

TITLE 26 - INTERNAL REVENUE CODE

Subtitle A - Income Taxes

CHAPTER 1 - NORMAL TAXES AND SURTAXES

Subchapter B - Computation of Taxable Income

PART XI - SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS

§ 291. Special rules relating to corporate preference items

(a) Reduction in certain preference items, etc.

For purposes of this subtitle, in the case of a corporation—

(1) Section 1250 capital gain treatment

In the case of section 1250 property which is disposed of during the taxable year, 20 percent of the excess (if any) of—

(A) the amount which would be treated as ordinary income if such property was section 1245 property, over

(B) the amount treated as ordinary income under section 1250 (determined without regard to this paragraph),

shall be treated as gain which is ordinary income under section 1250 and shall be recognized notwithstanding any other provision of this title. Under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent section 1250 (a) does not apply to such disposition by reason of section 1250 (d).

(2) Reduction in percentage depletion

In the case of iron ore and coal (including lignite), the amount allowable as a deduction under section 613 with respect to any property (as defined in section 614) shall be reduced by 20 percent of the amount of the excess (if any) of—

(A) the amount of the deduction allowable under section 613 for the taxable year (determined without regard to this paragraph), over

(B) the adjusted basis of the property at the close of the taxable year (determined without regard to the depletion deduction for the taxable year).

(3) Certain financial institution preference items

The amount allowable as a deduction under this chapter (determined without regard to this section) with respect to any financial institution preference item shall be reduced by 20 percent.

(4) Amortization of pollution control facilities

If an election is made under section 169 with respect to any certified pollution control facility, the amortizable basis of such facility for purposes of such section shall be reduced by 20 percent.

(b) Special rules for treatment of intangible drilling costs and mineral exploration and development costs

For purposes of this subtitle, in the case of a corporation—

(1) In general

The amount allowable as a deduction for any taxable year (determined without regard to this section)—

(A) under section 263 (c) in the case of an integrated oil company, or

(B) under section 616 (a) or 617 (a),

shall be reduced by 30 percent.

(2) Amortization of amounts not allowable as deductions under paragraph (1)

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The amount not allowable as a deduction under section 263 (c), 616 (a), or 617 (a) (as the case may be) for any taxable year by reason of paragraph (1) shall be allowable as a deduction ratably over the 60-month period beginning with the month in which the costs are paid or incurred.

(3) Dispositions

For purposes of section 1254, any deduction under paragraph (2) shall be treated as a deduction allowable under section 263 (c), 616 (a), or 617 (a) (whichever is appropriate).

(4) Integrated oil company defined

For purposes of this subsection, the term “integrated oil company” means, with respect to any taxable year, any producer of crude oil to whom subsection (c) of section 613A does not apply by reason of paragraph (2) or (4) of section 613A (d).

(5) Coordination with cost depletion

The portion of the adjusted basis of any property which is attributable to amounts to which paragraph (1) applied shall not be taken into account for purposes of determining depletion under section 611.

(c) Special rules relating to pollution control facilities

For purposes of this subtitle—

(1) Accelerated cost recovery deduction

Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(4).

(2) 1250 Recapture

Subsection (a)(1) shall not apply to any section 1250 property which is part of a certified pollution control facility (within the meaning of section 169 (d)(1)) with respect to which an election under section 169 was made.

(d) Special rule for real estate investment trusts

In the case of a real estate investment trust (as defined in section 856), the difference between the amounts described in subparagraphs (A) and (B) of subsection (a)(1) shall be reduced to the extent that a capital gain dividend (as defined in section 857 (b)(3)(C), applied without regard to this section) is treated as paid out of such difference. Any capital gain dividend treated as having been paid out of such difference to a shareholder which is an applicable corporation retains its character in the hands of the shareholder as gain from the disposition of section 1250 property for purposes of applying subsection (a)(1) to such shareholder.

