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Sec. 1. - Tax imposed

(a) Married individuals filing joint returns and surviving spouses

There is hereby imposed on the taxable income of -

(1)

every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

(2)

every surviving spouse (as defined in section 2(a)), a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over \$36,900	15% of taxable income.
Over \$36,900 but not over \$89,150	\$5,535, plus 28% of the excess over \$36,900.
Over \$89,150 but not over \$140,000	\$20,165, plus 31% of the excess over \$89,150.
Over \$140,000 but not over \$250,000	\$35,928.50, plus 36% of the excess over \$140,000.
Over \$250,000	\$75,528.50, plus 39.6% of the excess over \$250,000.

(b) Heads of households

There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

If taxable income is: **The tax is:**

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Not over \$29,600	15% of taxable income.
Over \$29,600 but not over \$76,400	\$4,440, plus 28% of the excess over \$29,600.
Over \$76,400 but not over \$127,500	\$17,544, plus 31% of the excess over \$76,400.
Over \$127,500 but not over \$250,000	\$33,385, plus 36% of the excess over \$127,500.
Over \$250,000	\$77,485, plus 39.6% of the excess over \$250,000.

(c) Unmarried individuals (other than surviving spouses and heads of households)

There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over \$22,100	15% of taxable income.
Over \$22,100 but not over \$53,500	\$3,315, plus 28% of the excess over \$22,100.
Over \$53,500 but not over \$115,000	\$12,107, plus 31% of the excess over \$53,500.
Over \$115,000 but not over \$250,000	\$31,172, plus 36% of the excess over \$115,000.
Over \$250,000	\$79,772, plus 39.6% of the excess over \$250,000.

(d) Married individuals filing separate returns

There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over \$18,450	15% of taxable income.
Over \$18,450 but not over \$44,575	\$2,767.50, plus 28% of the excess over \$18,450.
Over \$44,575 but not over \$70,000	\$10,082.50, plus 31% of the excess over \$44,575.

Over \$70,000 but not over \$125,000	\$17,964.25, plus 36% of the excess over \$70,000.
Over \$125,000	\$37,764.25, plus 39.6% of the excess over \$125,000.

(e) Estates and trusts

There is hereby imposed on the taxable income of -

(1)

every estate, and

(2)

every trust,

taxable under this subsection a tax determined in accordance with the following table

If taxable income is:	The tax is:
Not over \$1,500	15% of taxable income.
Over \$1,500 but not over \$3,500	\$225, plus 28% of the excess over \$1,500.
Over \$3,500 but not over \$5,500	\$785, plus 31% of the excess over \$3,500.
Over \$5,500 but not over \$7,500	\$1,405, plus 36% of the excess over \$5,500.
Over \$7,500	\$2,125, plus 39.6% of the excess over \$7,500.

(f) Adjustments in tax tables so that inflation will not result in tax increases**(1) In general**

Not later than December 15 of 1993, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning in the succeeding calendar year.

(2) Method of prescribing tables

The table which under paragraph (1) is to apply in lieu of the table contained in subsection (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed -

(A)

by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table by the cost -of-living adjustment for such calendar year,

(B)

by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A), and

(C)

by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

(3) Cost-of-living adjustment

For purposes of paragraph (2), the cost-of-living adjustment for any calendar year is the percentage (if any) by which -

(A)

the CPI for the preceding calendar year, exceeds

(B)

the CPI for the calendar year 1992.

(4) CPI for any calendar year

For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

(5) Consumer Price Index

For purposes of paragraph (4), the term "Consumer Price Index" means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

(6) Rounding

(A) In general

If any increase determined under paragraph (2) (A), section 63(c)(4), section 68(b)(2) or section 151 (d)(4) is not a multiple of \$50, such increase shall be

rounded to the next lowest multiple of \$50.

(B) Table for married individuals filing separately

In the case of a married individual filing a separate return, subparagraph (A) (other than with respect to subsection (c)(4) of section 63 (as it applies to subsections (c)(5)(A) and (f) of such section) and section 151(d)(4)(A)) shall be applied by substituting "\$25" for "\$50" each place it appears.

(7) Special rule for certain brackets

(A) Calendar year 1994

In prescribing the tables under paragraph (1) which apply with respect to taxable years beginning in calendar year 1994, the Secretary shall make no adjustment to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate begins under any table contained in subsection (a), (b), (c), (d), or (e).

(B) Later calendar years

In prescribing tables under paragraph (1) which apply with respect to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts referred to in subparagraph (A) shall be determined under paragraph (3) by substituting "1993" for "1992".

