Public Law 96-603
96th Congress

An Act

To amend the Internal Revenue Code of 1954 to simplify private foundation return and reporting requirements, and for other purposes.

Dec. 28, 1980
[H.R. 4155]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Internal Revenue Code of 1954, amendment.

SECTION 1. SIMPLIFICATION OF PRIVATE FOUNDATION RETURN AND REPORTING REQUIREMENTS.

(a) AMENDMENT OF SECTION 6033.—Section 6033 of the Internal Revenue Code of 1954 (relating to returns by exempt organizations) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections: 26 USC 6033.

"(c) ADDITIONAL PROVISIONS RELATING TO PRIVATE FOUNDATIONS.—In the case of an organization which is a private foundation (within the meaning of section 509(a))— 26 USC 509.

"(1) the Secretary shall by regulations provide that the private foundation shall include in its annual return under this section such information (not required to be furnished by subsection (b) or the forms or regulations prescribed thereunder) as would have been required to be furnished under section 6056 (relating to annual reports by private foundations) as such section 6056 was in effect on January 1, 1979, 26 USC 6056.

"(2) a copy of the notice required by section 6104(d) (relating to public inspection of private foundations' annual returns), together with proof of publication thereof, shall be filed by the foundation together with the annual return under this section, and 26 USC 6104.

"(3) the foundation managers shall furnish copies of the annual return under this section to such State officials, at such times, and under such conditions, as the Secretary may by regulations prescribe.

Nothing in paragraph (1) shall require the inclusion of the name and address of any recipient (other than a disqualified person within the meaning of section 4946) of 1 or more charitable gifts or grants made by the foundation to such recipient as an indigent or needy person if the aggregate of such gifts or grants made by the foundation to such recipient during the year does not exceed $1,000. 26 USC 4946.

"(d) SECTION TO APPLY TO NONEXEMPT CHARITABLE TRUSTS AND NONEXEMPT PRIVATE FOUNDATIONS.—The following organizations shall comply with the requirements of this section in the same manner as organizations described in section 501(c)(3) which are exempt from tax under section 501(a): 26 USC 501.

"(1) NONEXEMPT CHARITABLE TRUSTS.—A trust described in section 4947(a)(1) (relating to nonexempt charitable trusts). 26 USC 4947.

"(2) NONEXEMPT PRIVATE FOUNDATIONS.—A private foundation which is not exempt from tax under section 501(a)."

(b) PUBLIC INSPECTION OF PRIVATE FOUNDATIONS' ANNUAL RETURNS.—

(1) IN GENERAL.—The first sentence of subsection (d) of section 6104 of such Code (relating to public inspection of private foundations' annual reports) is amended to read as follows: "The annual return required to be filed under section 6033 (relating to returns by exempt organizations) by any organization which is a private foundation within the meaning of section 509(a) shall be made available by the foundation managers for inspection at the principal office of the foundation during regular business hours by any citizen on request made within 180 days after the date of the publication of notice of its availability."

26 USC 6104.
26 USC 6033.
26 USC 509.

(2) CONFORMING AMENDMENTS.—Such subsection (d) is amended—

(A) by striking out "ANNUAL REPORTS" in the heading and inserting in lieu thereof "ANNUAL RETURNS"; and

(B) by striking out "annual report" each place it appears in the second and third sentences and inserting in lieu thereof "annual return".

(c) REPEAL OF PRIVATE FOUNDATION ANNUAL REPORTING REQUIREMENTS.—Subpart D of part III of subchapter A of chapter 61 of such Code (relating to information concerning private foundations) is hereby repealed.

26 USC 6056.

(d) TECHNICAL AMENDMENTS.—

(1) Section 6034 of such Code (relating to returns by trust described in section 4947(a) or claiming charitable deductions under section 642(c)) is amended—

26 USC 6034.

(A) by striking out "section 4947(a)" in subsection (a) and inserting in lieu thereof "section 4947(a)(2)";

(B) by adding at the end of subsection (b) the following new sentence: "This section shall not apply in the case of a trust described in section 4947(a)(1).";

(C) by striking out "EXCEPTION" in the heading of subsection (b) and inserting in lieu thereof "EXCEPTIONS"; and

(D) by striking out "SECTION 4947(a)" in the section heading and inserting in lieu thereof "SECTION 4947(a)(2)".

