

Section 543 (Continued)

(B) Deductions allowable under section 162. -- For purposes of subparagraph (A), a deduction shall not be treated as allowable under section 162 if it is specifically allowable under another section.

(C) Limitation on allowable deductions. -- For purposes of subparagraph (A), no deduction shall be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of the corporation. For purposes of the preceding sentence --

(i) individuals holding less than 5 percent (by value) of the stock of such corporation shall not be taken into account, and

(ii) stock deemed to be owned by a shareholder solely by attribution from a partner under section 544(a)(2) shall be disregarded.

(5) Dividends must equal or exceed excess of personal holding company income over 10 percent of ordinary gross income.

(A) In general. -- The requirements of this paragraph are met if the sum of --

(i) the dividends paid during the taxable year (determined under section 562),

(ii) the dividends considered as paid on the last day of the taxable year under section 563(c) (as limited by the second sentence of section 563(b)), and

(iii) the consent dividends for the taxable year (determined under section 565),

equals or exceeds the amount, if any, by which the personal holding company income for the taxable year exceeds 10 percent of the ordinary gross income of such corporation for such taxable year.

(B) Computation of personal holding company income. -- For purposes of this paragraph, personal holding company income shall be computed --

(i) without regard to amounts described in subsection (a)(1)(C),

(ii) without regard to interest income during any taxable year --

(I) which is in the 5-taxable year period beginning with the later of the 1st taxable year of the corporation or the 1st taxable year in which the corporation conducted the trade or business described in paragraph (2)(A), and

(II) during which the corporation meets the requirements of paragraphs (2), (3), and (4), and

(iii) by including adjusted income from rents and adjusted income from mineral, oil, and gas royalties (within the meaning of paragraphs (2) and (3) of subsection (a)).

(6) Special rules for affiliated group members. --

(A) In general. -- In any case in which --

(i) the taxpayer receives royalties in connection with the licensing of computer software, and

(ii) another corporation which is a member of the same affiliated group as the taxpayer meets the requirements of paragraphs (2), (3), (4), and (5) with respect to such computer software,

the taxpayer shall be treated as having met such requirements.

(B) Affiliated group. -- For purposes of this paragraph, the term "affiliated group" has the meaning given such term by section 1504(a).

544. Rules for determining stock ownership

(a) Constructive ownership. -- For purposes of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership under section 542 (a)(2), section 543(a)(7), section 543(a)(6), or section 543(a)(4) --

(1) Stock not owned by individual. -- Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) Family and partnership ownership. -- An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) Options. -- If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) Application of family-partnership and option rules. -- Paragraphs (2) and (3) shall be applied --

(A) for purposes of the stock ownership requirement provided in section 542(a)(2), if, but only if, the effect is to make the corporation a personal holding company;

(B) for purposes of section 543(a)(7) (relating to personal service contracts), of section 543(a)(6) (relating to use of property shareholders), or of section 543(a)(4) (relating to copyright royalties), if, but only if, the effect is to make the amount therein referred to includible under such paragraph as personal holding company income.

(5) Constructive ownership as actual ownership. -- Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

(6) Option rule in lieu of family and partnership rule. -- If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) Convertible securities. -- Outstanding securities

convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock --

(1) for purposes of the stock ownership requirement provided in section 542(a)(2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

(2) for purposes of section 543(a)(7) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income;

(3) for purposes of section 543(a)(6) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income; and

(4) for purposes of section 543(a)(4) (relating to copyright royalties), but only if the effect of the inclusion of all such securities is to make the amount therein referred to includible under such paragraph as personal holding company income.

The requirement in paragraphs (1), (2), (3), and (4) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.

545. Undistributed personal holding company income

(a) Definition. -- For purposes of this part, the term "undistributed personal holding company income" means the taxable income of a personal holding company adjusted in the manner provided in subsections (b), (c), and (d), minus the dividends paid deduction as defined in section 561. In the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons, the term "undistributed personal holding company income" means the amount determined by multiplying the undistributed personal holding company income (determined without regard to this sentence) by the percentage in value of its outstanding stock which is the greatest percentage in value of its outstanding stock so owned by United States persons on any one day during such period.

(b) Adjustments to taxable income. -- For the purposes of subsection (a), the 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 902(a) or 960(a) (1) for the taxable year, but not including the accumulated

earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.

