

ALLOCATION RATIO FOR APPORTIONING STORAGE COSTS
AND RELATED HANDLING COSTS

Pub. L. 100-647, title I, §1008(b)(8), Nov. 10, 1988, 102 Stat. 3438, provided that: "The allocation used in the regulations prescribed under section 263A(h)(2) of the Internal Revenue Code of 1986 for apportioning storage costs and related handling costs shall be determined by dividing the amount of such costs by the beginning inventory balances and the purchases during the year and by multiplying the resulting allocation ratio by inventory amounts determined in accordance with the provisions of the joint explanatory statement of the committee of conference of the conference report accompanying H.R. 3838 (H.R. Rept. No. 99-841, Vol. II., 99th Cong., 2d Sess. II-306-307 (1986))."

AMORTIZATION OF PAST SERVICE PENSION COSTS

Pub. L. 100-203, title X, §10204, Dec. 22, 1987, 101 Stat. 1330-394, provided that:

"(a) IN GENERAL.—For purposes of sections 263A and 460 of the Internal Revenue Code of 1986, the allocable costs (within the meaning of section 263A(a)(2) or section 460(c) of such Code, whichever is applicable) with respect to any property shall include contributions paid to or under a pension or annuity plan whether or not such contributions represent past service costs.

"(b) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), subsection (a) shall apply to costs incurred after December 31, 1987, in taxable years ending after such date.

"(2) SPECIAL RULE FOR INVENTORY PROPERTY.—In the case of any property which is inventory in the hands of the taxpayer—

"(A) IN GENERAL.—Subsection (a) shall apply to taxable years beginning after December 31, 1987.

"(B) CHANGE IN METHOD OF ACCOUNTING.—If the taxpayer is required by this section to change its method of accounting for any taxable year—

"(i) such change shall be treated as initiated by the taxpayer,

"(ii) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

"(iii) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years."

§ 264. Certain amounts paid in connection with insurance contracts

(a) General rule

No deduction shall be allowed for—

(1) Premiums on any life insurance policy, or endowment or annuity contract, if the taxpayer is directly or indirectly a beneficiary under the policy or contract.

(2) Any amount paid or accrued on indebtedness incurred or continued to purchase or carry a single premium life insurance, endowment, or annuity contract.

(3) Except as provided in subsection (d), any amount paid or accrued on indebtedness incurred or continued to purchase or carry a life insurance, endowment, or annuity contract (other than a single premium contract or a contract treated as a single premium contract) pursuant to a plan of purchase which contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of such contract (either from the insurer or otherwise).

(4) Except as provided in subsection (e), any interest paid or accrued on any indebtedness with respect to 1 or more life insurance poli-

cies owned by the taxpayer covering the life of any individual, or any endowment or annuity contracts owned by the taxpayer covering any individual.

Paragraph (2) shall apply in respect of annuity contracts only as to contracts purchased after March 1, 1954. Paragraph (3) shall apply only in respect of contracts purchased after August 6, 1963. Paragraph (4) shall apply with respect to contracts purchased after June 20, 1986.

(b) Exceptions to subsection (a)(1)

Subsection (a)(1) shall not apply to—

(1) any annuity contract described in section 72(s)(5), and

(2) any annuity contract to which section 72(u) applies.

(c) Contracts treated as single premium contracts

For purposes of subsection (a)(2), a contract shall be treated as a single premium contract—

(1) if substantially all the premiums on the contract are paid within a period of 4 years from the date on which the contract is purchased, or

(2) if an amount is deposited after March 1, 1954, with the insurer for payment of a substantial number of future premiums on the contract.

(d) Exceptions

Subsection (a)(3) shall not apply to any amount paid or accrued by a person during a taxable year on indebtedness incurred or continued as part of a plan referred to in subsection (a)(3)—

(1) if no part of 4 of the annual premiums due during the 7-year period (beginning with the date the first premium on the contract to which such plan relates was paid) is paid under such plan by means of indebtedness,

(2) if the total of the amounts paid or accrued by such person during such taxable year for which (without regard to this paragraph) no deduction would be allowable by reason of subsection (a)(3) does not exceed \$100,

(3) if such amount was paid or accrued on indebtedness incurred because of an unforeseen substantial loss of income or unforeseen substantial increase in his financial obligations, or

(4) if such indebtedness was incurred in connection with his trade or business.

For purposes of applying paragraph (1), if there is a substantial increase in the premiums on a contract, a new 7-year period described in such paragraph with respect to such contract shall commence on the date the first such increased premium is paid.

