

1970—Subsec. (a)(3), (4). Pub. L. 91-513 struck out pars. (3) and (4) relating to taxes in respect of narcotic drugs and taxes in respect of marihuana, respectively, and making references to parts I and III of subchapter A of chapter 39 and to parts II and III of subchapter A of chapter 39, respectively.

1958—Subsec. (a)(5), (6). Pub. L. 85-859 redesignated par. (6) as (5) and struck out former par. (5) which contained a cross reference to chapter 51 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85-859, set out as an Effective Date note under section 5001 of this title.

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.

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91-513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as a note under sections 171 to 174 of Title 21, Food and Drugs.

CHAPTER 79—DEFINITIONS

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Editorial Notes

AMENDMENTS

2014—Pub. L. 113-295, div. B, title II, §206(d)(2), Dec. 19, 2014, 128 Stat. 4071, added item 7705.

1996—Pub. L. 104-191, title III, §321(e), Aug. 21, 1996, 110 Stat. 2059, added item 7702B.

1988—Pub. L. 100-647, title V, §5012(c)(2), Nov. 10, 1988, 102 Stat. 3664, added item 7702A.

1987—Pub. L. 100-203, title X, §10211(b), Dec. 22, 1987, 101 Stat. 1330-405, added item 7704.

1986—Pub. L. 99-514, title XIII, §1301(j)(2)(B), Oct. 22, 1986, 100 Stat. 2657, added item 7703.

1984—Pub. L. 98-369, div. A, title II, §221(c), July 18, 1984, 98 Stat. 772, added item 7702.

§ 7701. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) Person

The term “person” shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) Partnership and partner

The term “partnership” includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term “partner” includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) Corporation

The term “corporation” includes associations, joint-stock companies, and insurance companies.

(4) Domestic

The term “domestic” when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

(5) Foreign

The term “foreign” when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) Fiduciary

The term “fiduciary” means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) Stock

The term “stock” includes shares in an association, joint-stock company, or insurance company.

(8) Shareholder

The term “shareholder” includes a member in an association, joint-stock company, or insurance company.

(9) United States

The term “United States” when used in a geographical sense includes only the States and the District of Columbia.

(10) State

The term “State” shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) Secretary of the Treasury and Secretary

(A) Secretary of the Treasury

The term “Secretary of the Treasury” means the Secretary of the Treasury, personally, and shall not include any delegate of his.

(B) Secretary

The term “Secretary” means the Secretary of the Treasury or his delegate.

(12) Delegate

(A) In general

The term “or his delegate”—

(i) when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context; and

(ii) when used with reference to any other official of the United States, shall be similarly construed.

(B) Performance of certain functions in Guam or American Samoa

The term “delegate,” in relation to the performance of functions in Guam or American Samoa with respect to the taxes imposed by chapters 1, 2, and 21, also includes any officer or employee of any other department or agency of the United States, or of any possession thereof, duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform such functions.

(13) Commissioner

The term “Commissioner” means the Commissioner of Internal Revenue.

(14) Taxpayer

The term “taxpayer” means any person subject to any internal revenue tax.

(15) Military or naval forces and armed forces of the United States

The term “military or naval forces of the United States” and the term “Armed Forces of the United States” each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

(16) Withholding agent

The term “withholding agent” means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461.

(17) Husband and wife

As used in section 2516, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such section, the term “wife” shall be read “former wife” and the term “husband” shall be read “former husband”; and, if the payments described in such section are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such section, the term “husband” shall be read “wife” and the term “wife” shall be read “husband.”

(18) International organization

The term “international organization” means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization

under the International Organizations Immunities Act (22 U.S.C. 288–288f).

(19) Domestic building and loan association

The term “domestic building and loan association” means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association—

(A) which is subject by law to supervision and examination by State or Federal authority having supervision over such associations;

(B) the business of which consists principally of acquiring the savings of the public and investing in loans; and

(C) at least 60 percent of the amount of the total assets of which (at the close of the taxable year) consists of—

(i) cash,

(ii) obligations of the United States or of a State or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof, but not including obligations the interest on which is excludable from gross income under section 103,

(iii) certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations,

(iv) loans secured by a deposit or share of a member,

(v) loans (including redeemable ground rents, as defined in section 1055) secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this clause, residential real property shall include single or multi-family dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis,

(vi) loans secured by an interest in real property located within an urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part A or part B of title I of the Housing Act of 1949, as amended, or located within any area covered by a program eligible for assistance under section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, and loans made for the improvement of any such real property,

(vii) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities,

(viii) property acquired through the liquidation of defaulted loans described in clause (v), (vi), or (vii),

(ix) loans made for the payment of expenses of college or university education or vocational training, in accordance with such regulations as may be prescribed by the Secretary,

(x) property used by the association in the conduct of the business described in subparagraph (B), and

(xi) any regular or residual interest in a REMIC, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC are assets described in clauses (i) through (x), the entire interest in the REMIC shall qualify.

At the election of the taxpayer, the percentage specified in this subparagraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year, computed under regulations prescribed by the Secretary. For purposes of clause (v), if a multi-family structure securing a loan is used in part for nonresidential purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds 80 percent of the property's planned use (determined as of the time the loan is made). For purposes of clause (v), loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if, under regulations prescribed by the Secretary, there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such 3-year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi).

(20) Employee

For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees, for the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident and health insurance or accident and health plans, and for the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, and for purposes of applying section 125 with respect to cafeteria plans, the term "employee" shall include a full-time life insurance salesman who is con-

sidered an employee for the purpose of chapter 21.

(21) Levy

The term "levy" includes the power of distraint and seizure by any means.

(22) Attorney General

The term "Attorney General" means the Attorney General of the United States.

(23) Taxable year

The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed under subtitle A. "Taxable year" means, in the case of a return made for a fractional part of a year under the provisions of subtitle A or under regulations prescribed by the Secretary, the period for which such return is made.

(24) Fiscal year

The term "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December.

(25) Paid or incurred, paid or accrued

The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under subtitle A.

(26) Trade or business

The term "trade or business" includes the performance of the functions of a public office.

(27) Tax Court

The term "Tax Court" means the United States Tax Court.

(28) Other terms

Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) Internal Revenue Code

The term "Internal Revenue Code of 1986" means this title, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(30) United States person

The term "United States person" means—

- (A) a citizen or resident of the United States,
- (B) a domestic partnership,
- (C) a domestic corporation,
- (D) any estate (other than a foreign estate, within the meaning of paragraph (31)), and
- (E) any trust if—

(i) a court within the United States is able to exercise primary supervision over the administration of the trust, and

(ii) one or more United States persons have the authority to control all substantial decisions of the trust.

(31) Foreign estate or trust

(A) Foreign estate

The term "foreign estate" means an estate the income of which, from sources without

the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.

(B) Foreign trust

The term “foreign trust” means any trust other than a trust described in subparagraph (E) of paragraph (30).

(32) Cooperative bank

The term “cooperative bank” means an institution without capital stock organized and operated for mutual purposes and without profit, which—

(A) is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and

(B) meets the requirements of subparagraphs (B) and (C) of paragraph (19) of this subsection (relating to definition of domestic building and loan association).

In determining whether an institution meets the requirements referred to in subparagraph (B) of this paragraph, any reference to an association or to a domestic building and loan association contained in paragraph (19) shall be deemed to be a reference to such institution.

(33) Regulated public utility

The term “regulated public utility” means—
(A) A corporation engaged in the furnishing or sale of—

(i) electric energy, gas, water, or sewerage disposal services, or

(ii) transportation (not included in subparagraph (C)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

(iii) transportation (not included in clause (ii)) by motor vehicle—

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof, or by a foreign country or an agency or instrumentality or political subdivision thereof.

(B) A corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission.

(C) A corporation engaged as a common carrier (i) in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Surface Transportation Board, or (ii) in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission or other similar body of the District of Columbia or of any State.

(D) A corporation engaged in the furnishing or sale of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of subparagraph (A).

(E) A corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Secretary of Transportation.

(F) A corporation engaged in the furnishing or sale of transportation by a water carrier subject to jurisdiction under subchapter II of chapter 135 of title 49.

(G) A rail carrier subject to part A of subtitle IV of title 49, if (i) substantially all of its railroad properties have been leased to another such railroad corporation or corporations by an agreement or agreements entered into before January 1, 1954, (ii) each lease is for a term of more than 20 years, and (iii) at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, an agreement for lease of railroad properties entered into before January 1, 1954, shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into before January 1, 1954.

(H) A common parent corporation which is a common carrier by railroad subject to part A of subtitle IV of title 49 if at least 80 percent of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, dividends and interest, and income from leases described in subparagraph (G), received from a regulated public utility shall be considered as derived from sources described in subparagraphs (A) through (F), inclusive, if the regulated public utility is a member of an affiliated group (as defined in section 1504) which includes the common parent corporation.

The term “regulated public utility” does not (except as provided in subparagraphs (G) and (H)) include a corporation described in subparagraphs (A) through (F), inclusive, unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in subparagraphs (A) through (F), inclusive. If the taxpayer establishes to the satisfaction of the Secretary that (i) its revenue from regulated rates described in subparagraph (A) or (D) and its revenue derived from unregulated rates are derived from the operation of a single interconnected and coordinated system or from the operation of more than one such system, and (ii) the unregulated rates have been and are substantially as favorable to users and con-

sumers as are the regulated rates, then such revenue from such unregulated rates shall be considered, for purposes of the preceding sentence, as income derived from sources described in subparagraph (A) or (D).

[§(34) Repealed. Pub. L. 98-369, div. A, title IV, § 4112(b)(11), July 18, 1984, 98 Stat. 792]

(35) Enrolled actuary

The term “enrolled actuary” means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974.

(36) Tax return preparer

(A) In general

The term “tax return preparer” means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this title or any claim for refund of tax imposed by this title. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.

(B) Exceptions

A person shall not be a “tax return preparer” merely because such person—

- (i) furnishes typing, reproducing, or other mechanical assistance,
- (ii) prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed,
- (iii) prepares as a fiduciary a return or claim for refund for any person, or
- (iv) prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to such taxpayer or in response to any waiver of restriction after the commencement of an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

(37) Individual retirement plan

The term “individual retirement plan” means—

- (A) an individual retirement account described in section 408(a), and
- (B) an individual retirement annuity described in section 408(b).