(2) Charitable contributions. -- The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 10-percent limitation) provided in section 170(b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (6) of this subsection.

(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, but there shall be allowed as a deduction the amount of the net operating loss (as defined in section 172(c)) for the preceding taxable year computed without the deductions provided in part VIII (except section 248) of subchapter B.

(5) Net capital gains. -- There shall be allowed as a deduction the net capital gain for the taxable year, minus the taxes imposed by this subtitle attributable to such net capital gain. The taxes attributable to such net capital gain shall be an amount equal to the difference between --

(A) the taxes imposed by this subtitle (except the tax imposed by this part) for such year, and

(B) such taxes computed for such year without including such net capital gain in taxable income.

(6) Expenses and depreciation applicable to property of the taxpayer. -- The aggregate of the deductions allowed under section 162 (relating to trade or business expenses) and section 167 (relating to depreciation), which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established (under regulations prescribed by the Secretary) to the satisfaction of the Secretary --

(A) that the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) that the property was held in the course of a business carried on bona fide for profit; and

(C) either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

(7) Special rule for capital gains and losses of foreign corporations. -- In the case of a foreign corporation, paragraph (5) 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.

(c) Certain foreign corporations. -- In the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), the taxable income for purposes of subsection (a) shall be the income which constitutes personal holding company income under section 543(a)(7), reduced by the deductions attributable to such income, and adjusted, with respect to such income, in the manner provided in subsection (b).

(d) Redesignated.

546. 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 personal holding company tax imposed by section 541.

547. Deduction for deficiency dividends

(a) General rule. -- If a determination (as defined in subsection (c)) with respect to a taxpayer establishes liability for personal holding company tax imposed by section 541 (or by a corresponding provision of a prior income tax law) for any taxable year, a deduction shall be allowed to the taxpayer for the amount of deficiency dividends (as defined in subsection (d)) for the purpose of determining the personal holding company tax for such year, but not for the purpose of determining interest, additional amounts, or assessable penalties computed with respect to such personal holding company tax.

(b) Rules for application of section. --

(1) Allowance of deduction. -- The deficiency dividend deduction shall be allowed as of the date the claim for the deficiency dividend deduction is filed.

(2) Credit or refund. -- If the allowance of a deficiency dividend deduction results in an overpayment of personal holding company tax for any taxable year, credit or refund with respect to such overpayment shall be made as if on the date of the determination 2 years remained before the expiration of the period of limitation on the filing of claim for refund for the taxable year to which the overpayment relates. No interest shall be allowed on a credit or refund arising from the application of this section.

(c) Determination. -- For purposes of this section, the term "determination" means --

(1) a decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121; or

(3) under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the taxpayer relating to the liability of such taxpayer for personal holding company tax.

(d) Deficiency dividends. --

(1) Definition. -- For purposes of this section, the term "deficiency dividends" means the amount of the dividends paid by the corporation on or after the date of the determination and before filing claim under subsection (e), which would have been includible in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for personal holding company tax exists, if distributed during such taxable year. No dividends shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determination.

(2) Effect on dividends paid deduction. --

(A) For taxable year in which paid. -- Deficiency dividends paid in any taxable year (to the extent of the portion thereof taken into account under subsection (a) in determining personal holding company tax) shall not be included in the amount of dividends paid for such year for purposes of computing the dividends paid deduction for such year and succeeding years.

(B) For prior taxable year. -- Deficiency dividends paid in any taxable year (to the extent of the portion thereof taken into account under subsection (a) in determining personal holding company tax) shall not be allowed for purposes of section 563(b) in the computation of the dividends paid deduction for the taxable year preceding the taxable year in which paid.

(e) Claim required. -- No deficiency dividend deduction shall be allowed under subsection (a) unless (under regulations prescribed by the Secretary) claim therefor is filed within 120 days after the determination.

(f) Suspension of statute of limitations and stay of collection. --

(1) Suspension of running of statute. -- If the corporation files a claim, as provided in subsection (e), the running of the statute of limitations provided in section 6501 on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency and all interest, additional amounts, or assessable penalties, shall be suspended for a period of 2 years after the date of the determination.

