

maintenance shall not be considered as married.

**(b) Certain married individuals living apart**

For purposes of those provisions of this title which refer to this subsection, if—

(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 152(f)(1)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for section 152(e)),

(2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and

(3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household,

such individual shall not be considered as married.

(Added Pub. L. 99-514, title XIII, § 1301(j)(2)(A), Oct. 22, 1986, 100 Stat. 2657; amended Pub. L. 100-647, title I, § 1018(u)(41), Nov. 10, 1988, 102 Stat. 3592; Pub. L. 108-311, title II, § 207(26), Oct. 4, 2004, 118 Stat. 1178.)

PRIOR PROVISIONS

Provisions relating to determination of marital status were formerly contained in section 143 of this title, prior to enactment of this section by Pub. L. 99-514.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108-311 substituted “152(f)(1)” for “151(c)(3)” and struck out “paragraph (2) or (4) of” before “section 152(e)”,.

1988—Subsec. (b)(1). Pub. L. 100-647 substituted “section 151(c)(3)” for “section 151(e)(3)”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108-311, set out as a note under section 2 of this title.

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

Section applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

**§ 7704. Certain publicly traded partnerships treated as corporations**

**(a) General rule**

For purposes of this title, except as provided in subsection (c), a publicly traded partnership shall be treated as a corporation.

**(b) Publicly traded partnership**

For purposes of this section, the term “publicly traded partnership” means any partnership if—

(1) interests in such partnership are traded on an established securities market, or

(2) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

**(c) Exception for partnerships with passive-type income**

**(1) In general**

Subsection (a) shall not apply to any publicly traded partnership for any taxable year if such partnership met the gross income requirements of paragraph (2) for such taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence. For purposes of the preceding sentence, a partnership shall not be treated as being in existence during any period before the 1st taxable year in which such partnership (or a predecessor) was a publicly traded partnership.

**(2) Gross income requirements**

A partnership meets the gross income requirements of this paragraph for any taxable year if 90 percent or more of the gross income of such partnership for such taxable year consists of qualifying income.

**(3) Exception not to apply to certain partnerships which could qualify as regulated investment companies**

This subsection shall not apply to any partnership which would be described in section 851(a) if such partnership were a domestic corporation. To the extent provided in regulations, the preceding sentence shall not apply to any partnership a principal activity of which is the buying and selling of commodities (not described in section 1221(a)(1)), or options, futures, or forwards with respect to commodities.

**(d) Qualifying income**

For purposes of this section—

**(1) In general**

Except as otherwise provided in this subsection, the term “qualifying income” means—

(A) interest,

(B) dividends,

(C) real property rents,

(D) gain from the sale or other disposition of real property (including property described in section 1221(a)(1)),

(E) income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber), industrial source carbon dioxide, or the transportation or storage of any fuel described in subsection (b), (c), (d), or (e) of section 6426, or any alcohol fuel defined in section 6426(b)(4)(A) or any biodiesel fuel as defined in section 40A(d)(1),

(F) any gain from the sale or disposition of a capital asset (or property described in section 1231(b)) held for the production of in-

come described in any of the foregoing subparagraphs of this paragraph, and

(G) in the case of a partnership described in the second sentence of subsection (c)(3), income and gains from commodities (not described in section 1221(a)(1)) or futures, forwards, and options with respect to commodities.

For purposes of subparagraph (E), the term “mineral or natural resource” means any product of a character with respect to which a deduction for depletion is allowable under section 611; except that such term shall not include any product described in subparagraph (A) or (B) of section 613(b)(7).

**(2) Certain interest not qualified**

Interest shall not be treated as qualifying income if—

(A) such interest is derived in the conduct of a financial or insurance business, or

(B) such interest would be excluded from the term “interest” under section 856(f).

**(3) Real property rent**

The term “real property rent” means amounts which would qualify as rent from real property under section 856(d) if—

(A) such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements), and

(B) stock owned, directly or indirectly, by or for a partner would not be considered as owned under section 318(a)(3)(A) by the partnership unless 5 percent or more (by value) of the interests in such partnership are owned, directly or indirectly, by or for such partner.