(2)(A) The first sentence of section 6652(d)(3) of such Code (relating to annual reports) is amended to read as follows: "In the case of a failure to comply with the requirements of section 6104(d) (relating to public inspection of private foundations' annual returns), on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to meet such requirement, $10 for each day during which such failure continues, but the total amount imposed hereunder on all such persons for such failure with respect to any one annual return shall not exceed $5,000."

26 USC 6652.

(B) The heading of paragraph (3) of section 6652(d) of such Code is amended by striking out "REPORTS" and inserting in lieu thereof "RETURNS".

(3) Subsection (b) of section 6104 of such Code (relating to inspection of annual information returns) is amended by striking out "6056,".

26 USC 6104.

(4) Section 6685 of such Code (relating to assessable penalties with respect to private foundation annual reports) is amended to read as follows:

26 USC 6685.

"SEC. 6685. ASSESSABLE PENALTIES WITH RESPECT TO PRIVATE FOUNDATION ANNUAL RETURNS.

"In addition to the penalty imposed by section 7207 (relating to fraudulent returns, statements, or other documents), any person who is required to comply with the requirements of section 6104(d) (relating to private foundations' annual returns) and who fails to so comply with respect to any return, if such failure is willful, shall pay a penalty of $1,000 with respect to each such return."

26 USC 7207.

26 USC 6104.

(5) Section 7207 of such Code (relating to fraudulent returns, statements, or other documents) is amended by striking out "sections 6047 (b) or (c), 6056, or 6104(d)" and inserting in lieu thereof "subsection (b) or (c) of section 6047 or pursuant to subsection (d) of section 6104".

26 USC 7207.

(e) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part III of subchapter A of chapter 61 of such Code is amended by striking out "4947(a)" in the item relating to section 6034 and inserting in lieu thereof "4947(a)(2)".

(2) The table of subparts for part III of subchapter A of chapter 61 of such Code is amended by striking out the item relating to subpart D.

(3) The table of sections for subchapter B of chapter 68 of such Code is amended by striking out "reports" in the item relating to section 6685 and inserting in lieu thereof "returns".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1980.

26 USC 6033 note.

SEC. 2. ALLOWANCE OF DEDUCTION FOR CERTAIN FOREIGN DEFERRED COMPENSATION PLANS.

(a) ALLOWANCE.—Part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 (relating to pension, profit sharing, stock bonus plans, etc.) is amended by inserting after section 404 the following new section:

"SEC. 404A. DEDUCTION FOR CERTAIN FOREIGN DEFERRED COMPENSATION PLANS.

26 USC 404A.

"(a) GENERAL RULE.—Amounts paid or accrued by an employer under a qualified foreign plan—

"(1) shall not be allowable as a deduction under section 162, 212, or 404, but

26 USC 162, 212, 404.

"(2) if they satisfy the conditions of section 162, shall be allowed as a deduction under this section for the taxable year for which such amounts are properly taken into account under this section.

"(b) RULES FOR QUALIFIED FUNDED PLANS.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this section, in the case of a qualified funded plan contributions are properly taken into account for the taxable year in which paid.

"(2) PAYMENT AFTER CLOSE OF TAXABLE YEAR.—For purposes of paragraph (1), a payment made after the close of a taxable year shall be treated as made on the last day of such year if the payment is made—

"(A) on account of such year, and

"(B) not later than the time prescribed by law for filing the return for such year (including extensions thereof).

