

§ 565. Consent dividends

(a) General rule

If any person owns consent stock (as defined in subsection (f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with regulations prescribed by the Secretary, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in subsection (b), constitute a consent dividend for purposes of section 561 (relating to the deduction for dividends paid).

(b) Limitations

A consent dividend shall not include—

(1) an amount specified in a consent which, if distributed in money, would constitute, or be part of, a distribution which would be disqualified for purposes of the dividends paid deduction under section 562(c) (relating to preferential dividends), or

(2) an amount specified in a consent which would not constitute a dividend (as defined in section 316) if the total amounts specified in consents filed by the corporation had been distributed in money to shareholders on the last day of the taxable year of such corporation.

(c) Effect of consent

The amount of a consent dividend shall be considered, for purposes of this title—

(1) as distributed in money by the corporation to the shareholder on the last day of the taxable year of the corporation, and

(2) as contributed to the capital of the corporation by the shareholder on such day.

(d) Consent dividends and other distributions

If a distribution by a corporation consists in part of consent dividends and in part of money or other property, the entire amount specified in the consents and the amount of such money or other property shall be considered together for purposes of applying this title.

(e) Nonresident aliens and foreign corporations

In the case of a consent dividend which, if paid in money would be subject to the provisions of section 1441 (relating to withholding of tax on nonresident aliens) or section 1442 (relating to withholding of tax on foreign corporations), this section shall not apply unless the consent is accompanied by money, or such other medium of payment as the Secretary may by regulations authorize, in an amount equal to the amount that would be required to be deducted and withheld under sections 1441 or 1442 if the consent dividend had been, on the last day of the taxable year of the corporation, paid to the shareholder in money as a dividend. The amount accompanying the consent shall be credited against the tax imposed by this subtitle on the shareholder.

(f) Definitions

(1) Consent stock

Consent stock, for purposes of this section, means the class or classes of stock entitled, after the payment of preferred dividends, to a share in the distribution (other than in com-

plete or partial liquidation) within the taxable year of all the remaining earnings and profits, which share constitutes the same proportion of such distribution regardless of the amount of such distribution.

(2) Preferred dividends

Preferred dividends, for purposes of this section, means a distribution (other than in complete or partial liquidation), limited in amount, which must be made on any class of stock before a further distribution (other than in complete or partial liquidation) of earnings and profits may be made within the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 200; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (e). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

Subchapter H—Banking Institutions

Part

- I. Rules of general application to banking institutions.
- II. Mutual savings banks, etc.

AMENDMENTS

1976—Pub. L. 94-455, title XIX, §1901(b)(20)(C), Oct. 4, 1976, 90 Stat. 1797, struck out item for part III “Bank affiliates”.

PART I—RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

Sec.

- 581. Definition of bank.
- 582. Bad debts, losses, and gains with respect to securities held by financial institutions.
- [583. Repealed.]
- 584. Common trust funds.
- 585. Reserves for losses on loans of banks.
- [586. Repealed.]

AMENDMENTS

1986—Pub. L. 99-514, title IX, §901(d)(4)(H), Oct. 22, 1986, 100 Stat. 2380, struck out item 586 “Reserves for losses on loans of small business investment companies, etc.”

1976—Pub. L. 94-455, title XIX, §1901(b)(18), Oct. 4, 1976, 90 Stat. 1796, struck out item 583 “Deductions of dividends paid on certain preferred stock”.

1969—Pub. L. 91-172, title IV, §431(c)(2), Dec. 30, 1969, 83 Stat. 620, substituted “Bad debts, losses, and gains with respect to securities held by financial institutions”, for “Bad debt and loss deduction with respect to securities held by banks” in item 582, and added items 585 and 586.

§ 581. Definition of bank

For purposes of sections 582 and 584, the term “bank” means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having su-

pervision over banking institutions. Such term also means a domestic building and loan association.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Pub. L. 87-722, §5, Sept. 28, 1962, 76 Stat. 670; Pub. L. 94-455, title XIX, §1901(c)(5), Oct. 4, 1976, 90 Stat. 1803.)

AMENDMENTS

1976—Pub. L. 94-455 substituted “or of any State” for “of any State, or of any Territory” after “District of Columbia” and struck out “, Territorial,” after “examination by State”.

1962—Pub. L. 87-722 substituted “authority of the Comptroller of the Currency” for “section 11(k) of the Federal Reserve Act (38 Stat. 262; 12 U.S.C. 248(k))”.

