

deemed before December 30, 1969, and more than one-half of the stock so redeemed was redeemed with property other than money.

“(5) The amendments made by subsections (a) and (b) shall not apply to a distribution of stock, by a corporation organized prior to December 1, 1969, for the principal purpose of providing an equity participation plan for employees of the corporation whose stock is being distributed (hereinafter referred to as the ‘employer corporation’) if—

“(A) the stock being distributed was owned by the distributing corporation on November 30, 1969,

“(B) the stock being redeemed was acquired before January 1, 1973, pursuant to such equity participation plan by the shareholder presenting such stock for redemption (or by a predecessor of such shareholder),

“(C) the employment of the shareholder presenting the stock for redemption (or the predecessor of such shareholder) by the employer corporation commenced before January 1, 1971,

“(D) at least 90 percent in value of the assets of the distributing corporation on November 30, 1969, consisted of common stock of the employer corporation, and

“(E) at least 50 percent of the outstanding voting stock of the employer corporation is owned by the distributing corporation at any time within the nine-year period ending one year before the date of such distribution.”

§ 312. Effect on earnings and profits

(a) General rule

Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of—

(1) the amount of money,

(2) the principal amount of the obligations of such corporation (or, in the case of obligations having original issue discount, the aggregate issue price of such obligations), and

(3) the adjusted basis of the other property, so distributed.

(b) Distributions of appreciated property

On the distribution by a corporation, with respect to its stock, of any property (other than an obligation of such corporation) the fair market value of which exceeds the adjusted basis thereof—

(1) the earnings and profits of the corporation shall be increased by the amount of such excess, and

(2) subsection (a)(3) shall be applied by substituting “fair market value” for “adjusted basis”.

For purposes of this subsection and subsection (a), the adjusted basis of any property is its adjusted basis as determined for purposes of computing earnings and profits.

(c) Adjustments for liabilities

In making the adjustments to the earnings and profits of a corporation under subsection (a) or (b), proper adjustment shall be made for—

(1) the amount of any liability to which the property distributed is subject, and

(2) the amount of any liability of the corporation assumed by a shareholder in connection with the distribution.

(d) Certain distributions of stock and securities

(1) In general

The distribution to a distributee by or on behalf of a corporation of its stock or securities,

of stock or securities in another corporation, or of property, in a distribution to which this title applies, shall not be considered a distribution of the earnings and profits of any corporation—

(A) if no gain to such distributee from the receipt of such stock or securities, or property, was recognized under this title, or

(B) if the distribution was not subject to tax in the hands of such distributee by reason of section 305(a).

(2) Stock or securities

For purposes of this subsection, the term “stock or securities” includes rights to acquire stock or securities.

(e) Repealed. Pub. L. 98-369, div. A, title I, § 61(a)(2)(B), July 18, 1984, 98 Stat. 581]

(f) Effect on earnings and profits of gain or loss and of receipt of tax-free distributions

(1) Effect on earnings and profits of gain or loss

The gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation—

(A) for the purpose of the computation of the earnings and profits of the corporation, shall (except as provided in subparagraph (B)) be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of March 1, 1913; but

(B) for purposes of the computation of the earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing taxable income under the law applicable to the year in which such sale or disposition was made. Where, in determining the adjusted basis used in computing such realized gain or loss, the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings and profits, then the latter adjustment shall be used in determining the increase or decrease above provided. For purposes of this subsection, a loss with respect to which a deduction is disallowed under section 1091 (relating to wash sales of stock or securities), or the corresponding provision of prior law, shall not be deemed to be recognized.

(2) Effect on earnings and profits of receipt of tax-free distributions

Where a corporation receives (after February 28, 1913) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings

and profits of the first corporation in the following cases:

(A) no such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made; and

(B) no such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would, but for section 307(b), be so allocated).

(g) Earnings and profits—increase in value accrued before March 1, 1913

(1) If any increase or decrease in the earnings and profits for any period beginning after February 28, 1913, with respect to any matter would be different had the adjusted basis of the property involved been determined without regard to its March 1, 1913, value, then, except as provided in paragraph (2), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(2) If the application of subsection (f) to a sale or other disposition after February 28, 1913, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding subsection (f) and in lieu of the rule provided in paragraph (1) of this subsection, the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss exceeds the adjusted basis computed without regard to the value of the property on March 1, 1913, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(h) Allocation in certain corporate separations and reorganizations

(1) Section 355

In the case of a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under regulations prescribed by the Secretary.

