

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1056 of Title 29, Labor] shall apply to plan years beginning on or after October 1, 2008.

“(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2007.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of this title.

EFFECTIVE DATE

Pub. L. 109-280, title I, §113(b), Aug. 17, 2006, 120 Stat. 852, as amended by Pub. L. 110-458, title I, §101(c)(3), Dec. 23, 2008, 122 Stat. 5098, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this subpart] shall apply to plan years beginning after December 31, 2007.

“(2) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before January 1, 2008, the amendments made by this section shall not apply to plan years beginning before the earlier of—

“(A) the later of—

“(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Aug. 17, 2006]), or

“(ii) the first day of the first plan year to which the amendments made by this section [enacting this subpart] would (but for this paragraph) apply, or

“(B) January 1, 2010.

For purposes of subparagraph (A)(i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.”

PROVISIONS RELATING TO PLAN AMENDMENTS

Pub. L. 113-159, title II, §2003(c)(4), Aug. 8, 2014, 128 Stat. 1850, provided that:

“(A) IN GENERAL.—If this paragraph applies to any amendment to any plan or annuity contract, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(ii).

“(B) AMENDMENTS TO WHICH PARAGRAPH APPLIES.—

“(i) IN GENERAL.—This paragraph shall apply to any amendment to any plan or annuity contract which is made—

“(I) pursuant to the amendments made by this subsection [amending this section and section 1056 of Title 29, Labor], or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under any provision as so amended, and

“(II) on or before the last day of the first plan year beginning on or after January 1, 2016, or such later date as the Secretary of the Treasury may prescribe.

“(ii) CONDITIONS.—This subsection [amending this section and section 1056 of Title 29, Labor, and enacting provisions set out as a note under this section] shall not apply to any amendment unless, during the period—

“(I) beginning on the date that the amendments made by this subsection or the regulation described in clause (i)(I) takes effect (or in the case of a plan or contract amendment not required by such amendments or such regulation, the effective date specified by the plan), and

“(II) ending on the date described in clause (i)(II) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and such plan or contract amendment applies retroactively for such period.

“(C) ANTI-CUTBACK RELIEF.—A plan shall not be treated as failing to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) and section 411(d)(6) of the Internal Revenue Code of 1986 [26 U.S.C. 411(d)(6)] solely by reason of a plan amendment to which this paragraph applies.”

TEMPORARY MODIFICATION OF APPLICATION OF LIMITATION ON BENEFIT ACCRUALS

Pub. L. 111-192, title II, §203(b), June 25, 2010, 124 Stat. 1300, provided that: “Section 203 of the Worker, Retiree, and Employer Recovery Act of 2008 [Pub. L. 110-458, set out below] shall apply to a plan for any plan year in lieu of the amendments made by this section applying to sections 206(g)(4) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1056(g)(4)] and 436(e) of the Internal Revenue Code of 1986 only to the extent that such section produces a higher adjusted funding target attainment percentage for such plan for such year.”

Pub. L. 110-458, title II, §203, Dec. 23, 2008, 122 Stat. 5118, provided that: “In the case of the first plan year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, sections 206(g)(4)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(g)(4)(A)) and 436(e)(1) of the Internal Revenue Code of 1986 shall be applied by substituting the plan’s adjusted funding target attainment percentage for the preceding plan year for such percentage for such plan year but only if the adjusted funding target attainment percentage for the preceding plan year is greater.”

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§101-108) and B (§§111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of this title.

Subchapter E—Accounting Periods and Methods of Accounting

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I.	Accounting periods.
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PART I—ACCOUNTING PERIODS

Sec.	
441.	Period for computation of taxable income.
442.	Change of annual accounting period.
443.	Returns for a period of less than 12 months.
444.	Election of taxable year other than required taxable year.

Editorial Notes

AMENDMENTS

1987—Pub. L. 100-203, title X, §10206(a)(2), Dec. 22, 1987, 101 Stat. 1330-398, added item 444.

§ 441. Period for computation of taxable income

(a) Computation of taxable income

Taxable income shall be computed on the basis of the taxpayer’s taxable year.

(b) Taxable year

For purposes of this subtitle, the term “taxable year” means—

(1) the taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) the calendar year, if subsection (g) applies;

(3) the period for which the return is made, if a return is made for a period of less than 12 months; or

(4) in the case of a DISC filing a return for a period of at least 12 months, the period determined under subsection (h).

(c) Annual accounting period

For purposes of this subtitle, the term "annual accounting period" means the annual period on the basis of which the taxpayer regularly computes his income in keeping his books.

(d) Calendar year

For purposes of this subtitle, the term "calendar year" means a period of 12 months ending on December 31.

(e) Fiscal year

For purposes of this subtitle, the term "fiscal year" means a period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided by subsection (f) the term means the annual period (varying from 52 to 53 weeks) so elected.

(f) Election of year consisting of 52–53 weeks

(1) General rule

A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always—

(A) on whatever date such same day of the week last occurs in a calendar month, or

(B) on whatever date such same day of the week falls which is nearest to the last day of a calendar month,

may (in accordance with the regulations prescribed under paragraph (3)) elect to compute his taxable income for purposes of this subtitle on the basis of such annual period. This paragraph shall apply to taxable years ending after the date of the enactment of this title.