(38) Joint return

The term “joint return” means a single return made jointly under section 6013 by a husband and wife.

(39) Persons residing outside United States

If any citizen or resident of the United States does not reside in (and is not found in) any United States judicial district, such citizen or resident shall be treated as residing in the District of Columbia for purposes of any provision of this title relating to—

- (A) jurisdiction of courts, or
- (B) enforcement of summons.

(40) Indian tribal government

(A) In general

The term “Indian tribal government” means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

(B) Special rule for Alaska Natives

No determination under subparagraph (A) with respect to Alaska Natives shall grant or defer any status or powers other than those enumerated in section 7871. Nothing in the Indian Tribal Governmental Tax Status Act of 1982, or in the amendments made thereby, shall validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.

(41) TIN

The term “TIN” means the identifying number assigned to a person under section 6109.

(42) Substituted basis property

The term “substituted basis property” means property which is—

- (A) transferred basis property, or
- (B) exchanged basis property.

(43) Transferred basis property

The term “transferred basis property” means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to the basis in the hands of the donor, grantor, or other transferor.

(44) Exchanged basis property

The term “exchanged basis property” means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to other property held at any time by the person for whom the basis is to be determined.

(45) Nonrecognition transaction

The term “nonrecognition transaction” means any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A.

(46) Determination of whether there is a collective bargaining agreement

In determining whether there is a collective bargaining agreement between employee representatives and 1 or more employers, the term “employee representatives” shall not include any organization more than one-half of the members of which are employees who are owners, officers, or executives of the employer. An agreement shall not be treated as a collective bargaining agreement unless it is a bona fide agreement between bona fide employee representatives and 1 or more employers.

[(47) Repealed. Pub. L. 111-312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]

(48) Off-highway vehicles

(A) Off-highway transportation vehicles

(i) In general

A vehicle shall not be treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design such vehicle's capability to transport a load over the public highway is substantially limited or impaired.

(ii) Determination of vehicle's design

For purposes of clause (i), a vehicle's design is determined solely on the basis of its physical characteristics.

(iii) Determination of substantial limitation or impairment

For purposes of clause (i), in determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than such vehicle is permitted to transport over the public highway.

(B) Nontransportation trailers and semitrailers

A trailer or semitrailer shall not be treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an off-highway function at an off-highway site.

(49) Qualified blood collector organization

The term "qualified blood collector organization" means an organization which is—

- (A) described in section 501(c)(3) and exempt from tax under section 501(a),
- (B) primarily engaged in the activity of the collection of human blood,
- (C) registered with the Secretary for purposes of excise tax exemptions, and
- (D) registered by the Food and Drug Administration to collect blood.

(50) Termination of United States citizenship

(A) In general

An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(g)(4).

(B) Dual citizens

Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.

(b) Definition of resident alien and nonresident alien

(1) In general

For purposes of this title (other than subtitle B)—

(A) Resident alien

An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):

(i) Lawfully admitted for permanent residence

Such individual is a lawful permanent resident of the United States at any time during such calendar year.

(ii) Substantial presence test

Such individual meets the substantial presence test of paragraph (3).

(iii) First year election

Such individual makes the election provided in paragraph (4).

(B) Nonresident alien

An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

(2) Special rules for first and last year of residency

(A) First year of residency

(i) In general

If an alien individual is a resident of the United States under paragraph (1)(A) with respect to any calendar year, but was not a resident of the United States at any time during the preceding calendar year, such alien individual shall be treated as a resident of the United States only for the portion of such calendar year which begins on the residency starting date.

(ii) Residency starting date for individuals lawfully admitted for permanent residence

In the case of an individual who is a lawfully permanent resident of the United States at any time during the calendar year, but does not meet the substantial presence test of paragraph (3), the residency starting date shall be the first day in such calendar year on which he was present in the United States while a lawful permanent resident of the United States.

(iii) Residency starting date for individuals meeting substantial presence test

In the case of an individual who meets the substantial presence test of paragraph (3) with respect to any calendar year, the residency starting date shall be the first day during such calendar year on which the individual is present in the United States.

(iv) Residency starting date for individuals making first year election

In the case of an individual who makes the election provided by paragraph (4) with

respect to any calendar year, the residency starting date shall be the 1st day during such calendar year on which the individual is treated as a resident of the United States under that paragraph.

(B) Last year of residency

An alien individual shall not be treated as a resident of the United States during a portion of any calendar year if—

(i) such portion is after the last day in such calendar year on which the individual was present in the United States (or, in the case of an individual described in paragraph (1)(A)(i), the last day on which he was so described),

(ii) during such portion the individual has a closer connection to a foreign country than to the United States, and

(iii) the individual is not a resident of the United States at any time during the next calendar year.

(C) Certain nominal presence disregarded

(i) In general

For purposes of subparagraphs (A)(iii) and (B), an individual shall not be treated as present in the United States during any period for which the individual establishes that he has a closer connection to a foreign country than to the United States.

(ii) Not more than 10 days disregarded

Clause (i) shall not apply to more than 10 days on which the individual is present in the United States.

(3) Substantial presence test

(A) In general

Except as otherwise provided in this paragraph, an individual meets the substantial presence test of this paragraph with respect to any calendar year (hereinafter in this subsection referred to as the “current year”) if—

(i) such individual was present in the United States on at least 31 days during the calendar year, and

(ii) the sum of the number of days on which such individual was present in the United States during the current year and the 2 preceding calendar years (when multiplied by the applicable multiplier determined under the following table) equals or exceeds 183 days:

In the case of days in:	The applicable multiplier is:
Current year	1
1st preceding year	$\frac{1}{3}$
2nd preceding year	$\frac{1}{6}$

(B) Exception where individual is present in the United States during less than one-half of current year and closer connection to foreign country is established

An individual shall not be treated as meeting the substantial presence test of this paragraph with respect to any current year if—

(i) such individual is present in the United States on fewer than 183 days during the current year, and

(ii) it is established that for the current year such individual has a tax home (as defined in section 911(d)(3) without regard to the second sentence thereof) in a foreign country and has a closer connection to such foreign country than to the United States.

(C) Subparagraph (B) not to apply in certain cases

Subparagraph (B) shall not apply to any individual with respect to any current year if at any time during such year—

(i) such individual had an application for adjustment of status pending, or

(ii) such individual took other steps to apply for status as a lawful permanent resident of the United States.

(D) Exception for exempt individuals or for certain medical conditions

An individual shall not be treated as being present in the United States on any day if—

(i) such individual is an exempt individual for such day, or

(ii) such individual was unable to leave the United States on such day because of a medical condition which arose while such individual was present in the United States.

(4) First-year election

(A) An alien individual shall be deemed to meet the requirements of this subparagraph if such individual—

(i) is not a resident of the United States under clause (i) or (ii) of paragraph (1)(A) with respect to a calendar year (hereinafter referred to as the “election year”),

(ii) was not a resident of the United States under paragraph (1)(A) with respect to the calendar year immediately preceding the election year,

(iii) is a resident of the United States under clause (ii) of paragraph (1)(A) with respect to the calendar year immediately following the election year, and

(iv) is both—

(I) present in the United States for a period of at least 31 consecutive days in the election year, and

(II) present in the United States during the period beginning with the first day of such 31-day period and ending with the last day of the election year (hereinafter referred to as the “testing period”) for a number of days equal to or exceeding 75 percent of the number of days in the testing period (provided that an individual shall be treated for purposes of this subclause as present in the United States for a number of days during the testing period not exceeding 5 days in the aggregate, notwithstanding his absence from the United States on such days).

(B) An alien individual who meets the requirements of subparagraph (A) shall, if he so elects, be treated as a resident of the United States with respect to the election year.

(C) An alien individual who makes the election provided by subparagraph (B) shall be treated as a resident of the United States for

the portion of the election year which begins on the 1st day of the earliest testing period during such year with respect to which the individual meets the requirements of clause (iv) of subparagraph (A).

(D) The rules of subparagraph (D)(i) of paragraph (3) shall apply for purposes of determining an individual's presence in the United States under this paragraph.

(E) An election under subparagraph (B) shall be made on the individual's tax return for the election year, provided that such election may not be made before the individual has met the substantial presence test of paragraph (3) with respect to the calendar year immediately following the election year.

(F) An election once made under subparagraph (B) remains in effect for the election year, unless revoked with the consent of the Secretary.

(5) Exempt individual defined

For purposes of this subsection—

(A) In general

An individual is an exempt individual for any day if, for such day, such individual is—

- (i) a foreign government-related individual,
 - (ii) a teacher or trainee,
 - (iii) a student, or
 - (iv) a professional athlete who is temporarily in the United States to compete in a sports event—

(I) which is organized for the primary purpose of benefiting an organization which is described in section 501(c)(3) and exempt from tax under section 501(a),

(II) all of the net proceeds of which are contributed to such organization, and,¹

(III) which utilizes volunteers for substantially all of the work performed in carrying out such event.

(B) Foreign government-related individual

The term "foreign government-related individual" means any individual temporarily present in the United States by reason of—

- (i) diplomatic status, or a visa which the Secretary (after consultation with the Secretary of State) determines represents full-time diplomatic or consular status for purposes of this subsection,
 - (ii) being a full-time employee of an international organization, or
 - (iii) being a member of the immediate family of an individual described in clause (i) or (ii).

(C) Teacher or trainee

The term "teacher or trainee" means any individual—

- (i) who is temporarily present in the United States under subparagraph (J) or (Q) of section 101(15) of the Immigration and Nationality Act (other than as a student), and
 - (ii) who substantially complies with the requirements for being so present.

(D) Student

The term "student" means any individual—

(i) who is temporarily present in the United States—

(I) under subparagraph (F) or (M) of section 101(15) of the Immigration and Nationality Act, or

(II) as a student under subparagraph (J) or (Q) of such section 101(15), and

(ii) who substantially complies with the requirements for being so present.

(E) Special rules for teachers, trainees, and students

(i) Limitation on teachers and trainees

An individual shall not be treated as an exempt individual by reason of clause (ii) of subparagraph (A) for the current year if, for any 2 calendar years during the preceding 6 calendar years, such person was an exempt person under clause (ii) or (iii) of subparagraph (A). In the case of an individual all of whose compensation is described in section 872(b)(3), the preceding sentence shall be applied by substituting "4 calendar years" for "2 calendar years".