(2) Stay of collection. -- In the case of any deficiency with respect to the tax imposed by section 541 established by a determination under this section --

(A) the collection of the deficiency and all interest, additional amounts, and assessable penalties shall, except in cases of jeopardy, be stayed until the expiration of 120 days after the date of the determination, and

(B) if claim for deficiency dividend deduction is filed under subsection (e), the collection of such part of the deficiency as is not reduced by the deduction for deficiency dividends provided in subsection (a) shall be stayed until the date the claim is disallowed (in whole or in part), and if disallowed in part collection shall be made only with respect to the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A) or (B) during the period for which the collection of such amount is stayed.

(g) Deduction denied in case of fraud, etc. -- No deficiency dividend deduction shall be allowed under subsection (a) if the determination contains a finding that any part of the deficiency is due to fraud with intent to evade tax, or to wilful failure to file an income tax return within the time prescribed by law or prescribed by the Secretary in pursuance of law.

551. Foreign personal holding company income taxed to United States shareholders

(a) General rule. -- The undistributed foreign personal holding company income of a foreign personal holding company shall be included in the gross income of the citizens or residents of the United States, domestic corporations, domestic partnerships, and estates or trusts (other than foreign estates or trusts), who are shareholders in such foreign personal holding company (hereinafter called "United States shareholders") in the manner and to the extent set forth in this part.

(b) Amount included in gross income. -- Each United States shareholder, who was a shareholder on the day in the taxable year of the company which was the last day on which a United States group (as defined in section 552(a)(2)) existed with respect to the company, shall include in his gross income, as a dividend, for the taxable year in which or with which the taxable year of the company ends, the amount he would have received as a dividend (determined as if any distribution in liquidation actually made in such taxable year has not been made) if on such last day there had been distributed by the company, and received by the shareholders, an amount which bears the same ratio to the undistributed foreign personal holding company income of the company for the taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

(c) Information in return. -- Every United States shareholder who is required under subsection (b) to include in his gross income any amount with respect to the undistributed foreign personal holding company income of a foreign personal holding company and who, on the last day on which a United States group existed with respect to the company, shall set forth in his return in complete detail the gross income, deductions and credits, taxable income, foreign personal holding company income, and undistributed foreign personal holding company income of such company.

(d) Effect on capital account of foreign personal holding company. -- An account which bears the same ratio to the undistributed foreign personal holding company income of the foreign personal holding company for its taxable year as the portion of such taxable year up to and including the last day on which a United States group existed with respect to the company bears to the entire taxable year, shall, for purpose of determining the effect of distributions in subsequent taxable years by the corporation, be considered as paid-in surplus or as a contribution to capital, and the accumulated earnings and profits as of the close of the taxable year shall be correspondingly reduced, if such amount or any portion thereof is

required to be included as a dividend, directly or indirectly, in the gross income of United States shareholders.

(e) Basis of stock in hands of shareholders. -- The amount required to be included in the gross income of a United States shareholder under subsection (b) shall, for the purpose of adjusting the basis of his stock with respect to which the distribution would have been made (if it had been made), be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only to the extent to which such amount is included in his gross income in his return, increased or decreased by any adjustment of such amount in the last determination of the shareholder's tax liability, made before the expiration of 6 years after the date prescribed by law for filing the return.

(f) Stock held through foreign entity. -- For purposes of this section, stock of a foreign personal holding company owned (directly or through the application of this subsection) by --

(1) a foreign partnership or an estate or trust which is a foreign estate or trust, or

(2) a foreign corporation which is not a foreign personal holding company, shall be considered as being owned proportionately by its partners, beneficiaries, or shareholders. In any case to which the preceding sentence applies, the Secretary may by regulations provide that rules similar to the rules of section 1297(b)(5) shall apply, and provide for such other adjustments in the application of this subchapter as may be necessary to carry out the purposes of this subsection.

552. Definition of foreign personal holding company

(a) General rule. -- For purposes of this subtitle, the term "foreign personal holding company" means any foreign corporation if --

(1) Gross income requirement. -- At least 60 percent of its gross income (as defined in section 555(a)) for the taxable year is foreign personal holding company income as defined in section 553; but if the corporation is a foreign personal holding company with respect to any taxable year ending after August 26, 1937, then, for each subsequent taxable year, the minimum percentage shall be 50 percent in lieu of 60 percent, until a taxable year during the whole of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 50 percent of the gross income is foreign personal holding company income. For purposes of this paragraph, there shall be included in the gross income the amount includible therein as a dividend by reason of the application of section 555(c)(2); and

(2) Stock ownership requirement. -- At any time during the taxable year more than 50 percent of --

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(B) the total value of the stock of such corporation, is owned (directly or indirectly) by or for not more than 5 individuals who are citizens or residents of the United States (hereinafter in this part referred to as the "United States group").

