

Table of Contents

CHAPTER 1. INTRODUCTION

I. IN GENERAL

- § 1:1 The *Mertens* approach to tax research
- § 1:2 What is in the *Mertens* treatise

II. RESEARCHING TAX LAW

- § 1:3 Generally
- § 1:4 Internal Revenue Code and other tax legislation
- § 1:5 Judicial decisions
- § 1:6 Treasury Regulations
- § 1:7 Administrative rulings and determinations
- § 1:8 Other Internal Revenue Service material

III. FINDING MATERIAL IN *MERTENS*

A. ORGANIZATION OF *MERTENS*

1. In General

- § 1:9 Generally
- 2. Organization of a *Mertens* Chapter
- § 1:10 Overview section
- § 1:11 Legislative history or historical developments section
- § 1:12 Subject-driven Table of Contents and Index

B. WAYS TO FIND MATERIAL IN *MERTENS*

- § 1:13 By Code or Regulation section
- § 1:14 By topic
- § 1:15 By judicial or administrative decision

IV. WORKING WITH OTHER PIECES OF *MERTENS*

- § 1:16 *Mertens Highlights and Developments*
- § 1:17 *Mertens Rulings*
- § 1:18 *Mertens Regulations*

CHAPTER 2. RATES OF TAX

I. IN GENERAL

- § 2:1 Overview
- § 2:2 Historical development

II. TAX FOR INDIVIDUALS

A. IN GENERAL

- § 2:3 Generally
- § 2:4 Filing Status

B. TAX RATES

a. Single Individuals

- § 2:5 Tax Rate for Single Individuals

b. Married Individuals Filing Jointly and Surviving Spouses

- § 2:6 Married Individuals Filing Jointly
- § 2:7 Surviving Spouses

c. Married Individuals Filing Separately

- § 2:8 Married Individuals Filing Separately

d. Heads of Household

- § 2:9 Heads of Household
- § 2:10 Household and Principal Place of Abode
- § 2:11 Absences From the Household
- § 2:12 Cost of Maintaining Household
- § 2:13 Qualifying Person
- § 2:14 —Qualifying Child
- § 2:15 —Qualifying Parent
- § 2:16 —Other Qualifying Relatives
- § 2:17 Definitions and Special Rules

e. Tax on Unearned Income of Minor Children

- § 2:18 Generally
- § 2:19 Net Unearned Income
- § 2:20 Allocable parental tax
- § 2:21 Subsequent adjustments to parents' taxable income
- § 2:22 Estimates and extensions
- § 2:23 Election to report income
- § 2:24 Information from parent's return
- § 2:25 Request by child for information regarding parent

TABLE OF CONTENTS

§ 2:26	Failure to list Social Security numbers of dependents
	f. Tax Tables and Tax Rate Schedules
§ 2:27	Tax tables
§ 2:28	Tax rate schedules
§ 2:29	Tax computed by Service
§ 2:30	Inflation adjustment (indexing)
§ 2:31	Capital gains rates
	g. Changes in Rates During Tax Year
§ 2:32	Computation of changes in rates during taxable year
§ 2:33	What constitutes change in rate
§ 2:34	Effective date of change
 C. TAXABLE INCOME FOR INDIVIDUALS	
	1. In General
§ 2:35	Generally
§ 2:36	Special election to average farm and fishing income
	2. Deductions
§ 2:37	Deductions: adjustments to income v. itemized deductions
§ 2:38	Adjustments to income (above-the-line deductions)
§ 2:39	Employee expenses deductible above the line
§ 2:40	Itemized deductions (below-the-line deductions)
§ 2:41	Limit on itemized deductions
	3. Standard Deduction and Personal Exemptions
§ 2:42	Standard deduction
§ 2:43	Additional deductions for seniors and the blind
§ 2:44	Prior law: personal exemptions
 III. ESTATES AND TRUSTS	
§ 2:45	Tax on estates and trusts
 IV. CORPORATIONS	
	A. TAX RATES OF CORPORATIONS
§ 2:46	Tax imposed on corporations
§ 2:47	Tax rate schedules for corporations
§ 2:48	Alternative tax on capital gains
§ 2:49	Short taxable year
§ 2:50	—Controlled group member
§ 2:51	Accumulated earnings tax