(g) Certain unearned income of minor children taxed as if parent's income

(1) In general

In the case of any child to whom this subsection applies, the tax imposed by this section shall be equal to the greater of -

(A)

the tax imposed by this section without regard to this subsection, or

(B)

the sum of -

(i)

the tax which would be imposed by this section if

the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus

(ii)

such child's share of the allocable parental tax.

(2) Child to whom subsection applies

This subsection shall apply to any child for any taxable year if -

(A)

such child has not attained age 14 before the close of the taxable year, and

(B)

either parent of such child is alive at the close of the taxable year.

(3) Allocable parental tax

For purposes of this subsection -

(A) In general

The term "allocable parental tax" means the excess of -

(i)

the tax which would be imposed by this section on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this subsection applies, over

(ii)

the tax imposed by this section on the parent without regard to this subsection.

For purposes of clause (i), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

(B) Child's share

A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the

child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this subsection applies.

(C) Special rule where parent has different taxable year

Except as provided in regulations, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

(4) Net unearned income

For purposes of this subsection -

(A) In general

The term "net unearned income" means the excess of -

(i)

the portion of the adjusted gross income for the taxable year which is not attributable to earned income (as defined in section 911(d)(2)), over

(ii)

the sum of -

(I)

the amount in effect for the taxable year under section 63(c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents), plus

(II)

the greater of the amount described in subclause (I) or, if the child itemizes his deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of adjusted gross income referred to in clause (i).

(B) Limitation based on taxable income

The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

(5) Special rules for determining parent to whom subsection applies

For purposes of this subsection, the parent whose taxable income shall be taken into account shall be -

(A)

in the case of parents who are not married (within the meaning of section 7703), the custodial parent (within the meaning of section 152(e)) of the child, and

(B)

in the case of married individuals filing separately, the individual with the greater taxable income.

(6) Providing of parent's TIN

The parent of any child to whom this subsection applies for any taxable year shall provide the TIN of such parent to such child and such child shall include such TIN on the child's return of tax imposed by this section for such taxable year.

(7) Election to claim certain unearned income of child on parent's return

(A) In general

If -

(i)

any child to whom this subsection applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends),

(ii)

such gross income is more than the amount described in paragraph (4)(A)(ii)(I) and less than 10 times the amount so described,

(iii)

no estimated tax payments for such year are made in the name and TIN of such child, and no amount has been deducted and withheld under section 3406, and

(iv)

the parent of such child (as determined under paragraph (5)) elects the application of subparagraph (B),

such child shall be treated (other than for purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under section 6012.

(B) Income included on parent's return

In the case of a parent making the election under this paragraph -

(i)

the gross income of each child to whom such election applies (to the extent the gross income of such child exceeds twice the amount described in paragraph (4)(A)(ii)(I)) shall be included in such parent's gross income for the taxable year,

(ii)

the tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of -

(I)

the amount determined under this section after the application of clause (i), plus

(II)

for each such child, 15 percent of the lesser of the amount described in paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount so described, and

(iii)

any interest which is an item of tax preference under section 57(a)(5) of the child shall be treated as an item of tax preference of such parent (and not of such child).

(C) Regulations

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

(h) Maximum capital gains rate

(1) In general

If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of -

(A)

a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of -

(i)

taxable income reduced by the net capital gain; or

(ii)

the lesser of -

(I)

the amount of taxable income taxed at a rate below 28 percent; or

(II)

taxable income reduced by the adjusted net capital gain;

(B)

10 percent of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of -

(i)

the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 28 percent, over

(ii)

the taxable income reduced by the adjusted net capital gain;

(C)

20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);

(D)

25 percent of the excess (if any) of -

(i)

the unrecaptured section 1250 gain (or, if less, the net capital gain), over

(ii)

the excess (if any) of -

(I)

the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over

(II)

taxable income; and

(E)

28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

(2) Reduced capital gain rates for qualified 5-year gain

(A) Reduction in 10-percent rate

In the case of any taxable year beginning after December 31, 2000, the rate under paragraph (1)(B) shall be 8 percent with respect to so much of the amount to which the 10-percent rate would otherwise apply as does not exceed qualified 5-year gain, and 10 percent with respect to the remainder of such amount.