(b) Exceptions. -- The term "foreign personal holding company" does not include --

(1) a corporation exempt from tax under subchapter F (sec. 501 and following); and

(2) a corporation organized and doing business under the banking and credit laws of a foreign country if it is established (annually or at other periodic intervals) to the satisfaction of the Secretary that such corporation is not formed or availed of for the purpose of evading or avoiding United States income taxes which would otherwise be imposed upon its shareholders. If the Secretary is satisfied that such corporation is not so formed or availed of, he shall issue to such corporation annually or at other periodic intervals a certification that the corporation is not a foreign personal holding company.

Each United States shareholder of a foreign corporation which would, except for the provisions of paragraph (2), be a foreign personal holding company, shall attach to and file with his income tax return for the taxable year a copy of the certification by the Secretary made pursuant to paragraph (2). Such copy shall be filed with the taxpayer's return for the taxable year if he has been a shareholder of such corporation for any part of such year.

(c) Look-thru for certain dividends and interest. --

(1) In general. -- For purposes of this part, any related person dividend or interest shall be treated as foreign personal holding company income only to the extent such dividend or interest is attributable (determined under rules similar to the rules of subparagraph (C) and (D) of section 904(d)(3)) to income of the related person which would be foreign personal holding company income.

(2) Related person dividend or interest. -- For purposes of paragraph (1), the term "related person dividend or interest" means any dividend or interest which --

(A) is described in subparagraph (A) of section 954(c)(3), and

(B) is received from a related person which is not a foreign personal holding company (determined without regard to this subsection).

For purposes of the preceding sentence, the term "related person" has the meaning given such term by section 954(d)(3) (determined by substituting "foreign personal holding company" for "controlled foreign corporation" each place it appears).

553. Foreign personal holding company income

(a) Foreign personal holding company income. -- For purposes of this subtitle, the term "foreign personal holding company income" means that portion of the gross income, determined for purposes of section 552, which consists of:

(1) Dividends, etc. -- Dividends, interest, royalties, and annuities. This paragraph shall not apply to active business computer software royalties (as defined in section 543(d)).

(2) Stock and securities transactions. -- Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

(3) Commodities transactions. -- Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This paragraph shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others.

(4) Estates and trusts. -- Amounts includible in computing the taxable income of the corporation under part I of subchapter J (sec. 641 and following, relating to estates, trusts, and beneficiaries); and gains from the sale or other disposition of any interest in an estate or trust.

(5) Personal service contracts. --

(A) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and

(B) amounts received from the sale or other disposition of such a contract.

This paragraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(6) Use of corporation property by shareholder. -- Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement. This paragraph shall apply only to a corporation which has foreign personal holding company income for the taxable year, computed without regard to this paragraph and paragraph (7), in excess of 10 percent of its gross income.

(7) Rents. -- Rents, unless constituting 50 percent or more of the gross income. For purposes of this paragraph, the term "rents" means compensation, however designated, for the use of, or right to use, property; but does not include amounts constituting foreign personal holding company income under paragraph (6).

(b) Limitation on gross income in certain transactions. -- For purposes of this part --

(1) gross income and foreign personal holding company income determined with respect to transactions described in subsection (a)(2) (relating to gains from stock and security transactions) shall include only the excess of gains over losses from such transactions, and

(2) gross income and foreign personal holding company income determined with respect to transactions described in subsection (a)(3) (relating to gains from commodity transactions) shall include only the excess of gains over losses from such transactions.

554. Stock ownership

(a) Constructive ownership. -- For purposes of determining whether a corporation is a foreign personal holding company, insofar as such determination is based on stock ownership under section 552(a)(2), section 553(a)(5), or section 553(a)(6) --

(1) Stock not owned by individual. -- Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partner, or beneficiaries.

(2) Family and partnership ownership. -- An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) Options. -- If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) Application of family-partnership and option rules. -- Paragraphs (2) and (3) shall be applied --

(A) for purposes of the stock ownership requirement provided in section 552(a)(2), if, but only if, the effect is to make the corporation a foreign personal holding company;

(B) for purposes of section 553(a)(5) (relating to personal service contracts) or of section 553(a)(6), (relating to the use of property by shareholders), if, but only if, the effect is to make the amount therein referred to includible under such paragraph as foreign personal holding company income.