"(3) LIMITATIONS.—In the case of a qualified funded plan, the amount allowable as a deduction for the taxable year shall be subject to—

"(A) in the case of—

"(i) a plan under which the benefits are fixed or determinable, limitations similar to those contained in clauses (ii) and (iii) of subparagraph (A) of section 404(a)(1) (determined without regard to the last sentence of such subparagraph (A)), or

26 USC 404.

"(ii) any other plan, limitations similar to the limitations contained in paragraph (3) of section 404(a), and

"(B) limitations similar to those contained in paragraph (7) of section 404(a).

"(4) CARRYOVER.—If—

"(A) the aggregate of the contributions paid during the taxable year reduced by any contributions not allowable as a deduction under paragraphs (1) and (2) of subsection (g), exceeds

"(B) the amount allowable as a deduction under subsection (a) (determined without regard to subsection (d)),

such excess shall be treated as an amount paid in the succeeding taxable year.

"(5) AMOUNTS MUST BE PAID TO QUALIFIED TRUST, ETC.—In the case of a qualified funded plan, a contribution shall be taken into account only if it is paid—

"(A) to a trust (or the equivalent of a trust) which meets the requirements of section 401(a)(2),

26 USC 401.

"(B) for a retirement annuity, or

"(C) to a participant or beneficiary.

"(c) RULES RELATING TO QUALIFIED RESERVE PLANS.—For purposes of this section—

"(1) IN GENERAL.—In the case of a qualified reserve plan, the amount properly taken into account for the taxable year is the reasonable addition for such year to a reserve for the taxpayer's liability under the plan. Unless otherwise required or permitted in regulations prescribed by the Secretary, the reserve for the taxpayer's liability shall be determined under the unit credit method modified to reflect the requirements of paragraphs (3) and (4). All benefits paid under the plan shall be charged to the reserve.

"(2) INCOME ITEM.—In the case of a plan which is or has been a qualified reserve plan, an amount equal to that portion of any decrease for the taxable year in the reserve which is not attributable to the payment of benefits shall be included in gross income.

"(3) RIGHTS MUST BE NONFORFEITABLE, ETC.—In the case of a qualified reserve plan, an item shall be taken into account for a taxable year only if—

"(A) there is no substantial risk that the rights of the employee will be forfeited, and

"(B) such item meets such additional requirements as the Secretary may by regulations prescribe as necessary or appropriate to ensure that the liability will be satisfied.

"(4) SPREADING OF CERTAIN INCREASES AND DECREASES IN RESERVES.—There shall be amortized over a 10-year period any increase or decrease to the reserve on account of—

"(A) the adoption of the plan or a plan amendment,

"(B) experience gains and losses, and

"(C) any change in actuarial assumptions,

"(D) changes in the interest rate under subsection (g)(3)(B), and

"(E) such other factors as may be prescribed by regulations.

"(d) AMOUNTS TAKEN INTO ACCOUNT MUST BE CONSISTENT WITH AMOUNTS ALLOWED UNDER FOREIGN LAW.—

"(1) GENERAL RULE.—In the case of any plan, the amount allowed as a deduction under subsection (a) for any taxable year shall equal—

"(A) the lesser of—

"(i) the cumulative United States amount, or

"(ii) the cumulative foreign amount, reduced by

"(B) the aggregate amount determined under this section for all prior taxable years.

"(2) CUMULATIVE AMOUNTS DEFINED.—For purposes of paragraph (1)—

"(A) CUMULATIVE UNITED STATES AMOUNT.—The term 'cumulative United States amount' means the aggregate amount determined with respect to the plan under this section for the taxable year and for all prior taxable years to which this section applies. Such determination shall be made for each taxable year without regard to the application of paragraph (1).

"(B) CUMULATIVE FOREIGN AMOUNT.—The term 'cumulative foreign amount' means the aggregate amount allowed as a deduction under the appropriate foreign tax laws for the taxable year and all prior taxable years to which this section applies.

"(3) EFFECT ON EARNINGS AND PROFITS, ETC.—In determining the earnings and profits and accumulated profits of any foreign corporation with respect to a qualified foreign plan, the amount determined under paragraph (1) with respect to any plan for any taxable year shall in no event exceed the amount allowed as a deduction under the appropriate foreign tax laws for such taxable year.