§ 2:52 Base Erosion Minimum Tax

**B. DISALLOWANCE OF BENEFITS OF
GRADUATED CORPORATE RATES AND
ACCUMULATED EARNINGS TAX**

§ 2:53 Multiple corporations and Section 1551

§ 2:54 Clear preponderance of evidence standard under
Section 1551

C. CONTROLLED CORPORATIONS

§ 2:55 Controlled corporations

§ 2:56 Meaning of controlled group of corporations

§ 2:57 Meaning of component member

§ 2:58 Certain stock excluded

§ 2:59 Rules for determining stock ownership

§ 2:60 Constructive ownership of stock

§ 2:61 Franchised corporations

D. CORPORATE TAX PREFERENCE ITEMS

§ 2:62 Reduction in tax benefit of corporate tax preference
items

**CHAPTER 2A. ALTERNATIVE MINIMUM
TAX**

I. INTRODUCTION

§ 2A:1 Overview

§ 2A:2 Legislative History

§ 2A:3 *[Deleted]*

II. OPERATION OF AMT

A. GENERAL

§ 2A:4 Alternative or Additional Minimum Tax

§ 2A:5 Taxing Scheme

§ 2A:6 Tax Rates, Exemptions, and Phase-Outs

B. COMPUTATION

§ 2A:7 Computation Under Section 55

§ 2A:8 Alternative Minimum Taxable Income Under
Sections 56, 57 and 58

§ 2A:9 Exemption Amount Under Section 55(d)

TABLE OF CONTENTS

§ 2A:10 Regular Taxes

C. ADJUSTMENTS, PREFERENCES AND CREDITS

§ 2A:11 Adjustments for Both Noncorporate and Corporate Taxpayers

§ 2A:12 Adjustments for Only Noncorporate Taxpayers

§ 2A:13 Adjustments for Only Corporate Taxpayers (Prior to 2018)

§ 2A:14 Preferences

§ 2A:15 Tax Credits Under Section 59

III. COMPUTATION OF AMT

§ 2A:16 Computation of Alternative Minimum Tax

§ 2A:17 Tentative Minimum Tax

§ 2A:18 Alternative Minimum Tax Liability

§ 2A:19 Determination of Tentative Minimum Tax for Noncorporate Taxpayer (Example)

§ 2A:20 Exemption Amount

§ 2A:21 Exemption Phase Out

§ 2A:22 Small Corporation Exemption (Prior to 2018)

§ 2A:23 Minors and Limitations on Parental Minimum Tax

§ 2A:24 Other Special Case Taxpayers

§ 2A:25 Exemption Amount (Example)

§ 2A:26 Comparison of AMT Liability to Regular Tax Liability

§ 2A:26.50 Corporate AMT (Tax Years Beginning After 2022)

IV. ADJUSTMENTS

A. GENERAL

§ 2A:27 Adjustments

§ 2A:28 Alternative Minimum Taxable Income Base After Adjustments

§ 2A:29 Adjustments and Items of Tax Preference

§ 2A:30 Example: Not-For-Profit Activities

B. ADJUSTMENTS APPLICABLE TO ALL TAXPAYERS

1. Depreciation, Depletion and Amortization

a. Depreciation

i. Depreciation Prior to the 1986 Tax Reform Act

§ 2A:31 Pre-1987 Property

ii. Property Placed In Service Before 1999: Macrs And Ads

§ 2A:32 Depreciation Under AMT

§ 2A:33 Modified Accelerated Cost Recovery System (MACRS)

§ 2A:34 Alternative Depreciation System

iii. Depreciation Rules Under AMT For Property Placed In Service After 1999

§ 2A:35 150% Declining Balance Method

§ 2A:36 Exception to Depreciation Rules

§ 2A:37 Special Rule for Grandfathered Property

§ 2A:38 Effects of Depreciation Deduction

§ 2A:39 Tax Considerations

b. Depletion and Amortization

§ 2A:40 Mining, Exploration and Development Costs

§ 2A:41 Example: Treatment of Mining Exploration and Development Costs

§ 2A:42 Costs and Basis

§ 2A:43 Tax Considerations

§ 2A:44 Amortization of Certified Pollution Control Facilities

2. Installment Sales

§ 2A:45 Installment Sales of Certain Property

3. Net Operating Loss

§ 2A:46 Net Operating Loss Deduction

§ 2A:47 Computation of AMT Net Operating Loss

§ 2A:48 Carryforward and Carryback of Net Operating Loss

§ 2A:49 —Carryback Election

§ 2A:50 —Passive Activity Loss Amounts

§ 2A:51 —Tax Considerations

4. Passive Activity Losses

§ 2A:52 Passive Activity Losses

TABLE OF CONTENTS

- § 2A:53 —Example
- § 2A:54 —Modifications
- § 2A:55 —Tax Considerations

5. Other Items

a. Adjusted Basis

- § 2A:56 Adjusted Basis—General
- § 2A:57 —Effect of Gain or Loss on Sale
- § 2A:58 —Example
- § 2A:59 Taxpayers Not Subject to Alternative Minimum Tax

b. Long-Term Contracts

- § 2A:60 Long-Term Contracts under Regular Tax
- § 2A:61 Long-Term Contracts for AMT Purposes
- § 2A:62 Home Construction and Small Construction Contracts
- § 2A:63 Effect of Section 56(a)(3) Adjustment
- § 2A:64 Alcohol Fuel Credit