(B) Reduction in 20-percent rate

The rate under paragraph (1)(C) shall be 18 percent with respect to so much of the amount to which the 20-percent rate would otherwise apply as does not exceed the lesser of -

(i)

the excess of qualified 5-year gain over the amount of such gain taken into account under subparagraph (A) of this paragraph; or

(ii)

the amount of qualified 5-year gain (determined by taking into account only property the holding period for which begins after December 31, 2000),

and 20 percent with respect to the remainder of such amount. For purposes of determining under the preceding sentence whether the holding period of property begins after December 31, 2000, the holding period of property acquired pursuant to the exercise of an option (or other right or obligation to acquire property) shall include the period such option (or other right or obligation) was held.

(3) Net capital gain taken into account as investment income

For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

(4) Adjusted net capital gain

For purposes of this subsection, the term "adjusted net capital gain" means net capital gain reduced (but not below zero) by the sum of -

(A)

unrecaptured section 1250 gain; and

(B)

28-percent rate gain.

(5) 28-percent rate gain

For purposes of this subsection, the term "28-percent rate gain" means the excess (if any) of -

(A)

the sum of -

(i)

collectibles gain; and

(ii)

section 1202 gain, over

(B)

the sum of -

(i)

collectibles loss;

(ii)

the net short-term capital loss; and

(iii)

the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

(6) Collectibles gain and loss

For purposes of this subsection -

(A) In general

The terms "collectibles gain" and "collectibles loss" mean gain or loss (respectively) from the sale or exchange of a collectible (as defined in section 408(m) without regard to paragraph (3) thereof) which is a capital asset held for more than 1 year but only to the extent such gain is taken into account in computing gross income and such loss is taken into account in computing taxable income.

(B) Partnerships, etc.

For purposes of subparagraph (A), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751 shall apply for purposes of the preceding sentence.

(7) Unrecaptured section 1250 gain

For purposes of this subsection -

(A) In general

The term "unrecaptured section 1250 gain" means the excess (if any) of -

(i)

the amount of long-term capital gain (not otherwise treated as ordinary income) which would

be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, over

(ii)

the excess (if any) of -

(I)

the amount described in paragraph (5)(B); over

(II)

the amount described in paragraph (5)(A).

(B) Limitation with respect to section 1231 property

The amount described in subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231(a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in section 1231(c)(3)) for such year.

(8) Section 1202 gain

For purposes of this subsection, the term "section 1202 gain" means the excess of -

(A)

the gain which would be excluded from gross income under section 1202 but for the percentage limitation in section 1202(a), over

(B)

the gain excluded from gross income under section 1202.

(9) Qualified 5-year gain

For purposes of this subsection, the term "qualified 5-year gain" means the aggregate long-term capital gain from property held for more than 5 years. The determination under the preceding sentence shall be made without regard to collectibles gain, gain described in paragraph (7)(A)(i), and section 1202 gain.

(10) Coordination with recapture of net ordinary losses under section 1231

If any amount is treated as ordinary income under section 1231(c), such amount shall be allocated among

the separate categories of net section 1231 gain (as defined in section 1231(c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

(11) Regulations

The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

(12) Pass-thru entity defined

For purposes of this subsection, the term "pass-thru entity" means -

(A)

a regulated investment company;

(B)

a real estate investment trust;

(C)

an S corporation;

(D)

a partnership;

(E)

an estate or trust;

(F)

a common trust fund;

(G)

a foreign investment company which is described in section 1246(b)(1) and for which an election is in effect under section 1247; and

(H)

a qualified electing fund (as defined in section 1295).

(13) Special rules

(A) Determination of 28-percent rate gain

In applying paragraph (5) -

(i)

the amount determined under subparagraph (A) of paragraph (5) shall include long-term capital gain (not otherwise described in such subparagraph) -

(I)

which is properly taken into account for the portion of the taxable year before May 7, 1997;
or

(II)

from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998;

(ii)

the amount determined under subparagraph (B) of paragraph (5) shall include long-term capital loss (not otherwise described in such subparagraph) -

(I)

which is properly taken into account for the portion of the taxable year before May 7, 1997;
or

(II)

from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998; and

(iii)

subparagraph (B) of paragraph (5) (as in effect immediately before the enactment of this clause) shall apply to amounts properly taken into account before January 1, 1998.

(B) Determination of unrecaptured section 1250 gain

The amount determined under paragraph (7)(A)(i) shall not include gain -

(i)

which is properly taken into account for the portion

of the taxable year before May 7, 1997; or

(ii)

from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998.

(C) Special rules for pass-thru entities

In applying this paragraph with respect to any pass-thru entity, the determination of when gains and loss are properly taken into account shall be made at the entity level.