"(e) QUALIFIED FOREIGN PLAN.—For purposes of this section, the term 'qualified foreign plan' means any written plan of an employer for deferring the receipt of compensation but only if—

"(1) such plan is for the exclusive benefit of the employer's employees or their beneficiaries,

"(2) 90 percent or more of the amounts taken into account for the taxable year under the plan are attributable to services—

"(A) performed by nonresident aliens, and

"(B) the compensation for which is not subject to tax under this chapter, and

"(3) the employer elects (at such time and in such manner as the Secretary shall by regulations prescribe) to have this section apply to such plan.

"(f) FUNDED AND RESERVE PLANS.—For purposes of this section—

"(1) QUALIFIED FUNDED PLAN.—The term 'qualified funded plan' means a qualified foreign plan which is not a qualified reserve plan.

"(2) QUALIFIED RESERVE PLAN.—The term 'qualified reserve plan' means a qualified foreign plan with respect to which an election made by the taxpayer is in effect for the taxable year. An election under the preceding sentence shall be made in such manner and form as the Secretary may by regulations prescribe

and, once made, may be revoked only with the consent of the Secretary.

"(g) OTHER SPECIAL RULES.—

"(1) NO DEDUCTION FOR CERTAIN AMOUNTS.—Except as provided in section 404(a)(5), no deduction shall be allowed under this section for any item to the extent such item is attributable to services—

26 USC 404.

"(A) performed by a citizen or resident of the United States who is an officer, shareholder, or highly compensated, or

"(B) performed in the United States the compensation for which is subject to tax under this chapter.

"(2) TAXPAYER MUST FURNISH INFORMATION.—

Deductions.

"(A) IN GENERAL.—No deduction shall be allowed under this section with respect to any plan for any taxable year unless the taxpayer furnishes to the Secretary with respect to such plan (at such time as the Secretary may by regulations prescribe)—

"(i) a statement from the foreign tax authorities specifying the amount of the deduction allowed in computing taxable income under foreign law for such year with respect to such plan,

"(ii) if the return under foreign tax law shows the deduction for plan contributions or reserves as a separate, identifiable item, a copy of the foreign tax return for the taxable year, or

"(iii) such other statement, return, or other evidence as the Secretary prescribes by regulation as being sufficient to establish the amount of the deduction under foreign law.

"(B) REDETERMINATION WHERE FOREIGN TAX DEDUCTION IS ADJUSTED.—If the deduction under foreign tax law is adjusted, the taxpayer shall notify the Secretary of such adjustment on or before the date prescribed by regulations, and the Secretary shall redetermine the amount of the tax for the year or years affected. In any case described in the preceding sentence, rules similar to the rules of subsection (c) of section 905 shall apply.

26 USC 905.

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE; FULL FUNDING.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), principles similar to those set forth in paragraphs (3) and (7) of section 412(c) shall apply for purposes of this section.

26 USC 412.

"(B) INTEREST RATE FOR RESERVE PLAN.—

"(i) IN GENERAL.—In the case of a qualified reserve plan, in lieu of taking rates of interest into account under subparagraph (A), the rate of interest for the plan shall be the rate selected by the taxpayer which is within the permissible range.

"(ii) RATE REMAINS IN EFFECT SO LONG AS IT FALLS WITHIN PERMISSIBLE RANGE.—Any rate selected by the taxpayer for the plan under this subparagraph shall remain in effect for such plan until the first taxable year for which such rate is no longer within the permissible range. At such time, the taxpayer shall select a new rate of interest which is within the permissible range applicable at such time.

"(iii) PERMISSIBLE RANGE.—For purposes of this subparagraph, the term 'permissible range' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average rate of interest for long-term corporate bonds in the appropriate country for the 15-year period ending on the last day before the beginning of the taxable year.