C. ADJUSTMENTS APPLICABLE ONLY TO NONCORPORATE TAXPAYERS

1. Itemized Deductions

- § 2A:65 Itemized Deductions
- § 2A:66 Limitations on Itemized Deductions
- § 2A:67 Miscellaneous Itemized Deductions
- § 2A:68 Definition of Miscellaneous Itemized Deductions
- § 2A:69 Taxes, Standard Deduction
- § 2A:70 Medical Expenses
- § 2A:71 Interest
- § 2A:72 —Investment Interest
- § 2A:73 —Qualified Housing Interest
- § 2A:74 —Qualified Housing and Residence Interest

2. Circulation And Research And Experimental Expenditures

- § 2A:75 Circulation and Research Experimental Expenditures Generally
- § 2A:76 Circulation Expenditures
- § 2A:77 —Losses
- § 2A:78 —Tax Considerations
- § 2A:79 Research and Experimental Expenditures
- § 2A:80 —Exception
- § 2A:81 —Tax Considerations

3. Other Adjustments

- § 2A:82 Tax Shelter Farm Activity Losses

- § 2A:83 —Personal Service Corporations
- § 2A:84 —Definition
- § 2A:85 Incentive Stock Options

D. ADJUSTMENTS APPLICABLE ONLY TO CORPORATE TAXPAYERS — PRIOR LAW

1. Adjusted Current Earnings

a. General

- § 2A:86 Economic Reflection of Income
- § 2A:87 Adjusted Current Earnings under AMT
- § 2A:88 ACE Adjustment (Example)
- § 2A:89 Tax Considerations for Negative Adjustments
- § 2A:90 Application of ACE
- § 2A:91 Foreign Corporation ACE Adjustments

b. Earnings And Profits

i. Earnings And Profits Items Included In Ace Adjustment

- § 2A:92 Adjustment for Earnings and Profits
- § 2A:93 Earnings and Profits Items
- § 2A:94 Inclusion in Earnings and Profits
- § 2A:95 Examples of Includible Earnings and Profits Items
- § 2A:96 Rules for Inclusion

ii. Life Insurance

- § 2A:97 Life Insurance Contracts
- § 2A:98 Surrender and Distributions
- § 2A:99 Death Benefits, Surrender Values and Divided
Ownership
- § 2A:100 Life Insurance Contract (Example)

iii. Non-Deductible Items

- § 2A:101 Dividends Received
- § 2A:102 Possession Corporations Under Section 936
- § 2A:103 Cooperatives
- § 2A:104 Other Examples of Non-Deductible Items

iv. Distributions

- § 2A:105 Distributions of Property to Shareholders
- § 2A:106 Appreciated Property

4. Other Adjustments For Corporate Taxpayers

- § 2A:107 Merchant Marine Capital Construction Funds
- § 2A:108 Section 833(b) Deduction

TABLE OF CONTENTS

V. ITEMS OF TAX PREFERENCE UNDER SECTION 57

A. GENERAL

- § 2A:109 Tax Preference Items
- § 2A:110 Items Increase AMT Income
- § 2A:111 Section 57 Preferences
- § 2A:112 Tax Preferences vs. Adjustments

B. INTANGIBLE DRILLING COSTS

- § 2A:113 Intangible Drilling Costs
- § 2A:114 Computation of Tax Preference Item Under Section 57(a)(2)
- § 2A:115 Oil and Gas Properties Separated from Geothermal Properties
- § 2A:116 Excess Intangible Drilling Costs
- § 2A:117 Straight-Line Recovery of Intangibles
- § 2A:118 Net Income from Oil, Gas and Geothermal Properties
- § 2A:119 Tax Considerations

C. DEPRECIATION AND AMORTIZATION

- § 2A:120 Depreciation and Amortization of Certain Property Placed in Service Before January 1, 1987

D. OTHER PREFERENCE ITEMS

1. General

- § 2A:121 Other Preference Items

2. Depletion Deduction

- § 2A:122 Depletion Deduction
- § 2A:123 Example: Preference for Depletion
- § 2A:124 Separate Property Rule

