

§ 831. Tax on insurance companies other than life insurance companies

(a) General rule

Taxes computed as provided in section 11 shall be imposed for each taxable year on the taxable income of every insurance company other than a life insurance company.

(b) Alternative tax for certain small companies

(1) In general

In lieu of the tax otherwise applicable under subsection (a), there is hereby imposed for each taxable year on the income of every insurance company to which this subsection applies a tax computed by multiplying the taxable investment income of such company for such taxable year by the rates provided in section 11(b).

(2) Companies to which this subsection applies

(A) In general

This subsection shall apply to every insurance company other than life if—

- (i) the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed \$2,200,000,
- (ii) such company meets the diversification requirements of subparagraph (B), and
- (iii) such company elects the application of this subsection for such taxable year.

The election under clause (iii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clauses (i) and (ii) are met. Such an election, once made, may be revoked only with the consent of the Secretary.

(B) Diversification requirements

(i) In general

An insurance company meets the requirements of this subparagraph if—

(I) no more than 20 percent of the net written premiums (or, if greater, direct written premiums) of such company for the taxable year is attributable to any one policyholder, or

(II) such insurance company does not meet the requirement of subclause (I) and no person who holds (directly or indirectly) an interest in such insurance company is a specified holder who holds (directly or indirectly) aggregate interests in such insurance company which constitute a percentage of the entire interests in such insurance company which is more than a de minimis percentage higher than the percentage of interests in the relevant specified assets with respect to such insurance company held (directly or indirectly) by such specified holder.

(ii) Aggregation of certain spousal interests

For purposes of clause (i)(II), any interest in the insurance company referred to in such clause which is held (directly or indirectly) by an individual who is a spouse of the specified holder, and who is a citizen of the United States, shall be treated as held by the specified holder.

(iii) Specified holder

For purposes of this subparagraph, the term “specified holder” means, with respect to any insurance company, any individual who holds (directly or indirectly) an interest in such insurance company and who—

(I) is a lineal descendent (including by adoption) of an individual who holds an interest (directly or indirectly) in the specified assets with respect to such insurance company or of such individual’s spouse,

(II) is a spouse of any lineal descendent described in subclause (I), or

(III) is not a citizen of the United States and is a spouse of an individual who holds an interest (directly or indirectly) in the specified assets with respect to such insurance company.

(iv) Definitions

For purposes of this subparagraph—

(I) Relevant specified assets

The term “relevant specified assets” means, with respect to any specified holder with respect to any insurance company, the aggregate amount of the specified assets, with respect to such insurance company, any interest in which is held (directly or indirectly) by any spouse or specified relation of such specified holder. Such term shall not include any specified asset solely by reason of an interest in such asset which was acquired by such spouse or specified relation by bequest, devise, or inheritance from a decedent during the taxable year of the insurance company or the preceding taxable year. For purposes of this subclause, the term “specified relation” means any individual with respect to whom the specified holder bears a relationship described in subclause (I) or (II) of clause (iii).

(II) Specified assets

The term “specified assets” means, with respect to any insurance company, the trades or businesses, rights, or assets with respect to which the net written premiums (or direct written premiums) of such insurance company are paid.

(III) Indirect interest

An indirect interest includes any interest held through a trust, estate, partnership, or corporation.

(IV) De minimis

Except as otherwise provided by the Secretary in regulations or other guidance, 2 percentage points or less shall be treated as de minimis.

(C) Controlled group rules

(i) In general

For purposes of this paragraph—

(I) in determining whether any company is described in clause (i) of subparagraph (A), such company shall be treated

as receiving during the taxable year amounts described in such clause (i) which are received during such year by all other companies which are members of the same controlled group as the insurance company for which the determination is being made, and

(II) in determining the attribution of premiums to any policyholder under subparagraph (B)(i), all policyholders which are related (within the meaning of section 267(b) or 707(b)) or are members of the same controlled group shall be treated as one policyholder.

(ii) Controlled group

For purposes of clause (i), the term “controlled group” means any controlled group of corporations (as defined in section 1563(a)); except that—

(I) “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears in section 1563(a), and

(II) subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply.

(D) Look-through of reinsurance and fronting arrangements

In the case of reinsurance or any fronting, intermediary, or similar arrangement, the term “policyholder” means each policyholder of the underlying direct written insurance with respect to such reinsurance or arrangement.