(D) Charitable remainder trusts

Subparagraphs (A) and (B)(ii) shall not apply to any capital gain distribution made by a trust described in section 664.'

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[Next](#)**Sec. 871. - Tax on nonresident alien individuals**

(a)

Income not connected with United States business - 30 percent tax

(1) Income other than capital gains

Except as provided in subsection (h), there is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a nonresident alien individual as -

(A)

interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(B)

gains described in section 631(b) or (c), and gains on transfers described in section 1235 made on or before October 4, 1966,

(C)

in the case of -

(i)

a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

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(ii)

a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the nonresident alien individual (except that such original issue discount shall be taken into account under this clause only to the extent such discount was not theretofore taken into account under this clause and only to the extent that the tax thereon does not exceed the payment less the tax imposed by subparagraph (A) thereon), and

(D)

gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged,

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(2) Capital gains of aliens present in the United States 183 days or more

In the case of a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year, there is hereby imposed for such year a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from the sale or exchange at any time during such year of capital assets exceed his losses, allocable to sources within the United States, from the sale or exchange at any time during such year of capital assets. For purposes of this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such gains and losses were effectively connected with the conduct of a trade or business within the United States, except that such gains and losses shall be determined without regard to section 1202 and such losses shall be determined without the benefits of the capital loss carryover provided in section 1212. Any gain or loss which is taken into account in determining the tax under paragraph (1) or subsection (b) shall not be taken into account in determining the tax under this paragraph. For purposes of the 183-day requirement of this paragraph, a nonresident alien individual not engaged in trade or

business within the United States who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(3) Taxation of social security benefits

For purposes of this section and section 1441 -

(A)

85 percent of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act), and

(B)

section 86 shall not apply.

For treatment of certain citizens of possessions of the United States, see section 932(c). [11](#)

(b)

Income connected with United States business - graduated rate of tax

(1) Imposition of tax

A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1 or 55 on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Participants in certain exchange or training programs

For purposes of this section, a nonresident alien individual who (without regard to this subsection) is not engaged in trade or business within the United States and who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended ([8 U.S.C. 1101\(a\)\(15\)\(F\), \(J\), \(M\), or \(Q\)](#)), shall be treated as a nonresident alien individual engaged in trade or business within the United States, and any income

described in the second sentence of section 1441(b) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States.

(d) Election to treat real property income as income connected with United States business

(1) In general

A nonresident alien individual who during the taxable year derives any income -

(A)

from real property held for the production of income and located in the United States, or from any interest in such real property, including

(i)

gains from the sale or exchange of such real property or an interest therein,

(ii)

rents or royalties from mines, wells, or other natural deposits, and

(iii)

gains described in section 631(b) or (c), and

(B)

which, but for this subsection, would not be treated as income which is effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (b)(1) whether or not such individual is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) Election after revocation

If an election has been made under paragraph (1) and such election has been revoked, a new election may not be made under such paragraph for any taxable year before the 5th taxable year which begins after the first taxable year for which such revocation is effective, unless the Secretary consents to such new election.

(3) Form and time of election and revocation

An election under paragraph (1), and any revocation of such an election, may be made only in such manner and at such time as the Secretary may by regulations prescribe.

(e)

Repealed. Pub. L. 99-514, title XII, Sec. 1211(b)(5), Oct. 22, 1986, 100 Stat. 2536)

(f) Certain annuities received under qualified plans

(1) In general

For purposes of this section, gross income does not include any amount received as an annuity under a qualified annuity plan described in section 403(a)(1), or from a qualified trust described in section 401(a) which is exempt from tax under section 501(a), if -

(A)

all of the personal services by reason of which the annuity is payable were either -

(i)

personal services performed outside the United States by an individual who, at the time of performance of such personal services, was a nonresident alien, or

(ii)

personal services described in section 864(b)(1) performed within the United States by such individual, and

(B)

at the time the first amount is paid as an annuity under the annuity plan or by the trust, 90 percent or more of the employees for whom contributions or benefits are provided under such annuity plan, or under the plan or plans of which the trust is a part,

are citizens or residents of the United States.

(2) Exclusion

Income received during the taxable year which would be excluded from gross income under this subsection but for the requirement of paragraph (1)(B) shall not be included in gross income if -

(A)

the recipient's country of residence grants a substantially equivalent exclusion to residents and citizens of the United States; or

(B)

the recipient's country of residence is a beneficiary developing country under title V of the Trade Act of 1974 ([19 U.S.C. 2461](#) et seq.).