(2) Section 368(a)(1)(C) or (D)

In the case of a reorganization described in subparagraph (C) or (D) of section 368(a)(1), proper allocation with respect to the earnings and profits of the acquired corporation shall, under regulations prescribed by the Secretary, be made between the acquiring corporation and the acquired corporation (or any corporation which had control of the acquired corporation before the reorganization).

(i) Distribution of proceeds of loan insured by the United States

If a corporation distributes property with respect to its stock and if, at the time of distribution—

(1) there is outstanding a loan to such corporation which was made, guaranteed, or insured by the United States (or by any agency or instrumentality thereof), and

(2) the amount of such loan so outstanding exceeds the adjusted basis of the property constituting security for such loan,

then the earnings and profits of the corporation shall be increased by the amount of such excess, and (immediately after the distribution) shall be decreased by the amount of such excess. For purposes of paragraph (2), the adjusted basis of the property at the time of distribution shall be determined without regard to any adjustment under section 1016(a)(2) (relating to adjustment for depreciation, etc.). For purposes of this subsection, a commitment to make, guarantee, or insure a loan shall be treated as the making, guaranteeing, or insuring of a loan.

[j) Repealed. Pub. L. 108-357, title IV, § 413(c)(4), Oct. 22, 2004, 118 Stat. 1507]

(k) Effect of depreciation on earnings and profits

(1) General rule

For purposes of computing the earnings and profits of a corporation for any taxable year beginning after June 30, 1972, the allowance for depreciation (and amortization, if any) shall be deemed to be the amount which would be allowable for such year if the straight line method of depreciation had been used for each taxable year beginning after June 30, 1972.

(2) Exception

If for any taxable year a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a) and which is the unit-of-production method or other method not expressed in a term of years, then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of the straight line method).

(3) Exception for tangible property

(A) In general

Except as provided in subparagraph (B), in the case of tangible property to which section 168 applies, the adjustment to earnings and profits for depreciation for any taxable year shall be determined under the alternative depreciation system (within the meaning of section 168(g)(2)).

(B) Treatment of amounts deductible under section 179, 179B, 179C, 179D, or 179E

For purposes of computing the earnings and profits of a corporation, any amount deductible under section 179, 179B, 179C, 179D, or 179E shall be allowed as a deduction ratably over the period of 5 taxable years (beginning with the taxable year for which such amount is deductible under section 179, 179B, 179C, 179D, or 179E, as the case may be).

(4) Certain foreign corporations

The provisions of paragraph (1) shall not apply in computing the earnings and profits of a foreign corporation for any taxable year for which less than 20 percent of the gross income from all sources of such corporation is derived from sources within the United States.

(5) Basis adjustment not taken into account

In computing the earnings and profits of a corporation for any taxable year, the allowance for depreciation (and amortization, if any) shall be computed without regard to any basis adjustment under section 50(c).

(l) Discharge of indebtedness income**(1) Does not increase earnings and profits if applied to reduce basis**

The earnings and profits of a corporation shall not include income from the discharge of indebtedness to the extent of the amount applied to reduce basis under section 1017.

(2) Reduction of deficit in earnings and profits in certain cases

If—

(A) the interest of any shareholder of a corporation is terminated or extinguished in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), and

(B) there is a deficit in the earnings and profits of the corporation,

then such deficit shall be reduced by an amount equal to the paid-in capital which is allocable to the interest of the shareholder which is so terminated or extinguished.

(m) No adjustment for interest paid on certain registration-required obligations not in registered form

The earnings and profits of any corporation shall not be decreased by any interest with respect to which a deduction is not or would not be allowable by reason of section 163(f), unless at the time of issuance the issuer is a foreign corporation that is not a controlled foreign corporation (within the meaning of section 957) and the issuance did not have as a purpose the avoidance of section 163(f) of this subsection¹

(n) Adjustments to earnings and profits to more accurately reflect economic gain and loss

For purposes of computing the earnings and profits of a corporation, the following adjustments shall be made:

(1) Construction period carrying charges**(A) In general**

In the case of any amount paid or incurred for construction period carrying charges—

(i) no deduction shall be allowed with respect to such amount, and

(ii) the basis of the property with respect to which such charges are allocable shall be increased by such amount.

(B) Construction period carrying charges defined

For purposes of this paragraph, the term “construction period carrying charges” means all—

(i) interest paid or accrued on indebtedness incurred or continued to acquire, construct, or carry property,

(ii) property taxes, and

(iii) similar carrying charges,

to the extent such interest, taxes, or charges are attributable to the construction period for such property and would be allowable as a deduction in determining taxable income under this chapter for the taxable year in which paid or incurred.