3. Interest Deduction

- § 2A:125 Certain Tax-Exempt Interest
- § 2A:126 Inapplicability of Section 265
- § 2A:127 Private Activity Bonds
- § 2A:128 Private Business Test
- § 2A:129 Private Loan Financing Test

4. Small Business Stock

- § 2A:130 Excluded Gain from Disposition of Small Business Stock

§ 2A:131 Redemption of De Minimis Amounts of Stock

VI. CREDITS

A. MINIMUM TAX CREDIT

- § 2A:132 Minimum Tax Credit
- § 2A:133 Adjusted Net Minimum Tax
- § 2A:134 Deferral and Exclusion Preferences
- § 2A:135 Limitation on Application of Minimum Tax Credit
- § 2A:136 Carryforward of Credits
- § 2A:137 Example of Minimum Tax Credit

B. ALTERNATIVE MINIMUM TAX FOREIGN TAX CREDIT

- § 2A:138 Alternative Minimum Tax Foreign Tax Credit
- § 2A:139 Application of Section 904
- § 2A:140 Ninety Percent Limitation for Alternative Minimum Tax Foreign Tax Credit—Prior Law

C. OTHER CREDITS

- § 2A:141 Investment Tax Credits
- § 2A:142 Targeted Job Credits

VII. SPECIAL RULES

A. GENERAL

- § 2A:143 Special Rules

B. WRITE-OFFS

- § 2A:144 Optional Ten-Year Write-Off of Certain Tax Preferences
- § 2A:145 Qualified Expenditures
- § 2A:146 Electing Optional Write-Off
- § 2A:147 Tax Considerations for Optional Write-Offs

C. TAX BENEFIT RULE

- § 2A:148 Tax Benefit Rule
- § 2A:149 Section 291 and Other Limitations

D. OTHER RULES

- § 2A:150 Tax-Exempt Interest
- § 2A:151 Short Taxable Year
- § 2A:152 Estimated Tax Payments

TABLE OF CONTENTS

VIII. SPECIAL TAXPAYERS

A. GENERAL

§ 2A:153 Special Application to Certain Taxpayers

B. PASS-THROUGH ENTITIES

§ 2A:154 Partnerships

§ 2A:155 S Corporations

C. FOREIGN CORPORATIONS AND INDIVIDUALS

§ 2A:156 Foreign Corporations

§ 2A:157 Nonresident Alien Individuals

§ 2A:158 Section 936 Corporations—Prior to 2018

**D. TAX-EXEMPT ORGANIZATIONS AND
NONEXEMPT COOPERATIVES**

§ 2A:159 Tax-Exempt Organizations

§ 2A:160 Nonexempt Cooperatives

E. ESTATES AND TRUSTS

§ 2A:161 Estates and Trusts

§ 2A:162 Common Trust Funds

F. REAL ESTATE COMPANIES AND TRUSTS

§ 2A:163 Regulated Investment Companies and Real Estate
Investments Trusts

**CHAPTER 3. CONSTRUCTION OF TAX
STATUTES**

I. INTRODUCTION

§ 3:1 Constitutional considerations

§ 3:2 Common law principles

§ 3:3 Limitations on judicial interpretation

II. RULES OF CONSTRUCTION

A. PLAIN LANGUAGE REQUIREMENT

1. In General

§ 3:4 Generally

2. When Further Construction Is Permitted

§ 3:5 Ambiguity

- § 3:6 —Limits on using Congressional intent
- § 3:7 — —Plain language inconsistent with drafters' intentions
- § 3:8 — —Absurd or unreasonable result

B. GENERAL RULES AND PRESUMPTIONS

1. In General

- § 3:9 Resolving doubts

2. Type of Language and Grammar Used

- § 3:10 Defined terms
- § 3:11 Ordinary meaning of words
- § 3:12 General versus specific statutory language
- § 3:13 Mandatory and permissive language
- § 3:14 Provisos and exceptions
- § 3:15 Titles, punctuation, grammar, etc., as interpretive aids
- § 3:16 Construction of specific words and phrases

III. SOURCES FOR INTERPRETING TAX STATUTES

A. CONGRESSIONAL INTENT

1. In General

- § 3:17 Generally
- § 3:18 Sources of Congressional intent
- § 3:19 Circumstances surrounding enactment
- § 3:20 Congressional awareness of judicial decisions
- § 3:21 Congressional awareness of administrative interpretation
- § 3:22 Effect of statute's reenactment
- § 3:23 Subsequently enacted legislative history

2. Reports

- § 3:24 Committee reports
- § 3:25 General Explanation of tax acts; Blue Books

3. Statements

- § 3:26 Colloquies
- § 3:27 Post-enactment statements and colloquies
- § 3:28 Congressional debates; sponsor statements
- § 3:29 Comments on other legislation