(e) Definitions

For purposes of this section—

(1) Financial institution preference item

The term “financial institution preference item” includes the following:

[(A) Repealed. Pub. L. 101–508, title XI, § 11801(c)(12)(B), Nov. 5, 1990, 104 Stat. 1388–527]

(B) Interest on debt to carry tax-exempt obligations acquired after December 31, 1982, and before August 8, 1986

(i) In general

In the case of a financial institution which is a bank (as defined in section 585 (a)(2)), the amount of interest on indebtedness incurred or continued to purchase or carry obligations acquired after December 31, 1982, and before August 8, 1986, the interest on which is exempt from taxes for the taxable year, to the extent that a deduction would (but for this

paragraph or section 265 (b)) be allowable with respect to such interest for such taxable year.

(ii) Determination of interest allocable to indebtedness on tax-exempt obligations

Unless the taxpayer (under regulations prescribed by the Secretary) establishes otherwise, the amount determined under clause (i) shall be an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section and section 265 (b)) to the taxpayer as a deduction for interest for the taxable year as—

(I) the taxpayer's average adjusted basis (within the meaning of section 1016) of obligations described in clause (i), bears to

(II) such average adjusted basis for all assets of the taxpayer.

(iii) Interest

For purposes of this subparagraph, the term "interest" includes amounts (whether or not designated as interest) paid in respect of deposits, investment certificates, or withdrawable or repurchasable shares.

(iv) Application of subparagraph to certain obligations issued after August 7, 1986

For application of this subparagraph to certain obligations issued after August 7, 1986, see section 265 (b)(3). That portion of any obligation not taken into account under paragraph (2)(A) of section 265 (b) by reason of paragraph (7) of such section shall be treated for purposes of this section as having been acquired on August 7, 1986.

(2) Section 1245 and 1250 property

The terms "section 1245 property" and "section 1250 property" have the meanings given such terms by sections 1245 (a)(3) and 1250 (c), respectively.

(Added Pub. L. 97–248, title II, § 204(a), Sept. 3, 1982, 96 Stat. 423; amended Pub. L. 97–354, § 5(a)(27), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97–448, title III, § 306(a)(2), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title I, § 68(a), (b), title VII, § 712(a)(1)(A), (2)–(4), July 18, 1984, 98 Stat. 588, 946; Pub. L. 99–514, title II, § 201(d)(5), title IV, §§ 411(a), (b)(2)(C)(ii), 412 (b)(1), title IX, §§ 901(b)(4), (d)(4)(C), 902 (c), title XVIII, §§ 1804(k)(1), (3)(A), 1854 (c)(1), 1876 (b)(1), Oct. 22, 1986, 100 Stat. 2140, 2225, 2227, 2378, 2380, 2382, 2809, 2878, 2898; Pub. L. 100–418, title I, § 1941(b)(5), Aug. 23, 1988, 102 Stat. 1324; Pub. L. 100–647, title I, § 1009(b)(4), (5), Nov. 10, 1988, 102 Stat. 3449; Pub. L. 101–508, title XI, § 11801(c)(12)(B), Nov. 5, 1990, 104 Stat. 1388–527; Pub. L. 104–188, title I, §§ 1602(b)(1), 1616 (b)(5), Aug. 20, 1996, 110 Stat. 1833, 1856; Pub. L. 110–172, § 11(g)(6), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 111–5, div. B, title I, § 1501(b), Feb. 17, 2009, 123 Stat. 353.)

Amendments

2009—Subsec. (e)(1)(B)(iv). Pub. L. 111–5 inserted at end "That portion of any obligation not taken into account under paragraph (2)(A) of section 265 (b) by reason of paragraph (7) of such section shall be treated for purposes of this section as having been acquired on August 7, 1986."

2007—Subsec. (a)(4), (5). Pub. L. 110–172, § 11(g)(6)(A), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "In the case of taxable years beginning after December 31, 1984, section 923 (a) shall be applied with respect to any FSC by substituting—

“(A) ‘30 percent’ for ‘32 percent’ in paragraph (2), and

“(B) ‘15/23’ for ‘16/23’ in paragraph (3).

If all of the stock in the FSC is not held by 1 or more C corporations throughout the taxable year, under regulations, proper adjustments shall be made in the application of the preceding sentence to take into account stock held by persons other than C corporations."