(e) Special rules for application of subsection (a)(4)

(1) Exception for key persons

Subsection (a)(4) shall not apply to any interest paid or accrued on any indebtedness with respect to policies or contracts covering an individual who is a key person to the extent that the aggregate amount of such indebtedness with respect to policies and contracts covering such individual does not exceed \$50,000.

(2) Interest rate cap on key persons and pre-1986 contracts**(A) In general**

No deduction shall be allowed by reason of paragraph (1) or the last sentence of subsection (a) with respect to interest paid or accrued for any month beginning after December 31, 1995, to the extent the amount of such interest exceeds the amount which would have been determined if the applicable rate of interest were used for such month.

(B) Applicable rate of interest

For purposes of subparagraph (A)—

(i) In general

The applicable rate of interest for any month is the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto, for such month.

(ii) Pre-1986 contracts

In the case of indebtedness on a contract purchased on or before June 20, 1986—

(I) which is a contract providing a fixed rate of interest, the applicable rate of interest for any month shall be the Moody's rate described in clause (i) for the month in which the contract was purchased, or

(II) which is a contract providing a variable rate of interest, the applicable rate of interest for any month in an applicable period shall be such Moody's rate for the third month preceding the first month in such period.

For purposes of subclause (II), the term "applicable period" means the 12-month period beginning on the date the policy is issued (and each successive 12-month period thereafter) unless the taxpayer elects a number of months (not greater than 12) other than such 12-month period to be its applicable period. Such an election shall be made not later than the 90th day after the date of the enactment of this sentence and, if made, shall apply to the taxpayer's first taxable year ending on or after October 13, 1995, and all subsequent taxable years unless revoked with the consent of the Secretary.

(3) Key person

For purposes of paragraph (1), the term "key person" means an officer or 20-percent owner, except that the number of individuals who may be treated as key persons with respect to any taxpayer shall not exceed the greater of—

(A) 5 individuals, or

(B) the lesser of 5 percent of the total officers and employees of the taxpayer or 20 individuals.

(4) 20-percent owner

For purposes of this subsection, the term "20-percent owner" means—

(A) if the taxpayer is a corporation, any person who owns directly 20 percent or more of the outstanding stock of the corporation or stock possessing 20 percent or more of the

total combined voting power of all stock of the corporation, or

(B) if the taxpayer is not a corporation, any person who owns 20 percent or more of the capital or profits interest in the taxpayer.

(5) Aggregation rules**(A) In general**

For purposes of paragraph (4)(A) and applying the \$50,000 limitation in paragraph (1)—

(i) all members of a controlled group shall be treated as one taxpayer, and

(ii) such limitation shall be allocated among the members of such group in such manner as the Secretary may prescribe.

(B) Controlled group

For purposes of this paragraph, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as members of a controlled group.

(f) Pro rata allocation of interest expense to policy cash values**(1) In general**

No deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values.

(2) Allocation

For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values is an amount which bears the same ratio to such interest expense as—

(A) the taxpayer's average unborrowed policy cash values of life insurance policies, and annuity and endowment contracts, issued after June 8, 1997, bears to

(B) the sum of—

(i) in the case of assets of the taxpayer which are life insurance policies or annuity or endowment contracts, the average unborrowed policy cash values of such policies and contracts, and

(ii) in the case of assets of the taxpayer not described in clause (i), the average adjusted bases (within the meaning of section 1016) of such assets.

(3) Unborrowed policy cash value

For purposes of this subsection, the term "unborrowed policy cash value" means, with respect to any life insurance policy or annuity or endowment contract, the excess of—

(A) the cash surrender value of such policy or contract determined without regard to any surrender charge, over

(B) the amount of any loan with respect to such policy or contract.

If the amount described in subparagraph (A) with respect to any policy or contract does not reasonably approximate its actual value, the amount taken into account under subparagraph (A) shall be the greater of the amount of the insurance company liability or the insurance company reserve with respect to such policy or contract (as determined for purposes of the annual statement approved by the Na-

tional Association of Insurance Commissioners) or shall be such other amount as is determined by the Secretary.

(4) Exception for certain policies and contracts

(A) Policies and contracts covering 20-percent owners, officers, directors, and employees

Paragraph (1) shall not apply to any policy or contract owned by an entity engaged in a trade or business if such policy or contract covers only 1 individual and if such individual is (at the time first covered by the policy or contract)—

- (i) a 20-percent owner of such entity, or
- (ii) an individual (not described in clause (i)) who is an officer, director, or employee of such trade or business.