(ii) Limitation on students

For any calendar year after the 5th calendar year for which an individual was an exempt individual under clause (ii) or (iii) of subparagraph (A), such individual shall not be treated as an exempt individual by reason of clause (iii) of subparagraph (A), unless such individual establishes to the satisfaction of the Secretary that such individual does not intend to permanently reside in the United States and that such individual meets the requirements of subparagraph (D)(i).

(6) Lawful permanent resident

For purposes of this subsection, an individual is a lawful permanent resident of the United States at any time if—

(A) such individual has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, and

(B) such status has not been revoked (and has not been administratively or judicially determined to have been abandoned).

An individual shall cease to be treated as a lawful permanent resident of the United States if such individual commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country, does not waive the benefits of such treaty applicable to residents of the foreign country, and notifies the Secretary of the commencement of such treatment.

(7) Presence in the United States

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), (C), or (D), an individual shall be treated as present in the United States on any day if such individual is physically present in the United States at any time during such day.

¹ So in original. The comma probably should not appear.

(B) Commuters from Canada or Mexico

If an individual regularly commutes to employment (or self-employment) in the United States from a place of residence in Canada or Mexico, such individual shall not be treated as present in the United States on any day during which he so commutes.

(C) Transit between 2 foreign points

If an individual, who is in transit between 2 points outside the United States, is physically present in the United States for less than 24 hours, such individual shall not be treated as present in the United States on any day during such transit.

(D) Crew members temporarily present

An individual who is temporarily present in the United States on any day as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States shall not be treated as present in the United States on such day unless such individual otherwise engages in any trade or business in the United States on such day.

(8) Annual statements

The Secretary may prescribe regulations under which an individual who (but for subparagraph (B) or (D) of paragraph (3)) would meet the substantial presence test of paragraph (3) is required to submit an annual statement setting forth the basis on which such individual claims the benefits of subparagraph (B) or (D) of paragraph (3), as the case may be.

(9) Taxable year**(A) In general**

For purposes of this title, an alien individual who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(B) Fiscal year taxpayer

If—

(i) an individual is treated under paragraph (1) as a resident of the United States for any calendar year, and

(ii) after the application of subparagraph (A), such individual has a taxable year other than a calendar year,

he shall be treated as a resident of the United States with respect to any portion of a taxable year which is within such calendar year.

(10) Coordination with section 877

If—

(A) an alien individual was treated as a resident of the United States during any period which includes at least 3 consecutive calendar years (hereinafter referred to as the “initial residency period”), and

(B) such individual ceases to be treated as a resident of the United States but subsequently becomes a resident of the United States before the close of the 3rd calendar year beginning after the close of the initial residency period,

such individual shall be taxable for the period after the close of the initial residency period and before the day on which he subsequently became a resident of the United States in the manner provided in section 877(b). The preceding sentence shall apply only if the tax imposed pursuant to section 877(b) exceeds the tax which, without regard to this paragraph, is imposed pursuant to section 871.

(11) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(c) Includes and including

The terms “includes” and “including” when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(d) Commonwealth of Puerto Rico

Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(e) Treatment of certain contracts for providing services, etc.

For purposes of chapter 1—

(1) In general

A contract which purports to be a service contract shall be treated as a lease of property if such contract is properly treated as a lease of property, taking into account all relevant factors including whether or not—

(A) the service recipient is in physical possession of the property,

(B) the service recipient controls the property,

(C) the service recipient has a significant economic or possessory interest in the property,

(D) the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract,

(E) the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient, and

(F) the total contract price does not substantially exceed the rental value of the property for the contract period.

(2) Other arrangements

An arrangement (including a partnership or other pass-thru entity) which is not described in paragraph (1) shall be treated as a lease if such arrangement is properly treated as a lease, taking into account all relevant factors including factors similar to those set forth in paragraph (1).

(3) Special rules for contracts or arrangements involving solid waste disposal, energy, and clean water facilities**(A) In general**

Notwithstanding paragraphs (1) and (2), and except as provided in paragraph (4), any contract or arrangement between a service provider and a service recipient—

(i) with respect to—

(I) the operation of a qualified solid waste disposal facility,

(II) the sale to the service recipient of electrical or thermal energy produced at a cogeneration or alternative energy facility,

(III) the operation of a water treatment works facility, or

(IV) the operation of a storage facility, and

(ii) which purports to be a service contract,

shall be treated as a service contract.

(B) Qualified solid waste disposal facility

For purposes of subparagraph (A), the term “qualified solid waste disposal facility” means any facility if such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed at such facility is collected from the general public.

(C) Cogeneration facility

For purposes of subparagraph (A), the term “cogeneration facility” means a facility which uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy.

(D) Alternative energy facility

For purposes of subparagraph (A), the term “alternative energy facility” means a facility for producing electrical or thermal energy if the primary energy source for the facility is not oil, natural gas, coal, or nuclear power.

(E) Water treatment works facility

For purposes of subparagraph (A), the term “water treatment works facility” means any treatment works within the meaning of section 212(2) of the Federal Water Pollution Control Act.

(F) Storage facility

For purposes of subparagraph (A), the term “storage facility” means a facility which uses energy storage technology within the meaning of section 48(c)(6).

(4) Paragraph (3) not to apply in certain cases

(A) In general

Paragraph (3) shall not apply to any qualified solid waste disposal facility, cogeneration facility, alternative energy facility, water treatment works facility, or storage facility used under a contract or arrangement if—

(i) the service recipient (or a related entity) operates such facility,

(ii) the service recipient (or a related entity) bears any significant financial burden if there is nonperformance under the contract or arrangement (other than for reasons beyond the control of the service provider),

(iii) the service recipient (or a related entity) receives any significant financial

benefit if the operating costs of such facility are less than the standards of performance or operation under the contract or arrangement, or

(iv) the service recipient (or a related entity) has an option to purchase, or may be required to purchase, all or a part of such facility at a fixed and determinable price (other than for fair market value).

For purposes of this paragraph, the term “related entity” has the same meaning as when used in section 168(h).

(B) Special rules for application of subparagraph (A) with respect to certain rights and allocations under the contract

For purposes of subparagraph (A), there shall not be taken into account—

(i) any right of a service recipient to inspect any facility, to exercise any sovereign power the service recipient may possess, or to act in the event of a breach of contract by the service provider, or

(ii) any allocation of any financial burden or benefits in the event of any change in any law.

(C) Special rules for application of subparagraph (A) in the case of certain events

(i) Temporary shut-downs, etc.

For purposes of clause (ii) of subparagraph (A), there shall not be taken into account any temporary shut-down of the facility for repairs, maintenance, or capital improvements, or any financial burden caused by the bankruptcy or similar financial difficulty of the service provider.

(ii) Reduced costs

For purposes of clause (iii) of subparagraph (A), there shall not be taken into account any significant financial benefit merely because payments by the service recipient under the contract or arrangement are decreased by reason of increased production or efficiency or the recovery of energy or other products.

(5) Exception for certain low-income housing

This subsection shall not apply to any property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) (relating to low-income housing) if—

(A) such property is operated by or for an organization described in paragraph (3) or (4) of section 501(c), and

(B) at least 80 percent of the units in such property are leased to low-income tenants (within the meaning of section 167(k)(3)(B)) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(6) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection.

(f) Use of related persons or pass-thru entities

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of those provisions of this title which deal with—

- (1) the linking of borrowing to investment, or
- (2) diminishing risks,

through the use of related persons, pass-thru entities, or other intermediaries.

(g) Clarification of fair market value in the case of nonrecourse indebtedness

For purposes of subtitle A, in determining the amount of gain or loss (or deemed gain or loss) with respect to any property, the fair market value of such property shall be treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject.

(h) Motor vehicle operating leases

(1) In general

For purposes of this title, in the case of a qualified motor vehicle operating agreement which contains a terminal rental adjustment clause—

(A) such agreement shall be treated as a lease if (but for such terminal rental adjustment clause) such agreement would be treated as a lease under this title, and

(B) the lessee shall not be treated as the owner of the property subject to an agreement during any period such agreement is in effect.

(2) Qualified motor vehicle operating agreement defined

For purposes of this subsection—

(A) In general

The term “qualified motor vehicle operating agreement” means any agreement with respect to a motor vehicle (including a trailer) which meets the requirements of subparagraphs (B), (C), and (D) of this paragraph.

(B) Minimum liability of lessor

An agreement meets the requirements of this subparagraph if under such agreement the sum of—

- (i) the amount the lessor is personally liable to repay, and
- (ii) the net fair market value of the lessor’s interest in any property pledged as security for property subject to the agreement,

equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. There shall not be taken into account under clause (ii) any property pledged which is property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement.

(C) Certification by lessee; notice of tax ownership

An agreement meets the requirements of this subparagraph if such agreement contains a separate written statement separately signed by the lessee—

- (i) under which the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to such agreement is to be in a trade or business of the lessee, and

(ii) which clearly and legibly states that the lessee has been advised that it will not be treated as the owner of the property subject to the agreement for Federal income tax purposes.

(D) Lessor must have no knowledge that certification is false

An agreement meets the requirements of this subparagraph if the lessor does not know that the certification described in subparagraph (C)(i) is false.

(3) Terminal rental adjustment clause defined

(A) In general

For purposes of this subsection, the term “terminal rental adjustment clause” means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property.

(B) Special rule for lessee dealers

The term “terminal rental adjustment clause” also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in subparagraph (A).

(i) Taxable mortgage pools

(1) Treated as separate corporations

A taxable mortgage pool shall be treated as a separate corporation which may not be treated as an includible corporation with any other corporation for purposes of section 1501.

(2) Taxable mortgage pool defined

For purposes of this title—

(A) In general

Except as otherwise provided in this paragraph, a taxable mortgage pool is any entity (other than a REMIC) if—

- (i) substantially all of the assets of such entity consists of debt obligations (or interests therein) and more than 50 percent of such debt obligations (or interests) consists of real estate mortgages (or interests therein),
- (ii) such entity is the obligor under debt obligations with 2 or more maturities, and
- (iii) under the terms of the debt obligations referred to in clause (ii) (or underlying arrangement), payments on such debt obligations bear a relationship to payments on the debt obligations (or interests) referred to in clause (i).

(B) Portion of entities treated as pools

Any portion of an entity which meets the definition of subparagraph (A) shall be treated as a taxable mortgage pool.

(C) Exception for domestic building and loan

Nothing in this subsection shall be construed to treat any domestic building and loan association (or portion thereof) as a taxable mortgage pool.