TABLE OF CONTENTS

B. ADMINISTRATIVE INTERPRETATION

1. Regulations

a. In General

- § 3:30 Generally
- § 3:31 Regulations in conflict with statutes
- § 3:32 Regulations in conflict with judicial decisions
- § 3:33 Preambles to regulations
- § 3:34 Statements of regulation's drafters
- § 3:35 Failure to comply with promulgation procedure
- § 3:36 Procedural Regulations
- § 3:37 Lack of Regulations

b. Temporary, Proposed and Expired Regulations

- § 3:38 Temporary Regulations
- § 3:39 Proposed Regulations
- § 3:40 Outdated, invalid, and expired Regulations

2. Other Forms of Administrative Interpretation

a. Revenue Rulings and Procedures

- § 3:41 Revenue Rulings
- § 3:42 Revenue Procedures

b. Notices and Announcements

- § 3:43 Notices and Announcements

c. Treasury and Service Publications; Forms

- § 3:44 Publications
- § 3:45 Tax forms
- § 3:46 Internal Revenue Manual

d. Private Letter Rulings

- § 3:47 Private Letter Rulings, Determination Letters, and notices of deficiency
- § 3:48 Internal Memoranda

C. OTHER PROVISIONS OF STATUTE

- § 3:49 All parts of statute must be read together
- § 3:50 Language used in same statute

D. OTHER STATUTES

- § 3:51 Other statutes as interpretive aids
- § 3:52 Same language used in different statutes

§ 3:53 Same language used in statutes not part of Internal Revenue Code

§ 3:54 Effect of state law on construction of tax statutes

IV. CONSTRUCTION OF PARTICULAR TYPES OF PROVISIONS AND STATUTES; TREATIES

§ 3:55 Exemption provisions

§ 3:56 Deduction provisions

§ 3:57 —Double deductions

§ 3:58 Treaties

§ 3:58.50 Foreign governments seeking enforcement of foreign law

§ 3:59 Statutes involving crimes or penalties

§ 3:60 Statutes of limitations

V. RETROACTIVITY AND TRANSITIONAL RULES

A. RETROACTIVITY

§ 3:61 Legislative repeal of court decisions

§ 3:62 Regulations

§ 3:63 Revenue Rulings

B. TRANSITIONAL RULES BETWEEN OLDER AND NEWER TAX ACTS

§ 3:64 Generally

VI. PRINCIPAL TAX STATUTES; REGULATIONS PRIOR TO 1954 CODE

§ 3:65 Principal tax acts

§ 3:66 Regulations prior to 1954 Code

CHAPTER 4. CONSTITUTIONAL LIMITATIONS ON THE TAXING POWER

I. INTRODUCTION

§ 4:1 Overview

§ 4:2 Legislative history

II. GENERAL PRINCIPLES

§ 4:3 Preference for constitutional construction

§ 4:4 Congressional regulatory motive

§ 4:5 Who may plead unconstitutionality

§ 4:6 Actual controversy

TABLE OF CONTENTS

- § 4:7 Jurisdiction to hear issue; scope of review
- § 4:8 Partial unconstitutionality

III. SOURCES OF CONSTITUTIONAL OBJECTIONS

A. TAXING POWER

- § 4:9 Generally
- § 4:10 Requirement that direct taxes be apportioned
- § 4:11 Requirement that certain taxes be uniform
- § 4:12 Export clause

B. DUE PROCESS

- § 4:13 Generally
- § 4:14 Classifications
- § 4:15 Retroactivity
- § 4:16 —Retroactive application of court decisions

C. OTHER PROVISIONS

- § 4:17 Origination clause
- § 4:18 First Amendment
- § 4:19 Privilege against self-incrimination
- § 4:20 Double jeopardy clause
- § 4:21 Fourth Amendment search and seizure; exclusionary rule
- § 4:22 Bills of attainder
- § 4:23 Appointments clause
- § 4:24 Other provisions
- § 4:25 Objections to military expenditures

IV. CONSTITUTIONALITY OF SPECIFIC PROVISIONS

A. AFFECTING INDIVIDUALS

- § 4:26 Marital status and dependents
- § 4:27 Withholding, estimated, and social security taxes
- § 4:28 Deductions and personal exemptions