(5) Constructive ownership as actual ownership. -- Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

(6) Option rule in lieu of family and partnership rule. -- If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) Convertible securities. -- Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock --

(1) for purposes of the stock ownership requirement provided in section 552(a)(2), but only if the effect of the inclusion of all such securities is to make the corporation a foreign personal holding company;

(2) for purposes of section 553(a)(5) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amount therein referred to includible under such paragraph as foreign personal holding company income; and

(3) for purposes of section 553(a)(6) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as foreign personal holding company income.

The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.

(c) Special rules for application of subsection (a)(2). -- For purposes of the stock ownership requirement provided in section 552(a)(2) --

(1) stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered by reason of much of subsection (1)(2) as relates to attribution through family membership as owned by a citizen or by a resident alien individual who is not the spouse of the nonresident individual and who does not otherwise own stock in such corporation (determined after the application of subsection (a), other than attribution through partners).

555. Gross income of foreign personal holding companies

(a) General rule. -- For purposes of this part, the term "gross income" means, with respect to a foreign corporation, gross income computed (without regard to the provisions of subchapter N (sec. 861 and following)) as if the foreign corporation were a domestic corporation which is a personal holding company.

(b) Additions to gross income. -- In the case of a foreign personal holding company (whether or not a United States group, as defined in section 552(a)(2), existed with respect to such company on the last day of its taxable year) which was a shareholder in another foreign personal holding company on the day in the taxable year of the second company which was the last day on which a United States group existed with respect to the second company, there shall be included, as a dividend, in the gross income of the first company, for the taxable year in which or with which the taxable year of the second company ends, the amount the first company would have received as a dividend if on such last day there had been distributed by the second company, and received by the shareholders, and amount which bears the same ratio to the undistributed foreign personal holding company income of the second company for its taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

(c) Application of subsection (b). -- The rule provided in subsection (b) --

(1) shall be applied in the case of a foreign personal holding company for the purpose of determining its undisturbed foreign personal holding company income which, or a part of which, is to be included in the gross income of its shareholders, whether United States shareholders or other foreign personal holding companies;

(2) shall be applied in the case of every foreign corporation with respect to which a United States group exists on some day of its taxable year, for the purpose of determining whether such corporation meets the gross income requirements of section 552(a)(1).

556. Undistributed foreign personal holding company income

(a) Definition. -- For purposes of this part, the term "undistributed foreign personal holding company income" means the taxable income of a foreign personal holding company adjusted in the manner provided in subsection (b), minus the dividends paid deduction (as defined in section 561).

(b) Adjustments to taxable income. -- For the purposes of subsection (a), the 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, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.

(2) Charitable contributions. -- The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 10-percent limitation) provided in section 170(b)(2) and (d)(1) and without the deduction of the amounts disallowed under paragraphs (5) and (6) of this subsection or the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 555(b) (relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder).

(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, but there shall be allowed as a deduction the amount of the net operating loss (as

defined in section 172(c)) for the preceding taxable year computed without the deductions provided in part VIII (except section 248) of subchapter B.

(5) Expenses and depreciation applicable to property of the taxpayer. -- The aggregate of the deductions allowed under section 162 (relating to trade or business expenses) and section 167 (relating to depreciation) which are allocable to the operation and maintenance of property owned or operated by the company, shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established (under regulations prescribed by the Secretary) to the satisfaction of the Secretary

--
(A) that the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) that the property was held in the course of a business carried on bona fide for profit; and

(C) either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

(6) Taxes and contributions to pension trusts. -- The deductions provided in section 164(e) (relating to taxes of a shareholder paid by the corporation) and in section 404 (relating to pension, etc., trusts) shall not be allowed.

557. 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 undistributed foreign personal holding company income under section 556.

558. Returns of officers, directors, and shareholders of foreign personal holding companies

For provisions relating to returns of officers, directors, and shareholders of foreign personal holding companies, see section 6035.

561. Definition of deduction for dividends paid

(a) General rule. -- The deduction for dividends paid shall be the sum of --

(1) the dividends paid during the taxable year,

(2) the consent dividends for the taxable year (determined under section 565), and

(3) in the case of a personal holding company, the dividend carryover described in section 564.