Subsec. (c)(1). Pub. L. 110–172, § 11(g)(6)(B), substituted "subsection (a)(4)" for "subsection (a)(5)".

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1996—Subsec. (e)(1)(B)(i). Pub. L. 104–188, § 1616(b)(5), struck out “or to which section 593 applies” after “585(a)(2)”.

Subsec. (e)(1)(B)(iv), (v). Pub. L. 104–188, § 1602(b)(1), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: “Special rules for obligations to which section 133 applies.—In the case of an obligation to which section 133 applies, interest on such obligation shall not be treated as exempt from taxes for purposes of this subparagraph.”

1990—Subsec. (e)(1)(A). Pub. L. 101–508 struck out subpar. (A) “Excess reserves for losses on bad debts of financial institutions” which read as follows: “In the case of a financial institution to which section 585 applies, the excess of—

“(i) the amount which would, but for this section, be allowable as a deduction for the taxable year for a reasonable addition to a reserve for bad debts, over

“(ii) the amount which would have been allowable had such institution maintained its bad debt reserve for all taxable years on the basis of actual experience.”

1988—Subsec. (b)(4). Pub. L. 100–418 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “For purposes of this subsection, the term ‘integrated oil company’ means, with respect to any taxable year, any producer (within the meaning of section 4996(a)(1)) of crude oil other than an independent producer (within the meaning of section 4992 (b)).”

Subsec. (e)(1)(B)(i). Pub. L. 100–647, § 1009(b)(5), substituted “section 585 (a)(2)” for “section 582 (a)(2)”.

Subsec. (e)(1)(B)(iv), (v). Pub. L. 100–647, § 1009(b)(4), redesignated cl. (iv), relating to application of subparagraph to certain obligations issued after Aug. 7, 1986, as (v).

1986—Subsec. (a). Pub. L. 99–514, § 1804(k)(3)(A), substituted “Reduction” for “20-percent reduction” in heading.

Subsec. (a)(1)(A). Pub. L. 99–514, § 201(d)(5)(A), struck out “or section 1245 recovery property” after “section 1245 property”.

Subsec. (a)(2). Pub. L. 99–514, § 412(b)(1), substituted “20 percent” for “15 percent”.

Subsec. (a)(4). Pub. L. 99–514, § 1876(b)(1), substituted “Certain FSC income” for “Certain deferred FSC income” in heading and amended text generally. Prior to amendment, text read as follows: “If a C corporation is a shareholder of the FSC, in the case of taxable years beginning after December 31, 1984, section 923 (a) shall be applied with respect to such corporation by substituting—

“(A) ‘30 percent’ for ‘32 percent’ in paragraph (2), and

“(B) ‘15/23’ for ‘16/23’ in paragraph (3).”

Pub. L. 99–514, § 1804(k)(1), substituted “If a C corporation” for “If a corporation”.

Subsec. (b)(1). Pub. L. 99–514, § 411(a)(1), (b)(2)(C)(ii), substituted “30 percent” for “20 percent” in closing provisions and “617(a)” for “617” in subpar. (B).

Subsec. (b)(2) to (6). Pub. L. 99–514, § 411(a)(2), added pars. (2) to (5) and struck out former pars. (2) to (6) as follows: former par. (2), special rule for amounts not allowable as deductions under paragraph (1), related in subpar. (A) to intangible drilling costs and in subpar. (B) to mineral exploration and development costs; former par. (3) defined applicable percentage in accordance with table for taxable years 1 to 5; former par. (4) dispositions, related in subpar. (A) to oil, gas, and geothermal property, in subpar. (B) to application of section 617 (d) of this title, and in subpar. (C) to recapture of investment credit; former par. (5) defined integrated oil company; and former par. (6) related to coordination with cost depletion.

Subsec. (c)(1). Pub. L. 99–514, § 201(d)(5)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “For purposes of subclause (1) of section 168 (d)(1)(A)(ii), a taxpayer shall not be treated as electing the amortization deduction under section 169 with respect to that portion of the basis not taken into account under section 169 by reason of subsection (a)(5).”