B. CORPORATIONS AND DIVIDENDS

- § 4:29 Generally

C. ANNUITIES, ESTATES, AND TRUSTS

- § 4:30 Generally

D. ACCOUNTING

- § 4:31 Provisions relating to bookkeeping

§ 4:32 Accounting provisions

E. PROCEDURES AND PENALTIES

§ 4:33 Provisions relating to returns, summonses, and hearings

§ 4:34 Income tax penalties

§ 4:35 Assignment of cases to special trial judges

F. OTHER PROVISIONS

§ 4:36 Tax-exempt organizations and charitable contributions

§ 4:37 Taxing foreign entities and international commerce

§ 4:38 Governmental immunity from tax

§ 4:39 Alternative minimum tax

§ 4:40 Various components of taxable income

§ 4:41 Tax liens and collection procedures

§ 4:42 Taxes on different classes of taxpayers

CHAPTER 5. INCOME AND ASSIGNMENTS OF INCOME

I. INTRODUCTION

§ 5:1 Overview

§ 5:2 Constitutional foundation and early development of the income tax

§ 5:3 Capital existing prior to March 1, 1913

II. INCOME

§ 5:4 Definition of “income”

§ 5:5 All-inclusive concept of gross income

§ 5:6 Gross income not limited to cash received

§ 5:7 Gross income not necessarily gross receipts

§ 5:8 Gross income ordinarily not realized on purchase

§ 5:9 Unrealized appreciation

§ 5:10 Return of capital

§ 5:11 Dividends

§ 5:12 Allocation to income or capital

§ 5:13 Loans

§ 5:14 Interest

§ 5:15 Compensation

§ 5:16 Termination of employment

§ 5:17 Proceeds of lawsuits

§ 5:18 Attorney’s fees awarded

§ 5:19 Illegal income

TABLE OF CONTENTS

- § 5:20 Transactions in digital assets
- § 5:21 State tax credits
- § 5:22 Incentive payments to electronic health record users
- § 5:22.50 Crowdfunding

III. ASSIGNMENT OF INCOME

- § 5:23 Introduction
- § 5:24 Development of the assignment of income doctrine
- § 5:25 Assignment of income from services rendered
- § 5:26 Assignment of property and income on property
- § 5:27 —No assignment of income
- § 5:28 —Sale in anticipation of income
- § 5:29 —Income producing fund
- § 5:30 Intra-family assignments
- § 5:31 —Assignments to spouses
- § 5:32 —Assignments to children
- § 5:33 Family partnerships
- § 5:34 Transfers of securities
- § 5:35 —Assignment of dividends
- § 5:36 —Brokerage accounts
- § 5:37 Real estate
- § 5:38 Assignment to a charity
- § 5:39 Assignments of oil, gas and other minerals and timber
- § 5:40 —Royalty vs. sale payment
- § 5:41 —Assignment ineffective
- § 5:42 Patents
- § 5:43 —Right to receive royalties only
- § 5:44 Copyrights
- § 5:45 Assignment of a beneficial interest in a trust
- § 5:46 Lottery or sweepstakes ticket
- § 5:47 Vow of poverty; corporation sole
- § 5:48 Exception: Bona fide agency

CHAPTER 5A. COMPENSATION FOR PERSONAL SERVICES

I. INTRODUCTION

- § 5A:1 Overview
- § 5A:2 Historical development

II. TYPES OF COMPENSATION

- § 5A:3 Cash and noncash compensation, generally

- § 5A:4 Bonuses
- § 5A:5 Commissions
- § 5A:6 Deferred compensation
- § 5A:7 Stock and stock options as compensation
- § 5A:8 Insurance and amounts received from insurance as compensation
- § 5A:9 Insurance and amounts received from insurance as compensation—Group term life insurance
- § 5A:10 Insurance and amounts received from insurance as compensation—Split-dollar life insurance
- § 5A:11 Employer contributions to HRAs and Archer MSAs
- § 5A:12 Cafeteria plans
- § 5A:13 Flexible spending arrangements
- § 5A:14 Severance pay
- § 5A:15 Amounts related to litigation
- § 5A:16 Excess compensation and golden parachutes
- § 5A:17 Fringe benefits
- § 5A:18 Reimbursement of employee expenses
- § 5A:19 Compensation paid to third parties
- § 5A:20 Military pay and exclusion of certain amounts paid to members of the Armed Forces, National Oceanic and Atmospheric Administration, and Public Health Service
- § 5A:21 Endorsements
- § 5A:22 Miscellaneous types of compensation

III. COMPENSATION DISTINGUISHED FROM OTHER PAYMENTS

- § 5A:23 Gifts distinguished from compensation
- § 5A:24 Dividends and stock sales distinguished from compensation
- § 5A:25 Loans distinguished from compensation