**(4) Certain income qualifying under regulated investment company or real estate trust provisions**

The term “qualifying income” also includes any income which would qualify under section 851(b)(2)(A) or 856(c)(2).

**(5) Special rule for determining gross income from certain real property sales**

In the case of the sale or other disposition of real property described in section 1221(a)(1), gross income shall not be reduced by inventory costs.

**(e) Inadvertent terminations**

If—

(1) a partnership fails to meet the gross income requirements of subsection (c)(2),

(2) the Secretary determines that such failure was inadvertent,

(3) no later than a reasonable time after the discovery of such failure, steps are taken so that such partnership once more meets such gross income requirements, and

(4) such partnership agrees to make such adjustments (including adjustments with respect to the partners) or to pay such amounts as may be required by the Secretary with respect to such period,

then, notwithstanding such failure, such entity shall be treated as continuing to meet such gross income requirements for such period.

**(f) Effect of becoming corporation**

As of the 1st day that a partnership is treated as a corporation under this section, for purposes

of this title, such partnership shall be treated as—

(1) transferring all of its assets (subject to its liabilities) to a newly formed corporation in exchange for the stock of the corporation, and

(2) distributing such stock to its partners in liquidation of their interests in the partnership.

**(g) Exception for electing 1987 partnerships**

**(1) In general**

Subsection (a) shall not apply to an electing 1987 partnership.

**(2) Electing 1987 partnership**

For purposes of this subsection, the term “electing 1987 partnership” means any publicly traded partnership if—

(A) such partnership is an existing partnership (as defined in section 10211(c)(2) of the Revenue Reconciliation Act of 1987),

(B) subsection (a) has not applied (and without regard to subsection (c)(1) would not have applied) to such partnership for all prior taxable years beginning after December 31, 1987, and before January 1, 1998, and

(C) such partnership elects the application of this subsection, and consents to the application of the tax imposed by paragraph (3), for its first taxable year beginning after December 31, 1997.

A partnership which, but for this sentence, would be treated as an electing 1987 partnership shall cease to be so treated (and the election under subparagraph (C) shall cease to be in effect) as of the 1st day after December 31, 1997, on which there has been an addition of a substantial new line of business with respect to such partnership.

**(3) Additional tax on electing partnerships**

**(A) Imposition of tax**

There is hereby imposed for each taxable year on the income of each electing 1987 partnership a tax equal to 3.5 percent of such partnership's gross income for the taxable year from the active conduct of trades and businesses by the partnership.

**(B) Adjustments in the case of tiered partnerships**

For purposes of this paragraph, in the case of a partnership which is a partner in another partnership, the gross income referred to in subparagraph (A) shall include the partnership's distributive share of the gross income of such other partnership from the active conduct of trades and businesses of such other partnership. A similar rule shall apply in the case of lower-tiered partnerships.

**(C) Treatment of tax**

For purposes of this title, the tax imposed by this paragraph shall be treated as imposed by chapter 1 other than for purposes of determining the amount of any credit allowable under chapter 1 and shall be paid by the partnership. Section 6655 shall be applied to such partnership with respect to such tax in the same manner as if the partnership were

a corporation, such tax were imposed by section 11, and references in such section to taxable income were references to the gross income referred to in subparagraph (A).

#### (4) Election

An election and consent under this subsection shall apply to the taxable year for which made and all subsequent taxable years unless revoked by the partnership. Such revocation may be made without the consent of the Secretary, but, once so revoked, may not be reinstated.

(Added Pub. L. 100-203, title X, §10211(a), Dec. 22, 1987, 101 Stat. 1330-403; amended Pub. L. 100-647, title II, §2004(f)(1), (3)-(5), Nov. 10, 1988, 102 Stat. 3602, 3603; Pub. L. 105-34, title IX, §964(a), Aug. 5, 1997, 111 Stat. 892; Pub. L. 105-206, title VI, §6009(b)(1), July 22, 1998, 112 Stat. 812; Pub. L. 106-170, title V, §532(c)(2)(V)-(Y), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 108-357, title III, §331(e), Oct. 22, 2004, 118 Stat. 1476; Pub. L. 110-343, div. B, title I, §116(a), title II, §208(a), Oct. 3, 2008, 122 Stat. 3831, 3840.)

