

to which the provisions of part I of subchapter M of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applied for any taxable year ending before November 8, 1983, for purposes of section 852(a)(3)(B) of the Internal Revenue Code of 1986 (as amended by this subsection), no earnings and profits accumulated in any taxable year ending before January 1, 1984, shall be taken into account.

“(C) INVESTMENT COMPANIES BEGINNING BUSINESS IN 1983.—In the case of an investment company which began business in 1983 (and was not a successor corporation), earnings and profits accumulated during its first taxable year shall not be taken into account for purposes of section 852(a)(3)(B) of such Code (as so amended).

“(D) INVESTMENT COMPANIES REGISTERING BEFORE NOVEMBER 8, 1983.—In the case of any investment company—

“(i) which, during the period after December 31, 1981, and before November 8, 1983—

“(I) was engaged in the active conduct of a trade or business,

“(II) sold substantially all of its operating assets, and

“(III) registered under the Investment Company Act of 1940 [15 U.S.C. §80a-1 et seq.] as either a management company or a unit investment trust, and

“(ii) to which the provisions of part I of subchapter M of chapter 1 of the Internal Revenue Code of 1986 applied for its first taxable year beginning after November 8, 1983,

for purposes of section 852(a)(3)(A) of such Code (as amended by paragraph (3)), the provisions of part I of subchapter M of chapter 1 of such Code shall be treated as applying to such investment company for its first taxable year ending after November 8, 1983. For purposes of the preceding sentence, all members of an affiliated group (as defined in section 1504(a) of such Code) filing a consolidated return shall be treated as 1 taxpayer.”

Pub. L. 98-369, div. A, title X, §1071(b)(2), July 18, 1984, 98 Stat. 1052 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1978.”

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(11) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as a note under section 11 of this title.

Amendment by section 362(c) of Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date note under section 860 of this title.

Amendment by section 701(s)(2) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1975, see section 701(s)(3) of Pub. L. 95-600, set out as a note under section 851 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94-455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(a)(110)(A), (C), (b)(1)(V), (6)(B), (33)(I), (J), (N) 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 an Effective Date of 1976 Amendment note under section 2 of this title.

Pub. L. 94-455, title XIX, §1901(a)(110)(B)(ii), Oct. 4, 1976, 90 Stat. 1783, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by clause (i) [amending this section] shall not be considered to affect the amount of any increase in the basis of stock under the provisions of section 852(b)(3)(D)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is based upon amounts subject to tax under section 1201 of such Code [former section 1201 of this title] in taxable years beginning before January 1, 1975.”

Pub. L. 94-455, title XXI, §2137(e), Oct. 4, 1976, 90 Stat. 1931, provided that: “The amendments made by this section [amending this section and sections 103 and 265 of this title] shall apply to taxable years beginning after December 31, 1975.”

#### EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title V, §511(d), Dec. 30, 1969, 83 Stat. 638, provided that: “The amendments made by this section [amending this section and sections 802, 857, 1201, 1222, and 1378 of this title] shall apply to taxable years beginning after December 31, 1969.”

#### EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88-272, title II, §229(c), Feb. 26, 1964, 78 Stat. 99, provided that: “The amendments made by subsection (a) [amending this section and sections 853, 854, and 855 of this title] shall apply to taxable years of regulated investment companies ending on or after the date of the enactment of this Act [Feb. 26, 1964]. The amendment made by subsection (b) [amending this section] shall apply to taxable years of regulated investment companies ending after December 31, 1963.”

#### EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86-779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86-779, set out as an Effective Date note under section 856 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-866, title I, §39(b), Sept. 2, 1958, 72 Stat. 1638, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to shares of stock acquired after December 31, 1957.”

Pub. L. 85-866, title I, §101(c), Sept. 2, 1958, 72 Stat. 1674, provided that: “The amendments made by this section [amending this section] shall apply with respect to taxable years of regulated investment companies beginning on or after March 1, 1958.”

#### EFFECTIVE DATE OF 1956 AMENDMENT

Act July 11, 1956, ch. 573, §2(b), 70 Stat. 530, provided that: “The amendment made by this section [amending this section] shall apply only with respect to taxable years of regulated investment companies beginning after December 31, 1956.”