CHAPTER 6. COMPENSATORY STOCK OPTIONS

I. INTRODUCTION

- § 6:1 Overview
- § 6:2 Legislative history

II. STATUTORY/QUALIFIED STOCK OPTIONS: INCENTIVE STOCK OPTIONS AND EMPLOYEE STOCK PURCHASE PLANS

- § 6:3 Corporations that may grant options

TABLE OF CONTENTS

- § 6:4 “Stock” and “option” defined
- § 6:5 Grant date
- § 6:6 Transfer of stock on exercise of an option
- § 6:7 Disposition of stock acquired by option

A. INCENTIVE STOCK OPTIONS (ISOS)

- § 6:8 Advantages of classification as an ISO
- § 6:9 Tax consequences to ISO grantee on grant or exercise
- § 6:10 Tax consequences on disposition of stock acquired by ISO; qualifying and disqualifying dispositions of ISO stock; required holding periods
- § 6:11 Alternative minimum tax treatment for ISOs
- § 6:12 Other ISO-related issues effecting employees
- § 6:13 Tax consequences to employer; withholding and employment tax
- § 6:14 ISO qualification requirements
- § 6:15 Employment requirements
- § 6:16 ISO plan requirements
- § 6:17 Option requirements
- § 6:18 \$100,000 first-year limitation
- § 6:19 Permitted provisions related to exercise
- § 6:20 Modification, extension, renewal of ISOs
- § 6:21 Substitutions and assumptions in certain reorganizations
- § 6:22 Acquisition of new stock
- § 6:23 Special rules for 10% owners
- § 6:24 Death of employee

B. EMPLOYEE STOCK PURCHASE PLANS (ESPPS)

- § 6:25 Employee stock purchase plans, generally
- § 6:26 Tax consequences to employee
- § 6:27 Death of employee
- § 6:28 Tax consequences to employer
- § 6:29 Employee participation requirements
- § 6:30 Shareholder approval
- § 6:31 Equal rights and privileges; exceptions
- § 6:32 \$25,000 maximum annual accrual
- § 6:33 Option period and grant date
- § 6:34 Option price: not less than 85% of fair market value
- § 6:35 Nontransferability
- § 6:36 Modification, extension, renewal of ESPPs
- § 6:37 Substitutions and assumptions of purchase rights in certain reorganizations

III. NONQUALIFIED STOCK OPTIONS

- § 6:38 Nonqualified stock options, generally
- § 6:39 Transfers of property and options under Section 83
- § 6:40 Performance of services
- § 6:41 Tax consequences of NSO to employee
- § 6:42 Readily ascertainable fair market value
- § 6:43 Restricted property rules: substantial risk of forfeiture
- § 6:44 Restricted property rules: nontransferability
- § 6:45 Restricted property rules: lapse and nonlapse restrictions
- § 6:46 Disposition other than by exercise
- § 6:47 Disposition of restricted stock
- § 6:48 Forfeiture of restricted stock
- § 6:49 Section 83(b) election to include income in year of receipt
- § 6:50 Death of employee
- § 6:51 Gift of NSO
- § 6:52 Transfer of NSO incident to divorce
- § 6:53 IRS levy on NSO
- § 6:54 Tax consequences of NSO to employers: deduction for compensation paid
- § 6:55 Tax consequences of NSO to employers: recognition of gain or loss on disposition (including reorganizations)
- § 6:56 Withholding and employment taxes
- § 6:57 Information reporting requirements for employers
- § 6:58 Qualified equity grants

CHAPTER 6A. INTEREST AND RENT

I. INTRODUCTION

- § 6A:1 Overview

II. INTEREST

- § 6A:2 Interest generally
- § 6A:3 Interest as income
- § 6A:4 Effect of parties' agreement on interest income
- § 6A:5 Obligations acquired with interest accrued or in default
- § 6A:6 Accrued interest on foreclosure sales
- § 6A:7 Interest realized in certain corporate transactions
- § 6A:8 Original issue discount

III. RENTS

- § 6A:9 Rent generally

TABLE OF CONTENTS

A. INCOME

- § 6A:10 Rent
- § 6A:11 Examples of rental income
- § 6A:12 Additional rent
- § 6A:13 Income taxes paid by lessee

B. DEDUCTION

- § 6A:14 Deduction of rent
- § 6A:15 Examples of rental deductions

C. REASONABLENESS OF RENT

- § 6A:16 Reasonableness of amount
- § 6A:17 Rent paid to related parties
- § 6A:18 Determination of reasonableness

D. COMPARISON OF LEASES WITH OTHER AGREEMENTS

- § 6A:19 Lease or sale
- § 6A:20 Effect of option to purchase
- § 6A:21 Right to use goods or equipment
- § 6A:22 Lease or management agreement