(D) Treatment of certain equity interests

To the extent provided in regulations, equity interest of varying classes which correspond to maturity classes of debt shall be treated as debt for purposes of this subsection.

(3) Treatment of certain REIT's

If—

(A) a real estate investment trust is a taxable mortgage pool, or

(B) a qualified REIT subsidiary (as defined in section 856(i)(2)) of a real estate investment trust is a taxable mortgage pool,

under regulations prescribed by the Secretary, adjustments similar to the adjustments provided in section 860E(d) shall apply to the shareholders of such real estate investment trust.

(j) Tax treatment of Federal Thrift Savings Fund**(1) In general**

For purposes of this title—

(A) the Thrift Savings Fund shall be treated as a trust described in section 401(a) which is exempt from taxation under section 501(a);

(B) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(C) subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(e)(3), contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of subchapter III of chapter 84 of title 5, United States Code, and section 8351 of such title 5, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(2) Nondiscrimination requirements

Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the nondiscrimination requirements applicable to arrangements described in section 401(k) or to matching contributions (as described in section 401(m)), so long as it meets the requirements of this section.

(3) Coordination with Social Security Act

Paragraph (1) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term "wages" for the purposes of section 209 of the Social Security Act or section 3121(a) of this title.

(4) Definitions

For purposes of this subsection, the terms "Member", "employee", and "Thrift Savings Fund" shall have the same respective meanings as when used in subchapter III of chapter 84 of title 5, United States Code.

(5) Coordination with other provisions of law

No provision of law not contained in this title shall apply for purposes of determining

the treatment under this title of the Thrift Savings Fund or any contribution to, or distribution from, such Fund.

(k) Treatment of certain amounts paid to charity

In the case of any payment which, except for section 13143(b) of title 5, United States Code, might be made to any officer or employee of the Federal Government but which is made instead on behalf of such officer or employee to an organization described in section 170(c)—

(1) such payment shall not be treated as received by such officer or employee for all purposes of this title and for all purposes of any tax law of a State or political subdivision thereof, and

(2) no deduction shall be allowed under any provision of this title (or of any tax law of a State or political subdivision thereof) to such officer or employee by reason of having such payment made to such organization.

For purposes of this subsection, a Senator, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government.

(l) Regulations relating to conduit arrangements

The Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by this title.

(m) Designation of contract markets

Any designation by the Commodity Futures Trading Commission of a contract market which could not have been made under the law in effect on the day before the date of the enactment of the Commodity Futures Modernization Act of 2000 shall apply for purposes of this title except to the extent provided in regulations prescribed by the Secretary.

(n) Convention or association of churches

For purposes of this title, any organization which is otherwise a convention or association of churches shall not fail to so qualify merely because the membership of such organization includes individuals as well as churches or because individuals have voting rights in such organization.

(o) Clarification of economic substance doctrine**(1) Application of doctrine**

In the case of any transaction to which the economic substance doctrine is relevant, such transaction shall be treated as having economic substance only if—

(A) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and

(B) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction.

(2) Special rule where taxpayer relies on profit potential**(A) In general**

The potential for profit of a transaction shall be taken into account in determining

whether the requirements of subparagraphs (A) and (B) of paragraph (1) are met with respect to the transaction only if the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected.

(B) Treatment of fees and foreign taxes

Fees and other transaction expenses shall be taken into account as expenses in determining pre-tax profit under subparagraph (A). The Secretary shall issue regulations requiring foreign taxes to be treated as expenses in determining pre-tax profit in appropriate cases.

(3) State and local tax benefits

For purposes of paragraph (1), any State or local income tax effect which is related to a Federal income tax effect shall be treated in the same manner as a Federal income tax effect.

(4) Financial accounting benefits

For purposes of paragraph (1)(B), achieving a financial accounting benefit shall not be taken into account as a purpose for entering into a transaction if the origin of such financial accounting benefit is a reduction of Federal income tax.

(5) Definitions and special rules

For purposes of this subsection—

(A) Economic substance doctrine

The term “economic substance doctrine” means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

(B) Exception for personal transactions of individuals

In the case of an individual, paragraph (1) shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

(C) Determination of application of doctrine not affected

The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted.

(D) Transaction

The term “transaction” includes a series of transactions.

(p) Cross references

(1) Other definitions

For other definitions, see the following sections of Title 1 of the United States Code:

- (1) Singular as including plural, section 1.
- (2) Plural as including singular, section 1.
- (3) Masculine as including feminine, section 1.
- (4) Officer, section 1.
- (5) Oath as including affirmation, section 1.
- (6) County as including parish, section 2.

(7) Vessel as including all means of water transportation, section 3.

(8) Vehicle as including all means of land transportation, section 4.

(9) Company or association as including successors and assigns, section 5.

(2) Effect of cross references

For effect of cross references in this title, see section 7806(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 911; Pub. L. 86-70, § 22(g), (h), June 25, 1959, 73 Stat. 146; Pub. L. 86-624, § 18(i), (j), July 12, 1960, 74 Stat. 416; Pub. L. 86-778, title I, § 103(t), Sept. 13, 1960, 74 Stat. 941; Pub. L. 87-834, §§ 6(c), 7(h), Oct. 16, 1962, 76 Stat. 982, 988; Pub. L. 87-870, § 5(a), Oct. 23, 1962, 76 Stat. 1161; Pub. L. 88-272, title II, §§ 204(a)(3), 234(b)(3), Feb. 26, 1964, 78 Stat. 36, 114; Pub. L. 89-368, title I, § 102(b)(5), Mar. 15, 1966, 80 Stat. 64; Pub. L. 89-809, title I, § 103(l)(1), Nov. 13, 1966, 80 Stat. 1554; Pub. L. 90-364, title I, § 103(e)(6), June 28, 1968, 82 Stat. 264; Pub. L. 91-172, title IV, § 432(c), (d), title IX, § 960(j), Dec. 30, 1969, 83 Stat. 622, 623, 735; Pub. L. 92-606, § 1(f)(4), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 93-406, title III, § 3043, Sept. 2, 1974, 88 Stat. 1003; Pub. L. 94-455, title XII, § 1203(a), title XIX, § 1906(a)(57), (b)(13)(A), (c)(3), Oct. 4, 1976, 90 Stat. 1688, 1832, 1834, 1835; Pub. L. 95-600, title I, § 157(k)(2), title VII, § 701(cc)(2), Nov. 6, 1978, 92 Stat. 2809, 2923; Pub. L. 97-34, title VII, § 725(c)(4), Aug. 13, 1981, 95 Stat. 346; Pub. L. 97-248, title II, § 201(d)(10), formerly § 201(c)(10), title III, §§ 307(a)(17), 308(a), 336(a), Sept. 3, 1982, 96 Stat. 421, 590, 591, 628, renumbered § 201(d)(10) and amended Pub. L. 97-448, title III, § 306(a)(1)(A)(i), (b)(3), Jan. 12, 1983, 96 Stat. 2400, 2406; Pub. L. 97-449, § 5(e), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 97-473, title II, § 203, Jan. 14, 1983, 96 Stat. 2611; Pub. L. 98-67, title I, §§ 102(a), 104(d)(1), Aug. 5, 1983, 97 Stat. 369, 379; Pub. L. 98-216, § 3(c)(2), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98-369, div. A, title I, §§ 31(e), 43(a)(1), 53(c), 75(c), 138(a), title IV, §§ 412(b)(11), 422(d)(3), 474(r)(29)(K), 491(d)(53), title V, § 526(c)(1), July 18, 1984, 98 Stat. 518, 558, 567, 595, 672, 792, 798, 845, 852, 874; Pub. L. 98-443, § 9(q), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 99-514, title II, § 201(c), (d)(14), title VI, §§ 671(b)(3), 673, title XI, §§ 1137, 1147(a), 1166(a), title XVIII, § 1802(a)(9)(C), 1810(l)(1)-(5)(A), 1842(d), 1899A(63), (64), Oct. 22, 1986, 100 Stat. 2138, 2142, 2317, 2319, 2486, 2493, 2511, 2790, 2830-2832, 2853, 2962; Pub. L. 100-202, § 101(m) [title VI, § 624(a)], Dec. 22, 1987, 101 Stat. 1329-390, 1329-429; Pub. L. 100-647, § 1(c), title I, §§ 1001(d)(2)(D), 1002(a)(2), 1006(t)(12), (25)(A), 1011A(m)(1), 1011B(e), 1018(g)(3), Nov. 10, 1988, 102 Stat. 3342, 3351, 3352, 3422, 3426, 3483, 3489, 3583; Pub. L. 101-194, title VI, § 602, Nov. 30, 1989, 103 Stat. 1762; Pub. L. 101-508, title XI, §§ 11704(a)(34), 11812(b)(13), Nov. 5, 1990, 104 Stat. 1388-519, 1388-536; Pub. L. 102-90, title III, § 314(e), Aug. 14, 1991, 105 Stat. 470; Pub. L. 102-318, title V, § 521(b)(43), July 3, 1992, 106 Stat. 313; Pub. L. 103-66, title XIII, § 13238, Aug. 10, 1993, 107 Stat. 508; Pub. L. 103-296, title III, § 320(a)(3), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 104-88, title III, § 304(e), Dec. 29, 1995, 109 Stat. 944; Pub. L. 104-188, title I, §§ 1402(b)(3), 1621(b)(8), (9), 1907(a)(1), (2), Aug. 20, 1996, 110 Stat. 1790, 1867, 1916; Pub. L. 105-34, title XI, §§ 1151(a), 1174(b), title XVI, § 1601(i)(3)(A), Aug. 5, 1997, 111 Stat. 986, 989, 1093; Pub. L. 106-554, § 1(a)(7) [title IV,

§ 401(i)], Dec. 21, 2000, 114 Stat. 2763, 2763A–650; Pub. L. 107–16, title V, § 542(e)(3), June 7, 2001, 115 Stat. 85; Pub. L. 108–311, title II, § 207(24), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 108–357, title VIII, §§ 804(b), 835(b)(10), (11), 852(a), Oct. 22, 2004, 118 Stat. 1570, 1594, 1609; Pub. L. 109–135, title IV, § 403(v)(2), Dec. 21, 2005, 119 Stat. 2628; Pub. L. 109–280, title XII, §§ 1207(f), 1222, Aug. 17, 2006, 120 Stat. 1071, 1089; Pub. L. 110–28, title VIII, § 8246(a)(1), May 25, 2007, 121 Stat. 200; Pub. L. 110–245, title III, § 301(c)(1), (2)(B), (C), June 17, 2008, 122 Stat. 1646; Pub. L. 111–152, title I, § 1409(a), Mar. 30, 2010, 124 Stat. 1067; Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300; Pub. L. 113–295, div. A, title II, § 221(a)(119), Dec. 19, 2014, 128 Stat. 4055; Pub. L. 115–97, title I, §§ 11051(b)(4), 13304(a)(2)(F), Dec. 22, 2017, 131 Stat. 2090, 2125; Pub. L. 115–141, div. U, title IV, § 401(a)(331), (332), (b)(54), (55), Mar. 23, 2018, 132 Stat. 1200, 1205; Pub. L. 117–169, title I, § 13102(n), Aug. 16, 2022, 136 Stat. 1920; Pub. L. 117–286, § 4(c)(33), Dec. 27, 2022, 136 Stat. 4358.)