(E) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2015, the dollar amount set forth in subparagraph (A)(i) shall be increased by an amount equal to—

- (i) such dollar amount, multiplied by
- (ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting “calendar year 2013” for “calendar year 2016” in subparagraph (A)(ii) thereof.

If the amount as adjusted under the preceding sentence is not a multiple of \$50,000, such amount shall be rounded to the next lowest multiple of \$50,000.

(3) Limitation on use of net operating losses

For purposes of this part, a net operating loss (as defined in section 172) shall not be carried—

(A) to or from any taxable year for which the insurance company is not subject to the tax imposed by subsection (a), or

(B) to any taxable year if, between the taxable year from which such loss is being carried and such taxable year, there is an intervening taxable year for which the insurance company was not subject to the tax imposed by subsection (a).

(c) Insurance company defined

For purposes of this section, the term “insurance company” has the meaning given to such term by section 816(a).

(d) Reporting

Every insurance company for which an election is in effect under subsection (b) for any tax-

able year shall furnish to the Secretary at such time and in such manner as the Secretary shall prescribe such information for such taxable year as the Secretary shall require with respect to the requirements of subsection (b)(2)(A)(ii).

(e) Cross references

(1) For taxation of foreign corporations carrying on an insurance business within the United States, see section 842.

(2) For exemption from tax for certain insurance companies other than life, see section 501(c)(15).

(Aug. 16, 1954, ch. 736, 68A Stat. 264; Pub. L. 87–834, §8(e)(1), (f), (g)(4)(B), Oct. 16, 1962, 76 Stat. 997–999; Pub. L. 89–809, title I, §104(i)(6), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94–455, title XIX, §§1901(a)(107), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1834; Pub. L. 99–514, title X, §1024(a)(4), Oct. 22, 1986, 100 Stat. 2405; Pub. L. 100–647, title I, §1010(f)(1), (9), Nov. 10, 1988, 102 Stat. 3454, 3455; Pub. L. 108–218, title II, §206(c), (d), Apr. 10, 2004, 118 Stat. 611; Pub. L. 114–113, div. Q, title III, §333(a), (b), Dec. 18, 2015, 129 Stat. 3106, 3108; Pub. L. 115–97, title I, §§11002(d)(1)(AA), 13001(b)(2)(H), 13511(b)(2)(B), Dec. 22, 2017, 131 Stat. 2060, 2096, 2142; Pub. L. 115–141, div. U, title I, §101(r), title IV, §401(a)(142), Mar. 23, 2018, 132 Stat. 1168, 1191.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

Editorial Notes

AMENDMENTS

2018—Subsec. (b)(2)(B)(i)(II). Pub. L. 115–141, §101(r)(1), substituted “relevant specified assets” for “specified assets”.

Subsec. (b)(2)(B)(ii), (iii). Pub. L. 115–141, §101(r)(2), added cls. (ii) and (iii). Former cl. (ii) redesignated (iv).

Subsec. (b)(2)(B)(iv). Pub. L. 115–141, §101(r)(2), (3)(A), redesignated cl. (ii) as (iv) and substituted “this subparagraph” for “clause (i)(II)” in introductory provisions.

Subsec. (b)(2)(B)(iv)(I). Pub. L. 115–141, §101(r)(3)(B), amended subcl. (I) generally. Prior to amendment, text read as follows: “The term ‘specified holder’ means, with respect to any insurance company, any individual who holds (directly or indirectly) an interest in such insurance company and who is a spouse or lineal descendant (including by adoption) of an individual who holds an interest (directly or indirectly) in the specified assets with respect to such insurance company.”

Subsec. (b)(2)(D), (E). Pub. L. 115–141, §101(r)(4), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (c). Pub. L. 115–141, §401(a)(142), substituted “section 816(a).” for “section 816(a).”

2017—Subsec. (b)(2)(D)(ii). Pub. L. 115–97, §11002(d)(1)(AA), substituted “for ‘calendar year 2016’ in subparagraph (A)(ii)” for “for ‘calendar year 1992’ in subparagraph (B)”.

Subsec. (b)(3). Pub. L. 115–97, §13511(b)(2)(B), struck out “except as provided in section 844,” after “part,” in introductory provisions.

Subsec. (e). Pub. L. 115–97, §13001(b)(2)(H), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: “For alternative tax in case of capital gains, see section 1201(a).”