"(4) ACCOUNTING METHOD.—Any change in the method (but not the actuarial assumptions) used to determine the amount allowed as a deduction under subsection (a) shall be treated as a change in accounting method under section 446(e).

26 USC 446.

"(5) SECTION 481 APPLIES TO ELECTION.—For purposes of section 481, any election under this section shall be treated as a change in the taxpayer's method of accounting. In applying section 481 with respect to any such election, the period for taking into account any increase or decrease in accumulated profits, earnings and profits or taxable income resulting from the application of section 481(a)(2) shall be the year for which the election is made and the fourteen succeeding years.

26 USC 481.

"(h) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section (including regulations providing for the coordination of the provisions of this section with section 404 in the case of a plan which has been subject to both of such sections)."

26 USC 404.

(b) AMENDMENTS OF SECTION 679(a).—Subsection (a)(1) of section 679 of such Code (relating to foreign trusts having one or more United States beneficiaries) is amended by adding the phrase "Or section 404A" immediately after the phrase "section 404(a)(4)".

26 USC 679.

(c) TAXPAYER MUST NOTIFY SECRETARY WHERE THERE IS A REDETERMINATION OF TAX, ETC., UNDER FOREIGN LAW.—

(1) AMENDMENT OF SECTION 905(c).—Subsection (c) of section 905 of such Code (relating to adjustments on payment of accrued taxes) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply (with respect to any period after the refund or adjustment in the foreign taxes) if the taxpayer fails to notify the Secretary (on or before the date prescribed by regulations for giving such notice) unless it is shown that such failure is due to reasonable cause and not due to willful neglect."

26 USC 905.

(2) CIVIL PENALTY FOR FAILURE TO NOTIFY.—Subchapter B of chapter 68 of such Code (relating to assessable penalties) is amended by inserting after section 6688 the following new section:

"SEC. 6689. FAILURE TO FILE NOTICE OF REDETERMINATION OF FOREIGN TAX.

26 USC 6689.

"(a) CIVIL PENALTY.—If the taxpayer fails to notify the Secretary (on or before the date prescribed by regulations for giving such notice) of a foreign tax redetermination, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the deficiency attributable to such redetermination an amount (not in excess of 25 percent of the deficiency) determined as follows—

"(1) 5 percent of the deficiency if the failure is for not more than 1 month, with

"(2) an additional 5 percent of the deficiency for each month (or fraction thereof) during which the failure continues.

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"(b) FOREIGN TAX REDETERMINATION DEFINED.—For purposes of this section, the term 'foreign tax redetermination' means any redetermination for which a notice is required under subsection (c) of section 905 or paragraph (2) of section 404A(g)."

26 USC 905, *Ante*, p. 3505.

(d) CLERICAL AMENDMENTS.—

(1) The table of sections for part I of subchapter D of chapter 1 of such Code is amended by inserting after the item relating to section 404 the following new item:

"Sec. 404A. Deduction for certain foreign deferred compensation plans."

(2) The table of sections for subchapter B of chapter 68 of such Code is amended by inserting after the item relating to section 6688 the following new item:

"Sec. 6689. Failure to file notice of redetermination of foreign tax."

26 USC 404A note.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to employer contributions or accruals for taxable years beginning after December 31, 1979.

(2) ELECTION TO APPLY AMENDMENTS RETROACTIVELY WITH RESPECT TO FOREIGN SUBSIDIARIES.—

(A) IN GENERAL.—The taxpayer may elect to have the amendments made by this section apply retroactively with respect to its foreign subsidiaries.

(B) SCOPE OF RETROACTIVE APPLICATION.—Any election made under this paragraph shall apply with respect to all foreign subsidiaries of the taxpayer for the taxpayer's open period.

(C) DISTRIBUTIONS BY FOREIGN SUBSIDIARY MUST BE OUT OF POST-1971 EARNINGS AND PROFITS.—The election under this paragraph shall apply to distributions made by a foreign subsidiary only if made out of accumulated profits (or earnings and profits) earned after December 31, 1970.