(2) Special rules for 52–53-week year

(A) Effective dates

In any case in which the effective date or the applicability of any provision of this title is expressed in terms of taxable years beginning, including, or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall (except for purposes of the computation under section 15) be treated—

(i) as beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or

(ii) as ending with the last day of the calendar month ending nearest to the last day of such taxable year,

as the case may be.

(B) Change in accounting period

In the case of a change from or to a taxable year described in paragraph (1)—

(i) if such change results in a short period (within the meaning of section 443) of 359 days or more, or of less than 7 days, section 443(b) (relating to alternative tax computation) shall not apply;

(ii) if such change results in a short period of less than 7 days, such short period shall, for purposes of this subtitle, be added to and deemed a part of the following taxable year; and

(iii) if such change results in a short period to which subsection (b) of section 443 applies, the taxable income for such short period shall be placed on an annual basis for purposes of such subsection by multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions as described in section 443(c)) by 365, by dividing the result by the number of days in the short period, and the tax shall be the same part of the tax computed on the annual basis as the number of days in the short period is of 365 days.

(3) Special rule for partnerships, S corporations, and personal service corporations

The Secretary may by regulation provide terms and conditions for the application of this subsection to a partnership, S corporation, or personal service corporation (within the meaning of section 441(i)(2)).

(4) Regulations

The Secretary shall prescribe such regulations as he deems necessary for the application of this subsection.

(g) No books kept; no accounting period

Except as provided in section 443 (relating to returns for periods of less than 12 months), the taxpayer's taxable year shall be the calendar year if—

(1) the taxpayer keeps no books;

(2) the taxpayer does not have an annual accounting period; or

(3) the taxpayer has an annual accounting period, but such period does not qualify as a fiscal year.

(h) Taxable year of DISC's

(1) In general

For purposes of this subtitle, the taxable year of any DISC shall be the taxable year of that shareholder (or group of shareholders with the same 12-month taxable year) who has the highest percentage of voting power.

(2) Special rule where more than one shareholder (or group) has highest percentage

If 2 or more shareholders (or groups) have the highest percentage of voting power under paragraph (1), the taxable year of the DISC shall be the same 12-month period as that of any such shareholder (or group).

(3) Subsequent changes of ownership

The Secretary shall prescribe regulations under which paragraphs (1) and (2) shall apply to a change of ownership of a corporation after the taxable year of the corporation has been

determined under paragraph (1) or (2) only if such change is a substantial change of ownership.

(4) Voting power determined

For purposes of this subsection, voting power shall be determined on the basis of total combined voting power of all classes of stock of the corporation entitled to vote.

(i) Taxable year of personal service corporations

(1) In general

For purposes of this subtitle, the taxable year of any personal service corporation shall be the calendar year unless the corporation establishes, to the satisfaction of the Secretary, a business purpose for having a different period for its taxable year. For purposes of this paragraph, any deferral of income to shareholders shall not be treated as a business purpose.

(2) Personal service corporation

For purposes of this subsection, the term “personal service corporation” has the meaning given such term by section 269A(b)(1), except that section 269A(b)(2) shall be applied—

(A) by substituting “any” for “more than 10 percent”, and

(B) by substituting “any” for “50 percent or more in value” in section 318(a)(2)(C).

A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence). If a corporation is a member of an affiliated group filing a consolidated return, all members of such group shall be taken into account in determining whether such corporation is a personal service corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 148; Pub. L. 88-272, title II, §235(c)(3), Feb. 26, 1964, 78 Stat. 127; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-30, title I, §102(b)(5), May 23, 1977, 91 Stat. 137; Pub. L. 98-369, div. A, title IV, §474(b)(2), title VIII, §803, July 18, 1984, 98 Stat. 830, 1000; Pub. L. 99-514, title I, §104(b)(6), title VIII, §806(c)(1), (d), Oct. 22, 1986, 100 Stat. 2105, 2364; Pub. L. 100-647, title I, §1008(e)(4), Nov. 10, 1988, 102 Stat. 3440; Pub. L. 110-172, §11(g)(7), Dec. 29, 2007, 121 Stat. 2490.)

Editorial Notes

AMENDMENTS

2007—Subsec. (b)(4). Pub. L. 110-172, §11(g)(7)(A), struck out “FSC or” before “DISC filing”.

Subsec. (h). Pub. L. 110-172, §11(g)(7)(B), struck out “FSC’s and” before “DISC’s” in heading and “FSC or” before “DISC” in pars. (1) and (2).

1988—Subsec. (i)(2). Pub. L. 100-647 inserted at end “A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence). If a corporation is a member of an affiliated group filing a consolidated return, all members of such group shall be taken into account in determining whether such corporation is a personal service corporation.”

1986—Subsec. (f)(2)(B)(iii). Pub. L. 99-514, §104(b)(6), struck out “and by adding the zero bracket amount,” after “in the short period.”

