

“(B) paragraph (1) shall not apply to any loss or credit which arises on or after the date 1 year after the date of the enactment of this Act, and

“(C) paragraph (2) shall be applied by substituting ‘\$99,000,000’ for ‘\$40,000,000’.

“(c) SPECIAL ADMINISTRATIVE RULES.—

“(1) NOTICE TO NATIVE CORPORATIONS OF PROPOSED TAX ADJUSTMENTS.—Notwithstanding section 6103 of the 1986 Code, the Secretary of the Treasury or his delegate shall notify a Native Corporation or its designated representative of any proposed adjustment—

“(A) of the tax liability of a taxpayer which has contracted with the Native Corporation (or other corporation all of the stock of which is owned directly by the Native Corporation) for the use of losses of such Native Corporation (or such other corporation), and

“(B) which is attributable to an asserted overstatement of losses by, or misassignment of income (or income attributable to property contributed) to, an affiliated group of which the Native Corporation (or such other corporation) is a member.

Such notice shall only include information with respect to the transaction between the taxpayer and the Native Corporation.

“(2) RIGHTS OF NATIVE CORPORATION.—

“(A) IN GENERAL.—If a Native Corporation receives a notice under paragraph (1), the Native Corporation shall have the right to—

“(i) submit to the Secretary of the Treasury or his delegate a written statement regarding the proposed adjustment, and

“(ii) meet with the Secretary of the Treasury or his delegate with respect to such proposed adjustment.

The Secretary of the Treasury or his delegate may discuss such proposed adjustment with the Native Corporation or its designated representative.

“(B) EXTENSION OF STATUTE OF LIMITATIONS.—Subparagraph (A) shall not apply if the Secretary of the Treasury or his delegate determines that an extension of the statute of limitation[s] is necessary to permit the participation described in subparagraph (A) and the taxpayer and the Secretary or his delegate have not agreed to such extension.

“(3) JUDICIAL PROCEEDINGS.—In the case of any proceeding in a Federal court or the United States Tax Court involving a proposed adjustment under paragraph (1), the Native Corporation, subject to the rules of such court, may file an amicus brief concerning such adjustment.

“(4) FAILURES.—For purposes of the 1986 Code, any failure by the Secretary of the Treasury or his delegate to comply with the provisions of this subsection shall not affect the validity of the determination of the Internal Revenue Service of any adjustment of tax liability of any taxpayer described in paragraph (1).

“(d) DISQUALIFIED INCOME DEFINED.—For purposes of subsection (a), the term ‘disqualified income’ means any income assigned (or attributable to property contributed) after April 26, 1988, by a person who is not a Native Corporation or a corporation all the stock of which is owned directly by a Native Corporation.

“(e) BASIS DETERMINATION.—For purposes of determining basis for Federal tax purposes, no provision in any law enacted after the date of the enactment of this Act [Nov. 10, 1988] shall affect the date on which the transfer to the Native Corporation is made. The preceding sentence shall apply to all taxable years whether beginning before, on, or after such date of enactment.”

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.

TRANSACTION RULES

Pub. L. 94–455, title XV, §1507(c)(2), Oct. 4, 1976, 90 Stat. 1740, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) LIMITATIONS ON CARRYOVERS OR CARRYBACKS FOR GROUPS ELECTING UNDER SECTION 1504(c)(2).—If an affiliated group elects to file a consolidated return pursuant to section 1501(c)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] a carryover of a loss or credit from a taxable year ending before January 1, 1981, and losses or credits which may be carried back to taxable years ending before such date, shall be taken into account as if this section had not been enacted.

“(B) NONTERMINATION OF AFFILIATED GROUP.—The mere election to file a consolidated return pursuant to such section 1504(c)(2) shall not cause the termination of an affiliated group filing consolidated returns.”

§ 1505. Cross references

(1) For suspension of running of statute of limitations when notice in respect of a deficiency is mailed to one corporation, see section 6503(a)(1).

(2) For allocation of income and deductions of related trades or businesses, see section 482.

(Aug. 16, 1954, ch. 736, 68A Stat. 370.)

Subchapter B—Related Rules

Part		Sec. ¹
I.	In general	1551
II.	Certain controlled corporations	1561

PART I—IN GENERAL

Sec.	
[1551.	Repealed.]
1552.	Earnings and profits.

AMENDMENTS

2017—Pub. L. 115–97, title I, §13001(b)(5)(A), Dec. 22, 2017, 131 Stat. 2098, which directed amendment of the table of sections for part I of subchapter B of chapter 5 by striking out item 1551 “Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit”, was executed to the table of sections for part I of subchapter B of this chapter to reflect the probable intent of Congress.

1978—Pub. L. 95–600, title III, §301(b)(18)(C), Nov. 6, 1978, 92 Stat. 2823, in item 1551 substituted “the benefits of the graduated corporate rates” for “surtax exemption”.

1964—Pub. L. 88–272, title II, §235(c)(4), Feb. 26, 1964, 78 Stat. 127, inserted table of parts, and heading for part I.