(b) Special rules applicable. -- In determining the deduction for dividends paid, the rules provided in section 562 (relating to rules applicable in determining dividends eligible for dividends paid deduction) and section 563 (relating to dividends paid after the close of the taxable year) shall be applicable.

562. Rules applicable in determining dividends eligible for dividends paid deduction

(a) General rule. -- For purposes of this part, the term "dividend" shall, except as otherwise provided in this section, include only dividends described in section 316 (relating to definition of dividends for purposes of corporate distributions)

(b) Distribution in liquidation. --

(1) Except in the case of a personal holding company described in section 542 or a foreign personal holding company described in section 552 --

(A) in the case of amounts distributed in liquidation, the part of such distribution which is properly chargeable to earnings and profits accumulated after February 28, 1913, shall be treated as a dividend for purposes of computing the dividends paid deduction, and

(B) in the case of a complete liquidation occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall, to the extent of the earnings and profits (computed without regard to capital losses) of the corporation for the taxable year in which such distribution is made, be treated as a dividend for purposes of computing the dividends paid deduction.

For purposes of subparagraph (A), a liquidation includes a redemption of stock to which section 302 applies. Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company.

(2) In the case of a complete liquidation of a personal holding company, occurring within 24 months after the adoption of a plan of liquidation, the amount of any distribution within such period pursuant to such plan shall be treated as a dividend for purposes of computing the dividends paid deduction, to the extent that such amount is distributed to corporate distributees and represents such corporate distributees' allocable share of the undistributed personal holding company income for the taxable year of such distribution computed without regard to this paragraph and without regard to subparagraph (B) of section 316(b)(2).

(c) Preferential dividends. -- The amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference. In the case of a distribution by a regulated investment company to a shareholder who made an initial investment of at least \$10,000,000 in such company, such distribution shall not be treated as not being pro rata or as being preferential solely by reason of an increase in the distribution by reason of reductions in administrative expenses of the company.

(d) Distributions by a member of an affiliated group. -- In the case where a corporation which is a member of an affiliated group of corporations filing or required to file a consolidated return for a taxable year is required to file a consolidated

return for a taxable year is required to file a separate personal holding company schedule for such taxable year, a distribution by such corporation to another member of the affiliated group shall be considered as a dividend for purposes of computing the dividends paid deduction if such distribution would constitute a dividend under the other provisions of this section to a recipient which is not a member of an affiliated group.

(e) Special rules for real estate investment trusts. -- In the case of a real estate investment trust, in determining the amount of dividends under section 316 for purposes of computing the dividends paid deduction, the earnings and profits of such trust for any taxable year beginning after December 31, 1980, shall be increased by the total amount of gain (if any) on the sale or exchange of real property by such trust during such taxable year.

563. Rules relating to dividends paid after close of taxable year

(a) Accumulated earnings tax. -- In the determination of the dividends paid deduction for purposes of the accumulated earnings tax imposed by section 531, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall be considered as paid during such taxable year.

(b) Personal holding company tax. -- In the determination of the dividends paid deduction for purposes of the personal holding company tax imposed by section 541, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall, to the extent the taxpayer elects in its return for the taxable year, be considered as paid during such taxable year. The amount allowed as a dividend by reason of the application of this subsection with respect to any taxable year shall not exceed either --

(1) The undistributed personal holding company income of the corporation for the taxable year, computed without regard to this subsection, or

(2) 20 percent of the sum of the dividends paid during the taxable year, computed without regard to this subsection.

(c) Foreign personal holding company tax. --

(1) In general. -- In the determination of the dividends paid deduction for purposes of part III, a dividend paid after the close of any taxable year and on or before the 15th day of the 3rd month following the close of such taxable year shall, to the extent the company designates such dividend as being taken into account under this subsection, be considered as paid during such taxable year. The amount allowed as a deduction by reason of the application of this subsection with respect to any taxable year shall not exceed the undistributed foreign personal holding company income of the corporation for the taxable year computed without regard to this subsection.

(2) Special rules. -- In the case of any distribution referred to in paragraph (1) --

(A) paragraph (1) shall apply only if such distribution is to the person who was the shareholder of record (as of the last day of the taxable year of the foreign personal holding company) with respect to the stock for which such distribution is made,

(B) the determination of the person required to include such distribution in gross income shall be made under the principles of section 551(f), and

(C) any person required to include such distribution in gross or distributable net income shall include such distribution in income for such person's taxable year in which the taxable year of the foreign personal holding company ends.