Editorial Notes

REFERENCES IN TEXT

Part A and part B of title I of the Housing Act of 1949, referred to in subsec. (a)(19)(C)(vi), which were classified generally to part A (§ 1450 et seq.) and part B (§ 1469 et seq.) of subchapter II of chapter 8A of Title 42, The Public Health and Welfare, were omitted from the Code pursuant to section 5316 of Title 42, which terminated authority to make new loans and grants under title I of that Act after Jan. 1, 1975.

Section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, referred to in subsec. (a)(19)(C)(vi), which was classified to section 3303 of Title 42, was omitted from the Code pursuant to section 5316 of Title 42, which terminated authority to make new loans and grants under title I (§ 101 et seq.) of that Act after Jan. 1, 1975.

The Internal Revenue Code of 1939, referred to in subsec. (a)(29), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. The Internal Revenue Code of 1954 was redesignated The Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(35), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Subtitle C of title III of the Employee Retirement Income Security Act of 1974 is classified to subtitle C (§ 1241 et seq.) of subchapter II of chapter 18 of Title 29, Labor and amended subsec. (a)(35) of this section. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Indian Tribal Governmental Tax Status Act of 1982, referred to in subsec. (a)(40)(B), is title II of Pub. L. 97–473, Jan. 14, 1983, 96 Stat. 2607, which is classified principally to subchapter C (§ 7871) of chapter 80 of this title. For complete classification of this Act to the Code, see Short Title of 1983 Amendments note set out under section 1 of this title and Tables.

Section 101(15) of the Immigration and Nationality Act, referred to in subsec. (b)(5)(C)(i), (D)(i), probably means section 101(a)(15) of that Act, which is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Section 212(2) of the Federal Water Pollution Control Act, referred to in subsec. (e)(3)(E), is classified to section 1292(2) of Title 33, Navigation and Navigable Waters.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (e)(5)(B), is the

date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 209 of the Social Security Act, referred to in subsec. (j)(3), is classified to section 409 of Title 42, The Public Health and Welfare.

The date of the enactment of the Commodity Futures Modernization Act of 2000, referred to in subsec. (m), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

CODIFICATION

Sections 1207(f) and 1222 of Pub. L. 109–280, which directed the amendment of section 7701 without specifying the act to be amended, were executed to this section, which is section 7701 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2022—Subsec. (e)(3)(A)(i)(IV). Pub. L. 117–169, § 13102(n)(1)(A), added subcl. (IV).

Subsec. (e)(3)(F). Pub. L. 117–169, § 13102(n)(1)(B), added subpar. (F).

Subsec. (e)(4)(A). Pub. L. 117–169, § 13102(n)(2), substituted “water treatment works facility, or storage facility” for “or water treatment works facility” in introductory provisions.

Subsec. (k). Pub. L. 117–286 substituted “section 13143(b) of title 5, United States Code,” for “section 501(b) of the Ethics in Government Act of 1978.”

2018—Subsec. (a)(19)(A). Pub. L. 115–141, § 401(b)(54), struck out “either (i) is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a), or (ii)” after “which”.

Subsec. (a)(32)(A). Pub. L. 115–141, § 401(b)(55), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “either—

“(i) is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a), or

“(ii) is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and”.

Subsec. (a)(36)(B). Pub. L. 115–141, § 401(a)(331), substituted “shall not be a” for “shall not be an” in introductory provisions.

Subsec. (e)(5)(B). Pub. L. 115–141, § 401(a)(332), substituted “Reconciliation” for “Reconciliation”.

2017—Subsec. (a)(17). Pub. L. 115–97, § 11051(b)(4), substituted “section 2516” for “sections 682 and 2516” and substituted “such section” for “such sections” wherever appearing.

Subsec. (b)(5)(A)(iv). Pub. L. 115–97, § 13304(a)(2)(F), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: “a professional athlete who is temporarily in the United States to compete in a charitable sports event described in section 274(b)(1)(B).”

2014—Subsec. (a)(20). Pub. L. 113–295 substituted “chapter 21.” for “chapter 21, or in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.”

2010—Subsec. (a)(47). Pub. L. 111–312 amended subsec. (a) to read as if amendment by Pub. L. 107–16, § 542(e)(3), had never been enacted.

Subsecs. (o), (p). Pub. L. 111–152 added subsec. (o) and redesignated former subsec. (o) as (p).

2008—Subsec. (a)(50). Pub. L. 110–245, § 301(c)(1), added par. (50).

Subsec. (b)(6). Pub. L. 110–245, § 301(c)(2)(B), inserted concluding provisions.

Subsecs. (n) to (p). Pub. L. 110–245, § 301(c)(2)(C), redesignated subsecs. (o) and (p) as (n) and (o), respectively, and struck out former subsec. (n) which related to special rules for determining when an individual is no longer a United States citizen or long-term resident.

2007—Subsec. (a)(36). Pub. L. 110–28, § 8246(a)(1)(A), which directed the striking out of “income” in heading, was executed by substituting “Tax” for “Income tax” to reflect the probable intent of Congress.

Pub. L. 110-28, §8246(a)(1)(A), struck out “income” before “tax return preparer” in subpar. (A) and in introductory provisions of subpar. (B).

Subsec. (a)(36)(A). Pub. L. 110-28, §8246(a)(1)(B), substituted “this title” for “subtitle A” in two places.

2006—Subsec. (a)(49). Pub. L. 109-280, §1207(f), added par. (49). See Codification note above.

Subsecs. (o), (p). Pub. L. 109-280, §1222, added subsec. (o) and redesignated former subsec. (o) as (p). See Codification note above.

2005—Subsec. (n). Pub. L. 109-135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “An individual who would (but for this subsection) cease to be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States, as the case may be, until such individual—

“(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and

“(2) provides a statement in accordance with section 6039G.”

2004—Subsec. (a)(17). Pub. L. 108-311 substituted “682” for “152(b)(4), 682.”

Subsec. (a)(19)(C)(xi). Pub. L. 108-357, §835(b)(10), struck out “and any regular interest in a FASIT,” after “residual interest in a REMIC,” and struck out “or FASIT” after “entire interest in the REMIC” and after “such REMIC” in two places.

Subsec. (a)(48). Pub. L. 108-357, §852(a), added par. (48).
Subsec. (i)(2)(A). Pub. L. 108-357, §835(b)(11), struck out “or a FASIT” after “other than a REMIC” in introductory provisions.

Subsecs. (n), (o). Pub. L. 108-357, §804(b), added subsec. (n) and redesignated former subsec. (n) as (o).

2001—Subsec. (a)(47). Pub. L. 107-16, §542(e)(3), added par. (47) which defined the term “executor”.

2000—Subsecs. (m), (n). Pub. L. 106-554 added subsec. (m) and redesignated former subsec. (m) as (n).

1997—Subsec. (a)(4). Pub. L. 105-34, §1151(a), inserted before period at end “unless, in the case of a partnership, the Secretary provides otherwise by regulations”.

Subsec. (a)(30)(E)(ii). Pub. L. 105-34, §1601(i)(3)(A), substituted “persons” for “fiduciaries”.

Subsec. (b)(7)(A). Pub. L. 105-34, §1174(b)(2), substituted “, (C), or (D)” for “or (C)”.

Subsec. (b)(7)(D). Pub. L. 105-34, §1174(b)(1), added subpar. (D).

1996—Subsec. (a)(19)(C)(xi). Pub. L. 104-188, §1621(b)(8), amended cl. (xi) generally. Prior to amendment, cl. (xi) read as follows: “any regular or residual interest in a REMIC, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC are assets described in clauses (i) through (x), the entire interest in the REMIC shall qualify.”

Subsec. (a)(20). Pub. L. 104-188, §1402(b)(3), struck out “, for the purpose of applying the provisions of section 101(b) with respect to employees’ death benefits” after “health plans”.

Subsec. (a)(30)(C) to (E). Pub. L. 104-188, §1907(a)(1), struck out “and” at end of subpar. (C), added subpars. (D) and (E), and struck out former subpar. (D) which read as follows: “any estate or trust (other than a foreign estate or foreign trust, within the meaning of section 7701(a)(31)).”

Subsec. (a)(31). Pub. L. 104-188, §1907(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The terms ‘foreign estate’ and ‘foreign trust’ mean an estate or trust, as the case may be, the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.”

Subsec. (i)(2)(A). Pub. L. 104-188, §1621(b)(9), inserted “or a FASIT” after “a REMIC” in introductory provisions.

1995—Subsec. (a)(33)(B). Pub. L. 104-88, §304(e)(1), substituted “Federal Energy Regulatory Commission” for “Federal Power Commission”.

Subsec. (a)(33)(C)(i). Pub. L. 104-88, §304(e)(2), substituted “Surface Transportation Board” for “Interstate Commerce Commission”.

Subsec. (a)(33)(C)(ii). Pub. L. 104-88, §304(e)(3), substituted “Federal Energy Regulatory Commission” for “Interstate Commerce Commission”.

Subsec. (a)(33)(F). Pub. L. 104-88, §304(e)(4), substituted “a water carrier subject to jurisdiction under subchapter II of chapter 135 of title 49” for “common carrier by water, subject to the jurisdiction of the Interstate Commerce Commission under subchapter III of chapter 105 of title 49, or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933”.

Subsec. (a)(33)(G). Pub. L. 104-88, §304(e)(5), substituted “rail carrier subject to part A of subtitle IV” for “railroad corporation subject to subchapter I of chapter 105”.