(g) Special rules for original issue discount

For purposes of this section and section 881 -

(1) Original issue discount obligation

(A) In general

Except as provided in subparagraph (B), the term "original issue discount obligation" means any bond or other evidence of indebtedness having original issue discount (within the meaning of section 1273).

(B) Exceptions

The term "original issue discount obligation" shall not include -

(i) Certain short-term obligations

Any obligation payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

(ii) Tax-exempt obligations

Any obligation the interest on which is exempt from tax under section 103 or under any other provision of law without regard to the identity of the holder.

(2) Determination of portion of original issue discount accruing during any period

The determination of the amount of the original issue discount which accrues during any period shall be made under the rules of section 1272 (or the corresponding provisions of prior law) without regard to any exception for short-term obligations.

(3) Source of original issue discount

Except to the extent provided in regulations prescribed by the Secretary, the determination of whether any amount described in subsection (a)(1)(C) is from sources within the United States shall be made at the time of the payment (or sale or exchange) as if such payment (or sale or exchange) involved the payment of interest.

(4) Stripped bonds

The provisions of section 1286 (relating to the treatment of stripped bonds and stripped coupons as obligations with original issue discount) shall apply for purposes of this section.

(h) Repeal of tax on interest of nonresident alien individuals received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a nonresident individual from sources within the United States, no tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term "portfolio interest" means any interest (including original issue discount) which would be subject to tax under subsection (a) but for this subsection and which is described in any of the following subparagraphs:

(A) Certain obligations which are not registered

Interest which is paid on any obligation which -

(i)

is not in registered form, and

(ii)

is described in section 163(f)(2)(B).

(B) Certain registered obligations

Interest which is paid on an obligation -

(i)

which is in registered form, and

(ii)

with respect to which the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441 (a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person.

(3) Portfolio interest not to include interest received by 10-percent shareholders

For purposes of this subsection -

(A) In general

The term "portfolio interest" shall not include any interest described in subparagraph (A) or (B) of paragraph (2) which is received by a 10-percent shareholder.

(B) 10-Percent shareholder

The term "10-percent shareholder" means -

(i)

in the case of an obligation issued by a corporation, any person who owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote, or

(ii)

in the case of an obligation issued by a partnership, any person who owns 10 percent or more of the capital or profits interest in such partnership.

(C) Attribution rules

For purposes of determining ownership of stock under subparagraph (B)(i) the rules of section 318(a) shall apply, except that -

(i)

section 318(a)(2)(C) shall be applied without

regard to the 50-percent limitation therein,

(ii)

section 318(a)(3)(C) shall be applied -

(I)

without regard to the 50-percent limitation therein; and

(II)

in any case where such section would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) which is owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owns in such corporation bears to the value of all stock in such corporation, and

(iii)

any stock which a person is treated as owning after application of section 318(a)(4) shall not, for purposes of applying paragraphs (2) and (3) of section 318(a), be treated as actually owned by such person.

Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall be applied in determining the ownership of the capital or profits interest in a partnership for purposes of subparagraph (B)(ii).

(4) Portfolio interest not to include certain contingent interest

For purposes of this subsection -

(A) In general

Except as otherwise provided in this paragraph, the term "portfolio interest" shall not include -

(i)

any interest if the amount of such interest is determined by reference to -

(I)

any receipts, sales or other cash flow of the debtor or a related person,

(II)

any income or profits of the debtor or a related person,

(III)

any change in value of any property of the debtor or a related person, or

(IV)

any dividend, partnership distributions, or similar payments made by the debtor or a related person, or

(ii)

any other type of contingent interest that is identified by the Secretary by regulation, where a denial of the portfolio interest exemption is necessary or appropriate to prevent avoidance of Federal income tax.

(B) Related person

The term "related person" means any person who is related to the debtor within the meaning of section 267(b) or 707(b)(1), or who is a party to any arrangement undertaken for a purpose of avoiding the application of this paragraph.