(C) Construction period

The term “construction period” has the meaning given the term production period under section 263A(f)(4)(B).²

(2) Intangible drilling costs and mineral exploration and development costs**(A) Intangible drilling costs**

Any amount allowable as a deduction under section 263(c) in determining taxable income (other than costs incurred in connection with a nonproductive well)—

(i) shall be capitalized, and

(ii) shall be allowed as a deduction ratably over the 60-month period beginning with the month in which such amount was paid or incurred.

(B) Mineral exploration and development costs

Any amount allowable as a deduction under section 616(a) or 617 in determining taxable income—

(i) shall be capitalized, and

(ii) shall be allowed as a deduction ratably over the 120-month period beginning with the later of—

(I) the month in which production from the deposit begins, or

(II) the month in which such amount was paid or incurred.

(3) Certain amortization provisions not to apply

Sections 173 and 248 shall not apply.

(4) LIFO inventory adjustments**(A) In general**

Earnings and profits shall be increased or decreased by the amount of any increase or decrease in the LIFO recapture amount as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the 1st taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary.

(B) LIFO recapture amount

For purposes of this paragraph, the term “LIFO recapture amount” means the amount (if any) by which—

(i) the inventory amount of the inventory assets under the first-in, first-out method authorized by section 471, exceeds

(ii) the inventory amount of such assets under the LIFO method.

¹ Subsec. (m) was enacted without a period at the end.

² See References in Text note below.

(C) Definitions

For purposes of this paragraph—

(i) LIFO method

The term “LIFO method” means the method authorized by section 472 (relating to last-in, first-out inventories).

(ii) Inventory assets

The term “inventory assets” means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(iii) Inventory amount

The inventory amount of assets under the first-in, first-out method authorized by section 471 shall be determined—

(I) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

(II) if subclause (I) does not apply, by using cost or market, whichever is lower.

(5) Installment sales

In the case of any installment sale, earnings and profits shall be computed as if the corporation did not use the installment method.

(6) Completed contract method of accounting

In the case of a taxpayer who uses the completed contract method of accounting, earnings and profits shall be computed as if such taxpayer used the percentage of completion method of accounting.

(7) Redemptions

If a corporation distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of such corporation accumulated after February 28, 1913, attributable to the stock so redeemed.

(8) Special rule for certain foreign corporations

In the case of a foreign corporation described in subsection (k)(4)—

(A) paragraphs (4) and (6) shall apply only in the case of taxable years beginning after December 31, 1985, and

(B) paragraph (5) shall apply only in the case of taxable years beginning after December 31, 1987.

(o) Definition of original issue discount and issue price for purposes of subsection (a)(2)

For purposes of subsection (a)(2), the terms “original issue discount” and “issue price” have the same respective meanings as when used in subpart A of part V of subchapter P of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 95; Pub. L. 87-403, §3(a), Feb. 2, 1962, 76 Stat. 6; Pub. L. 87-834, §13(f)(3), 14(b)(1), Oct. 16, 1962, 76 Stat. 1035, 1040; Pub. L. 88-272, title II, §231(b)(3), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88-484, §1(b)(1), Aug. 22, 1964, 78 Stat. 597; Pub. L. 89-570, §1(b)(3), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91-172, title II, §211(b)(3), title

