

(Added Pub. L. 100-203, title X, §10611(a), Dec. 22, 1987, 101 Stat. 1330-451.)

REFERENCES IN TEXT

Section 202 of the Reclamation Reform Act of 1982, referred to in subsec. (b)(2), is classified to section 390bb of Title 43, Public Lands.

EFFECTIVE DATE

Pub. L. 100-203, title X, §10611(c), Dec. 22, 1987, 101 Stat. 1330-452, provided that: “The amendments made by this section [enacting this section] shall apply to water delivered to the taxpayer in months beginning after the date of the enactment of this Act [Dec. 22, 1987].”

§ 91. Certain foreign branch losses transferred to specified 10-percent owned foreign corporations

(a) In general

If a domestic corporation transfers substantially all of the assets of a foreign branch (within the meaning of section 367(a)(3)(C), as in effect before the date of the enactment of the Tax Cuts and Jobs Act) to a specified 10-percent owned foreign corporation (as defined in section 245A) with respect to which it is a United States shareholder after such transfer, such domestic corporation shall include in gross income for the taxable year which includes such transfer an amount equal to the transferred loss amount with respect to such transfer.

(b) Transferred loss amount

For purposes of this section, the term “transferred loss amount” means, with respect to any transfer of substantially all of the assets of a foreign branch, the excess (if any) of—

(1) the sum of losses—

(A) which were incurred by the foreign branch after December 31, 2017, and before the transfer, and

(B) with respect to which a deduction was allowed to the taxpayer, over

(2) the sum of—

(A) any taxable income of such branch for a taxable year after the taxable year in which the loss was incurred and through the close of the taxable year of the transfer, and

(B) any amount which is recognized under section 904(f)(3) on account of the transfer.

(c) Reduction for recognized gains

The transferred loss amount shall be reduced (but not below zero) by the amount of gain recognized by the taxpayer on account of the transfer (other than amounts taken into account under subsection (b)(2)(B)).

(d) Source of income

Amounts included in gross income under this section shall be treated as derived from sources within the United States.

(e) Basis adjustments

Consistent with such regulations or other guidance as the Secretary shall prescribe, proper adjustments shall be made in the adjusted basis of the taxpayer’s stock in the specified 10-percent owned foreign corporation to which the transfer is made, and in the transferee’s adjusted basis in the property transferred, to re-

flect amounts included in gross income under this section.

(Added Pub. L. 115-97, title I, §14102(d)(1), Dec. 22, 2017, 131 Stat. 2193.)

REFERENCES IN TEXT

The date of the enactment of the Tax Cuts and Jobs Act, referred to in subsec. (a), probably means the date of enactment of title I of Pub. L. 115-97, which was approved Dec. 22, 2017. Prior versions of the bill that was enacted into law as Pub. L. 115-97 included such Short Title, but it was not enacted as part of title I of Pub. L. 115-97.

EFFECTIVE DATE

Pub. L. 115-97, title I, §14102(d)(3), Dec. 22, 2017, 131 Stat. 2194, provided that: “The amendments made by this subsection [enacting this section] shall apply to transfers after December 31, 2017.”

TRANSITION RULE

Pub. L. 115-97, title I, §14102(d)(4), Dec. 22, 2017, 131 Stat. 2194, provided that: “The amount of gain taken into account under section 91(c) of the Internal Revenue Code of 1986, as added by this subsection, shall be reduced by the amount of gain which would be recognized under section 367(a)(3)(C) (determined without regard to the amendments made by subsection (e) [amending section 367 of this title]) with respect to losses incurred before January 1, 2018.”

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

Sec.

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| 101. | Certain death payments. ¹ |
| 102. | Gifts and inheritances. |
| 103. | Interest on State and local bonds. |
| [103A. | Repealed.] |
| 104. | Compensation for injuries or sickness. |
| 105. | Amounts received under accident and health plans. |
| 106. | Contributions by employer to accident and health plans. |
| 107. | Rental value of parsonages. |
| 108. | Income from discharge of indebtedness. |
| 109. | Improvements by lessee on lessor’s property. |
| 110. | Qualified lessee construction allowances for short-term leases. |
| 111. | Recovery of tax benefit items. |
| 112. | Certain combat zone compensation of members of the Armed Forces. |
| [113, 114. | Repealed.] |
| 115. | Income of States, municipalities, etc. |
| [116. | Repealed.] |
| 117. | Qualified scholarships. |
| 118. | Contributions to the capital of a corporation. |
| 119. | Meals or lodging furnished for convenience of employer. ¹ |
| [120. | Repealed.] |
| 121. | Exclusion of gain from sale of principal residence. |
| 122. | Certain reduced uniformed services retirement pay. |
| 123. | Amounts received under insurance contracts for certain living expenses. |
| [124. | Repealed.] |
| 125. | Cafeteria plans. |
| 126. | Certain cost-sharing payments. |
| 127. | Educational assistance programs. |
| [128. | Repealed.] |
| 129. | Dependent care assistance programs. ² |
| 130. | Certain personal injury liability assignments. |
| 131. | Certain foster care payments. |

¹ So in original. Does not conform to section catchline.