#### REFERENCES IN TEXT

Section 10211(c)(2) of the Revenue Reconciliation Act of 1987, referred to in subsec. (g)(2)(A), probably means section 10211(c)(2) of the Revenue Act of 1987, title X of Pub. L. 100-203, which is set out as a note below.

#### AMENDMENTS

2008—Subsec. (d)(1)(E). Pub. L. 110-343, §208(a), substituted “, industrial source carbon dioxide, or the transportation or storage of any fuel described in subsection (b), (c), (d), or (e) of section 6426, or any alcohol fuel defined in section 6426(b)(4)(A) or any biodiesel fuel as defined in section 40A(d)(1)” for “or industrial source carbon dioxide”.

Pub. L. 110-343, §116(a), inserted “or industrial source carbon dioxide” before comma at end.

2004—Subsec. (d)(4). Pub. L. 108-357 substituted “section 851(b)(2)(A)” for “section 851(b)(2)”.

1999—Subsecs. (c)(3), (d)(1)(D), (G), (5). Pub. L. 106-170 substituted “section 1221(a)(1)” for “section 1221(1)”.

1998—Subsec. (g)(3)(C). Pub. L. 105-206 inserted at end “and shall be paid by the partnership. Section 6655 shall be applied to such partnership with respect to such tax in the same manner as if the partnership were a corporation, such tax were imposed by section 11, and references in such section to taxable income were references to the gross income referred to in subparagraph (A)”.

1997—Subsec. (g). Pub. L. 105-34 added subsec. (g).

1988—Subsec. (c)(1). Pub. L. 100-647, §2004(f)(3), inserted at end “For purposes of the preceding sentence, a partnership shall not be treated as being in existence during any period before the 1st taxable year in which such partnership (or a predecessor) was a publicly traded partnership.”

Subsec. (d)(1). Pub. L. 100-647, §2004(f)(4), inserted at end “For purposes of subparagraph (E), the term ‘mineral or natural resource’ means any product of a character with respect to which a deduction for depletion is allowable under section 611; except that such term shall not include any product described in subparagraph (A) or (B) of section 613(b)(7).”

Subsec. (d)(3). Pub. L. 100-647, §2004(f)(5), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The term ‘real property rent’ means amounts which would qualify as rent from real property under section 856(d) if such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements).”

Subsec. (e)(4). Pub. L. 100-647, §2004(f)(1), inserted “or to pay such amounts” before “as may be required”.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title I, §116(b), Oct. 3, 2008, 122 Stat. 3831, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date.”

Pub. L. 110-343, div. B, title II, §208(b), Oct. 3, 2008, 122 Stat. 3840, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date.”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years beginning after Oct. 22, 2004, see section 331(h) of Pub. L. 108-357, set out as a note under section 469 of this title.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title VI, §6009(b)(2), July 22, 1998, 112 Stat. 812, provided that: “The second sentence of section 7704(g)(3)(C) of the 1986 Code (as added by paragraph (1)) shall apply to taxable years beginning after the date of the enactment of this Act [July 22, 1998].”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title IX, §964(b), Aug. 5, 1997, 111 Stat. 893, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

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

#### EFFECTIVE DATE

Pub. L. 100-203, title X, §10211(c), Dec. 22, 1987, 101 Stat. 1330-405, as amended by Pub. L. 100-647, title II, §2004(f)(2), Nov. 10, 1988, 102 Stat. 3602, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply—

“(A) except as provided in subparagraph (B), to taxable years beginning after December 31, 1987, or

“(B) in the case of an existing partnership, to taxable years beginning after December 31, 1997.

“(2) EXISTING PARTNERSHIP.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘existing partnership’ means any partnership if—

“(i) such partnership was a publicly traded partnership on December 17, 1987,

“(ii) a registration statement indicating that such partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission with respect to such partnership on or before such date, or

“(iii) with respect to such partnership, an application was filed with a State regulatory commission on or before such date seeking permission to restructure a portion of a corporation as a publicly traded partnership.

“(B) SPECIAL RULE WHERE SUBSTANTIAL NEW LINE OF BUSINESS ADDED AFTER DECEMBER 17, 1987.—A partnership which, but for this subparagraph, would be treated as an existing partnership shall cease to be treated as an existing partnership as of the 1st day after December 17, 1987, on which there has been an addition

of a substantial new line of business with respect to such partnership.