IV, §442(a), title IX, §905(b)(2), Dec. 30, 1969, 83 Stat. 570, 628, 714; Pub. L. 94-455, title II, §205(c)(1)(D), title XIX, §§1901(a)(43), (b)(32)(B)(i), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1771, 1800, 1834; Pub. L. 95-628, §3(c), Nov. 10, 1978, 92 Stat. 3627; Pub. L. 96-589, §5(f), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97-34, title II, §206(a), (b), Aug. 13, 1981, 95 Stat. 224; Pub. L. 97-248, title II, §§205(a)(3), 222(e)(3), title III, §310(b)(3), Sept. 3, 1982, 96 Stat. 429, 480, 597; Pub. L. 97-448, title III, §306(a)(6)(B), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 98-369, div. A, title I, §§61(a)-(c)(1), 63(b), 111(e)(5), July 18, 1984, 98 Stat. 579-581, 583, 633; Pub. L. 99-121, title I, §103(b)(1)(C), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99-514, title II, §§201(b), (d)(6), 241(b)(1), title VI, §631(e)(1), title VIII, §803(b)(3), title XVIII, §1804(f)(1)(A)-(E), 1809(a)(2)(C)(ii), Oct. 22, 1986, 100 Stat. 2137, 2141, 2181, 2273, 2355, 2804, 2805, 2819; Pub. L. 100-647, title I, §§1002(a)(3), 1018(d)(4), (u)(4), Nov. 10, 1988, 102 Stat. 3353, 3578, 3590; Pub. L. 101-239, title VII, §§7611(f)(5)(A), 7811(m)(2), Dec. 19, 1989, 103 Stat. 2373, 2412; Pub. L. 101-508, title XI, §§11812(b)(5), 11813(b)(14), Nov. 5, 1990, 104 Stat. 1388-535, 1388-555; Pub. L. 105-34, title XVI, §1604(a)(2), Aug. 5, 1997, 111 Stat. 1097; Pub. L. 108-357, title III, §338(b)(3), title IV, §413(c)(4), (5), Oct. 22, 2004, 118 Stat. 1481, 1507; Pub. L. 109-58, title XIII, §§1323(b)(3), 1331(b)(5), Aug. 8, 2005, 119 Stat. 1015, 1024; Pub. L. 109-432, div. A, title IV, §404(b)(2), Dec. 20, 2006, 120 Stat. 2956; Pub. L. 113-295, div. A, title II, §221(a)(34)(F), (49), Dec. 19, 2014, 128 Stat. 4042, 4045.)

REFERENCES IN TEXT

Section 263A(f)(4)(B), referred to in subsec. (n)(1)(C), was redesignated section 263A(f)(5)(B) by Pub. L. 115-97, title I, §13801(a)(1), Dec. 22, 2017, 131 Stat. 2169.

AMENDMENTS

2014—Subsec. (d)(2), (3). Pub. L. 113-295, §221(a)(49), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “In the case of a distribution of stock or securities, or property, to which section 115(h) of the Internal Revenue Code of 1939 (or the corresponding provision of prior law) applied, the effect on earnings and profits of such distribution shall be determined under such section 115(h), or the corresponding provision of prior law, as the case may be.”

Subsec. (k)(3)(B). Pub. L. 113-295, §221(a)(34)(F), struck out “179A,” after “section 179,” in heading and in two places in text.

2006—Subsec. (k)(3)(B). Pub. L. 109-432 substituted “179D, or 179E” for “or 179D” in heading and two places in text.

2005—Subsec. (k)(3)(B). Pub. L. 109-58, §1331(b)(5), substituted “179, 179A, 179B, 179C, or 179D” for “179, 179A, 179B, or 179C” in heading and two places in text.

Pub. L. 109-58, §1323(b)(3), substituted “179, 179A, 179B, or 179C” for “179 179A, or 179B” in heading and two places in text.

2004—Subsec. (j). Pub. L. 108-357, §413(c)(4), struck out subsec. (j) which related to earnings and profits of foreign investment companies.

Subsec. (k)(3)(B). Pub. L. 108-357, §338(b)(3), substituted “179A, or 179B” for “or 179A” in heading and two places in text.

Subsec. (m). Pub. L. 108-357, §413(c)(5), struck out “, a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)” before “and the issuance”.

1997—Subsec. (k)(3)(B). Pub. L. 105-34, in heading substituted “179 or 179A” for “179” and in text substituted “section 179 or 179A shall” for “section 179 shall” and

“section 179 or 179A, as the case may be)” for “section 179”.

1990—Subsec. (k)(2). Pub. L. 101-508, §11812(b)(5), substituted heading for one which read: “Exceptions” and amended text generally. Prior to amendment, text read as follows: “If for any taxable year beginning after June 30, 1972, a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a), and which is not—

“(A) a declining balance method,

“(B) the sum of the years-digit method, or

“(C) any other method allowable solely by reason of the application of subsection (b)(4) or (j)(1)(C) of section 167,

then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of under the straight line method).”

Subsec. (k)(5). Pub. L. 101-508, §11813(b)(14), substituted “section 50(c)” for “section 48(q)”.

1989—Subsec. (b). Pub. L. 101-239, §7811(m)(2), made clarifying amendment to directory language of Pub. L. 100-647, §1018(d)(4), see 1988 Amendment note below.

Subsec. (n)(2)(A)(ii). Pub. L. 101-239, §7611(f)(5)(A), substituted “in which such amount was paid or incurred” for “in which the production from the well begins”.

1988—Subsec. (b). Pub. L. 100-647, §1018(d)(4), as amended by Pub. L. 101-239, §7811(m)(2), substituted “of any property (other than an obligation of such corporation)” for “of any property” in introductory provisions.

