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## **Internal Revenue Code Sections 531-537**

### **Internal Revenue Code Section 531**

Imposition of accumulated earnings tax

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of each corporation described in section 532, an accumulated earnings tax equal to 20 percent of the accumulated taxable income.

### **Internal Revenue Code Section 532**

Corporations subject to accumulated earnings tax

(a) General rule.

The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b) ) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

(b) Exceptions.

The accumulated earnings tax imposed by section 531 shall not apply to-

- (1) a personal holding company (as defined in section 542 ),
- (2) a corporation exempt from tax under subchapter F ( section 501 and following), or
- (3) a passive foreign investment company (as defined in section 1297 ).

(c) Application determined without regard to number of shareholders.

The application of this part to a corporation shall be determined without regard to the number of shareholders of such corporation.

### **Internal Revenue Code Section 533**

Evidence of purpose to avoid income tax

(a) Unreasonable accumulation determinative of purpose.

For purposes of section 532 , the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary.

(b) Holding or investment company.

The fact that any corporation is a mere holding or investment company shall be prima facie evidence of the purpose to avoid the income tax with respect to shareholders.

## **Internal Revenue Code Section 534**

### **Burden of proof**

(a) General rule.

In any proceeding before the Tax Court involving a notice of deficiency based in whole or in part on the allegation that all or any part of the earnings and profits have been permitted to accumulate beyond the reasonable needs of the business, the burden of proof with respect to such allegation shall-

(1) if notification has not been sent in accordance with subsection (b) , be on the Secretary, or

(2) if the taxpayer has submitted the statement described in subsection (c) , be on the Secretary with respect to the grounds set forth in such statement in accordance with the provisions of such subsection.

(b) Notification by Secretary.

Before mailing the notice of deficiency referred to in subsection (a) , the Secretary may send by certified mail or registered mail a notification informing the taxpayer that the proposed notice of deficiency includes an amount with respect to the accumulated earnings tax imposed by section 531 .

(c) Statement by taxpayer.

Within such time (but not less than 30 days) after the mailing of the notification described in subsection (b) as the Secretary may prescribe by regulations, the taxpayer may submit a statement of the grounds (together with facts sufficient to show the basis thereof) on which the taxpayer relies to establish that all or any part of the earnings and profits have not been permitted to accumulate beyond the reasonable needs of the business.

(d) Jeopardy assessment.

If pursuant to section 6861(a) a jeopardy assessment is made before the mailing of the notice of deficiency referred to in subsection (a) , for purposes of this section such notice of deficiency shall, to the extent that it informs the taxpayer that such deficiency includes the accumulated earnings tax imposed by section 531 , constitute the notification described in subsection (b) , and in that event the statement described in subsection (c) may be included in the taxpayer's petition to the Tax Court.

## **Internal Revenue Code Section 535**

### **Accumulated taxable income**

(a) Definition.

For purposes of this subtitle, the term "accumulated taxable income" means the taxable income, adjusted in the manner provided in subsection (b) , minus the sum of the dividends paid

deduction (as defined in section 561 ) and the accumulated earnings credit (as defined in subsection (c) ).

(b) Adjustments to taxable income.

For purposes of subsection (a) , taxable income shall be adjusted as follows:

(1) Taxes.

There shall be allowed as a deduction Federal income and excess profits taxes and income, war profits, and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4) ), accrued during the taxable year or deemed to be paid by a domestic corporation under section 960 for the taxable year, but not including the accumulated earnings tax imposed by section 531 or the personal holding company tax imposed by section 541 .

(2) Charitable contributions.

The deduction for charitable contributions provided under section 170 shall be allowed without regard to section 170(b)(2) .

(3) Special deductions disallowed.

The special deductions for corporations provided in part VIII (except section 248 ) of subchapter B ( section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss.

The net operating loss deduction provided in section 172 shall not be allowed.

(5) Capital losses.

(A) In general. Except as provided in subparagraph (B) , there shall be allowed as a deduction an amount equal to the net capital loss for the taxable year (determined without regard to paragraph (7)(A) ).

(B) Recapture of previous deductions for capital gains. The aggregate amount allowable as a deduction under subparagraph (A) for any taxable year shall be reduced by the lesser of-

(i) the nonrecaptured capital gains deductions, or

(ii) the amount of the accumulated earnings and profits of the corporation as of the close of the preceding taxable year.

(C) Nonrecaptured capital gains deductions. For purposes of subparagraph (B) , the term "nonrecaptured capital gains deductions" means the excess of-

(i) the aggregate amount allowable as a deduction under paragraph (6) for preceding taxable years beginning after July 18, 1984, over

(ii) the aggregate of the reductions under subparagraph (B) for preceding taxable years.

(6) Net capital gains.

(A) In general. There shall be allowed as a deduction-

(i) the net capital gain for the taxable year (determined with the application of paragraph (7) ), reduced by

(ii) the taxes attributable to such net capital gain.

(B) Attributable taxes. For purposes of subparagraph (A) , the taxes attributable to the net capital gain shall be an amount equal to the difference between-

(i) the taxes imposed by this subtitle (except the tax imposed by this part) for the taxable year, and

(ii) such taxes computed for such year without including in taxable income the net capital gain for the taxable year (determined without the application of paragraph (7) ).

(7) Capital loss carryovers.

(A) Unlimited carryforward. The net capital loss for any taxable year shall be treated as a short-term capital loss in the next taxable year.

(B) Section 1212 inapplicable. No allowance shall be made for the capital loss carryback or carryforward provided in section 1212 .