A policy or contract covering a 20-percent owner of such entity shall not be treated as failing to meet the requirements of the preceding sentence by reason of covering the joint lives of such owner and such owner's spouse.

(B) Contracts subject to current income inclusion

Paragraph (1) shall not apply to any annuity contract to which section 72(u) applies.

(C) Coordination with paragraph (2)

Any policy or contract to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2).

(D) 20-percent owner

For purposes of subparagraph (A), the term "20-percent owner" has the meaning given such term by subsection (e)(4).

(E) Master contracts

If coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract for purposes of subparagraph (A). For purposes of the preceding sentence, the term "master contract" shall not include any group life insurance contract (as defined in section 848(e)(2)).

(5) Exception for policies and contracts held by natural persons; treatment of partnerships and S corporations

(A) Policies and contracts held by natural persons

(i) In general

This subsection shall not apply to any policy or contract held by a natural person.

(ii) Exception where business is beneficiary

If a trade or business is directly or indirectly the beneficiary under any policy or contract, such policy or contract shall be treated as held by such trade or business and not by a natural person.

(iii) Special rules

(I) Certain trades or businesses not taken into account

Clause (ii) shall not apply to any trade or business carried on as a sole proprietorship and to any trade or business performing services as an employee.

(II) Limitation on unborrowed cash value

The amount of the unborrowed cash value of any policy or contract which is taken into account by reason of clause (ii) shall not exceed the benefit to which the trade or business is directly or indirectly entitled under the policy or contract.

(iv) Reporting

The Secretary shall require such reporting from policyholders and issuers as is necessary to carry out clause (ii).

(B) Treatment of partnerships and S corporations

In the case of a partnership or S corporation, this subsection shall be applied at the partnership and corporate levels.

(6) Special rules

(A) Coordination with subsection (a) and section 265

If interest on any indebtedness is disallowed under subsection (a) or section 265—

- (i) such disallowed interest shall not be taken into account for purposes of applying this subsection, and
- (ii) the amount otherwise taken into account under paragraph (2)(B) shall be reduced (but not below zero) by the amount of such indebtedness.

(B) Coordination with section 263A

This subsection shall be applied before the application of section 263A (relating to capitalization of certain expenses where taxpayer produces property).

(7) Interest expense

The term "interest expense" means the aggregate amount allowable to the taxpayer as a deduction for interest (within the meaning of section 265(b)(4)) for the taxable year (determined without regard to this subsection, section 265(b), and section 291).

(8) Aggregation rules

(A) In general

All members of a controlled group (within the meaning of subsection (e)(5)(B)) shall be treated as 1 taxpayer for purposes of this subsection.

(B) Treatment of insurance companies

This subsection shall not apply to an insurance company subject to tax under subchapter L, and subparagraph (A) shall be applied without regard to any member of an affiliated group which is an insurance company.

(Aug. 16, 1954, ch. 736, 68A Stat. 77; Pub. L. 88-272, title II, §215(a), (b), Feb. 26, 1964, 78 Stat. 55; Pub. L. 99-514, title X, §1003(a), (b), Oct. 22, 1986, 100

Stat. 2388; Pub. L. 104-191, title V, §501(a), (b), Aug. 21, 1996, 110 Stat. 2090; Pub. L. 105-34, title X, §1084(a), (b)(1), (c), title XVI, §1602(f)(1)-(3), Aug. 5, 1997, 111 Stat. 951, 952, 1094, 1095; Pub. L. 105-206, title VI, §6010(o)(1)-(3)(A), (4)(A), (5), July 22, 1998, 112 Stat. 816; Pub. L. 105-277, div. J, title IV, §4003(i), Oct. 21, 1998, 112 Stat. 2681-910.)

REFERENCES IN TEXT

The date of the enactment of this sentence, referred to in subsec. (e)(2)(B)(ii), probably means the date of enactment of Pub. L. 105-34, which was approved Aug. 5, 1997.

CODIFICATION

Another section 1084(b) of Pub. L. 105-34 amended sections 805, 807, 812, and 832 of this title. Another section 1084(c) of Pub. L. 105-34 amended section 265 of this title.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105-206, §6010(o)(1), substituted “subsection (d)” for “subsection (c)”.

Subsec. (a)(4). Pub. L. 105-206, §6010(o)(2), substituted “subsection (e)” for “subsection (d)”.

Subsec. (f)(3). Pub. L. 105-277 inserted concluding provisions.