Subsec. (k)(4). Pub. L. 100-647, §1002(a)(3), substituted “paragraph (1)” for “paragraphs (1) and (3)”.

Subsec. (n)(1)(B). Pub. L. 100-647, §1018(u)(4), made technical amendment to directory language of Pub. L. 99-514, §803(b)(3)(A). See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99-514, §1804(f)(1)(A), amended subsec. (b) generally, substituting provisions relating to distributions of appreciated property for provisions relating to distribution of certain inventory assets.

Subsec. (c). Pub. L. 99-514, §1804(f)(1)(B), (C), struck out “, etc.” after “liabilities” in heading and struck out par. (3) which read as follows: “any gain recognized to the corporation on the distribution.”

Subsec. (k)(3). Pub. L. 99-514, §201(b), amended par. (3) generally, substituting provisions relating to tangible property to which section 168 applies and amounts deductible under section 179 for provisions relating to recovery property within the meaning of section 168, amounts deductible under section 179, and flexibility if a different recovery percentage is elected under section 168 based on a longer recovery period.

Subsec. (k)(3)(A). Pub. L. 99-514, §1809(a)(2)(C)(ii), in subpar. (A), struck out “and rules similar to the rules under the next to the last sentence of section 168(b)(2)(A) and section 168(b)(2)(B) shall apply” after “low-income housing”.

Subsec. (k)(4). Pub. L. 99-514, §201(d)(6), struck out last sentence “In determining the earnings and profits of such corporation in the case of recovery property (within the meaning of section 168), the rules of section 168(f)(2) shall apply.”

Subsec. (n)(1)(B). Pub. L. 99-514, §803(b)(3)(A), as amended by Pub. L. 100-647, §1018(u)(4), struck out “(determined without regard to section 189)” after “incurred”.

Subsec. (n)(1)(C). Pub. L. 99-514, §803(b)(3)(B), added subpar. (C) and struck out former subpar. (C) which read as follows: “The term ‘construction period’ has the meaning given such term by section 189(e)(2) (determined without regard to any real property limitation).”

Subsec. (n)(3). Pub. L. 99-514, §241(b)(1), struck out “, 177,” after “sections 173”.

Subsec. (n)(4). Pub. L. 99-514, §631(e)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “Earnings and profits shall be increased or decreased by the amount of any increase or decrease in

the LIFO recapture amount (determined under section 336(b)(3)) as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the first taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary.”

Pub. L. 99-514, §1804(f)(1)(D), redesignated par. (5) as (4). Former par. (4), relating to certain untaxed appreciation of distributed property, was struck out.

Subsec. (n)(5) to (7). Pub. L. 99-514, §1804(f)(1)(D), redesignated pars. (6) to (8) as (5) to (7), respectively. Former par. (5) redesignated (4).

Subsec. (n)(8), (9). Pub. L. 99-514, §1804(f)(1)(D), (E), redesignated par. (9) as (8) and substituted provisions of subpars. (A) and (B) for “paragraphs (5), (6), and (7) shall apply only in the case of taxable years beginning after December 31, 1985.” Former par. (8) redesignated (7).

1985—Subsec. (k)(3)(A). Pub. L. 99-121 substituted “19-year real property” for “18-year real property” wherever appearing.

1984—Subsec. (a)(2). Pub. L. 98-369, §61(c)(1)(A), inserted “(or, in the case of obligations having original issue discount, the aggregate issue price of such obligations)”.

Subsec. (e). Pub. L. 98-369, §61(a)(2)(B), struck out subsec. (e) which provided: “In the case of amounts distributed in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to capital account shall not be treated as a distribution of earnings and profits.”

Subsec. (h). Pub. L. 98-369, §63(b), amended subsec. (h) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (j)(3). Pub. L. 98-369, §61(a)(2)(A), struck out par. (3) which provided: “If a foreign investment company (as defined in section 1246) distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of the company accumulated after February 28, 1913, attributable to the stock so redeemed.”

Subsec. (k)(3)(A). Pub. L. 98-369, §111(e)(5), substituted “18-year real property and low-income housing” for “15-year real property” in three places.

Pub. L. 98-369, §61(b), substituted “40 years” for “35 years” in table item relating to 15-year real property. Directory language that table be amended by substituting “40 years” for “35 years” in item relating to 15-year real property and 20-year real property, was executed by making the substitution in item relating to 15-year real property. The table contained no item relating to 20-year real property.

