

104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

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.

**§ 280H. Limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years**

**(a) General rule**

If—

(1) an election by a personal service corporation under section 444 is in effect for a taxable year, and

(2) such corporation does not meet the minimum distribution requirements of subsection (c) for such taxable year,

then the deduction otherwise allowed under this chapter for applicable amounts paid or incurred by such corporation to employee-owners shall not exceed the maximum deductible amount. The preceding sentence shall not apply for purposes of subchapter G (relating to personal holding companies).

**(b) Carryover of nondeductible amounts**

If any amount is not allowed as a deduction for a taxable year under subsection (a), such amount shall be treated as paid or incurred in the succeeding taxable year.

**(c) Minimum distribution requirement**

For purposes of this section—

**(1) In general**

A personal service corporation meets the minimum distribution requirements of this subsection if the applicable amounts paid or incurred during the deferral period of the taxable year (determined without regard to subsection (b)) equal or exceed the lesser of—

(A) the product of—

(i) the applicable amounts paid during the preceding taxable year, divided by the number of months in such taxable year, multiplied by

(ii) the number of months in the deferral period of the preceding taxable year, or

(B) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

**(2) Applicable percentage**

The term “applicable percentage” means the percentage (not in excess of 95 percent) determined by dividing—

(A) the applicable amounts paid or incurred during the 3 taxable years immediately preceding the taxable year, by

(B) the adjusted taxable income of such corporation for such 3 taxable years.

**(d) Maximum deductible amount**

For purposes of this section, the term “maximum deductible amount” means the sum of—

(1) the applicable amounts paid during the deferral period, plus

(2) an amount equal to the product of—

(A) the amount determined under paragraph (1), divided by the number of months in the deferral period, multiplied by

(B) the number of months in the nondeferral period.

**(e) Disallowance of net operating loss carrybacks**

No net operating loss carryback shall be allowed to (or from) any taxable year of a personal service corporation to which an election under section 444 applies.

**(f) Other definitions and special rules**

For purposes of this section—

**(1) Applicable amount**

The term “applicable amount” means any amount paid to an employee-owner which is includible in the gross income of such employee, other than—

(A) any gain from the sale or exchange of property between the owner-employee and the corporation, or

(B) any dividend paid by the corporation.

**(2) Employee-owner**

The term “employee-owner” has the meaning given such term by section 269A(b)(2) (as modified by section 441(i)(2)).

**(3) Nondeferral and deferral periods**

**(A) Deferral period**

The term “deferral period” has the meaning given to such term by section 444(b)(4).

**(B) Nondeferral period**

The term “nondeferral period” means the portion of the taxable year of the personal service corporation which occurs after the portion of such year constituting the deferral period.

**(4) Adjusted taxable income**

The term “adjusted taxable income” means taxable income determined without regard to—

(A) any amount paid to an employee-owner which is includible in the gross income of such employee-owner, and

(B) any net operating loss carryover to the extent such carryover is attributable to amounts described in subparagraph (A).

**(5) Personal service corporation**

The term “personal service corporation” has the meaning given to such term by section 441(i)(2).

(Added Pub. L. 100-203, title X, § 10206(c)(1), Dec. 22, 1987, 101 Stat. 1330-401; amended Pub. L. 100-647, title II, § 2004(e)(2)(B), (3), (14)(A), (C), Nov. 10, 1988, 102 Stat. 3600, 3602.)

AMENDMENTS

1988—Subsecs. (c)(1)(A)(i), (d)(1). Pub. L. 100-647, § 2004(e)(14)(C), substituted “amounts paid” for “amounts paid or incurred”.

Subsec. (f)(2). Pub. L. 100-647, § 2004(e)(3), substituted “section 269A(b)(2) (as modified by section 441(i)(2))” for “section 296A(b)(2)”.