(d) Dividends considered as paid on last day of taxable year. -- For the purpose of applying section 562(a), with respect to distributions under subsection (a), (b), or (c) of this section, a distribution made after the close of a taxable year and on or before the 15th day of the third month following the close of the taxable year shall be considered as made on the last day of such taxable year.

564. Dividend carryover

(a) General rule. -- For purposes of computing the dividends paid deduction under section 561, in the case of a personal holding company the dividend carryover for any taxable year shall be the dividend carryover to such taxable year, computed as provided in subsection 9b), from the two preceding taxable years.

(b) computation of dividend carryover. -- The dividend carryover to the taxable year shall be determined as follows:

(1) For each of the 2 preceding taxable years there shall be determined the taxable income computed with the adjustments provided in section 545 (whether or not the taxpayer was a personal holding company for either of such preceding taxable years), and there shall also be determined for each such year the deduction for dividends paid during such year as provided in section 561 (but determined without regard to the dividend carryover to such year).

(2) There shall be determined for each such taxable year whether there is an excess of such taxable income over such deduction for dividends paid or an excess of such deduction for dividends paid over such taxable income, and the amount of each such excess.

(3) If there is an excess of such deductions for dividends paid over such taxable income for the first preceding taxable year, such excess shall be allowed as a dividend carryover to the taxable year.

(4) If there is an excess of such deduction for dividends paid over such taxable income for the second preceding taxable year, such excess shall be reduced by the amount determined in paragraph (5), and the remainder of such excess shall be allowed as a dividend carryover to the taxable year.

(5) The amount of the reduction specified in paragraph (4) shall be the amount of the excess of the taxable income, if any, for the first preceding taxable year over such deduction for dividends paid, if any, for the first preceding taxable year.

565. Consent dividends

(a) General rule. -- If any person owns consent stock (as defined in subsection (f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with regulations prescribed by the Secretary, to treat as a dividend the amount specified in such consent, the amount to specified shall, except as provided in subsection (b), constitute a consent dividend for purposes of section 561 (relating to the deduction for dividends paid).

(b) Limitations. -- A consent dividend shall not include --

(1) an amount specified in a consent which, if distributed in money, would constitute, or be part of, a distribution which would be disqualified for purposes of the dividends paid deduction under section 562(c) (relating to preferential dividends), or

(2) an amount specified in a consent which would not constitute a dividend (as defined in section 316) if the total amounts specified in consents filed by the corporation had been distributed in money to shareholders on the last day of the taxable year of such corporation.

(c) Effect of consent. -- The amount of a consent dividend shall be considered, for purposes of this title --

(1) as distributed in money by the corporation to the shareholder on the last day of the taxable year of the corporation, and

(2) as contributed to the capital of the corporation by the shareholder on such day.

(d) Consent dividends and other distributions. -- If a distribution by a corporation consists in part of consent dividends and in part of money or other property, the entire amount specified in the consents and the amount of such money or other property shall be considered together for purposes of applying this title.

(e) Nonresident aliens and foreign corporations. -- In the case of a consent dividend which, if paid in money would be subject to the provisions of section 1441 (relating to withholding of tax on nonresident aliens) or section 1442 (relating to withholding of tax on foreign corporations), this section shall not apply unless the consent is accompanied by money, or such other medium of payment as the Secretary may by regulations authorize, in an amount equal to the amount that would be required to be deducted and withheld under sections 1441 or 1442 if the consent dividend had been on the last day of the taxable year of the corporation, paid to the shareholder in money as a dividend. The amount accompanying the consent shall be credited against the tax imposed by this subtitle on the shareholder.

(f) Definitions. --

(1) Consent stock. -- Consent stock, for purposes of this section, means the class or classes of stock entitled, after the payment of preferred dividends, to a share in the distribution (other than in complete or partial liquidation) within the taxable year of all the remaining earnings and profits, which share constitutes the same proportion of such distribution regardless of the amount of such distribution.

(2) Preferred dividends. -- Preferred dividends, for purposes of this section, means a distribution (other than in complete or partial liquidation), limited in amount, which must be made on any class of stock before a further distribution (other than in complete or partial liquidation) of earnings and profits may be made within the taxable year.

581. Definition of bank

For purposes of sections 582 and 584, the term "bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.