Subsec. (n). Pub. L. 98-369, §61(a)(1), added subsec. (n). Subsec. (o). Pub. L. 98-369, §61(c)(1)(B), added subsec. (o).

1983—Subsec. (j)(3). Pub. L. 97-448 substituted “Redemptions” for “Partial liquidations and redemptions” in heading, and in text struck out “in partial liquidation or” after “distributes amounts”.

1982—Subsec. (e). Pub. L. 97-248, §222(e)(3), struck out “partial liquidations and” in heading, and in text struck out “in partial liquidation (whether before, on, or after June 22, 1954) or” after “amounts distributed”.

Subsec. (k)(5). Pub. L. 97-248, §205(a)(3), added par. (5).

Subsec. (m). Pub. L. 97-248, §310(b)(3), added subsec. (m).

1981—Subsec. (k)(3), (4). Pub. L. 97-34 added par. (3), redesignated former par. (3) as (4) substituted “The provisions of paragraphs (1) and (3)” for “The provisions of paragraph (1)”, and inserted provision that the rules of section 168(f)(2) shall apply in determining the earnings and profits of the corporation in the case of recovery property (within the meaning of section 168).

1980—Subsec. (l). Pub. L. 96-589 added subsec. (l).

1978—Subsec. (c)(3). Pub. L. 95-628 substituted “gain recognized to the corporation on the distribution” for “gain to the corporation recognized under subsection

(b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)”.

1976—Subsec. (c)(3). Pub. L. 94-455, § 205(c)(1)(D), substituted “1252(a), or 1254(a)” for “or 1252(a)”.

Subsec. (d)(1). Pub. L. 94-455, § 1901(a)(43)(A), substituted “this title” for “this Code” wherever appearing.

Subsec. (h). Pub. L. 94-455, §§ 1901(a)(43)(B), 1906(b)(13)(A), redesignated subsec. (i) as (h) and struck out “or his delegate” after “Secretary”. Former subsec. (h), which related to earnings and profits of personal service corporations, was struck out.

Subsec. (i). Pub. L. 94-455, § 1901(a)(43)(B), (C), redesignated subsec. (j) as (i), and, among other changes, substituted “paragraph (2)” for “subparagraph (B) of the preceding sentence” and “of this subsection” for “of this paragraph”, and struck out provisions relating to the effective date of this subsec. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 94-455, §§ 1901(a)(43)(D), (b)(32)(B)(i), 1906(b)(13)(A), redesignated subsec. (l) as (j), struck out “or his delegate” after “Secretary” in par. (1) and in par. (3) provision relating to the effective date of such paragraph. Former subsec. (j) redesignated (i).

Subsec. (k). Pub. L. 94-455, §§ 1901(b)(32)(B)(i), 1906(b)(13)(A), redesignated subsec. (m) as (k) and struck out “or his delegate” after “Secretary” in par. (2). Former subsec. (k), relating to special adjustment on disposition of antitrust stock received as a dividend, was struck out.

Subsec. (l). Pub. L. 94-455, § 1901(b)(32)(B)(i), redesignated subsec. (l) as (j).

Subsec. (m). Pub. L. 94-455, § 1901(b)(32)(B)(i), redesignated subsec. (m) as (k).

1969—Subsec. (c)(3). Pub. L. 91-172, §§ 211(b)(3), 905(b)(2), substituted “1250(a), 1251(c), or 1252(a)”, for “or 1250(a)” and inserted reference to section 311(d).

Subsec. (m). Pub. L. 91-172, § 442(a), added subsec. (m).

1966—Subsec. (c)(3). Pub. L. 89-570 inserted reference to section 617(d)(1).

1964—Subsec. (c)(3). Pub. L. 88-484 authorized adjustment for amount of gain recognized under section 341(f).

Pub. L. 88-272 inserted reference to section 1250(a).
1962—Subsec. (c)(3). Pub. L. 87-834, § 13(f)(3), included any gain recognized under section 1245(a).

Subsec. (k). Pub. L. 87-403 added subsec. (k).

Subsec. (l). Pub. L. 87-834, § 14(b)(1), added subsec. (l).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable to costs paid or incurred after Dec. 20, 2006, see section 404(c) of Pub. L. 109-432, set out as an Effective Date note under section 179E of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1323(b)(3) of Pub. L. 109-58 applicable to properties placed in service after Aug. 8, 2005, see section 1323(c) of Pub. L. 109-58, set out as an Effective Date note under section 179C of this title.

