, see section 234(e) of Pub. L. 97-248, set out as a note under section 6655 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(108), (b)(1)(T), (U) 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 OF 1968 AMENDMENT

Pub. L. 90-240, §5(e), Jan. 2, 1968, 81 Stat. 778, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a), (b), (c), and (d) [amending this section and section 381 of this title] shall apply to taxable years beginning after December 31, 1966, except that so much of section 832(e)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the amendment made by subsection (c)) as provides for payment of interest and penalties for failure to make a timely purchase of tax and loss bonds shall not apply with respect to any period during which such bonds are not available for purchase."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88-272, title II, §228(d), Feb. 26, 1964, 78 Stat. 99, provided that: "The amendment made by subsection (a) [amending former section 809 of this title] shall apply to taxable years beginning after December 31, 1961. The amendment made by subsection (c) [amending this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87-834, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

DEDUCTION FROM EARNINGS AND PROFITS OF INSURANCE COMPANIES TO WHICH SECTION 11305(c)(3) OF PUB. L. 101-508 APPLIES

Pub. L. 104-188, title I, §1702(c)(4), Aug. 20, 1996, 110 Stat. 1869, provided that: "The earnings and profits of any insurance company to which section 11305(c)(3) of the Revenue Reconciliation Act of 1990 [Pub. L. 101-508, set out above] applies shall be determined without regard to any deduction allowed under such section; except that, for purposes of applying sections 56 and [former] 902, and subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1986, such deduction shall be taken into account."

ACQUISITION DATE OF CERTAIN STOCKS OR OBLIGATIONS FOR PURPOSES OF SUBSECTION (b)(5)(C)(i)

Pub. L. 100-647, title I, §1010(d)(3), Nov. 10, 1988, 102 Stat. 3453, provided that: "For purposes of section 832(b)(5)(C)(i) of the 1986 Code, any stock or obligation acquired on or after August 8, 1986, by an insurance company subject to the tax imposed by section 831 of the 1986 Code (hereinafter in this paragraph referred to as the 'acquiring company') from another insurance company so subject (hereinafter in this paragraph referred to as the 'transferor company') shall be treated as acquired on the date on which such stock or obligation was acquired by the transferor company if—

"(A) the transferor company acquired such stock or obligation before August 8, 1986, and

"(B) at all times after the date on which such stock or obligation was acquired by the transferor company and before the date of the acquisition by the acquiring company, the transferor company and the acquiring company were members of the same affiliated group filing a consolidated return.

For purposes of the preceding sentence, the date on which the stock or obligation was acquired by the transferor company shall be determined with regard to any prior application of the preceding sentence. For purposes of this paragraph, if the acquiring corporation or transferor corporation was a party to a reorganization described in section 368(a)(1)(F) of the 1986 Code, any reference to such corporation shall include a reference to any predecessor thereof involved in such reorganization."

STUDY OF TREATMENT OF PROPERTY AND CASUALTY INSURANCE COMPANIES

Pub. L. 99-514, title X, §1025, Oct. 22, 1986, 100 Stat. 2409, directed Secretary of the Treasury or his delegate to conduct a study of the treatment of policyholder dividends by mutual property and casualty insurance companies, the treatment of property and casualty insurance companies under the minimum tax, and the operation and effect of, and revenue raised by, the amendments made by this subtitle, and not later than Jan. 1, 1989 (due date extended to Jan. 1, 1992, by Pub. L. 101-508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388-559), such Secretary to submit to Committee on Ways and Means of House of Representatives, Committee on Finance of Senate, and Joint Committee on Taxation, the results of such study, together with such recommendations as he determined to be appropriate.

PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS

Pub. L. 99-514, title X, §1031, Oct. 22, 1986, 100 Stat. 2409, as amended by Pub. L. 100-647, title I, §1010(g), Nov. 10, 1988, 102 Stat. 3455, provided that:

"(a) CERTAIN PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS.—

"(1) TREATMENT OF ARRANGEMENTS OR ASSOCIATIONS.—

"(A) CAPITAL CONTRIBUTIONS.—There shall not be included in the gross income of any eligible physicians' and surgeons' mutual protection and indemnity arrangement or association any initial payment (whether made in a lump sum or a series of substantially equal payments over a period of not more than 6 years) made during any taxable year to such arrangement or association by a member joining such arrangement or association which—

"(i) does not release such member from obligations to pay current or future dues, assessments, or premiums; and

"(ii) is a condition precedent to receiving benefits of membership.

Such initial payment shall be included in the gross income of such arrangement or association for such taxable year if it is reasonable to expect that such payment will be deductible pursuant to paragraph

(2) by any member of such arrangement or association.

“(B) RETURN OF CONTRIBUTIONS.—

“(i) IN GENERAL.—The repayment to any member of any amount of any payment excluded under subparagraph (A) shall not be treated as policyholder dividend, and is not deductible by the arrangement or association.

“(ii) SOURCE OF RETURNS.—Except in the case of the termination of a member’s interest in the arrangement or association, any amount distributed to any member shall be treated as paid out of surplus in excess of amounts excluded under subparagraph (A).