§ 582. Bad debts, losses, and gains with respect to securities held by financial institutions

(a) Securities

Notwithstanding sections 165(g)(1) and 166(e), subsections (a) and (b) of section 166 (relating to allowance of deduction for bad debts) shall apply in the case of a bank to a debt which is evidenced by a security as defined in section 165(g)(2)(C).

(b) Worthless stock in affiliated bank

For purposes of section 165(g)(1), where the taxpayer is a bank and owns directly at least 80 percent of each class of stock of another bank, stock in such other bank shall not be treated as a capital asset.

(c) Bond, etc., losses and gains of financial institutions

(1) General rule

For purposes of this subtitle, in the case of a financial institution referred to in paragraph (2), the sale or exchange of a bond, debenture, note, or certificate or other evidence of indebtedness shall not be considered a sale or exchange of a capital asset. For purposes of the preceding sentence, any regular or residual interest in a REMIC shall be treated as an evidence of indebtedness.

(2) Financial institutions to which paragraph (1) applies

(A) In general

For purposes of paragraph (1), the financial institutions referred to in this paragraph are—

- (i) any bank (and any corporation which would be a bank except for the fact it is a foreign corporation),
- (ii) any financial institution referred to in section 591,
- (iii) any small business investment company operating under the Small Business Investment Act of 1958, and
- (iv) any business development corporation.

(B) Business development corporation

For purposes of subparagraph (A), the term “business development corporation” means a corporation which was created by or pursuant to an act of a State legislature for purposes of promoting, maintaining, and assisting the economy and industry within such

State on a regional or statewide basis by making loans to be used in trades and businesses which would generally not be made by banks within such region or State in the ordinary course of their business (except on the basis of a partial participation), and which is operated primarily for such purposes.

(C) Limitations on foreign banks

In the case of a foreign corporation referred to in subparagraph (A)(i), paragraph (1) shall only apply to gains and losses which are effectively connected with the conduct of a banking business in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Pub. L. 85-866, title I, §34, Sept. 2, 1958, 72 Stat. 1632; Pub. L. 91-172, title IV, §433(a), (c), Dec. 30, 1969, 83 Stat. 623, 624; Pub. L. 94-455, title X, §1044(a), title XIV, §1402(b)(1)(G), (2), Oct. 4, 1976, 90 Stat. 1642, 1732; Pub. L. 98-369, div. A, title X, §1001(b)(6), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99-514, title VI, §671(b)(4), title IX, §901(d)(3), Oct. 22, 1986, 100 Stat. 2318, 2379; Pub. L. 100-647, title I, §1008(d)(3), Nov. 10, 1988, 102 Stat. 3439; Pub. L. 101-508, title XI, §11801(a)(25), (c)(11), Nov. 5, 1990, 104 Stat. 1388-521, 1388-527; Pub. L. 104-188, title I, §1621(b)(4), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108-357, title VIII, §835(b)(3), Oct. 22, 2004, 118 Stat. 1593.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c)(2)(A)(iii), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108-357 struck out “, and any regular interest in a FASIT,” before “shall be treated”.

1996—Subsec. (c)(1). Pub. L. 104-188 inserted “, and any regular interest in a FASIT,” after “REMIC”.

1990—Subsec. (c)(1). Pub. L. 101-508, §11801(c)(11)(A), substituted “paragraph (2)” for “paragraph (5)”.

Subsec. (c)(2). Pub. L. 101-508, §11801(a)(25), (c)(11)(B), redesignated par. (5) as (2) and struck out former par. (2) “Transitional rule for banks” which read as follows: “In the case of a bank, if the net long-term capital gains of the taxable year from sales or exchanges of qualifying securities exceed the net short-term capital losses of the taxable year from such sales or exchanges, such excess shall be considered as gain from the sale of a capital asset held for more than 6 months to the extent it does not exceed the net gain on sales and exchanges described in paragraph (1).”

Subsec. (c)(3). Pub. L. 101-508, §11801(a)(25), struck out par. (3) “Special rules” which read as follows: “For purposes of this subsection—

“(A) The term ‘qualifying security’ means a bond, debenture, note, or certificate or other evidence of indebtedness held by a bank on July 11, 1969.

“(B) The amount treated as capital gain or loss from the sale or exchange of a qualifying security shall be determined by multiplying the amount of capital gain or loss from the sale or exchange of such security (determined without regard to this subsection) by a fraction, the numerator of which is the number of days before July 12, 1969, that such security was held by the bank, and the denominator of which is the number of days the security was held by the bank.”