Subsec. (a)(33)(H). Pub. L. 104-88, §304(e)(6), substituted “part A of subtitle IV” for “subchapter I of chapter 105”.

1994—Subsec. (b)(5)(C)(i), (D)(i)(II). Pub. L. 103-296 substituted “(J) or (Q)” for “(J)”.

1993—Subsecs. (l), (m). Pub. L. 103-66 added subsec. (l) and redesignated former subsec. (l) as (m).

1992—Subsec. (j)(1)(C). Pub. L. 102-318 substituted “402(e)(3)” for “402(a)(8)”.

1991—Subsec. (k). Pub. L. 102-90 amended last sentence generally. Prior to amendment, last sentence read as follows: “For purposes of this subsection, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government and a Senator or officer (except the Vice President) or employee of the Senate shall not be treated as an officer or employee of the Federal Government.”

1990—Subsec. (e)(5)(B). Pub. L. 101-508, §11812(b)(13), inserted before period at end “(as in effect on the day before the date of the enactment of the Revenue Reconciliation [sic] Act of 1990)”.

Subsec. (j)(1)(C). Pub. L. 101-508, §11704(a)(34), substituted “(C) subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(a)(8),” for “(C) subject to, section 401(k)(4)(B), and any dollar limitation on the application of section 402(a)(8).”

1989—Subsecs. (k), (l). Pub. L. 101-194 added subsec. (k) and redesignated former subsec. (k) as (l).

1988—Subsec. (a)(19). Pub. L. 100-647, §1006(t)(25)(A), inserted at end “For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC’s are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi).”

Subsec. (a)(19)(C)(xi). Pub. L. 100-647, §1006(t)(12), substituted “are assets described” for “are loans described”.

Subsec. (a)(20). Pub. L. 100-647, §1011B(e), substituted “and 106” for “106, and 125” and inserted “and for purposes of applying section 125 with respect to cafeteria plans,” before “the term”.

Subsec. (a)(29). Pub. L. 100-647, §1(c), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Subsec. (b)(5)(A)(iv). Pub. L. 100-647, §1018(g)(3), substituted “section 274(l)(1)(B)” for “section 274(k)(2)”.

Subsec. (b)(5)(D)(i)(I). Pub. L. 100-647, §1001(d)(2)(D), substituted “subparagraph (F) or (M)” for “subparagraph (F)”.

Subsec. (e)(5). Pub. L. 100-647, §1002(a)(2), made technical correction to language of Pub. L. 99-514, §201(d)(14)(B), see 1986 Amendment note below.

Subsec. (j)(1)(C). Pub. L. 100-647, §1011A(m)(1), inserted “, section 401(k)(4)(B),” after “the provisions of paragraph (2)” in subpar. (C), as it read before amend-

ment by Pub. L. 100-202. See Effective Date of 1988 Amendment note below.

1987—Subsec. (j)(1)(C). Pub. L. 100-202, §101(m) [title VI, §624(a)(1)], which directed that “the provisions of paragraph (2) and” after “subject to” be struck out, was executed by striking out “the provisions of paragraph (2)” after “subject to” in view of the amendment by section 1011A(m)(1) of Pub. L. 100-647 which was effective as if it had been included in Pub. L. 99-514. See 1988 Amendment note above.

Subsec. (j)(2). Pub. L. 100-202, §101(m) [title VI, §624(a)(2)], added par. (2) and struck out former par. (2) which read as follows: “Paragraph (1)(C) shall not apply to the Thrift Savings Fund unless the Fund meets the antidiscrimination requirements (other than any requirement relating to coverage) applicable to arrangements described in section 401(k) and to matching contributions. Rules similar to the rules of sections 401(k)(8) and 401(m)(8) (relating to no disqualification if excess contributions distributed) shall apply for purposes of the preceding sentence.”

1986—Subsec. (a)(17). Pub. L. 99-514, §1842(d), inserted reference to section 2516.

Subsec. (a)(19)(C)(xi). Pub. L. 99-514, §671(b)(3), added cl. (xi).

Subsec. (a)(20). Pub. L. 99-514, §1166(a), inserted reference to section 125.

Subsec. (a)(46). Pub. L. 99-514, §1137, inserted last sentence.

Subsec. (b)(1)(A). Pub. L. 99-514, §1810(l)(2), substituted “the requirements of clause (i), (ii), or (iii)” for “the requirements of clause (i) or (ii)” in introductory provisions and added cl. (iii).

Subsec. (b)(2)(A)(iv). Pub. L. 99-514, §1810(l)(3), added cl. (iv).

Subsec. (b)(4). Pub. L. 99-514, §1810(l)(4), added par. (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 99-514, §1810(l)(4), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (b)(5)(A)(iv). Pub. L. 99-514, §1810(l)(5)(A), which directed that cl. (iv) be added to subpar. (4)(A), was executed by adding cl. (iv) to subpar. (5)(A) to reflect the probable intent of Congress and the intervening redesignation of par. (4) as (5) by section 1810(l)(4) of Pub. L. 99-514.

Subsec. (b)(5)(E)(i). Pub. L. 99-514, §1810(l)(1), inserted last sentence.

Pub. L. 99-514, §1899A(63), substituted “preceding” for “preceeding”.

Subsec. (b)(6) to (11). Pub. L. 99-514, §1810(l)(4), redesignated pars. (5) to (10) as pars. (6) to (11), respectively.

Subsec. (e)(4)(A). Pub. L. 99-514, §201(d)(14)(A), substituted “section 168(h)” for “section 168(j)”.

Pub. L. 99-514, §1802(a)(9)(C), inserted at end “For purposes of this paragraph, the term ‘related entity’ has the same meaning as when used in section 168(j).”

Subsec. (e)(5). Pub. L. 99-514, §201(d)(14)(B), as amended by Pub. L. 100-647, §1002(a)(2), substituted “property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) (relating to low-income housing)” for “low-income housing (within the meaning of section 168(c)(2)(F))”.

Pub. L. 99-514, §1899A(64), substituted “section 168(c)(2)(F)” for “section 168(C)(2)(F)”.

Subsec. (h). Pub. L. 99-514, §201(c), added subsec. (h). Former subsec. (h), relating to cross references, was successively redesignated as (i), (j), and (k).

Subsec. (i). Pub. L. 99-514, §673, added subsec. (i). Former subsec. (i), relating to cross references, as previously redesignated, was successively redesignated as (j) and (k).

Subsec. (j). Pub. L. 99-514, §1147(a), added subsec. (j). Former subsec. (j), relating to cross references, as previously redesignated, was redesignated as (k).

Subsec. (k). Pub. L. 99-514, §§201(c), 673, 1147(a), successively redesignated subsec. (h), relating to cross references, as subssecs. (i), (j), and (k).

1984—Subsec. (a)(16). Pub. L. 98-369, §474(r)(29)(K), struck out “1451,” after “1443”.

Subsec. (a)(17). Pub. L. 98-369, §422(d)(3), struck out reference to sections 71 and 215.

Subsec. (a)(33)(E). Pub. L. 98-443 substituted “Secretary of Transportation” for “Civil Aeronautics Board”.

Subsec. (a)(33)(G). Pub. L. 98-216 substituted “subchapter I of chapter 105 of title 49” for “part I of the Interstate Commerce Act”.

Subsec. (a)(34). Pub. L. 98-369, §412(b)(11), repealed par. (34) which defined estimated income tax in the case of an individual or a corporation as the estimated tax defined in section 6015(d) or 6154(c), respectively.

Subsec. (a)(37)(C). Pub. L. 98-369, §491(d)(53), struck out subpar. (C) which included a retirement bond described in section 409 within the term “individual plan”.

Subsec. (a)(42) to (45). Pub. L. 98-369, §43(a)(1), added pars. (42) to (45).

Subsec. (a)(46). Pub. L. 98-369, §526(c)(1), added par. (46).

Subsec. (b). Pub. L. 98-369, §138(a), added subsec. (b). Former subsec. (b), relating to includes and including, redesignated (c).

Subsec. (c). Pub. L. 98-369, §138(a), redesignated former subsec. (b), relating to includes and including, as (c). Former subsec. (c), relating to Commonwealth of Puerto Rico, redesignated (d).

Subsec. (d). Pub. L. 98-369, §138(a), redesignated former subsec. (c), relating to Commonwealth of Puerto Rico, as (d). Former subsec. (d), relating to cross references, redesignated (e).

Subsec. (e). Pub. L. 98-369, §31(e), added subsec. (e). Former subsec. (e), relating to cross references, redesignated (f).

Pub. L. 98-369, §138(a), redesignated former subsec. (d), relating to cross references, as (e).

Subsec. (f). Pub. L. 98-369, §53(c), added subsec. (f). Former subsec. (f), relating to cross references, redesignated (g).

Pub. L. 98-369, §31(e), redesignated former subsec. (e), relating to cross references, as (f).

Subsec. (g). Pub. L. 98-369, §75(c), added subsec. (g). Former subsec. (g), relating to cross references, redesignated (h).

Pub. L. 98-369, §53(c), redesignated former subsec. (f), relating to cross references, as (g).

Subsec. (h). Pub. L. 98-369, §75(c), redesignated former subsec. (g), relating to cross references, as (h).

1983—Subsec. (a)(16). Pub. L. 98-67, §102(a), repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

Subsec. (a)(33)(F). Pub. L. 97-449, §5(e)(1), substituted “subchapter III of chapter 105 of title 49” for “part III of the Interstate Commerce Act”.

Subsec. (a)(33)(H). Pub. L. 97-449, §5(e)(2), substituted “subchapter I of chapter 105 of title 49” for “part I of the Interstate Commerce Act”.

Subsec. (a)(38), (39). Pub. L. 97-448, §306(b)(3), redesignated par. (38), as added by Pub. L. 97-248, §336(a), relating to persons residing outside the United States, as (39).

Subsec. (a)(40). Pub. L. 97-473 added par. (40).

Subsec. (a)(41). Pub. L. 98-67, §104(d)(1), added par. (41).

1982—Subsec. (a)(16). Pub. L. 97-248, §§307(a)(17), 308(a), provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (16) is amended by substituting “1461 or 3451” for “or 1461”. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

Subsec. (a)(38). Pub. L. 97-248, §201(d)(10), formerly §201(c)(10), added par. (38) relating to joint return.

Pub. L. 97-248, §336(a), added par. (38) relating to persons residing outside the United States.