(8) Special rules for mere holding or investment companies.

In the case of a mere holding or investment company-

(A) Capital loss deduction, etc., not allowed. Paragraphs (5) and (7)(A) shall not apply.

(B) Deduction for certain offsets. There shall be allowed as a deduction the net short-term capital gain for the taxable year to the extent such gain does not exceed the amount of any capital loss carryover to such taxable year under section 1212 (determined without regard to paragraph (7)(B) ).

(C) Earnings and profits. For purposes of subchapter C, the accumulated earnings and profits at any time shall not be less than they would be if this subsection had applied to the computation of earnings and profits for all taxable years beginning after July 18, 1984.

(9) Special rule for capital gains and losses of foreign corporations.

In the case of a foreign corporation, paragraph (6) shall be applied by taking into account only gains and losses which are effectively connected with the conduct of a trade or business within the United States and are not exempt from tax under treaty.

(10) Controlled foreign corporations.

There shall be allowed as a deduction the amount of the corporation's income for the taxable year which is included in the gross income of a United States shareholder under section 951(a) . In the case of any corporation the accumulated taxable income of which would (but for this sentence) be determined without allowance of any deductions, the deduction under this paragraph shall be allowed and shall be appropriately adjusted to take into account any deductions which reduced such inclusion.

(c) Accumulated earnings credit.

(1) General rule.

For purposes of subsection (a) , in the case of a corporation other than a mere holding or investment company the accumulated earnings credit is (A) an amount equal to such part of the earnings and profits for the taxable year as are retained for the reasonable needs of the business, minus (B) the deduction allowed by subsection (b)(6) . For purposes of this paragraph , the amount of the earnings and profits for the taxable year which are retained is the amount by which the earnings and profits for the taxable year exceed the dividends paid deduction (as defined in section 561 ) for such year.

(2) Minimum credit.

(A) In general. The credit allowable under paragraph (1) shall in no case be less than the amount by which \$250,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(B) Certain service corporations. In the case of a corporation the principal function of which is the performance of services in the field of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, subparagraph (A) shall be applied by substituting "\$150,000" for "\$250,000".

(3) Holding and investment companies.

In the case of a corporation which is a mere holding or investment company, the accumulated earnings credit is the amount (if any) by which \$250,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(4) Accumulated earnings and profits.

For purposes of paragraphs (2) and (3) , the accumulated earnings and profits at the close of the preceding taxable year shall be reduced by the dividends which under section 563(a) (relating to dividends paid after the close of the taxable year) are considered as paid during such taxable year.

(5) Cross reference.

For limitation on credit provided in paragraph (2) or (3) in the case of certain controlled corporations, see section section 1561 .

(d) Income distributed to United States-owned foreign corporation retains United States connection.

(1) In general.

For purposes of this part, if 10 percent or more of the earnings and profits of any foreign corporation for any taxable year-

(A) is derived from sources within the United States, or

(B) is effectively connected with the conduct of a trade or business within the United States,

any distribution out of such earnings and profits (and any interest payment) received (directly or through 1 or more other entities) by a United States-owned foreign

corporation shall be treated as derived by such corporation from sources within the United States.

(2) United States-owned foreign corporation.

The term "United States-owned foreign corporation" has the meaning given to such term by section 904(h)(6).

## **Internal Revenue Code Section 536**

Income not placed on annual basis

Section 443(b) (relating to computation of tax on change of annual accounting period) shall not apply in the computation of the accumulated earnings tax imposed by section 531.

## **Internal Revenue Code Section 537**

Reasonable needs of the business

(a) General rule.

For purposes of this part, the term "reasonable needs of the business" includes-

- (1) the reasonably anticipated needs of the business,
- (2) the section 303 redemption needs of the business, and
- (3) the excess business holdings redemption needs of the business.

(b) Special rules.

For purposes of subsection (a) -

(1) Section 303 redemption needs.

The term "section 303 redemption needs" means, with respect to the taxable year of the corporation in which a shareholder of the corporation died or any taxable year thereafter, the amount needed (or reasonably anticipated to be needed) to make a redemption of stock included in the gross estate of the decedent (but not in excess of the maximum amount of stock to which section 303(a) may apply).

(2) Excess business holdings redemption needs.

The term "excess business holdings redemption needs" means the amount needed (or reasonably anticipated to be needed) to redeem from a private foundation stock which-

(A) such foundation held on May 26, 1969 (or which was received by such foundation pursuant to a will or irrevocable trust to which section 4943(c)(5) applies), and

(B) constituted excess business holdings on May 26, 1969, or would have constituted excess business holdings as of such date if there were taken into account (i) stock received pursuant to a will or trust described in subparagraph (A), and (ii) the reduction in the total outstanding stock of the corporation which would have resulted solely from the redemption of stock held by the private foundation.

(3) Obligations incurred to make redemptions.

In applying paragraphs (1) and (2) , the discharge of any obligation incurred to make a redemption described in such paragraphs shall be treated as the making of such redemption.

(4) Product liability loss reserves.

The accumulation of reasonable amounts for the payment of reasonably anticipated product liability losses (as defined in section 172(f) ) (as in effect before the date of enactment of the Tax Cuts and Jobs Act [12/22/2017]), as determined under regulations prescribed by the Secretary, shall be treated as accumulated for the reasonably anticipated needs of the business.

(5) No inference as to prior taxable years.

The application of this part to any taxable year before the first taxable year specified in paragraph (1) shall be made without regard to the fact that distributions in redemption coming within the terms of such paragraphs were subsequently made.