“(2) DEDUCTION FOR MEMBERS OF ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—

“(A) PAYMENT AS TRADE OR BUSINESS EXPENSES.—

To the extent not otherwise allowable under the Internal Revenue Code of 1986, any member of any eligible arrangement or association may treat any initial payment referred to in paragraph (1) made during a taxable year to such arrangement or association as an ordinary and necessary expense incurred in connection with a trade or business for purposes of the deduction allowable under section 162, to the extent such payment does not exceed the amount which would be payable to an independent insurance company for similar annual insurance coverage (as determined by the Secretary), and further reduced by any annual dues, assessments, or premiums paid during such taxable year. Such deduction shall not be allowable as to any initial payment referred to in paragraph (1) made to an eligible arrangement or association by any person who is a member of any other eligible arrangement or association on or after the effective date of the Tax Reform Act of 1986. Any excess amount not allowed as a deduction for the taxable year in which such payment was made pursuant to the limitation contained in the 1st sentence of this subparagraph shall, subject to such limitation, be allowable as a deduction in any of the 5 succeeding taxable years, in order of time, to the extent not previously allowed as a deduction under this sentence.

“(B) REFUNDS OF INITIAL PAYMENTS.—Any amount attributable to any initial payment referred to in paragraph (1) to such arrangement or association described in paragraph (1) which is later refunded for any reason shall be included in the gross income of the recipient in the taxable year received, to the extent a deduction for such payment was allowed. Any amount refunded in excess of such payment shall be included in gross income except to the extent otherwise excluded from income by the Internal Revenue Code of 1986.

“(3) ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—The terms ‘eligible physicians’ [sic] and ‘surgeons’ mutual protection and interindemnity arrangement or association’ and ‘eligible arrangement or association’ mean and are limited to any mutual protection and interindemnity arrangement or association that provides only medical malpractice liability protection for its members or medical malpractice liability protection in conjunction with protection against other liability claims incurred in the course of, or related to, the professional practice of a physician or surgeon and which—

“(A) was operative and was providing such protection, or had received a permit for the offer and sale of memberships, under the laws of any State before January 1, 1984.

“(B) is not subject to regulation by any State insurance department,

“(C) has a right to make unlimited assessments against all members to cover current claims and losses, and

“(D) is not a member of, nor subject to protection by, any insurance guaranty plan or association of any State.

“(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to payments made to and receipts of

physicians’ and surgeons’ mutual protection and interindemnity arrangements or associations, and refunds of payments by such arrangements or associations, after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.”

TREATMENT AS UNEARNED PREMIUMS OF ADDITIONS TO RESERVES REQUIRED BY STATE LAW OR REGULATIONS FOR MORTGAGE GUARANTY INSURANCE LOSSES

Pub. L. 90-240, §5(g), Jan. 2, 1968, 81 Stat. 779, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) In the case of taxable years beginning before 1967, a company shall treat additions to a reserve, required by State law or regulations for mortgage guaranty insurance losses resulting from adverse economic cycles, as unearned premiums for purposes of section 832(b)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], but the amount so treated as unearned premiums in a taxable year shall not exceed 50 percent of premiums earned on insurance contracts (as defined in section 832(b)(4) of such Code), determined without regard to amounts added to the reserve, with respect to mortgage guaranty insurance for such year. The amount of unearned premiums at the close of 1966 shall be determined without regard to the preceding sentence for the purpose of applying section 832(b)(4) of such Code to 1967. Additions to such a reserve shall not be treated as unearned premiums for any taxable year beginning after 1966.

“(2) If a mortgage guaranty insurance company made additions to a reserve which were so treated as unearned premiums described in paragraph (1), such company, in taxable years beginning after 1966, shall include in gross income (in addition to the items specified in section 832(b)(1) of such Code) the sum of the following amounts until there is included in gross income an amount equal to the aggregate additions to the reserve described in paragraph (1) for taxable years beginning before 1967:

“(A) an amount (if any) equal to the excess of losses incurred (as defined in section 832(b)(5) of such Code) for the taxable year over 35 percent of premiums earned on insurance contracts during the taxable year (as defined in section 832(b)(4) of such Code), determined without regard to amounts added to the reserve referred to in paragraph (1), with respect to mortgage guaranty insurance.

“(B) the amount (if any) remaining which was added to the reserve for the tenth preceding taxable year, and

“(C) the excess (if any) of—

“(i) the aggregate of amounts so treated as unearned premiums for all taxable years beginning before 1967 less the total of the amounts included in gross income under this paragraph for prior taxable years and the amounts included in gross income under subparagraphs (A) and (B) for the taxable year, over

“(ii) the aggregate of the additions made for taxable years beginning before 1967 which remain in the reserve at the close of the taxable year.

Amounts shall be taken into account on a first-in-time basis. For purposes of section 832(e) of such Code and this paragraph, if part of the reserve is reduced under State law or regulation, such reduction shall first apply to the extent of amounts added to the reserve for taxable years beginning before 1967, and only then to amounts added thereafter.

“(3) The provisions of this subsection shall apply to taxable years beginning after December 31, 1956.”

§ 833. Treatment of Blue Cross and Blue Shield organizations, etc.

(a) General rule

In the case of any organization to which this section applies—