#### 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.

## § 853. Foreign tax credit allowed to shareholders

### (a) General rule

A regulated investment company—

(1) more than 50 percent of the value (as defined in section 851(c)(4)) of whose total assets at the close of the taxable year consists of stock or securities in foreign corporations, and

(2) which meets the requirements of section 852(a) for the taxable year,

may, for such taxable year, elect the application of this section with respect to income, war profits, and excess profits taxes described in section 901(b)(1), which are paid by the investment company during such taxable year to foreign countries and possessions of the United States.

**(b) Effect of election**

If the election provided in subsection (a) is ineffective for a taxable year—

(1) the regulated investment company—

(A) shall not, with respect to such taxable year, be allowed a deduction under section 164(a) or a credit under section 901 for taxes to which subsection (a) is applicable, and

(B) shall be allowed as an addition to the dividends paid deduction for such taxable year the amount of such taxes;

(2) each shareholder of such investment company shall—

(A) include in gross income and treat as paid by him his proportionate share of such taxes, and

(B) treat as gross income from sources within the respective foreign countries and possessions of the United States, for purposes of applying subpart A of part III of subchapter N, the sum of his proportionate share of such taxes and the portion of any dividend paid by such investment company which represents income derived from sources within foreign countries or possessions of the United States.

**(c) Statements to shareholders**

The amounts to be treated by the shareholder, for purposes of subsection (b)(2), as his proportionate share of—

(1) taxes paid to any foreign country or possession of the United States, and

(2) gross income derived from sources within any foreign country or possession of the United States,

shall not exceed the amounts so reported by the company in a written statement furnished to such shareholder.

**(d) Manner of making election**

The election provided in subsection (a) shall be made in such manner as the Secretary may prescribe by regulations.

**(e) Treatment of certain taxes not allowed as a credit under section 901**

This section shall not apply to any tax with respect to which the regulated investment company is not allowed a credit under section 901 by reason of subsection (k) or (l) of such section.

**(f) Cross references**

(1) For treatment by shareholders of taxes paid to foreign countries and possessions of the United States, see section 164(a) and section 901.

(2) For definition of foreign corporation, see section 7701(a)(5).

(Aug. 16, 1954, ch. 736, 68A Stat. 272; Pub. L. 88-272, title II, §229(a)(3), Feb. 26, 1964, 78 Stat. 99; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-514, title VI, §655(a)(3), Oct. 22, 1986, 100 Stat. 2299; Pub. L. 105-34, title X, §1053(b), Aug. 5, 1997, 111 Stat. 943; Pub. L. 105-206, title VI, §6010(k)(1), (2), July 22, 1998, 112 Stat. 815; Pub. L. 109-135, title IV, §403(aa)(1), Dec. 21, 2005, 119 Stat. 2630; Pub. L. 111-325, title III, §301(c), Dec. 22, 2010, 124 Stat. 3544.)

**Editorial Notes**

AMENDMENTS

2010—Subsec. (c). Pub. L. 111-325, §301(c)(1)(B), substituted “Statements” for “Notice” in heading.

Pub. L. 111-325, §301(c)(1)(A), which directed amendment by substituting “so reported by the company in a written statement furnished to such shareholder” for “so designated by the company in a written notice mailed to its shareholders not later than 60 days after the close of the taxable year”, was executed by making the substitution for “so designated by the company in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year” in concluding provisions to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 111-325, §301(c)(2), struck out “and notifying shareholders” after “election” in heading and “and the notice to shareholders required by subsection (c)” after “subsection (a)” in text.

2005—Subsec. (e). Pub. L. 109-135 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “This section shall not apply to any tax with respect to which the regulated investment company is not allowed a credit under section 901 by reason of section 901(k).”

1998—Subsec. (c). Pub. L. 105-206, §6010(k)(2), struck out at end “Such notice shall also include the amount of such taxes which (without regard to the election under this section) would not be allowable as a credit under section 901(a) to the regulated investment company by reason of section 901(k).”

Subsecs. (e), (f). Pub. L. 105-206, §6010(k)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1997—Subsec. (c). Pub. L. 105-34 inserted at end “Such notice shall also include the amount of such taxes which (without regard to the election under this section) would not be allowable as a credit under section 901(a) to the regulated investment company by reason of section 901(k).”

1986—Subsec. (c). Pub. L. 99-514 substituted “60 days” for “45 days”.

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

1964—Subsec. (c). Pub. L. 88-272 substituted “45 days” for “30 days”.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111-325, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of

the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Pub. L. 105-34, title X, §1053(c), Aug. 5, 1997, 111 Stat. 943, provided that: “The amendments made by this section [amending this section and section 901 of this title] shall apply to dividends paid or accrued more than 30 days after the date of the enactment of this Act [Aug. 5, 1997].”