(D) REVOCATION ONLY WITH CONSENT.—An election under this paragraph may be revoked only with the consent of the Secretary of the Treasury or his delegate.

(E) OPEN PERIOD.—For purposes of this subsection, the term "open period" means, with respect to any taxpayer, all taxable years which begin before January 1, 1980, and which begin after December 31, 1971, and for which, on December 31, 1980, the making of a refund, or the assessment of a deficiency, was barred by any law or rule of law.

(3) ALLOWANCE OF PRIOR DEDUCTIONS IN CASE OF CERTAIN FUNDED BRANCH PLANS.—

(A) IN GENERAL.—If—

(i) the taxpayer elects to have this paragraph apply, and

(ii) the taxpayer agrees to the assessment of all deficiencies (including interest thereon) arising from all erroneous deductions,

then an amount equal to 1/15th of the aggregate of the prior deductions which would have been allowable if the amendments made by this section applied to taxable years beginning before January 1, 1980, shall be allowed as a deduction for the taxpayer's first taxable year beginning in 1980, and an equal amount shall be allowed for each of the succeeding 14 taxable years.

(B) PRIOR DEDUCTION.—For purposes of subparagraph (A), the term "prior deduction" means a deduction with respect

to a qualified funded plan (within the meaning of section 404A(f)(1) of the Internal Revenue Code of 1954) of the taxpayer—

Ante, p. 3505.

(i) which the taxpayer claimed for a taxable year (or could have claimed if the amendments made by this section applied to taxable years beginning before January 1, 1980) beginning before January 1, 1980,

(ii) which was not allowable, and

(iii) with respect to which, on December 1, 1980, the assessment of a deficiency was not barred by any law or rule of law.

(4) TIME AND MANNER FOR MAKING ELECTIONS.—

(A) TIME.—An election under paragraph (2) or (3) may be made only on or before the due date (including extensions) for filing the taxpayer's return of tax under chapter 1 of the Internal Revenue Code of 1954 for its first taxable year ending on or after December 31, 1980.

26 USC 1 *et seq.*

(B) MANNER.—An election under paragraph (2) may be made only by a statement attached to the taxpayer's return for its first taxable year ending on or after December 31, 1980. An election under paragraph (3) may be made only if the taxpayer, on or before the last day for making the election, files with the Secretary of the Treasury or his delegate such amended return and such other information as the Secretary of the Treasury or his delegate may require, and agrees to the assessment of a deficiency for any closed year falling within the open period, to the extent such deficiency is attributable to the operation of such election.

SEC. 3. TREATMENT OF TRANSFERS OF PROVEN OIL OR GAS PROPERTIES BY INDIVIDUALS TO CORPORATIONS.

(a) IN GENERAL.—Subsection (c) of section 613A of the Internal Revenue Code of 1954 (relating to exemption for independent producers and royalty owners) is amended by redesignating paragraphs (10) and (11) as paragraphs (11) and (12), respectively, and by inserting after paragraph (9) the following new paragraph:

26 USC 613A.

"(10) TRANSFERS BY INDIVIDUALS TO CORPORATIONS.—

"(A) IN GENERAL.—Paragraph (9)(A) shall not apply to a transfer by an individual of qualified property to a qualified transferee corporation solely in exchange for stock in such corporation.

"(B) 1,000-BARREL LIMIT FOR CORPORATION.—A tentative quantity shall be determined for the qualified transferee corporation under this subsection.

"(C) TRANSFEROR'S TENTATIVE QUANTITY REDUCED.—

"(i) IN GENERAL.—The tentative quantity for the transferor (and his family) for any period shall be reduced by the transferor's pro rata share of the corporation's depletable quantity for such period.