2015—Subsec. (b)(2)(A). Pub. L. 114–113, §333(a)(1)(A), (C), (b)(1), struck out “(including interinsurers and reciprocal underwriters)” after “other than life” in introductory provisions, substituted “\$2,200,000” for “\$1,200,000” in cl. (i), added cl. (ii), redesignated former cl. (ii) as (iii), and, in concluding provisions, sub-

stituted “clause (iii)” for “clause (ii)” and “clauses (i) and (ii)” for “clause (i)”.

Subsec. (b)(2)(B), (C). Pub. L. 114–113, §333(a)(1)(B), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(2)(C)(i). Pub. L. 114–113, §333(a)(2), substituted “For purposes of this paragraph—” for “For purposes of subparagraph (A).”, inserted subcl. (I) designation before “in determining”, and added subcl. (II).

Subsec. (b)(2)(D). Pub. L. 114–113, §333(b)(2), added subpar. (D).

Subsecs. (d), (e). Pub. L. 114–113, §333(a)(3), added subsec. (d) and redesignated former subsec. (d) as (e).

2004—Subsec. (b)(2)(A)(i). Pub. L. 108–218, §206(d), struck out “exceed \$350,000 but” after “taxable year”.

Subsecs. (c), (d). Pub. L. 108–218, §206(c), added subsec. (c) and redesignated former subsec. (c) as (d).

1988—Subsec. (b)(2)(A). Pub. L. 100–647, §1010(f)(1), inserted at end “The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (i) are met. Such an election, once made, may be revoked only with the consent of the Secretary.”

Subsec. (b)(3). Pub. L. 100–647, §1010(f)(9), added par. (3).

1986—Pub. L. 99–514 amended section generally, substituting provisions imposing taxes on insurance companies other than life insurance companies, with an alternative tax on certain small companies, for provisions imposing taxes on insurance companies (other than life or mutual), mutual marine insurance companies, and certain mutual fire or flood insurance companies, with an election for multiple line companies to be taxed on total income.

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(107), substituted “on the taxable income” for “or the taxable income”.

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

1966—Subsec. (b). Pub. L. 89–809, §104(i)(6)(A), redesignated subsec. (c) as (b). Former subsec. (b), which excepted foreign insurance companies other than life or mutual insurance companies, foreign mutual marine insurance companies, and foreign mutual fire insurance companies not carrying on an insurance business within the United States and provided that they would be taxable as other foreign corporations, was struck out.

Subsecs. (c), (d). Pub. L. 89–809, §104(i)(6)(B), redesignated subsec. (d) as (c) and added item (2). Former subsec. (c) redesignated (b).

1962—Pub. L. 87–834, §8(g)(4)(B), substituted “and certain mutual fire or flood insurance companies” for “and mutual fire insurance companies issuing perpetual policies” in section catchline.

Subsec. (a). Pub. L. 87–834, §8(e)(1), included flood insurance companies, and substituted provisions authorizing imposition of the tax on those companies whose principal business is the issuance of policies for which the premium deposits are the same, regardless of the length of the term for which the policies are written, if the unabsorbed portion of such premium deposits not required for losses, expenses, or establishment of reserves is returned or credited to the policyholder on cancellation or expiration of the policy for provisions which authorized imposition of tax on those companies which issued policies for which the sole premium charged is a single deposit which (except for such deduction of underwriting costs as may be provided) is refundable on cancellation or expiration of the policy.

Subsecs. (c), (d). Pub. L. 87–834, §8(f), added subsec. (c) and redesignated former subsec. (c) as (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 101(r) of Pub. L. 115–141 effective as if included in the provision of the Protecting Americans from Tax Hikes Act of 2015, div. Q of Pub. L.

114–113, to which such amendment relates, see section 101(s) of Pub. L. 115–141, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11002(d)(1)(AA) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115–97, set out as a note under section 1 of this title.

Amendment by section 13001(b)(2)(H) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

Amendment by section 13511(b)(2)(B) of Pub. L. 115–97 applicable to losses arising in taxable years beginning after Dec. 31, 2017, see section 13511(c) of Pub. L. 115–97, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title III, §333(c), Dec. 18, 2015, 129 Stat. 3108, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2016.”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2003, with exception for companies in receivership or liquidation, see section 206(e) of Pub. L. 108–218, set out as a note under section 501 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

Pub. L. 99–514, title X, §1024(e), Oct. 22, 1986, 100 Stat. 2409, provided that: “The amendments made by this section [amending this section and sections 501, 832, 834, 835, 841, 842, 844, 891, 1201, 1504, and 1563 of this title, redesignating former sections 822 and 826 of this title as sections 834 and 835 of this title, respectively, and repealing sections 821, 823, 824, and 825 of this title] (and the provisions of subsection (d) [set out below]) shall apply to taxable years beginning after December 31, 1986.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(107) 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 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