Amendment by section 1331(b)(5) of Pub. L. 109-58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109-58, set out as an Effective Date note under section 179D of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 338(b)(3) of Pub. L. 108-357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108-357, set out as an Effective Date note under section 179B of this title.

Amendment by section 413(c)(4), (5) of Pub. L. 108-357 applicable to taxable years of foreign corporations be-

ginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the amendments made by section 1913 of the Energy Policy Act of 1992, Pub. L. 102-486, see section 1604(a)(4) of Pub. L. 105-34, set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(5) of Pub. L. 101-508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99-514, see section 11812(c) of Pub. L. 101-508, set out as a note under section 42 of this title.

Amendment by section 11813(b)(14) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7611(f)(5)(A) of Pub. L. 101-239 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1989, see section 7611(g)(2) of Pub. L. 101-239, set out as a note under section 56 of this title.

Amendment by section 7811(m)(2) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(3) of Pub. L. 99-514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99-514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101-239, set out as an Effective Date note under section 263A of this title.

Amendment by section 201(b), (d)(6) of Pub. L. 99-514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99-514, set out as a note under section 168 of this title.

Amendment by section 201(b), (d)(6) of Pub. L. 99-514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99-514, set out as a note under section 46 of this title.

Amendment by section 241(b)(1) of Pub. L. 99-514 applicable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 241(c) of Pub. L. 99-514, set out as an Effective Date of Repeal note under former section 177 of this title.

Amendment by section 631(e)(1) of Pub. L. 99-514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99-514, set out as an Effective Date note under section 336 of this title.

Amendment by section 803(b)(3) of Pub. L. 99-514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99-514, set out as an Effective Date note under section 263A of this title.

Amendment by sections 1804(f)(1)(A)-(E) and 1809(a)(2)(C)(ii) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Pub. L. 99-514, title XVIII, §1804(f)(3), Oct. 22, 1986, 100 Stat. 2805, provided that: "Paragraph (7) of section 312(n) of the Internal Revenue Code of 1954 [now 1986] (as redesignated by paragraph (1)(D) of this subsection), and the amendments made by section 61(a)(2) of the Tax Reform Act of 1984 [amending this section], shall apply to distributions in taxable years beginning after September 30, 1984."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, see section 105(b) of Pub. L. 99-121, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §61(e)(1)-(3), July 18, 1984, 98 Stat. 582, 583, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) ADJUSTMENTS TO EARNINGS AND PROFITS.—

"(A) PARAGRAPHS (1), (2), AND (3) OF SECTION 312(n).—The provisions of paragraphs (1), (2), and (3) of section 312(n) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to amounts paid or incurred in taxable years beginning after September 30, 1984.

"(B) PARAGRAPH (4) OF SECTION 312(n).—The provisions of paragraph (4) of section 312(n) of such Code (as so added) shall apply to distributions after September 30, 1984; except that such provisions shall not apply to any distribution to which the amendments made by section 54(a) of this Act [amending section 311 of this title] do not apply.

"(C) LIFO INVENTORY.—The provisions of paragraph (5) of section 312(n) of such Code (as so added) shall apply to taxable years beginning after September 30, 1984.

"(D) INSTALLMENT SALES.—The provisions of paragraph (6) of section 312(n) of such Code (as so added) shall apply to sales after September 30, 1984, in taxable years ending after such date.

"(E) COMPLETED CONTRACT METHOD.—The provisions of paragraph (7) of section 312(n) of such Code (as so added) shall apply to contracts entered into after September 30, 1984, in taxable years ending after such date.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to property placed in service in taxable years beginning after September 30, 1984.

"(3) SUBSECTION (c).—The amendments made by subsection (c) [amending this section and section 1275 of

this title] shall apply with respect to distributions declared after March 15, 1984, in taxable years ending after such date."

Amendment by section 61(a)(2) of Pub. L. 98-369 applicable to distributions in taxable years beginning after Sept. 30, 1984, see section 1804(f)(3) of Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note above.

Pub. L. 99-514, title XVIII, §1804(f)(1)(F), Oct. 22, 1986, 100 Stat. 2805, provided that: "Any reference in subsection (e) of section 61 of the Tax Reform Act of 1984 [set out above] to a paragraph of section 312(n) of the Internal Revenue Code of 1954 [now 1986] shall be treated as a reference to such paragraph as in effect before its redesignation by subparagraph (D) [see 1986 Amendment note above]."