“(C) COORDINATION WITH PASSIVE-TYPE INCOME REQUIREMENTS.—In the case of an existing partnership, paragraph (1) of section 7704(c) of the Internal Revenue Code of 1986 (as added by this section) shall be applied by substituting for ‘December 31, 1987’ the earlier of—

“(i) December 31, 1997, or

“(ii) the day (if any) as of which such partnership ceases to be treated as an existing partnership by reason of subparagraph (B).”

### § 7705. Certified professional employer organizations

#### (a) In general

For purposes of this title, the term “certified professional employer organization” means a person who applies to be treated as a certified professional employer organization for purposes of section 3511 and has been certified by the Secretary as meeting the requirements of subsection (b).

#### (b) Certification requirements

A person meets the requirements of this subsection if such person—

(1) demonstrates that such person (and any owner, officer, and other persons as may be specified in regulations) meets such requirements as the Secretary shall establish, including requirements with respect to tax status, background, experience, business location, and annual financial audits,

(2) agrees that it will satisfy the bond and independent financial review requirements of subsection (c) on an ongoing basis,

(3) agrees that it will satisfy such reporting obligations as may be imposed by the Secretary,

(4) computes its taxable income using an accrual method of accounting unless the Secretary approves another method,

(5) agrees to verify on such periodic basis as the Secretary may prescribe that it continues to meet the requirements of this subsection, and

(6) agrees to notify the Secretary in writing within such time as the Secretary may prescribe of any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided under this subsection.

#### (c) Bond and independent financial review

##### (1) In general

An organization meets the requirements of this paragraph if such organization—

(A) meets the bond requirements of paragraph (2), and

(B) meets the independent financial review requirements of paragraph (3).

##### (2) Bond

###### (A) In general

A certified professional employer organization meets the requirements of this paragraph if the organization has posted a bond for the payment of taxes under subtitle C (in a form acceptable to the Secretary) that is in an amount at least equal to the amount specified in subparagraph (B).

##### (B) Amount of bond

For the period April 1 of any calendar year through March 31 of the following calendar year, the amount of the bond required is equal to the greater of—

- (i) 5 percent of the organization’s liability under section 3511 for taxes imposed by subtitle C during the preceding calendar year (but not to exceed \$1,000,000), or
- (ii) \$50,000.

##### (3) Independent financial review requirements

A certified professional employer organization meets the requirements of this paragraph if such organization—

(A) has, as of the most recent audit date, caused to be prepared and provided to the Secretary (in such manner as the Secretary may prescribe) an opinion of an independent certified public accountant as to whether the certified professional employer organization’s financial statements are presented fairly in accordance with generally accepted accounting principles, and

(B) provides to the Secretary an assertion regarding Federal employment tax payments and an examination level attestation on such assertion from an independent certified public accountant not later than the last day of the second month beginning after the end of each calendar quarter.

Such assertion shall state that the organization has withheld and made deposits of all taxes imposed by chapters 21, 22, and 24 in accordance with regulations imposed by the Secretary for such calendar quarter and such examination level attestation shall state that such assertion is fairly stated, in all material respects.

##### (4) Controlled group rules

For purposes of the requirements of paragraphs (2) and (3), all certified professional employer organizations that are members of a controlled group within the meaning of sections 414(b) and (c) shall be treated as a single organization.

##### (5) Failure to file assertion and attestation

If the certified professional employer organization fails to file the assertion and attestation required by paragraph (3) with respect to any calendar quarter, then the requirements of paragraph (3) with respect to such failure shall be treated as not satisfied for the period beginning on the due date for such attestation.

##### (6) Audit date

For purposes of paragraph (3)(A), the audit date shall be six months after the completion of the organization’s fiscal year.

##### (d) Suspension and revocation authority

The Secretary may suspend or revoke a certification of any person under subsection (b) for purposes of section 3511 if the Secretary determines that such person is not satisfying the agreements or requirements of subsections (b) or (c), or fails to satisfy applicable accounting, reporting, payment, or deposit requirements.

##### (e) Work site employee

For purposes of this title—