TRANSITIONAL RULES FOR 1984 AMENDMENT

Pub. L. 99–514, title X, §1024(d), Oct. 22, 1986, 100 Stat. 2408, as amended by Pub. L. 100–647, title I, §1010(f)(8), Nov. 10, 1988, 102 Stat. 3454, provided that:

“(1) TREATMENT OF AMOUNTS IN PROTECTION AGAINST LOSS ACCOUNT.—In the case of any insurance company which had a protection against loss account for its last taxable year beginning before January 1, 1987, there shall be included in the gross income of such company for any taxable year beginning after December 31, 1986,

the amount which would have been included in gross income for such taxable year under section 824 of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]). For purposes of the preceding sentence, no addition to such account shall be made for any taxable year beginning after December 31, 1986. In the case of a company taxable under section 831(b) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any amount included in gross income under this paragraph shall be treated as gross investment income.

“(2) TRANSITIONAL RULE FOR UNUSED LOSS CARRYOVER UNDER SECTION 825.—Any unused loss carryover under section 825 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) which—

“(A) is from a taxable year beginning before January 1, 1987, and

“(B) could have been carried under such section to a taxable year beginning after December 31, 1986, but for the repeal made by subsection (a)(1) [repealing sections 821 and 823 to 825 of this title],

shall be included in the net operating loss deduction under section 832(c)(10) of such Code without regard to the limitations of [former] section 844(b) of such Code.”

§ 832. Insurance company taxable income

(a) Definition of taxable income

In the case of an insurance company subject to the tax imposed by section 831, the term “taxable income” means the gross income as defined in subsection (b)(1) less the deductions allowed by subsection (c).

(b) Definitions

In the case of an insurance company subject to the tax imposed by section 831—

(1) Gross income

The term “gross income” means the sum of—

(A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Association of Insurance Commissioners,

(B) gain during the taxable year from the sale or other disposition of property,

(C) all other items constituting gross income under subchapter B, except that, in the case of a mutual fire insurance company exclusively issuing perpetual policies, the amount of single deposit premiums paid to such company shall not be included in gross income,

(D) in the case of a mutual fire or flood insurance company whose principal business is the issuance of policies—

(i) for which the premium deposits are the same (regardless of the length of the term for which the policies are written), and

(ii) under which the unabsorbed portion of such premium deposits not required for losses, expenses, or establishment of reserves is returned or credited to the policyholder on cancellation or expiration of the policy,

an amount equal to 2 percent of the premiums earned on insurance contracts during

the taxable year with respect to such policies after deduction of premium deposits returned or credited during the same taxable year, and

(E) in the case of a company which writes mortgage guaranty insurance, the amount required by subsection (e)(5) to be subtracted from the mortgage guaranty account.

(2) Investment income

The term “investment income” means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows: To all interest, dividends, and rents received during the taxable year, add interest, dividends, and rents due and accrued at the end of the taxable year, and deduct all interest, dividends, and rents due and accrued at the end of the preceding taxable year.

(3) Underwriting income

The term “underwriting income” means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

(4) Premiums earned

The term “premiums earned on insurance contracts during the taxable year” means an amount computed as follows:

(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance.

(B) To the result so obtained, add 80 percent of the unearned premiums on outstanding business at the end of the preceding taxable year and deduct 80 percent of the unearned premiums on outstanding business at the end of the taxable year.

(C) To the result so obtained, in the case of a taxable year beginning after December 31, 1986, and before January 1, 1993, add an amount equal to 3½ percent of unearned premiums on outstanding business at the end of the most recent taxable year beginning before January 1, 1987.

For purposes of this subsection, unearned premiums shall include life insurance reserves, as defined in section 816(b) but determined as provided in section 807. For purposes of this subsection, unearned premiums of mutual fire or flood insurance companies described in paragraph (1)(D) means (with respect to the policies described in paragraph (1)(D)) the amount of unabsorbed premium deposits which the company would be obligated to return to its policyholders at the close of the taxable year if all of its policies were terminated at such time; and the determination of such amount shall be based on the schedule of unabsorbed premium deposit returns for each such company then in effect. Premiums paid by the subscriber of a mutual flood insurance company described in paragraph (1)(D) or issuing exclusively perpetual policies shall be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company described in subparagraph (C) or (D) of paragraph (1).