"(ii) PRO RATA SHARE.—For purposes of clause (i), a transferor's pro rata share for any period shall be—

"(I) in the case of production from property to which subparagraph (A) applies, that portion of the corporation's depletable quantity which is allocable to production from such property, and

"(II) in the case of production from all other property, that portion of the corporation's depletable quantity which is allocable to the production

from such property, multiplied by a fraction the numerator of which is the fair market value of the transferor's stock in the corporation, and the denominator of which is the fair market value of all stock in the corporation.

"(iii) DEPLETABLE QUANTITY.—For purposes of this paragraph, a corporation's depletable quantity for any period in the lesser of—

"(I) such corporation's tentative quantity for such period (determined under paragraphs (3) and (8)), or

"(II) such corporation's average daily production for such period.

"(D) QUALIFIED TRANSFEREE CORPORATION DEFINED.—For purposes of this paragraph, the term 'qualified transferee corporation' means a corporation all of the outstanding stock of which has been issued to individuals solely in exchange for qualified property held by such individuals.

"(E) QUALIFIED PROPERTY DEFINED.—For purposes of this paragraph, the term 'qualified property' means oil or gas property with respect to which—

"(i) there has been no prior transfer to which paragraph (9)(A) applied, and

"(ii) the transferor has made an election to have this paragraph apply.

The term also includes cash (not to exceed $1,000 in the aggregate) which one or more individuals transfer to the corporation.

"(F) TRANSFEROR MUST RETAIN STOCK DURING LIFETIME.—If at any time during his lifetime any transferor disposes of stock in the corporation (other than to a member of his family), then the depletable quantity of the corporation (determined without regard to this subparagraph) shall be reduced (for all periods on or after the date of the disposition) by an amount which bears the same ratio to such quantity as the fair market value of the stock so disposed of bears to the aggregate fair market value of all stock of the corporation on such date of disposition.

"(G) SPECIAL RULES RELATING TO FAMILY OF TRANSFEROR.—

"(i) IN GENERAL.—For purposes of this paragraph—

"(I) the issuance of stock to a member of the family of the transferor shall be treated as issuance of stock to the transferor, and

"(II) during the lifetime of the transferor, stock transferred to a member of the family of the transferor shall be treated as held by the transferor.

If stock described in the preceding sentence ceases to be held by a member of the family of the transferor, the transferor shall be treated as having disposed of such stock at the time of such cessation.

"(ii) FAMILY DEFINED.—For purposes of this paragraph, the members of the family of an individual include only his spouse and minor children.

"(H) PROPERTY SUBJECT TO LIABILITIES.—For purposes of this paragraph, section 357 shall be applied as if—

26 USC 357.
26 USC 351.

"(i) references to section 351 include references to subparagraph (A) of this paragraph, and

"(ii) the reference in subsection (a)(1) of section 357 to the nonrecognition of gain includes a reference to the nonapplication of paragraph (9)(A) of this subsection. 26 USC 357.

"(I) ELECTION.—A transferor may make an election under this paragraph only in such manner as the Secretary may by regulations prescribe and only on or before the due date (including extensions) for filing the return of the corporation of the taxes imposed by this chapter for the corporation's first taxable year ending after the date of the transfer (or, if later, after the date of the enactment of this paragraph).

"(J) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to transfers in taxable years ending after December 31, 1974, but only for purposes of applying section 613A of the Internal Revenue Code of 1954 to periods after December 31, 1979. 26 USC 613A note. 26 USC 613A.

SEC. 4. CREDITS ALLOWABLE AGAINST MINIMUM TAX.

(a) ALLOWANCE OF CREDIT.—

(1) IN GENERAL.—Paragraph (1) of section 55(c) (relating to credits allowable against alternative minimum tax) is amended to read as follows: 26 USC 55.

"(1) IN GENERAL.—For purposes of—

"(A) determining the amount of any credit allowable under subpart A of part IV of this subchapter (other than the foreign tax credit allowable under section 33(a)) against the tax imposed by subsection (a), the tax imposed by subsection (a) shall be treated as a tax imposed by this chapter only to the extent of the amount which would be determined under subsection (a)(1) if the alternative minimum taxable income was reduced by the sum of— 26 USC 31. 26 USC 33.