Pub. L. 98-369, div. A, title I, §63(c), July 18, 1984, 98 Stat. 584, provided that: "The amendment made by this section [amending this section and section 368 of this title] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 111(e)(5) of Pub. L. 98-369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98-369, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 311(d) of Pub. L. 97-448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 205(a)(3) of Pub. L. 97-248 applicable to periods after Dec. 31, 1982, under rules similar to the rules of section 48(m) of this title, with certain qualifications, see section 205(c)(1) of Pub. L. 97-248, set out as an Effective Date note under section 196 of this title.

Amendment by section 222(e)(3) of Pub. L. 97-248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97-248, set out as a note under section 302 of this title.

Amendment by section 310(b)(3) of Pub. L. 97-248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97-248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in proceedings in bankruptcy cases or similar judicial proceedings or in proceedings under Title 11, Bankruptcy, commencing on or before Dec. 31, 1980, except as otherwise provided, see section 7 of Pub. L. 96-589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-628 applicable to distributions made after Nov. 10, 1978, see section 3(d) of Pub. L. 95-628, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(1)(D) of Pub. L. 94-455 effective for taxable years ending after Dec. 31, 1975, see

section 205(e) of Pub. L. 94-455, set out as a note under section 1254 of this title.

Amendment by section 1901(a)(43) of Pub. L. 94-455 effective for 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.

Amendment by section 1901(b)(32) of Pub. L. 94-455 effective for 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 1969 AMENDMENT

Amendment by section 211(b)(3) of Pub. L. 91-172 applicable to taxable years beginning after December 31, 1969, see section 211(c) of Pub. L. 91-172, set out as a note under section 301 of this title.

Amendment by section 905(b)(2) Pub. L. 91-172 effective with respect to distributions made after Nov. 30, 1969, see section 905(c) of Pub. L. 91-172, set out as a note under section 311 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89-570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-484 applicable with respect to transactions after Aug. 22, 1964 in taxable years ending after such date, see section 2 of Pub. L. 88-484, set out as a note under section 301 of this title.

Amendment by Pub. L. 88-272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88-272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(f)(3) of Pub. L. 87-834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87-834, set out as an Effective Date note under section 1245 of this title.

Pub. L. 87-834, §14(c), Oct. 16, 1962, 76 Stat. 1041, provided that: "The amendments made by this section [enacting sections 1246 and 1247 of this title and amending this section and sections 751 and 1223 of this title] shall apply with respect to taxable years beginning after December 31, 1962."

Pub. L. 87-403, §3(g), Feb. 2, 1962, 76 Stat. 8, provided that: "The amendments made by this section [amending this section and sections 535, 543, 545, 556 and 561 of this title] shall apply only with respect to distributions made after the date of the enactment of this Act [Feb. 2, 1962]."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K 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.

SUBPART C—DEFINITIONS; CONSTRUCTIVE OWNERSHIP OF STOCK

Sec.
316. Dividend defined.

Sec.
317. Other definitions.
318. Constructive ownership of stock.

§ 316. Dividend defined

(a) General rule

For purposes of this subtitle, the term "dividend" means any distribution of property made by a corporation to its shareholders—

- (1) out of its earnings and profits accumulated after February 28, 1913, or
- (2) out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

Except as otherwise provided in this subtitle, every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits. To the extent that any distribution is, under any provision of this subchapter, treated as a distribution of property to which section 301 applies, such distribution shall be treated as a distribution of property for purposes of this subsection.

(b) Special rules

(1) Certain insurance company dividends

The definition in subsection (a) shall not apply to the term "dividend" as used in subchapter L in any case where the reference is to dividends of insurance companies paid to policyholders as such.

(2) Distributions by personal holding companies

(A) In the case of a corporation which—

(i) under the law applicable to the taxable year in which the distribution is made, is a personal holding company (as defined in section 542), or

(ii) for the taxable year in respect of which the distribution is made under section 563(b) (relating to dividends paid after the close of the taxable year), or section 547 (relating to deficiency dividends), or the corresponding provisions of prior law, is a personal holding company under the law applicable to such taxable year,

the term "dividend" also means any distribution of property (whether or not a dividend as defined in subsection (a)) made by the corporation to its shareholders, to the extent of its undistributed personal holding company income (determined under section 545 without regard to distributions under this paragraph) for such year.

(B) For purposes of subparagraph (A), the term "distribution of property" includes a distribution in complete liquidation occurring within 24 months after the adoption of a plan of liquidation, but—

- (i) only to the extent of the amounts distributed to distributees other than corporate shareholders, and
- (ii) only to the extent that the corporation designates such amounts as a dividend