Subsec. (f)(3), (4). Pub. L. 99-514, §806(d), added par. (3) and redesignated former par. (3) as (4).

Subsec. (i). Pub. L. 99-514, §806(c)(1), added subsec. (i). 1984—Subsec. (b)(4). Pub. L. 98-369, §803(a), added par. (4).

Subsec. (f)(2)(A). Pub. L. 98-369, §474(b)(2), substituted “section 15” for “section 21” in provisions preceding cl. (i).

Subsec. (h). Pub. L. 98-369, §803(b), added subsec. (h). 1977—Subsec. (f)(2)(B)(iii). Pub. L. 95-30 substituted “multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions as described in section 443(c)) by 365, by dividing the result by the number of days in the short period, and by adding the zero bracket amount” for “multiplying such income by 365 and dividing the result by the number of days in the short period”.

1976—Subsec. (f)(3). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1964—Subsec. (f)(2)(A). Pub. L. 88-272 inserted “, including,” before “or ending with reference to”.

Statutory Notes and Related Subsidiaries

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

Amendment by section 104(b)(6) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 806(c)(1), (d) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99-514, set out as a note under section 1378 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(b)(2) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 803 of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 805(a)(4) of Pub. L. 98-369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88-272, set out as a note under section 269 of this title.

CONSTRUCTION OF SECTION 806 OF PUB. L. 99-514

Nothing in section 806 of Pub. L. 99-514 or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100-647, set out as a note under section 1378 of this title.

§ 442. Change of annual accounting period

If a taxpayer changes his annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Secretary. For purposes of this subtitle, if a taxpayer to whom section 441(g) applies adopts an annual accounting period (as defined in section 441(c)) other than a calendar year, the taxpayer shall be treated as having changed his annual accounting period.

(Aug. 16, 1954, ch. 736, 68A Stat. 149; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Editorial Notes**AMENDMENTS**

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

§ 443. Returns for a period of less than 12 months**(a) Returns for short period**

A return for a period of less than 12 months (referred to in this section as “short period”) shall be made under any of the following circumstances:

(1) Change of annual accounting period

When the taxpayer, with the approval of the Secretary, changes his annual accounting period. In such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year.

(2) Taxpayer not in existence for entire taxable year

When the taxpayer is in existence during only part of what would otherwise be his taxable year.

(b) Computation of tax on change of annual accounting period**(1) General rule**

If a return is made under paragraph (1) of subsection (a), the taxable income for the short period shall be placed on an annual basis by multiplying the modified taxable income for such short period by 12, dividing the result by the number of months in the short period. The tax shall be the same part of the tax computed on the annual basis as the number of months in the short period is of 12 months.

(2) Exception**(A) Computation based on 12-month period**

If the taxpayer applies for the benefits of this paragraph and establishes the amount of this taxable income for the 12-month period described in subparagraph (B), computed as if that period were a taxable year and under the law applicable to that year, then the tax for the short period, computed under paragraph (1), shall be reduced to the greater of the following:

(i) an amount which bears the same ratio to the tax computed on the taxable income for the 12-month period as the modified

taxable income computed on the basis of the short period bears to the modified taxable income for the 12-month period; or

(ii) the tax computed on the modified taxable income for the short period.

The taxpayer (other than a taxpayer to whom subparagraph (B)(ii) applies) shall compute the tax and file his return without the application of this paragraph.

(B) 12-month period

The 12-month period referred to in subparagraph (A) shall be—

(i) the period of 12 months beginning on the first day of the short period, or

(ii) the period of 12 months ending at the close of the last day of the short period, if at the end of the 12 months referred to in clause (i) the taxpayer is not in existence or (if a corporation) has theretofore disposed of substantially all of its assets.

(C) Application for benefits

Application for the benefits of this paragraph shall be made in such manner and at such time as the regulations prescribed under subparagraph (D) may require; except that the time so prescribed shall not be later than the time (including extensions) for filing the return for the first taxable year which ends on or after the day which is 12 months after the first day of the short period. Such application, in case the return was filed without regard to this paragraph, shall be considered a claim for credit or refund with respect to the amount by which the tax is reduced under this paragraph.

(D) Regulations

The Secretary shall prescribe such regulations as he deems necessary for the application of this paragraph.

(3) Modified taxable income defined

For purposes of this subsection the term “modified taxable income” means, with respect to any period, the gross income for such period minus the deductions allowed by this chapter for such period (but, in the case of a short period, only the adjusted amount of the deductions for personal exemptions).

(c) Adjustment in deduction for personal exemption

In the case of a taxpayer other than a corporation, if a return is made for a short period by reason of subsection (a)(1) and if the tax is not computed under subsection (b)(2), then the exemptions allowed as a deduction under section 151 (and any deduction in lieu thereof) shall be reduced to amounts which bear the same ratio to the full exemptions as the number of months in the short period bears to 12.

(d) Adjustment in computing minimum tax and tax preferences

If a return is made for a short period by reason of subsection (a)—

(1) the alternative minimum taxable income for the short period shall be placed on an annual basis by multiplying such amount by 12 and dividing the result by the number of months in the short period, and