Subsec. (e)(1)(A). Pub. L. 99–514, § 901(b)(4), struck out “or 593” after “section 585”.

Subsec. (e)(1)(B). Pub. L. 99–514, § 902(c)(2)(C), substituted “1982, and before August 8, 1986” for “1982” in heading.

Subsec. (e)(1)(B)(i). Pub. L. 99–514, § 902(c)(1), (2)(A), substituted “1982, and before August 8, 1986” for “1982” and “(but for this paragraph or section 265 (b))” for “(but for this paragraph)”.

Pub. L. 99–514, § 901(d)(4)(C), substituted “which is a bank (as defined in section 582 (a)(2)) or to which section 593 applies” for “to which section 585 or 593 applies”.

Subsec. (e)(1)(B)(ii). Pub. L. 99–514, § 902(c)(2)(B), inserted “and section 265 (b)”.

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Subsec. (e)(1)(B)(iv). Pub. L. 99–514, § 1854(c)(1), added cl. (iv) relating to special rules for obligations to which section 133 applies.

Pub. L. 99–514, § 902(c)(2)(D), added cl. (iv) relating to application of subparagraph to certain obligations issued after August 7, 1986.

Subsec. (e)(2). Pub. L. 99–514, § 201(d)(5)(C), struck out “, ‘section 1245 recovery property’,” after “‘section 1245 property’ ” and directed that par. (2) be amended by striking out “, section 1245 (a)(5),” which was executed by striking out “, 1245(a)(5),” after “sections 1245 (a)(3)” to reflect the probable intent of Congress.

1984—Subsec. (a). Pub. L. 98–369, § 68(a), which directed that each subsection be amended by substituting “20 percent” for “15 percent” wherever appearing, was executed in heading by substituting “20-percent” for “15-percent” to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 98–369, § 68(a), substituted “20 percent” for “15 percent” in provisions preceding subpar. (A).

Pub. L. 98–369, § 712(a)(1)(A)(ii), inserted “under section 1250” in provisions following subpar. (B).

Subsec. (a)(1)(B). Pub. L. 98–369, § 712(a)(1)(A)(i), inserted “(determined without regard to this paragraph)”.

Subsec. (a)(3). Pub. L. 98–369, § 68(a), substituted “20 percent” for “15 percent”.

Subsec. (a)(4). Pub. L. 98–369, § 68(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

“(4) Certain deferred disc income.—If a corporation is a shareholder of a DISC, in the case of taxable years beginning after December 31, 1982, section 995 (b)(1)(F)(i) shall be applied with respect to such corporation by substituting ‘57.5 percent’ for ‘one-half’.”

Subsec. (a)(5). Pub. L. 98–369, § 68(a), substituted “20 percent” for “15 percent”.

Subsec. (b)(1). Pub. L. 98–369, § 68(a), substituted “20 percent” for “15 percent” in provisions following subpar. (B).

Subsec. (b)(2)(B)(ii). Pub. L. 98–369, § 712(a)(2), inserted “in the case of a deposit located in the United States.”

Subsec. (b)(6). Pub. L. 98–369, § 712(a)(3), substituted “attributable to amounts to which paragraph (1) applied” for “attributable to intangible drilling and development costs or mining exploration and development costs”.

Subsec. (e)(1)(B)(iii). Pub. L. 98–369, § 712(a)(4), added cl. (iii).

1983—Subsec. (a)(1). Pub. L. 97–448 inserted provision that, under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent section 1250 (a) does not apply to such disposition by reason of section 1250 (d).

1982—Subsec. (a). Pub. L. 97–354, § 5(a)(27)(A), substituted “a corporation” for “an applicable corporation” wherever appearing.

Subsec. (b). Pub. L. 97–354, § 5(a)(27)(A), substituted “a corporation” for “an applicable corporation”.

Subsec. (e)(2), (3). Pub. L. 97–354, § 5(a)(27)(B), redesignated par. (3) as (2). Former par. (2), defining “applicable corporation”, was struck out.