² Editorially supplied. Section 129 added by Pub. L. 97-34 without corresponding amendment of part analysis.

132. Certain fringe benefits.
[133. Repealed.]
134. Certain military benefits.
135. Income from United States savings bonds used to pay higher education tuition and fees.
136. Energy conservation subsidies provided by public utilities.
137. Adoption assistance programs.
138. Medicare Advantage MSA.
139. Disaster relief payments.
139A. Federal subsidies for prescription drug plans.
139B. Benefits provided to volunteer firefighters and emergency medical responders.
[139C. Repealed.]
139D. Indian health care benefits.
139E. Indian general welfare benefits.
139F. Certain amounts received by wrongfully incarcerated individuals.
139G. Assignments to Alaska Native Settlement Trusts.
139H. Interest received in action to recover property seized by the Internal Revenue Service based on structuring transaction.
140. Cross references to other Acts.

AMENDMENTS

2019—Pub. L. 116-25, title I, § 1202(b), July 1, 2019, 133 Stat. 988, added item 139H.

2018—Pub. L. 115-141, div. U, title IV, § 401(d)(7)(C), Mar. 23, 2018, 132 Stat. 1212, struck out item 139C “COBRA premium assistance”.

2017—Pub. L. 115-97, title I, § 13821(a)(2), Dec. 22, 2017, 131 Stat. 2178, added item 139G.

2015—Pub. L. 114-113, div. Q, title III, § 304(b), Dec. 18, 2015, 129 Stat. 3088, added item 139F.

2014—Pub. L. 113-295, div. A, title II, § 221(a)(19)(A), Dec. 19, 2014, 128 Stat. 4039, which directed amendment of part III by striking out item 120 in table of sections for “such subpart”, was executed by striking out item 120 “Amounts received under qualified group legal services plans” in table of sections for this part to reflect the probable intent of Congress.

Pub. L. 113-168, § 2(b), Sept. 26, 2014, 128 Stat. 1884, added item 139E.

2011—Pub. L. 112-10, div. B, title VIII, § 1858(b)(2)(B), Apr. 15, 2011, 125 Stat. 168, struck out item 139D “Free choice vouchers”.

2010—Pub. L. 111-148, title X, § 10108(f)(2), Mar. 23, 2010, 124 Stat. 913, added item 139D relating to free choice vouchers.

Pub. L. 111-148, title IX, § 9021(b), Mar. 23, 2010, 124 Stat. 874, added item 139D relating to Indian health care benefits.

2009—Pub. L. 111-5, div. B, title III, § 3001(a)(15)(B), Feb. 17, 2009, 123 Stat. 465, added item 139C.

2007—Pub. L. 110-142, § 5(b), Dec. 20, 2007, 121 Stat. 1806, added item 139B.

2004—Pub. L. 108-357, title I, § 101(b)(3), Oct. 22, 2004, 118 Stat. 1423, struck out item 114 “Extraterritorial income”.

Pub. L. 108-311, title IV, § 408(a)(5)(G), Oct. 4, 2004, 118 Stat. 1191, substituted “Medicare Advantage MSA” for “Medicare+Choice MSA” in item 138.

2003—Pub. L. 108-173, title XII, § 1202(c), Dec. 8, 2003, 117 Stat. 2480, added item 139A.

2002—Pub. L. 107-134, title I, § 111(b), Jan. 23, 2002, 115 Stat. 2433, added item 139 and redesignated former item 139 as 140.

2000—Pub. L. 106-519, § 4(6), Nov. 15, 2000, 114 Stat. 2433, added item 114.

1997—Pub. L. 105-34, title III, § 312(d)(14), title XII, § 1213(d), Aug. 5, 1997, 111 Stat. 841, 1001, added item 110 and substituted “Exclusion of gain from sale of principal residence” for “One-time exclusion of gain from sale of principal residence by individual who has attained age 55” in item 121.