"(i) the net capital gain, and

"(ii) the adjusted itemized deductions, and

"(B) determining the amount of any such credit (including the credit allowable under section 33(a)) against the tax imposed by this chapter (other than the tax imposed by this section) for the current taxable year, this section shall be disregarded."

(2) METHOD OF DETERMINING CREDITS TAKEN INTO ACCOUNT.—Section 55(c) is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph: 26 USC 55.

"(2) RULES FOR DETERMINING AMOUNT OF CREDIT ALLOWABLE.—For purposes of determining the amount of any credit under subpart A of part IV of this subchapter (other than the credits imposed by sections 31, 39, and 43) which can be taken against the tax imposed by subsection (a)— 26 USC 31. 26 USC 31, 39, 43.

"(A) the amount of such credit shall be increased by an amount equal to the lesser of—

"(i) the amount of such credit allowable in computing the regular tax for the current taxable year, or

"(ii) the excess of—

"(I) the amount of the tax imposed by subsection (a), over

"(II) the sum of the amounts determined under this subparagraph with respect to credits allowed under a section of such subpart having a higher

26 USC 31, 39, 43.
26 USC 38, 40, 44B.

number designation than such credit (other than the credits allowable by sections 31, 39, and 43), and

"(B) in the case of any credit under section 38, 40, or 44B, such credit shall be reduced, under regulations prescribed by the Secretary, by that portion of such credit which is not attributable to an active trade or business of the taxpayer."

26 USC 55.

(3) Paragraph (4) of section 55(c) (relating to carryover and carryback of certain credits), as redesignated by paragraph (2), is amended to read as follows:

"(4) CARRYOVER AND CARRYBACK OF CERTAIN CREDITS.—

26 USC 31, 33.
26 USC 44E, 44C, 53.
26 USC 50A, 46.

"(A) IN GENERAL.—For purposes of determining the amount of any carryover or carryback to any other taxable year of any credit allowable under subpart A of part IV of this subchapter (other than section 33), the amount of the limitation under section 44E(e)(1), 44C(b) (1) and (2), 53(b), 50A(a)(2), or 46(a)(3) (to the exent such limitation does not exceed the amount of the credit allowable in computing the regular tax for the current taxable year) shall be increased for the current taxable year by the amount determined under subparagraph (A) of paragraph (1) of this subsection, and decreased by—

26 USC 31, 33, 39, 43.

"(i) the sum of the credits allowed under a section having a lower number designation than the section allowing such credit (other than the credits allowable by sections 31, 33, 39, and 43) against the tax imposed by subsection (a), and

"(ii) the amount determined with respect to such credit under paragraph (2)(B) for the current taxable year.

"(B) AMOUNT OF CREDIT.—Any increase under paragraph (2)(A) shall be taken into account in determining the amount of any carryover or carryback from the current taxable year."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

26 USC 55.
26 USC 33.

(1) Paragraph (2) of section 55(b) (defining regular tax) is amended by striking out "credit allowable under section 33" and inserting in lieu thereof "credits allowable under such subpart".

(2) Paragraph (3) of section 55(c) (relating to foreign tax credit), as redesignated by subsection (a)(2), is amended—

(A) by striking out subparagraph (B) and redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively;

(B) by striking out "subparagraph (C)" in subparagraphs

(C) and (D)(i), as so redesignated, and inserting in lieu thereof "subparagraph (B)"; and

(C) by striking out clause (ii) of subparagraph (D), as so redesignated, and inserting in lieu thereof the following:

"(ii) any increase under paragraph (2)(A) shall be taken into account."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1979.

26 USC 55 note.

Approved December 28, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1044 (Comm. on Ways and Means).
SENATE REPORT No. 96-1039 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 126 (1980):
June 17, considered and passed House.
Dec. 13, considered and passed Senate, amended; House agreed to Senate amendments with amendments; Senate agreed to House amendments.