

TREATMENT OF CERTAIN BANK HOLDING COMPANIES

Pub. L. 100-647, title VI, § 6280, Nov. 10, 1988, 102 Stat. 3754, provided that:

“(a) GENERAL RULE.—For purposes of subtitle A of the 1986 Code, the term ‘personal holding company income’ shall not include any dividend received by a qualified bank holding company from a 25-percent owned bank during any taxable year ending in 1989 or 1990.

“(b) \$3,000,000 LIMITATION.—The aggregate amount excluded from the personal holding company income of any qualified bank holding company under subsection (a) for the taxable year shall not exceed \$3,000,000.

“(c) QUALIFIED BANK HOLDING COMPANY.—For purposes of this section, the term ‘qualified bank holding company’ means any bank holding company (as defined in section 2(a) of the Bank Holding Company Act of 1956 [12 U.S.C. 1841(a)]) if 80 percent or more (by value) of the assets of such company at all times during the taxable year consist of stock in 1 or more 25-percent owned banks.

“(d) 25-PERCENT OWNED BANK.—For purposes of this section, the term ‘25-percent owned bank’ means any bank (as defined in section 581 of the 1986 Code) if at least 25 percent of the stock of such bank (by vote and value) is owned by the bank holding company.”

SPECIAL RULES FOR BROKER-DEALERS, ROYALTIES RECEIVED BY QUALIFIED TAXPAYER, AND TREATMENT OF ACTIVE BUSINESS COMPUTER ROYALTIES FOR S CORPORATION PURPOSES

Pub. L. 99-514, title VI, § 645(b)-(d), Oct. 22, 1986, 100 Stat. 2292, provided that:

“(b) SPECIAL RULES FOR BROKER-DEALERS.—In the case of a broker-dealer which is part of an affiliated group which files a consolidated Federal income tax return, the common parent of which was incorporated in Nevada on January 27, 1972, the personal holding company income (within the meaning of section 543 of the Internal Revenue Code of 1986) of such broker-dealer, shall not include any interest received after the date of the enactment of this Act [Oct. 22, 1986] with respect to—

“(1) any securities or money market instruments held as inventory,

“(2) margin accounts, or

“(3) any financing for a customer secured by securities or money market instruments.

“(c) SPECIAL RULE FOR ROYALTIES RECEIVED BY QUALIFIED TAXPAYER.—

“(1) IN GENERAL.—Any qualified royalty received or accrued in taxable years beginning after December 31, 1981, by a qualified taxpayer shall be treated in the same manner as a royalty with respect to software is treated under the amendments made by this section [amending this section and section 553 of this title].

“(2) QUALIFIED TAXPAYER.—For purposes of this subsection, a qualified taxpayer is any taxpayer incorporated on September 7, 1978, which is engaged in the trade or business of manufacturing dolls and accessories.

“(3) QUALIFIED ROYALTY.—For purposes of this subsection, the term ‘qualified royalty’ means any royalty arising from an agreement entered into in 1982 which permits the licensee to manufacture and sell dolls and accessories.

“(d) SPECIAL RULE FOR TREATMENT OF ACTIVE BUSINESS COMPUTER ROYALTIES FOR S CORPORATION PURPOSES.—In the case of a taxpayer which was incorporated on May 3, 1977, in California and which elected to be taxed as an S corporation for its taxable year ending on December 31, 1985, any active business computer royalties (within the meaning of section 543(d) of the Internal Revenue Code of 1986 as added by this Act) which are received by the taxpayer in taxable years beginning after December 31, 1984, shall not be treated as passive investment income (within the meaning of section 1362(d)(3)(D) [now section 1362(d)(3)(C)]) for purposes of subchapter S of chapter 1 of such Code.”

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.

§ 544. Rules for determining stock ownership**(a) Constructive ownership**

For purposes of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership under section 542(a)(2), section 543(a)(7), section 543(a)(6), or section 543(a)(4)—

(1) Stock not owned by individual

Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) Family and partnership ownership

An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) Options

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) Application of family-partnership and option rules

Paragraphs (2) and (3) shall be applied—

(A) for purposes of the stock ownership requirement provided in section 542(a)(2), if, but only if, the effect is to make the corporation a personal holding company;

(B) for purposes of section 543(a)(7) (relating to personal service contracts), of section 543(a)(6) (relating to use of property by shareholders), or of section 543(a)(4) (relating to copyright royalties), if, but only if, the effect is to make the amounts therein referred to includible under such paragraph as personal holding company income.

(5) Constructive ownership as actual ownership

Stock constructively owned by a person by reason of the application of paragraph (1) or (3), shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

(6) Option rule in lieu of family and partnership rule

If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) Convertible securities

Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) for purposes of the stock ownership requirement provided in section 542(a)(2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

(2) for purposes of section 543(a)(7) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income;

(3) for purposes of section 543(a)(6) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income; and

(4) for purposes of section 543(a)(4) (relating to copyright royalties), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income.

The requirement in paragraphs (1), (2), (3), and (4) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.

(Aug. 16, 1954, ch. 736, 68A Stat. 188; Pub. L. 86-435, §1(c), (d), Apr. 22, 1960, 74 Stat. 78; Pub. L. 88-272, title II, §225(k)(3), Feb. 26, 1964, 78 Stat. 93.)

AMENDMENTS

1964—Pub. L. 88-272 substituted “section 543(a)(7)” for “section 543(a)(5)”, and “section 543(a)(4)” for “section 543(a)(9),” wherever appearing.

1960—Subsec. (a). Pub. L. 86-435, §1(c)(1), inserted reference to section 543(a)(9) in introductory provisions.

Subsec. (a)(4)(B). Pub. L. 86-435, §1(c)(2), included reference to section 543(a)(9).

Subsec. (b). Pub. L. 86-435, §1(d), added par. (4), and inserted reference to par. (4) in last sentence.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l)(1) of Pub. L. 88-272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-435 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 2 of Pub. L. 86-435, set out as a note under section 543 of this title.

§ 545. Undistributed personal holding company income**(a) Definition**

For purposes of this part, the term “undistributed personal holding company income” means the taxable income of a personal holding company adjusted in the manner provided in subsections (b), (c), and (d), minus the dividends paid deduction as defined in section 561. In the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons, the term “undistributed personal holding company income” means the amount determined by multiplying the undistributed personal holding company income (determined without regard to this sentence) by the percentage in value of its outstanding stock which is the greatest percentage in value of its outstanding stock so owned by United States persons on any one day during such period.

(b) Adjustments to taxable income

For the purposes of subsection (a), the taxable income shall be adjusted as follows:

(1) Taxes

There shall be allowed as a deduction Federal income and excess profits taxes and income, war profits and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 960 for the taxable year, but not including the accumulated earnings tax imposed by section 531 or the personal holding company tax imposed by section 541.

(2) Charitable contributions

The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), (D), and (E) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term “contribution base” when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 10-percent limitation) provided in section 170(b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (6) of this subsection.

(3) Special deductions disallowed

The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss

The net operating loss deduction provided in section 172 shall not be allowed, but there shall be allowed as a deduction the amount of the net operating loss (as defined in section 172(c)) for the preceding taxable year computed without the deductions provided in part VIII (except section 248) of subchapter B.