[§ 1551. Repealed. Pub. L. 115–97, title I, § 13001(b)(5)(A), Dec. 22, 2017, 131 Stat. 2098]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 371; Pub. L. 85–866, title II, §205(a), Sept. 2, 1958, 72 Stat. 1680; Pub. L. 88–272, title II, §235(b), Feb. 26, 1964, 78 Stat. 125; Pub. L. 94–12, title III, §304(b), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–455, title XIX, §§1901(a)(158), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1790, 1834; Pub. L. 95–600, title III, §301(b)(18)(A), (B), Nov. 6, 1978, 92 Stat. 2823; Pub. L. 97–34, title II, §232(b)(2), Aug. 13, 1981, 95 Stat. 250; Pub. L. 99–514, title XVIII, §1899A(36), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 113–295, div. A, title II, §221(a)(94), Dec. 19, 2014, 128 Stat. 4051, related to disallowance of the benefits of the graduated corporate rates and accumulated earnings credit. Repeal was executed to this section, which is in part I of subchapter B of chapter 6, to re-

¹ Section numbers editorially supplied.

flect the probable intent of Congress, notwithstanding directory language of Pub. L. 115-97, which repealed section 1551 in part I of subchapter B of chapter 5.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115-97, set out as an Effective Date of 2017 Amendment note under section 11 of this title.

§ 1552. Earnings and profits

(a) General rule

Pursuant to regulations prescribed by the Secretary the earnings and profits of each member of an affiliated group required to be included in a consolidated return for such group filed for a taxable year shall be determined by allocating the tax liability of the group for such year among the members of the group in accord with whichever of the following methods the group shall elect in its first consolidated return filed for such a taxable year:

(1) The tax liability shall be apportioned among the members of the group in accordance with the ratio which that portion of the consolidated taxable income attributable to each member of the group having taxable income bears to the consolidated taxable income.

(2) The tax liability of the group shall be allocated to the several members of the group on the basis of the percentage of the total tax which the tax of such member if computed on a separate return would bear to the total amount of the taxes for all members of the group so computed.

(3) The tax liability of the group (excluding the tax increases arising from the consolidation) shall be allocated on the basis of the contribution of each member of the group to the consolidated taxable income of the group. Any tax increases arising from the consolidation shall be distributed to the several members in direct proportion to the reduction in tax liability resulting to such members from the filing of the consolidated return as measured by the difference between their tax liabilities determined on a separate return basis and their tax liabilities based on their contributions to the consolidated taxable income.

(4) The tax liability of the group shall be allocated in accord with any other method selected by the group with the approval of the Secretary.

(b) Failure to elect

If no election is made in such first return, the tax liability shall be allocated among the several members of the group pursuant to the method prescribed in subsection (a)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 371; Pub. L. 88-272, title II, § 234(b)(8), Feb. 26, 1964, 78 Stat. 116; Pub. L. 94-455, title XIX, §§ 1901(a)(159), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1790, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-455, § 1901(a)(159), 1906(b)(13)(A), struck out “beginning after December 31, 1953, and ending after the date of enactment of this title” after “group filed for a taxable year”, and “or his delegate” after “Secretary” in two places.

1964—Subsec. (a)(3). Pub. L. 88-272 struck out “(determined without regard to the 2 percent increase pro-

vided by section 1503(a))”, before “based on their contributions”.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(159) of Pub. L. 94-455 applicable with respect to 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 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88-272, set out as a note under section 1503 of this title.

PART II—CERTAIN CONTROLLED CORPORATIONS

Sec.	
1561.	Limitation on accumulated earnings credit in the case of certain controlled corporations.
[1562.]	Repealed.]
1563.	Definitions and special rules.
[1564.]	Repealed.]

AMENDMENTS

2017—Pub. L. 115-97, title I, § 13001(b)(6)(B), Dec. 22, 2017, 131 Stat. 2098, which directed amendment of the table of sections for part II of subchapter B of chapter 5 by substituting “Limitation on accumulated earnings credit in the case of certain controlled corporations” for “Limitations on certain multiple tax benefits in the case of certain controlled corporations” in item 1561, was executed to the table of sections for part II of subchapter B of this chapter to reflect the probable intent of Congress.

1990—Pub. L. 101-508, title XI, § 11801(b)(12), Nov. 5, 1990, 104 Stat. 1388-522, struck out item 1564 “Transitional rules in the case of certain controlled corporations”.

1969—Pub. L. 91-172, title IV, § 401(a)(3), (b)(2)(E), Dec. 30, 1969, 83 Stat. 600, 602, substituted “Sec. 1561. Limitations on certain multiple tax benefits in the case of certain controlled corporations.” for “Sec. 1561. Surtax exemptions in case of certain controlled corporations.”, and struck out item 1562, effective with respect to taxable years beginning after Dec. 31, 1974, and added item 1564.

1964—Pub. L. 88-272, title II, § 235(a), Feb. 26, 1964, 78 Stat. 116, added designation of part II, and items 1561 to 1563.

§ 1561. Limitation on accumulated earnings credit in the case of certain controlled corporations

(a) In general

The component members of a controlled group of corporations on a December 31 shall, for their taxable years which include such December 31, be limited for purposes of this subtitle to one \$250,000 (\$150,000 if any component member is a corporation described in section 535(c)(2)(B)) amount for purposes of computing the accumulated earnings credit under section 535(c)(2) and (3). Such amount shall be divided equally among the component members of such group on such December 31 unless the Secretary prescribes regulations permitting an unequal allocation of such amount.

(b) Certain short taxable years

If a corporation has a short taxable year which does not include a December 31 and is a component member of a controlled group of corporations with respect to such taxable year, then for purposes of this subtitle, the amount to be used