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Oct. 22, 1986, see section 655(b) of Pub. L. 99-514, set out as a note under section 852 of this title.

**EFFECTIVE DATE OF 1964 AMENDMENT**

Amendment by Pub. L. 88-272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88-272, set out as a note under section 852 of this title.

**§ 853A. Credits from tax credit bonds allowed to shareholders**

**(a) General rule**

A regulated investment company—

- (1) which holds (directly or indirectly) one or more tax credit bonds on one or more applicable dates during the taxable year, and
- (2) which meets the requirements of section 852(a) for the taxable year (determined after the application of this section),

may elect the application of this section with respect to some or all of the credits allowable (determined without regard to this section and sections 54(c), 54A(c)(1), 54AA(c)(1), and 1397E(c))<sup>1</sup> to the investment company during such taxable year with respect to such bonds.

**(b) Effect of election**

If the election provided in subsection (a) is in effect with respect to any credits for any taxable year—

- (1) the regulated investment company—

(A) shall not be allowed such credits,

(B) shall include in gross income (as interest) for such taxable year the amount which would have been so included with respect to such credits had the application of this section not been elected,

(C) shall include in earnings and profits the amount so included in gross income, and

(D) shall be treated as making one or more distributions of money with respect to its stock equal to the amount of such credits on the date or dates (on or after the applicable date for any such credit) during such taxable year (or following the close of the taxable year pursuant to section 855) selected by the company, and

- (2) each shareholder of such investment company shall—

(A) be treated as receiving such shareholder's proportionate share of any distribution of money which is treated as made by such investment company under paragraph (1)(D), and

(B) be allowed credits against the tax imposed by this chapter equal to the amount of

such distribution, subject to the provisions of this title applicable to the credit involved.

**(c) Statements<sup>2</sup> to shareholders**

The amount treated as a distribution of money received by a shareholder under subsection (b)(2)(A) (and as credits allowed to such shareholder under subsection (b)(2)(B)) shall not exceed the amount so reported by the regulated investment company in a written statement furnished to such shareholder.

**(d) Manner of making election**

The election provided in subsection (a) shall be made in such manner as the Secretary may prescribe.

**(e) Definitions and special rules**

**(1) Definitions**

For purposes of this subsection—

**(A) Tax credit bond**

The term “tax credit bond” means—

(i) a qualified tax credit bond (as defined in section 54A(d)),<sup>1</sup>

(ii) a build America bond (as defined in section 54AA(d))<sup>1</sup> other than a qualified bond described in section 54AA(g),<sup>1</sup> and

(iii) any bond for which a credit is allowable under subpart H of part IV of subchapter A of this chapter.<sup>1</sup>

**(B) Applicable date**

The term “applicable date” means—

(i) in the case of a qualified tax credit bond or a bond described in subparagraph (A)(iii), any credit allowance date (as defined in section 54A(e)(1)),<sup>1</sup> and

(ii) in the case of a build America bond (as defined in section 54AA(d)),<sup>1</sup> any interest payment date (as defined in section 54AA(e)).<sup>1</sup>

**(2) Stripped tax credit bonds**

If the ownership of a tax credit bond is separated from the credit with respect to such bond, subsection (a) shall be applied by reference to the instruments evidencing the entitlement to the credit rather than the tax credit bond.

**(f) Regulations, etc.**

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including methods for determining a shareholder's proportionate share of credits.

(Added Pub. L. 111-5, div. B, title I, §1541(a), Feb. 17, 2009, 123 Stat. 360; amended Pub. L. 111-325, title III, §301(d), Dec. 22, 2010, 124 Stat. 3544; Pub. L. 113-295, div. A, title II, §209(h), Dec. 19, 2014, 128 Stat. 4029.)

**Editorial Notes**

**REFERENCES IN TEXT**

Sections 54, 54A, and 54AA, referred to in subsecs. (a) and (e)(1), were repealed by Pub. L. 115-97, title I, §13404(a), Dec. 22, 2017, 131 Stat. 2138.

Section 1397E, referred to in subsec. (a), was repealed by Pub. L. 115-97, title I, §13404(c)(1), Dec. 22, 2017, 131 Stat. 2138.

<sup>1</sup> See References in Text note below.

<sup>2</sup> See 2010 Amendment note below.