1981—Subsec. (a)(34)(A). Pub. L. 97-34 substituted “section 6015(d)” for “section 6015(c)”.

1978—Subsec. (a)(36)(B)(iii). Pub. L. 95-600, § 701(cc)(2), substituted “prepares as a fiduciary a return or claim for refund for any person, or” for “prepares a return or claim for refund for any trust or estate with respect to which he is a fiduciary, or”.

Subsec. (a)(37). Pub. L. 95-600, § 157(k)(2), added par. (37).

1976—Subsec. (a)(4). Pub. L. 94-455, § 1906(c)(3), struck out “or Territory” after “any State”.

Subsec. (a)(11). Pub. L. 94-455, § 1906(a)(57)(A), substituted definitions of “Secretary of the Treasury” and “Secretary” for “Secretary.—The term ‘Secretary’ means the Secretary of the Treasury”.

Subsec. (a)(12)(A). Pub. L. 94-455, § 1906(a)(57)(B), substituted definition of “or his delegate” for definition of “Secretary of his delegate”.

Subsec. (a)(19), (23), (33). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (a)(36). Pub. L. 94-455, § 1203(a), added par. (36).
1974—Subsec. (a)(35). Pub. L. 93-406 added par. (35).

1972—Subsec. (a)(12)(B). Pub. L. 92-606 inserted reference to chapter 1.

1969—Subsec. (a)(19)(A). Pub. L. 91-172, § 432(c) reenacted subpar. (A) without change.

Subsec. (a)(19)(B). Pub. L. 91-172, § 432(c), struck out reference to subpar. (C).

Subsec. (a)(19)(C). Pub. L. 91-172, § 432(c), substituted 60 percent for 90 percent in text preceding cl. (i), reenacted cl. (i) without change, in cl. (ii), excluded obligations the interest on which was excludible from gross income under section 103, expanded provisions of former cl. (iii) and transferred them to cl. (v), reenacted cl. (iv) without change, redesignated former cls. (v) and (vi) as cls. (viii) and (x) and added cls. (iii), (vi), (vii) and (ix), and text following cl. (x).

Subsec. (a)(19)(D) to (F). Pub. L. 91-172, § 432(c), struck out subpars. (D) to (F) and text following subpar. (F) which had further qualified the assets.

Subsec. (a)(27). Pub. L. 91-172, § 960(j), substituted “United States Tax Court” for “Tax Court of the United States”.

Subsec. (a)(32). Pub. L. 91-172, § 432(d), struck out references to subpars. (D), (E) and (F) and struck out “determined with the application of the second, third, and fourth sentences of paragraph (19).” in subpar. (B) and, in text following subpar. (B), struck out provisions relating to the deduction allowable for a reasonable addition to the reserve for bad debts.

1968—Subsec. (a)(34)(B). Pub. L. 90-364 substituted “section 6154(c)” for “section 6016(b)”.

1966—Subsec. (a)(31). Pub. L. 89-809 substituted “, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States,” for “from sources without the United States”.

Pub. L. 89-368 added par. (34).

1964—Subsec. (a)(20). Pub. L. 88-272 inserted “For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees”.

Subsec. (a)(33). Pub. L. 88-272 added par. (33).

1962—Subsec. (a)(19). Pub. L. 87-834, § 6(c), amended par. (19) generally. Prior to such amendment, subsection read as follows: “The term ‘domestic building and loan association’ means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association, substantially all the business of which is confined to making loans to members.”

Subsec. (a)(30), (31). Pub. L. 87-834, § 7(h), added pars. (30), (31).

Subsec. (a)(32). Pub. L. 87-870 added par. (32).

1960—Subsec. (a)(9), (10). Pub. L. 86-624, § 18(i), (j), struck out reference to the Territory of Hawaii.

Subsec. (a)(12). Pub. L. 86-778 designated existing provisions as par. (A) and added par. (B).

1959—Subsec. (a)(9). Pub. L. 86-70, § 22(g), substituted “the Territory of Hawaii” for “the Territories of Alaska and Hawaii”.

Subsec. (a)(10). Pub. L. 86-70, § 22(h), substituted “Territory of Hawaii” for “Territories”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117-169 applicable to property placed in service after Dec. 31, 2022, see section 13102(q)(2) of Pub. L. 117-169, set out in a note under section 45 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11051(b)(4) of Pub. L. 115-97 applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115-97 applies to such modification, see section 11051(c) of Pub. L. 115-97, set out as a note under section 61 of this title.

Amendment by section 13304(a)(2)(F) of Pub. L. 115-97 applicable to amounts incurred or paid after Dec. 31, 2017, see section 13304(e)(1) of Pub. L. 115-97, set out as a note under section 274 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111-312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

Amendment by Pub. L. 111-152 applicable to transactions entered into after Mar. 30, 2010, see section 1409(e)(1) of Pub. L. 111-152, set out as a note under section 6662 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-245 applicable to any individual whose expatriation date is on or after June 17, 2008, see section 301(g)(1) of Pub. L. 110-245, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110-28, set out as a note under section 6060 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1207(f) of Pub. L. 109-280 effective Jan. 1, 2007, see section 1207(g)(1) of Pub. L. 109-280, set out as a note under section 4041 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 2004 AMENDMENTS

Amendment by section 804(b) of Pub. L. 108-357 applicable to individuals who expatriate after June 3, 2004, see section 804(f) of Pub. L. 108-357, set out as a note under section 877 of this title.

Amendment by section 835(b)(10), (11) of Pub. L. 108-357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date

continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108-357, set out as a note under section 56 of this title.

Pub. L. 108-357, title VIII, §852(c), Oct. 22, 2004, 118 Stat. 1609, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].

“(2) FUEL TAXES.—With respect to taxes imposed under subchapter B of chapter 31 and part III of subchapter A of chapter 32, the amendment made by this section shall apply to taxable periods beginning after the date of the enactment of this Act.”

Amendment by Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108-311, set out as a note under section 2 of this title

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107-16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, §1151(b), Aug. 5, 1997, 111 Stat. 986, provided that: “Any regulations issued with respect to the amendment made by subsection (a) [amending this section] shall apply to partnerships created or organized after the date determined under section 7805(b) of the Internal Revenue Code of 1986 (without regard to paragraph (2) thereof) with respect to such regulations.”

Pub. L. 105-34, title XI, §1174(c), Aug. 5, 1997, 111 Stat. 989, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 861 and 863 of this title] shall apply to remuneration for services performed in taxable years beginning after December 31, 1997.

“(2) PRESENCE.—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1997.”

Amendment by section 1601(i)(3)(A) of Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Pub. L. 105-34, title XVI, §1601(i)(4), Aug. 5, 1997, 111 Stat. 1093, provided that: “The Secretary of the Treasury may by regulations or other administrative guidance provide that the amendments made by section 1907(a) of the Small Business Job Protection Act of 1996 [Pub. L. 104-188, amending this section] shall not apply to a trust with respect to a reasonable period beginning on the date of the enactment of such Act [Aug. 20, 1996], if—

“(A) such trust is in existence on August 20, 1996, and is a United States person for purposes of the Internal Revenue Code of 1986 on such date (determined without regard to such amendments),

“(B) no election is in effect under section 1907(a)(3)(B) of such Act [set out as a note below] with respect to such trust,

“(C) before the expiration of such reasonable period, such trust makes the modifications necessary to be treated as a United States person for purposes of such Code (determined with regard to such amendments), and

“(D) such trust meets such other conditions as the Secretary may require.”

Amendment by section 1402(b)(3) of Pub. L. 104-188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104-188, set out as a note under section 101 of this title.

Amendment by section 1621(b)(8), (9) of Pub. L. 104-188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104-188, set out as a note under section 26 of this title.

Pub. L. 104-188, title I, §1907(a)(3), Aug. 20, 1996, 110 Stat. 1916, as amended by Pub. L. 105-34, title XI, §1161(a), Aug. 5, 1997, 111 Stat. 987, provided that: “The amendments made by this subsection [amending this section] shall apply—

“(A) to taxable years beginning after December 31, 1996, or

“(B) at the election of the trustee of a trust, to taxable years ending after the date of the enactment of this Act [Aug. 20, 1996].

Such an election, once made, shall be irrevocable. To the extent prescribed in regulations by the Secretary of the Treasury or his delegate, a trust which was in existence on August 20, 1996 (other than a trust treated as owned by the grantor under subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986), and which was treated as a United States person on the day before the date of the enactment of this Act may elect to continue to be treated as a United States person notwithstanding section 7701(a)(30)(E) of such Code.”

[Pub. L. 105-34, title XI, §1161(b), Aug. 5, 1997, 111 Stat. 987, provided that: “The amendment made by subsection (a) [amending section 1907(a)(3) of Pub. L. 104-188, set out above] shall take effect as if included in the amendments made by section 1907(a) of the Small Business Job Protection Act of 1996 [Pub. L. 104-188].”]

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103-296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-90 effective Jan. 1, 1992, see section 314(g)(1) of Pub. L. 102-90, as amended, set out as a note under section 4725 of Title 2, The Congress.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(13) of Pub. L. 101-508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsection (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99-514, see section 11812(c) of Pub. L. 101-508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-194, title VI, §603, Nov. 30, 1989, 103 Stat. 1763, provided that: “The amendments made by this title [amending this section, sections 31-1 and former 441 of Title 2, The Congress, and title V of the Ethics in Government Act of 1978, Pub. L. 95-521, set out in the Appendix to Title 5, Government Organization and Employees] shall take effect on January 1, 1991. Such amendments shall cease to be effective if the provisions of section 703 [5 U.S.C. 5318 note] are subsequently repealed, in which case the laws in effect before such amendments shall be deemed to be reenacted.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by title I 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(c), (d)(14) 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(c), (d)(14) 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, and 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 671(b)(3) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 675 of Pub. L. 99-514, set out as an Effective Date note under section 860A of this title.

Amendment by section 673 of Pub. L. 99-514 effective Jan. 1, 1992, but not applicable to any entity in existence on Dec. 31, 1991, except with respect to any entity as of the first day after Dec. 31, 1991, on which there is a substantial transfer of cash or other property to such entity, and for purposes of applying section 860F(d) of this title, applicable to taxable years beginning after Dec. 31, 1986, see section 675(c) of Pub. L. 99-514, set out as an Effective Date note under section 860A of this title.