Subsec. (f)(4). Pub. L. 100-647, §2004(e)(14)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The term 'adjusted taxable income' means taxable income increased by any amount paid or incurred to an employee-owner which was includible in the gross income of such employee-owner."

Subsec. (f)(5). Pub. L. 100-647, §2004(e)(2)(B), added par. (5).

#### 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

Section applicable to taxable years beginning after Dec. 31, 1986, see section 10206(d)(1) of Pub. L. 100-203, set out as a note under section 444 of this title.

### PART X—TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS

Sec.

281. Terminal railroad corporations and their shareholders.

#### AMENDMENTS

1962—Pub. L. 87-870, §1(a), Oct. 23, 1962, 76 Stat. 1158, added part X and item 281.

### § 281. Terminal railroad corporations and their shareholders

#### (a) Computation of taxable income of terminal railroad corporations

##### (1) In general

In computing the taxable income of a terminal railroad corporation—

(A) such corporation shall not be considered to have received or accrued—

(i) the portion of any liability of any railroad corporation, with respect to related terminal services provided by such corporation, which is discharged by crediting such liability with an amount of related terminal income, or

(ii) the portion of any charge which would be made by such corporation for related terminal services provided by it, but which is not made as a result of taking related terminal income into account in computing such charge; and

(B) no deduction otherwise allowable under this chapter shall be disallowed as a result of any discharge of liability described in subparagraph (A)(i) or as a result of any computation of charges in the manner described in subparagraph (A)(ii).

##### (2) Limitation

In the case of any taxable year ending after the date of the enactment of this section, paragraph (1) shall not apply to the extent that it would (but for this paragraph) operate to create (or increase) a net operating loss for the terminal railroad corporation for the taxable year.

#### (b) Computation of taxable income of shareholders

Subject to the limitation in subsection (a)(2), in computing the taxable income of any share-

holder of a terminal railroad corporation, no amount shall be considered to have been received or accrued or paid or incurred by such shareholder as a result of any discharge of liability described in subsection (a)(1)(A)(i) or as a result of any computation of charges in the manner described in subsection (a)(1)(A)(ii).

#### (c) Agreement required

In the case of any taxable year, subsections (a) and (b) shall apply with respect to any discharge of liability described in subsection (a)(1)(A)(i), and to any computation of charges in the manner described in subsection (a)(1)(A)(ii), only if such discharge or computation (as the case may be) was provided for in a written agreement, to which all of the shareholders of the terminal railroad corporation were parties, entered into before the beginning of such taxable year.

#### (d) Definitions

For purposes of this section—

##### (1) Terminal railroad corporation

The term "terminal railroad corporation" means a domestic railroad corporation which is not a member, other than as a common parent corporation, of an affiliated group (as defined in section 1504) and—

(A) all of the shareholders of which are rail carriers subject to part A of subtitle IV of title 49;

(B) the primary business of which is the providing of railroad terminal and switching facilities and services to rail carriers subject to part A of subtitle IV of title 49 and to the shippers and passengers of such railroad corporations;

(C) a substantial part of the services of which for the taxable year is rendered to one or more of its shareholders; and

(D) each shareholder of which computes its taxable income on the basis of a taxable year beginning or ending on the same day that the taxable year of the terminal railroad corporation begins or ends.

##### (2) Related terminal income

The term "related terminal income" means the income (determined in accordance with regulations prescribed by the Secretary) of a terminal railroad corporation derived—

(A) from services or facilities of a character ordinarily and regularly provided by terminal railroad corporations for railroad corporations or for the employees, passengers, or shippers of railroad corporations;

(B) from the use by persons other than railroad corporations of portions of a facility, or a service, which is used primarily for railroad purposes;

(C) from any railroad corporation for services or facilities provided by such terminal railroad corporation in connection with railroad operations; and

(D) from the United States in payment for facilities or services in connection with mail handling.

For purposes of subparagraph (B), a substantial addition, constructed after the date of the enactment of this section, to a facility shall be treated as a separate facility.