Subsec. (f)(4)(E). Pub. L. 105-206, §6010(o)(3)(A), added subpar. (E).

Subsec. (f)(5)(A)(iv). Pub. L. 105-206, §6010(o)(4)(A), struck out at end “Any report required under the preceding sentence shall be treated as a statement referred to in section 6724(d)(1).”

Subsec. (f)(8)(A). Pub. L. 105-206, §6010(o)(5), substituted “subsection (e)(5)(B)” for “subsection (d)(5)(B)”.

1997—Subsec. (a)(1). Pub. L. 105-34, §1084(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.”

Subsec. (a)(4). Pub. L. 105-34, §1602(f)(1), added subpars. (A) and (B) and concluding provisions and struck out former subpars. (A) and (B) and concluding provisions which read as follows:

“(A) is an officer or employee of, or

“(B) is financially interested in,

any trade or business carried on by the taxpayer.”

Pub. L. 105-34, §1084(b)(1), substituted “individual.” for “individual, who—

“(A) is or was an officer or employee, or

“(B) is or was financially interested in,

any trade or business carried on (currently or formerly) by the taxpayer.”

Subsecs. (b), (c). Pub. L. 105-34, §1084(a)(2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105-34, §1084(a)(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(2)(B)(ii). Pub. L. 105-34, §1602(f)(2), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: “For purposes of subclause (II), the taxpayer shall elect an applicable period for such contract on its return of tax imposed by this chapter for its first taxable year ending on or after October 13, 1995. Such applicable period shall be for any number of months (not greater than 12) specified in the election and may not be changed by the taxpayer without the consent of the Secretary.”

Subsec. (d)(4)(B). Pub. L. 105-34, §1602(f)(3), substituted “interest in the taxpayer” for “interest in the employer”.

Subsec. (e). Pub. L. 105-34, §1084(a)(2), redesignated subsec. (d) as (e).

Subsec. (f). Pub. L. 105-34, §1084(c), added subsec. (f). 1996—Subsec. (a)(4). Pub. L. 104-191, §501(a)(1), (b)(1), in introductory provisions, substituted “Except as pro-

vided in subsection (d), any” for “Any” and inserted “, or any endowment or annuity contracts owned by the taxpayer covering any individual,” after “the life of any individual”.

Pub. L. 104-191, §501(a)(2), struck out “to the extent that the aggregate amount of such indebtedness with respect to policies covering such individual exceeds \$50,000” after “carried on by the taxpayer” in concluding provisions.

Subsec. (d). Pub. L. 104-191, §501(b)(2), added subsec. (d).

1986—Subsec. (a). Pub. L. 99-514 added par. (4) and last sentence providing that par. (4) shall apply with respect to contracts purchased after June 20, 1986.

1964—Subsec. (a). Pub. L. 88-272 added par. (3) and sentence providing that par. (3) shall apply only to contracts purchased after August 6, 1963.

Subsec. (c). Pub. L. 88-272 added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 4003(i) of Pub. L. 105-277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1084(a), (b)(1), (c) of 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.

Amendment by section 1602(f)(1)-(3) of Pub. L. 105-34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, to which such amendment relates, see section 1602(i) of Pub. L. 105-34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-191, title V, §501(c), Aug. 21, 1996, 110 Stat. 2091, as amended by Pub. L. 105-34, title XVI, §1602(f)(4), Aug. 5, 1997, 111 Stat. 1095, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to interest paid or accrued after October 13, 1995.

“(2) TRANSITION RULE FOR EXISTING INDEBTEDNESS.—

“(A) IN GENERAL.—In the case of—

“(i) indebtedness incurred before January 1, 1996,

or

“(ii) indebtedness incurred before January 1, 1997 with respect to any contract or policy entered into in 1994 or 1995,

the amendments made by this section shall not apply to qualified interest paid or accrued on such indebtedness after October 13, 1995, and before January 1, 1999.

“(B) QUALIFIED INTEREST.—For purposes of subparagraph (A), the qualified interest with respect to any indebtedness for any month is the amount of interest (otherwise deductible) which would be paid or accrued for such month on such indebtedness if—

“(i) in the case of any interest paid or accrued after December 31, 1995, indebtedness with respect to no more than 20,000 insured individuals were taken into account, and

“(ii) the lesser of the following rates of interest were used for such month:

“(I) The rate of interest specified under the terms of the indebtedness as in effect on October 13, 1995 (and without regard to modification of such terms after such date).

