

TITLE 26 - INTERNAL REVENUE CODE**Subtitle A - Income Taxes****CHAPTER 1 - NORMAL TAXES AND SURTAXES****Subchapter B - Computation of Taxable Income****PART I - DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME,
TAXABLE INCOME, ETC.****§ 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).

(Added Pub. L. 99–514, title I, § 132(a), Oct. 22, 1986, 100 Stat. 2113; amended Pub. L. 100–647, title I, § 1001(f), title IV, § 4011(a), Nov. 10, 1988, 102 Stat. 3351, 3655; Pub. L. 101–239, title VII, § 7814(f), Dec. 19, 1989, 103 Stat. 2414; Pub. L. 103–66, title XIII, § 13213(c)(2), Aug. 10, 1993, 107 Stat. 474; Pub. L. 105–277, div. J, title IV, § 4004(b)(1), Oct. 21, 1998, 112 Stat. 2681–910; Pub. L. 106–554, § 1(a)(7) [title III, § 319(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646.)

References in Text

Section 4 of the Securities Act of 1933, referred to in subsec. (c)(2)(B)(i)(I), is classified to section 77d of Title 15, Commerce and Trade.

Amendments

2000—Subsec. (f). Pub. L. 106–554 substituted “the second sentence” for “the last sentence”.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

1998—Subsec. (b)(3). Pub. L. 105–277 substituted “for casualty or theft losses described in paragraph (2) or (3) of section 165 (c) or for losses described in section 165 (d)” for “for losses described in subsection (c)(3) or (d) of section 165”.

1993—Subsec. (b)(6) to (13). Pub. L. 103–66 redesignated pars. (7) to (13) as (6) to (12), respectively, and struck out former par. (6) which read as follows: “the deduction under section 217 (relating to moving expenses),”.

1989—Subsec. (c)(4). Pub. L. 101–239 struck out par. (4) which read as follows: “Termination.—This subsection shall not apply to any taxable year beginning after December 31, 1989.”

1988—Subsec. (b)(4). Pub. L. 100–647, § 1001(f)(2), substituted “deductions” for “deduction” and inserted before comma at end “and section 642 (c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose)”.

Subsec. (c). Pub. L. 100–647, § 4011(a), amended subsec. (c) generally. Prior to amendment subsec. (c) read as follows: “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. The preceding sentence shall not apply—

“(1) with respect to cooperatives and real estate investment trusts, and

“(2) except as provided in regulations, with respect to estates and trusts.”

Pub. L. 100–647, § 1001(f)(4), amended last sentence generally. Prior to amendment, last sentence read as follows: “The preceding sentence shall not apply with respect to estates, trusts, cooperatives, and real estate investment trusts.”

Subsec. (e). Pub. L. 100–647, § 1001(f)(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “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 the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and would not have been incurred if the property were not held in such trust or estate shall be treated as allowable in arriving at adjusted gross income.”

Subsec. (f). Pub. L. 100–647, § 1001(f)(1), added subsec. (f).

Effective Date of 1998 Amendment

Pub. L. 105–277, div. J, title IV, § 4004(c)(2), Oct. 21, 1998, 112 Stat. 2681–911, provided that: “The amendment made by subsection (b)(1) [amending this section] shall apply to taxable years beginning after December 31, 1986.”

Effective Date of 1993 Amendment

Amendment by Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

Effective Date of 1989 Amendment

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Effective Date of 1988 Amendment

Amendment by section 1001(f) of 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.

Section 4011(b) of Pub. L. 100–647 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.”

Effective Date

Section applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 1 of this title.

1-Year Delay in Treatment of Publicly Offered Regulated Investment Companies Under 2-Percent Floor

Pub. L. 100–203, title X, § 10104(a), Dec. 22, 1987, 101 Stat. 1330–386, provided that:

“(1) General rule.—Section 67(c) of the Internal Revenue Code of 1986 to the extent it relates to indirect deductions through a publicly offered regulated investment company shall apply only to taxable years beginning after December 31, 1987.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

“(2) Publicly offered regulated investment company defined.—For purposes of this subsection—

“(A) 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) [15 U.S.C. 77d]),

“(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.

“(B) Secretary may reduce 500 person requirement.—The Secretary of the Treasury or his delegate may by regulation decrease the minimum shareholder requirement of subparagraph (A)(iii) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares.”