(C) Exceptions

Subparagraph (A)(i) shall not apply to -

(i)

any amount of interest solely by reason of the fact that the timing of any interest or principal payment is subject to a contingency,

(ii)

any amount of interest solely by reason of the fact that the interest is paid with respect to nonrecourse or limited recourse indebtedness,

(iii)

any amount of interest all or substantially all of which is determined by reference to any other

amount of interest not described in subparagraph (A) (or by reference to the principal amount of indebtedness on which such other interest is paid),

(iv)

any amount of interest solely by reason of the fact that the debtor or a related person enters into a hedging transaction to manage the risk of interest rate or currency fluctuations with respect to such interest,

(v)

any amount of interest determined by reference to -

(I)

changes in the value of property (including stock) that is actively traded (within the meaning of section 1092(d)) other than property described in section 897(c)(1) or (g),

(II)

the yield on property described in subclause (I), other than a debt instrument that pays interest described in subparagraph (A), or stock or other property that represents a beneficial interest in the debtor or a related person, or

(III)

changes in any index of the value of property described in subclause (I) or of the yield on property described in subclause (II), and (vi) any other type of interest identified by the Secretary by regulation.

(D) Exception for certain existing indebtedness

Subparagraph (A) shall not apply to any interest paid or accrued with respect to any indebtedness with a fixed term -

(i)

which was issued on or before April 7, 1993, or

(ii)

which was issued after such date pursuant to a written binding contract in effect on such date and

at all times thereafter before such indebtedness was issued.

(5) Certain statements

A statement with respect to any obligation meets the requirements of this paragraph if such statement is made by -

(A)

the beneficial owner of such obligation, or

(B)

a securities clearing organization, a bank, or other financial institution that holds customers' securities in the ordinary course of its trade or business.

The preceding sentence shall not apply to any statement with respect to payment of interest on any obligation by any person if, at least one month before such payment, the Secretary has published a determination that any statement from such person (or any class including such person) does not meet the requirements of this paragraph.

(6) Secretary may provide subsection not to apply in cases of inadequate information exchange

(A) In general

If the Secretary determines that the exchange of information between the United States and a foreign country is inadequate to prevent evasion of the United States income tax by United States persons, the Secretary may provide in writing (and publish a statement) that the provisions of this subsection shall not apply to payments of interest to any person within such foreign country (or payments addressed to, or for the account of, persons within such foreign country) during the period -

(i)

beginning on the date specified by the Secretary, and

(ii)

ending on the date that the Secretary determines that the exchange of information between the United States and the foreign country is adequate to prevent the evasion of United States income tax

by United States persons.

(B) Exception for certain obligations

Subparagraph (A) shall not apply to the payment of interest on any obligation which is issued on or before the date of the publication of the Secretary's determination under such subparagraph.

(7) Registered form

For purposes of this subsection, the term "registered form" has the same meaning given such term by section 163(f).

(i) Tax not to apply to certain interest and dividends

(1) In general

No tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a) on any amount described in paragraph (2).

(2) Amounts to which paragraph (1) applies

The amounts described in this paragraph are as follows:

(A)

Interest on deposits, if such interest is not effectively connected with the conduct of a trade or business within the United States.

(B)

A percentage of any dividend paid by a domestic corporation meeting the 80-percent foreign business requirements of section 861(c)(1) equal to the percentage determined for purposes of section 861(c)(2)(A).

(C)

Income derived by a foreign central bank of issue from bankers' acceptances.

(3) Deposits

For purposes of paragraph (2), the term "deposits" means amounts which are -

(A)

deposits with persons carrying on the banking business,

(B)

deposits or withdrawable accounts with savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, but only to the extent that amounts paid or credited on such deposits or accounts are deductible under section 591 (determined without regard to sections 265 and 291) in computing the taxable income of such institutions, and

(C)

amounts held by an insurance company under an agreement to pay interest thereon.

(J) Exemption for certain gambling winnings

No tax shall be imposed under paragraph (1)(A) of subsection (a) on the proceeds from a wager placed in any of the following games: blackjack, baccarat, craps, roulette, or big-6 wheel. The preceding sentence shall not apply in any case where the Secretary determines by regulation that the collection of the tax is administratively feasible.

(k)

Cross references

(1)

For tax treatment of certain amounts distributed by the United States to nonresident alien individuals, see section 402(e)(2).

(2)

For taxation of nonresident alien individuals who are expatriate United States citizens, see section 877.

(3)

For doubling of tax on citizens of certain foreign countries, see section 891.

(4)

For adjustment of tax in case of nationals or residents of certain foreign countries, see section 896.

(5)

For withholding of tax at source on nonresident alien individuals, see section 1441.

(6)

For election to treat married nonresident alien individual as resident of United States in certain cases, see subsections (g) and (h) of section 6013.

(7)

For special tax treatment of gain or loss from the disposition by a nonresident alien individual of a United States real property interest, see section 897

[\[1\]](#) See References in Text note below.

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