Effective Date of 2009 Amendment

Amendment by Pub. L. 111–5 applicable to obligations issued after Dec. 31, 2008, see section 1501(c) of Pub. L. 111–5, set out as a note under section 265 of this title.

Effective Date of 1996 Amendment

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

Amendment by section 1616(b)(5) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

Effective Date of 1988 Amendments

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.

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

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>).

Effective Date of 1986 Amendment

Amendment by section 201(d)(5) of Pub. L. 99-514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99-514, set out as a note under section 168 of this title.

Amendment by section 201(d)(5) of Pub. L. 99-514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99-514, set out as a note under section 46 of this title.

Amendment by section 411(a), (b)(2)(C)(ii) of Pub. L. 99-514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99-514 set out as a note under section 263 of this title.

Section 412(b)(2) of Pub. L. 99-514 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.”

Amendment by section 901(b)(4), (d)(4)(C) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99-514, set out as a note under section 166 of this title.

Amendment by section 902(c) of Pub. L. 99-514 applicable to taxable years ending after Dec. 31, 1986, with certain exceptions and qualifications, see section 902(f) of Pub. L. 99-514, set out as a note under section 265 of this title.

Section 1804(k)(1) of Pub. L. 99-514 provided that amendment made by section 1804(k)(1) of Pub. L. 99-514 is effective with respect to taxable years beginning after Dec. 31, 1982.

Amendment by sections 1804(k)(3)(A), 1854(c)(1), and 1876(b)(1) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Effective Date of 1984 Amendment

Pub. L. 98-369, div. A, title I, § 68(e), July 18, 1984, 98 Stat. 588, as amended by Pub. L. 99-514, § 2, title XVIII, § 1804(k)(2), Oct. 22, 1986, 100 Stat. 2095, 2809, provided that:

“(1) In general.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 57 and 995 of this title] shall apply to taxable years beginning after December 31, 1984.

“(2) 1250 gain.—The amendments made by this section to section 291(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and the amendment made by subsection (c)(2) of this section [amending section 57 of this title], shall apply to sales or other dispositions after December 31, 1984, in taxable years ending after such date.

“(3) Pollution control facilities.—The amendments made by this section to section 291 (a)(5) [now 291(a)(4)] of such Code, and so much of the amendment made by subsection (c)(1) of this section [amending section 57 of this title] as relates to pollution control facilities, shall apply to property placed in service after December 31, 1984, in taxable years ending after such date.

“(4) Drilling and mining costs.—The amendments made by this section to section 291(b) of such Code shall apply to expenditures after December 31, 1984, in taxable years ending after such date.”

Amendment by section 712 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97-448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 311(d) of Pub. L. 97-448, set out as a note under section 31 of this title.

Effective Date of 1982 Amendment

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

Effective Date

Pub. L. 97-248, title II, § 204(d), Sept. 3, 1982, 96 Stat. 427, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

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>).

“(1) In general.—Except as provided in this subsection, the amendments made by this section [enacting this section and amending sections 57 and 263 of this title] shall apply to taxable years beginning after December 31, 1982.

“(2) 1250 Gain.—Section 291(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to sales or other disposition after December 31, 1982, in taxable years ending after such date.

“(3) Pollution control facilities.—Section 291 (a)(5) [now 291(a)(4)] of such Code shall apply to property placed in service after December 31, 1982, in taxable years ending after such date.

“(4) Drilling and mining costs.—Section 291(b) of such Code shall apply to expenditures after December 31, 1982, in taxable years ending after such date.

“(5) Reduction in percentage depletion for coal and iron ore.—Section 291(a)(2) of such Code shall apply to taxable years beginning after December 31, 1983.

“(6) Minimum tax.—The amendment made by subsection (b) [amending section 57 of this title] shall apply to taxable years ending after December 31, 1982, with respect to items of tax preference described in section 57(b) of such Code to which section 291 of such Code applies; except that in the case of an item described in section 291(a)(2) of such Code, such amendment shall apply to taxable years beginning after December 31, 1983.”

Savings Provision

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

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.