

change of property which is not a capital asset. Any loss from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as "ordinary loss" shall be treated as loss from the sale or exchange of property which is not a capital asset.

(Added Pub. L. 94-455, title XIX, §1901(a)(11), Oct. 4, 1976, 90 Stat. 1765.)

§ 66. Treatment of community income

(a) Treatment of community income where spouses live apart

If—

(1) 2 individuals are married to each other at any time during a calendar year;

(2) such individuals—

(A) live apart at all times during the calendar year, and

(B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;

(3) one or both of such individuals have earned income for the calendar year which is community income; and

(4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year,

then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

(b) Secretary may disregard community property laws where spouse not notified of community income

The Secretary may disallow the benefits of any community property law to any taxpayer with respect to any income if such taxpayer acted as if solely entitled to such income and failed to notify the taxpayer's spouse before the due date (including extensions) for filing the return for the taxable year in which the income was derived of the nature and amount of such income.

(c) Spouse relieved of liability in certain other cases

Under regulations prescribed by the Secretary, if—

(1) an individual does not file a joint return for any taxable year,

(2) such individual does not include in gross income for such taxable year any item of community income properly includible therein which, in accordance with the rules contained in section 879(a), would be treated as the income of the other spouse,

(3) the individual establishes that he or she did not know of, and had no reason to know of, such item of community income, and

(4) taking into account all facts and circumstances, it is inequitable to include such item of community income in such individual's gross income,

then, for purposes of this title, such item of community income shall be included in the gross income of the other spouse (and not in the gross income of the individual). Under proce-

dures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability.

(d) Definitions

For purposes of this section—

(1) Earned income

The term "earned income" has the meaning given to such term by section 911(d)(2).

(2) Community income

The term "community income" means income which, under applicable community property laws, is treated as community income.

(3) Community property laws

The term "community property laws" means the community property laws of a State, a foreign country, or a possession of the United States.

(Added Pub. L. 96-605, title I, §101(a), Dec. 28, 1980, 94 Stat. 3521; amended Pub. L. 98-369, div. A, title IV, §424(b)(1)-(2)(B), July 18, 1984, 98 Stat. 802, 803; Pub. L. 101-239, title VII, §7841(d)(8), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 105-206, title III, §3201(b), July 22, 1998, 112 Stat. 739.)

Editorial Notes

AMENDMENTS

1998—Subsec. (c). Pub. L. 105-206 inserted at end "Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability."

1989—Subsec. (d)(1). Pub. L. 101-239 substituted "section 911(d)(2)" for "section 911(b)".

1984—Pub. L. 98-369, §424(b)(2)(A), struck out "where spouses live apart" in section catchline.

Subsec. (a). Pub. L. 98-369, §424(b)(2)(B), substituted "Treatment of community income where spouses live apart" for "General rule" in heading.

Subsecs. (b) to (d). Pub. L. 98-369, §424(b)(1), added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 applicable to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining unpaid as of such date, see section 3201(g)(1) of Pub. L. 105-206, set out as a note under section 6015 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies with corresponding provisions deemed to be included in the Internal Revenue Code of 1939 and applicable to all taxable years to which such Code applies, except subsection (b) of this section is applicable to taxable years beginning after December 31, 1984, see section 424(c) of Pub. L. 98-369, set out as a note under section 6013 of this title.

EFFECTIVE DATE

Pub. L. 96-605, title I, §101(c), Dec. 28, 1980, 94 Stat. 3522, provided that: "The amendments made by this section [enacting this section] shall apply to calendar years beginning after December 31, 1980."

§ 67. 2-percent floor on miscellaneous itemized deductions

(a) General rule

In the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income.

(b) Miscellaneous itemized deductions

For purposes of this section, the term "miscellaneous itemized deductions" means the itemized deductions other than—

- (1) the deduction under section 163 (relating to interest),
- (2) the deduction under section 164 (relating to taxes),
- (3) the deduction under section 165(a) for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d),
- (4) the deductions under section 170 (relating to charitable, etc., contributions and gifts) and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose),
- (5) the deduction under section 213 (relating to medical, dental, etc., expenses),
- (6) any deduction allowable for impairment-related work expenses,
- (7) the deduction under section 691(c) (relating to deduction for estate tax in case of income in respect of the decedent),
- (8) any deduction allowable in connection with personal property used in a short sale,
- (9) the deduction under section 1341 (relating to computation of tax where taxpayer restores substantial amount held under claim of right),
- (10) the deduction under section 72(b)(3) (relating to deduction where annuity payments cease before investment recovered),
- (11) the deduction under section 171 (relating to deduction for amortizable bond premium), and
- (12) the deduction under section 216 (relating to deductions in connection with cooperative housing corporations).

(c) Disallowance of indirect deduction through pass-thru entity

(1) In general

The Secretary shall prescribe regulations which prohibit the indirect deduction through pass-thru entities of amounts which are not allowable as a deduction if paid or incurred directly by an individual and which contain such reporting requirements as may be necessary to carry out the purposes of this subsection.

(2) Treatment of publicly offered regulated investment companies

(A) In general

Paragraph (1) shall not apply with respect to any publicly offered regulated investment company.

(B) Publicly offered regulated investment companies

For purposes of this subsection—

(i) In general

The term "publicly offered regulated investment company" means a regulated investment company the shares of which are—

- (I) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),
- (II) regularly traded on an established securities market, or
- (III) held by or for no fewer than 500 persons at all times during the taxable year.

(ii) Secretary may reduce 500 person requirement

The Secretary may by regulation decrease the minimum shareholder requirement of clause (i)(III) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares.

(3) Treatment of certain other entities

Paragraph (1) shall not apply—

- (A) with respect to cooperatives and real estate investment trusts, and
- (B) except as provided in regulations, with respect to estates and trusts.

(d) Impairment-related work expenses

For purposes of this section, the term "impairment-related work expenses" means expenses—

- (1) of a handicapped individual (as defined in section 190(b)(3)) for attendant care services at the individual's place of employment and other expenses in connection with such place of employment which are necessary for such individual to be able to work, and
- (2) with respect to which a deduction is allowable under section 162 (determined without regard to this section).

(e) Determination of adjusted gross income in case of estates and trusts

For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

- (1) the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such trust or estate, and
- (2) the deductions allowable under sections 642(b), 651, and 661,

shall be treated as allowable in arriving at adjusted gross income. Under regulations, appropriate adjustments shall be made in the application of part I of subchapter J of this chapter to take into account the provisions of this section.

(f) Coordination with other limitation

This section shall be applied before the application of the dollar limitation of the second sentence of section 162(a) (relating to trade or business expenses).