Pub. L. 105-33, title IV, § 4006(b)(3), Aug. 5, 1997, 111 Stat. 334, added items 138 and 139 and struck out former item 138 “Cross reference to other Acts”.

1996—Pub. L. 104-188, title I, §§ 1602(b)(8), 1704(t)(4)(B), 1807(c)(7), Aug. 20, 1996, 110 Stat. 1834, 1887, 1902, substituted “combat zone compensation” for “combat pay” in item 112, struck out item 133 “Interest on certain loans used to acquire employer securities”, added items 137 and 138, and struck out former item 137 “Cross reference to other Acts”.

1992—Pub. L. 102-486, title XIX, § 1912(b), Oct. 24, 1992, 106 Stat. 3016, added items 136 and 137 and struck out former item 136 “Cross references to other Acts”.

1990—Pub. L. 101-508, title XI, § 11801(b)(2), Nov. 5, 1990, 104 Stat. 1388-522, struck out item 110 “Income taxes paid by lessee corporation”, item 113 “Mustering-out payments for members of the Armed Forces”, item 114 “Sports programs conducted for the American National Red Cross”, item 124 “Qualified transportation provided by employer”, and item 128 “Interest on certain savings certificates”.

1988—Pub. L. 100-647, title I, § 1013(a)(37), title VI, § 6009(c)(4), Nov. 10, 1988, 102 Stat. 3544, 3690, substituted “Interest on State and local bonds” for “Interest on certain governmental obligations” in item 103, struck out item 103A “Mortgage subsidy bonds”, added item 135 and redesignated former item 135 “Cross references to other Acts” as item 136.

1986—Pub. L. 99-514, title I, § 123(b)(4), title VI, § 612(b)(8), title XI, § 1168(b), Oct. 22, 1986, 100 Stat. 2113, 2251, 2512, struck out item 116 “Partial exclusion of dividends received by individuals”, substituted in item 117 “Qualified scholarships” for “Scholarships and fellowship grants”, added item 134, and redesignated former item 134 as 135.

1984—Pub. L. 98-369, div. A, title I, § 171(b), title V, §§ 531(a)(2), 543(b), July 18, 1984, 98 Stat. 699, 881, 892, substituted “Recovery of tax benefit items” for “Recovery of bad debts, prior taxes, and delinquency amounts” in item 111, added items 132 (relating to certain fringe benefits) and 133 (relating to interest on certain loans used to acquire employer securities), and redesignated former item 132 (relating to cross references to other Acts) as item 134.

Pub. L. 98-369, div. A, title I, § 16(a), July 18, 1984, 98 Stat. 505, repealed an amendment made by Pub. L. 97-34, § 302(c). See 1981 Amendment note below.

1983—Pub. L. 97-473, title I, § 101(b)(2), Jan. 14, 1983, 96 Stat. 2606, purported to strike out the item relating to section 130, and added items 130 (relating to certain personal injury liability assignments) and 131 (relating to cross references to other Acts).

Pub. L. 97-473, title I, § 102(b), Jan. 14, 1983, 96 Stat. 2607, struck out item 131 (relating to cross references to other Acts) and added items 131 (relating to certain foster care payments) and 132 (relating to cross references to other Acts).

1981—Pub. L. 97-34, title III, §§ 301(b)(1), 302(c)(1), (d)(1), Aug. 13, 1981, 95 Stat. 270, 272, 274, effective with regard to taxable years beginning after Sept. 30, 1981, redesignated item 128 “Cross References to other Acts” as 129 and added item 128 “Interest on certain savings certificates” and, section 302(c)(1), with regard to taxable years beginning after Dec. 31, 1984, provided that “Partial exclusion of interest” is substituted for “Interest on certain savings certificates” in item 128. Section 16(a) of Pub. L. 98-369, repealed section 302(c) of Pub. L. 97-34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Pub. L. 96-499, title XI, § 1102(b), Dec. 5, 1980, 94 Stat. 2669, added item 103A.

Pub. L. 96-223, title IV, § 404(b)(1), Apr. 2, 1980, 94 Stat. 306, inserted “and interest” after “dividends” in item 116.

1978—Pub. L. 95-618, title II, § 242(b), Nov. 9, 1978, 92 Stat. 3194, redesignated former item 124 as 125 and added item 124.

Pub. L. 95-600, title I, §§ 134(b), 164(c), title IV, § 404(c)(3), title V, § 543(b), Nov. 6, 1978, 92 Stat. 2785, 2814, 2870, 2890, in item 121 substituted “One-time exclusion of gain from sale of principal residence by individ-