Pub. L. 99-514, title XI, §1166(b), Oct. 22, 1986, 100 Stat. 2512, provided that: "The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1985."

Amendment by sections 1802(a)(9)(C), 1810(l)(1)-(4), 1842(d) 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.

Pub. L. 99-514, title XVIII, §1810(l)(5)(B), Oct. 22, 1986, 100 Stat. 2832, provided that: "The amendments made by this paragraph [amending this section] shall apply to periods after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

Amendment by section 31(e) of Pub. L. 98-369 effective, except as otherwise provided in section 31(g) of Pub. L. 98-369, as to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983, except that in the case of a service contract or other arrangement described in section 7701(e) of this title with respect to which no party is a tax-exempt entity, section 7701(e) shall not apply to (A) such contract or other arrangement if such contract or other arrangement was entered into before Nov. 5, 1983, or (B) any renewal or other extension of such contract or other arrangement pursuant to an option contained in such contract or other arrangement on Nov. 5, 1983, see section 31(g)(1), (13) of Pub. L. 98-369, set out as a note under section 168 of this title.

Amendment by section 43(a)(1) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 53(c) of Pub. L. 98-369 effective July 18, 1984, except as otherwise provided, see section 53(e)(3) of Pub. L. 98-369, as amended, set out as an Effective Date note under section 1059 of this title.

Amendment by section 75(c) of Pub. L. 98-369 applicable to distributions, sales, and exchanges made after

Mar. 31, 1984, in taxable years ending after such date, see section 75(e) of Pub. L. 98-369, set out as an Effective Date note under section 386 of this title.

Pub. L. 98-369, div. A, title I, §138(b), July 18, 1984, 98 Stat. 676, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.

"(2) TRANSITIONAL RULE FOR APPLYING SUBSTANTIAL PRESENCE TEST.—

"(A) If an alien individual was not a resident of the United States as of the close of calendar year 1984, the determination of whether such individual meets the substantial presence test of section 7701(b)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall be made by only taking into account presence after 1984.

"(B) If an alien individual was a resident of the United States as of the close of calendar year 1984, but was not a resident of the United States as of the close of calendar year 1983, the determination of whether such individual meets such substantial presence test shall be made by only taking into account presence in the United States after 1983.

"(3) TRANSITIONAL RULE FOR APPLYING LAWFUL RESIDENCE TEST.—In the case of any individual who—

"(A) was a lawful permanent resident of the United States (within the meaning of section 7701(b)(5) of the Internal Revenue Code of 1986, as added by this section) throughout calendar year 1984, or

"(B) was present in the United States at any time during 1984 while such individual was a lawful permanent resident of the United States (within the meaning of such section 7701(b)(5)),

for purposes of section 7701(b)(2)(A) of such Code (as so added), such individual shall be treated as a resident of the United States during 1984."

Amendment by section 412(b)(11) of Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

Amendment by section 422(d)(3) of Pub. L. 98-369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification, see section 422(e)(1), (2) of Pub. L. 98-369, set out as a note under section 219 of this title.

Amendment by section 474(r)(29)(K) of Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

Amendment by section 491(d)(53) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

Pub. L. 98-369, div. A, title V, §526(c)(2), July 18, 1984, 98 Stat. 875, provided that: "The amendment made by this subsection [amending this section] shall take effect on April 1, 1984."

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 104(d)(1) of Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

For effective date of amendment by Pub. L. 97-473, see section 204 of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

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 section 201(d)(10) of Pub. L. 97-248 applicable to taxable years beginning after Dec. 31, 1982,

see section 201(e)(1) of Pub. L. 97-248, set out as a note under section 5 of this title.

Pub. L. 97-248, title III, §336(b), Sept. 3, 1982, 96 Stat. 629, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982].”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estimated tax for taxable years beginning after Dec. 31, 1980, see section 725(d) of Pub. L. 97-34, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 157(k)(2) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1974, see section 157(k)(3) of Pub. L. 95-600, set out as a note under section 6058 of this title.

Amendment by section 701(cc)(2) of Pub. L. 95-600 applicable to documents prepared after Dec. 31, 1976, see section 701(cc)(3) of Pub. L. 95-600, set out as a note under section 6695 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XII, §1203(j), Oct. 4, 1976, 90 Stat. 1695, provided that: “The amendments made by this section [enacting sections 6060, 6107, 6694, 6695, 6696, 7407, and 7427 of this title, renumbering former sections 7407 and 7427 as 7408 and 7428 of this title, respectively, and amending this section and sections 6109, 6503, 6504, and 6511 of this title] shall apply to documents prepared after December 31, 1976.”

Amendment by section 1906(a)(57), (b)(13)(A), (c)(3) of Pub. L. 94-455 effective on first day of first month which begins more than ninety days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-606 applicable with respect to taxable years beginning after Dec. 31, 1972, see section 2 of Pub. L. 92-606, set out in part as an Effective Date note under section 931 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 432(c), (d) of Pub. L. 91-172 effective for taxable years beginning after July 11, 1969, see section 432(e) of Pub. L. 91-172, set out as a note under section 593 of this title.

Amendment by section 960(j) of Pub. L. 91-172 effective Dec. 30, 1969, see section 962(a) of Pub. L. 91-172, set out as a note under section 7441 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90-364, see section 103(f) of Pub. L. 90-364, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89-809, set out as a note under section 871 of this title.

Amendment by Pub. L. 89-368 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 102(d) of Pub. L. 89-368, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 204(a)(3) of Pub. L. 88-272 applicable to group-term life insurance provided after Dec. 31, 1963, in taxable years ending after such date, see section 204(d) of Pub. L. 88-272, set out as an Effective Date note under section 79 of this title.

Amendment by section 234(b)(3) of Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963,

see section 234(c) of Pub. L. 88-272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Pub. L. 87-870, §5(b), Oct. 23, 1962, 76 Stat. 1162, provided that: “The amendment made by subsection (a) of this section [amending this section] shall apply with respect to taxable years beginning after the date of the enactment of the Revenue Act of 1962 [Oct. 16, 1962].”

Pub. L. 87-834, §6(g)(3), Oct. 16, 1962, 76 Stat. 985, provided that: “The amendment made by subsection (c) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 16, 1962].”

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by Pub. L. 86-778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86-778, set out as an Effective Date of 1960 Amendment note under section 402 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 86-624 effective August 21, 1959, see section 18(k) of Pub. L. 86-624, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86-70, set out as a note under section 3121 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 401(b)(54), (55) of Pub. L. 115-141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115-141, set out as a note under section 23 of this title.

For provisions that nothing in amendment by section 11812(b)(13) of 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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation and all functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of other offices and officers of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89-670, §6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in former section 3 (now 103) of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521-523] of title V of Pub. L. 102-318 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, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 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.

AUTHORS OR ARTISTS PERFORMING SERVICES UNDER
CONTRACT WITH CORPORATION

Pub. L. 96-605, title IV, § 402, Dec. 28, 1980, 94 Stat. 3532, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) IN GENERAL.—An author or artist performing services under contract with a corporation shall be considered as an employee of the corporation for the purpose of applying the provisions specified in section 7701(a)(20) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], if, on December 31, 1977, such author or artist was a participant in one or more of the pension, profit-sharing or annuity plans of such corporation which are described in subsection (b)(2).

“(b) DEFINITIONS.—For purposes of this section—

“(1) CONTRACT.—The term ‘contract’ means a contract which during its term—

“(A) requires such author or artist to give the corporation first reading or first refusal on writings or drawings of specified types, and prohibits him from offering any such writing or drawing to any other publication unless it has been offered to and rejected by the corporation; or

“(B) requires such author or artist to use his best efforts to produce work of specified types for the corporation.

“(2) CORPORATION.—The term ‘corporation’ means a corporation which for at least 15 years prior to January 1, 1978, had in effect one or more pension, profit-sharing and annuity plans, each of which—

“(A) had contained from its inception a definition of the term ‘employee’ that included the category of ‘authors and artists under contract’, and

“(B) had been determined by the Secretary of the Treasury (taking into account the definition described in subparagraph (A)) to be a qualified plan within part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1986 [section 401 et seq. of this title] for all of such years.

“(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years ending after December 31, 1980.”

§ 7702. Life insurance contract defined

(a) General rule

For purposes of this title, the term “life insurance contract” means any contract which is a life insurance contract under the applicable law, but only if such contract—

(1) meets the cash value accumulation test of subsection (b), or

(2)(A) meets the guideline premium requirements of subsection (c), and

(B) falls within the cash value corridor of subsection (d).

(b) Cash value accumulation test for subsection (a)(1)

(1) In general

A contract meets the cash value accumulation test of this subsection if, by the terms of the contract, the cash surrender value of such contract may not at any time exceed the net single premium which would have to be paid at such time to fund future benefits under the contract.

(2) Rules for applying paragraph (1)

Determinations under paragraph (1) shall be made—

(A) on the basis of interest at the greater of the applicable accumulation test minimum rate or the rate or rates guaranteed on issuance of the contract,

(B) on the basis of the rules of subparagraph (B)(i) (and, in the case of qualified additional benefits, subparagraph (B)(ii)) of subsection (c)(3), and

(C) by taking into account under subparagraphs (A) and (D) of subsection (e)(1) only current and future death benefits and qualified additional benefits.

(3) Applicable accumulation test minimum rate

For purposes of paragraph (2)(A), the term “applicable accumulation test minimum rate” means the lesser of—

(A) an annual effective rate of 4 percent, or

(B) the insurance interest rate (as defined in subsection (f)(11)) in effect at the time the contract is issued.

(c) Guideline premium requirements

For purposes of this section—

(1) In general

A contract meets the guideline premium requirements of this subsection if the sum of the premiums paid under such contract does not at any time exceed the guideline premium limitation as of such time.

(2) Guideline premium limitation

The term “guideline premium limitation” means, as of any date, the greater of—

(A) the guideline single premium, or

(B) the sum of the guideline level premiums to such date.

(3) Guideline single premium

(A) In general

The term “guideline single premium” means the premium at issue with respect to future benefits under the contract.

(B) Basis on which determination is made

The determination under subparagraph (A) shall be based on—

(i) reasonable mortality charges which meet the requirements prescribed in regulations to be promulgated by the Secretary or that do not exceed the mortality charges specified in the prevailing commissioners’ standard tables as defined in subsection (f)(10),

(ii) any reasonable charges (other than mortality charges) which (on the basis of the company’s experience, if any, with re-