“(II) The applicable percentage of the rate of interest described as Moody’s Corporate Bond Yield

Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto, for such month.

For purposes of clause (i), all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (o) of section 414 of such Code shall be treated as 1 person. Subclause (II) of clause (ii) shall not apply to any month before January 1, 1996.

“(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (B), the applicable percentage is as follows:

For calendar year:	The percentage is:
1996	100 percent
1997	90 percent
1998	80 percent.”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title X, §1003(c), Oct. 22, 1986, 100 Stat. 2388, provided that: “The amendments made by this section [amending this section] shall apply to contracts purchased after June 20, 1986, in taxable years ending after such date.”

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88-272, title II, §215(c), Feb. 26, 1964, 78 Stat. 56, provided that: “The amendments made by this section [amending this section] shall apply with respect to amounts paid or accrued in taxable years beginning after December 31, 1963.”

SPREAD OF INCOME INCLUSION ON SURRENDER, ETC. OF CONTRACTS

Pub. L. 104-191, title V, §501(d), Aug. 21, 1996, 110 Stat. 2092, as amended by Pub. L. 105-34, title XVI, §1602(f)(5), Aug. 5, 1997, 111 Stat. 1095, provided that:

“(1) IN GENERAL.—If any amount is received under any life insurance policy or endowment or annuity contract described in paragraph (4) of section 264(a) of the Internal Revenue Code of 1986—

“(A) on the complete surrender, redemption, or maturity of such policy or contract during calendar year 1996, 1997, or 1998, or

“(B) in full discharge during any such calendar year of the obligation under the policy or contract which is in the nature of a refund of the consideration paid for the policy or contract, then (in lieu of any other inclusion in gross income) such amount shall be includible in gross income ratably over the 4-taxable year period beginning with the taxable year such amount would (but for this paragraph) be includible. The preceding sentence shall only apply to the extent the amount is includible in gross income for the taxable year in which the event described in subparagraph (A) or (B) occurs.

“(2) SPECIAL RULES FOR APPLYING SECTION 264.—A contract shall not be treated as—

“(A) failing to meet the requirement of section 264(c)(1) of the Internal Revenue Code of 1986, or

“(B) a single premium contract under section 264(b)(1) of such Code, solely by reason of an occurrence described in subparagraph (A) or (B) of paragraph (1) of this subsection or solely by reason of a lapse occurring after October 13, 1995, by reason of no additional premiums being received under the contract.

“(3) SPECIAL RULE FOR DEFERRED ACQUISITION COSTS.—In the case of the occurrence of any event described in subparagraph (A) or (B) of paragraph (1) of this subsection with respect to any policy or contract—

“(A) section 848 of the Internal Revenue Code of 1986 shall not apply to the unamortized balance (if any) of the specified policy acquisition expenses attributable to such policy or contract immediately before the insurance company's taxable year in which such event occurs, and

“(B) there shall be allowed as a deduction to such company for such taxable year under chapter 1 of such Code an amount equal to such unamortized balance.”

§ 265. Expenses and interest relating to tax-exempt income

(a) General rule

No deduction shall be allowed for—

(1) Expenses

Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this subtitle, or any amount otherwise allowable under section 212 (relating to expenses for production of income) which is allocable to interest (whether or not any amount of such interest is received or accrued) wholly exempt from the taxes imposed by this subtitle.

(2) Interest

Interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle.

(3) Certain regulated investment companies

In the case of a regulated investment company which distributes during the taxable year an exempt-interest dividend (including exempt-interest dividends paid after the close of the taxable year as described in section 855), that portion of any amount otherwise allowable as a deduction which the amount of the income of such company wholly exempt from taxes under this subtitle bears to the total of such exempt income and its gross income (excluding from gross income, for this purpose, capital gain net income, as defined in section 1222(9)).

(4) Interest related to exempt-interest dividends

Interest on indebtedness incurred or continued to purchase or carry shares of stock of a regulated investment company which during the taxable year of the holder thereof distributes exempt-interest dividends.

(5) Special rules for application of paragraph (2) in the case of short sales

For purposes of paragraph (2)—

(A) In general

The term “interest” includes any amount paid or incurred—

(i) by any person making a short sale in connection with personal property used in such short sale, or

(ii) by any other person for the use of any collateral with respect to such short sale.

(B) Exception where no return on cash collateral

If—

(i) the taxpayer provides cash as collateral for any short sale, and

(ii) the taxpayer receives no material earnings on such cash during the period of the sale,

subparagraph (A)(i) shall not apply to such short sale.