E. OTHER ISSUES

- § 6A:23 Advance rentals and bonuses with regard to lessors
- § 6A:24 Advance rentals with regard to lessees
- § 6A:25 Commissions and expenses in connection with acquiring leases
- § 6A:26 Rental income reservations in real estate transactions

F. IMPROVEMENTS

- § 6A:27 Improvements
- § 6A:28 Improvements upon termination of lease
- § 6A:29 Treatment of improvements by lessee
- § 6A:30 Demolition and removal of buildings

G. CANCELLATION OF LEASE

- § 6A:31 Cancellation of lease—General
- § 6A:32 Expenditures by lessor for surrender of lease
- § 6A:33 Accrued rents and multiple leases
- § 6A:34 Expenditure by lessor—Treatment of lessee
- § 6A:35 Expenditures by lessee—Treatment of lessor

§ 6A:36 —Treatment of lessee

H. SECTION 467 ACCRUAL OF RENT

- § 6A:37 Accrual of rents under Section 467—General
- § 6A:38 Section 467 rental arrangement
- § 6A:39 Amounts taken into account by lessor and lessee
- § 6A:40 Disregarded contingent rent
- § 6A:41 Allocation of agreement approach
- § 6A:42 Constant rental amount
- § 6A:43 Proportional rental amount
- § 6A:44 Recapture

I. LEASE STRIPS

- § 6A:45 Lease strips generally

CHAPTER 6B. ANNUITIES

I. INTRODUCTION

- § 6B:1 Overview
- § 6B:2 Legislative history

II. TAXATION OF ANNUITIES

A. GENERAL

- § 6B:3 Taxation of annuities generally
- § 6B:4 Types of annuities
- § 6B:5 Treatment of annuity payments
- § 6B:6 Definition of annuity payment
- § 6B:7 Annuity starting date

B. EXCLUSION RATIO

- § 6B:8 Exclusion ratio in general

C. INVESTMENT IN CONTRACT

- § 6B:9 Investment in contract
- § 6B:10 Single contract
- § 6B:11 Refund feature
- § 6B:12 Refund feature for joint and survivor annuities
- § 6B:13 Refund feature for variable annuities

D. TRANSFERS

- § 6B:14 Transfer for value

TABLE OF CONTENTS

§ 6B:15 Transfers without adequate consideration

E. OPERATION OF EXCLUSION RATIO

§ 6B:16 Operation of exclusion ratio

§ 6B:17 Deferral of income under exclusion ratio with regard to pre-1987 contracts

§ 6B:18 Pre-July 1986 and post-June 1986 investment

F. EXPECTED RETURN AND COMPUTATIONS

§ 6B:19 Expected return

§ 6B:20 Use of actuarial tables with respect to expected return

§ 6B:21 Computation of expected return

§ 6B:22 Computation of single life annuity

§ 6B:23 Computation of temporary life annuity

§ 6B:24 Computation of variable annuities

§ 6B:25 Computation of change in annuity amount

§ 6B:26 Computation of joint and survivor annuity

G. SIMPLIFIED EXCLUSION RATIO

§ 6B:27 Simplified exclusion ratio in general

§ 6B:28 Annuitants who must use simplified method

§ 6B:29 Investment in contract

§ 6B:30 Expected return

§ 6B:31 Computation using simplified exclusion ratio

§ 6B:32 Computation of simplified exclusion ratio—Joint and survivor annuity

§ 6B:33 —Joint and survivor annuities—Expected number of payments

§ 6B:34 Transition rule for annuity starting date after November 18, 1996, and before January 1, 1997

H. SAFE HARBOR (PRIOR LAW)

§ 6B:35 Safe harbor method—General (prior law)

§ 6B:36 Computation using safe harbor exclusion ratio (prior law)

III. NONANNUITY PAYMENTS

A. GENERALLY

§ 6B:37 Nonannuity payments in general

§ 6B:38 Amounts not received as annuities

§ 6B:39 Examples of amounts not taxable as annuity

§ 6B:40 Amounts received on or after annuity starting date

- § 6B:41 Amounts received before annuity starting date
- § 6B:42 Distribution in full discharge of contract

B. SPECIAL RULES FOR NONANNUITY PAYMENTS

- § 6B:43 Loans before annuity starting date treated as distributions
- § 6B:44 Exchanges of Annuity Contracts
- § 6B:45 Exchange of pre-August 14, 1982, contract for post-August 13, 1982, contract

C. PENALTY FOR PREMATURE DISTRIBUTION

- § 6B:46 Penalty for premature distributions from annuity contracts

IV. SPECIAL RULES FOR ANNUITIES

A. IN GENERAL

- § 6B:47 Special rules for annuities generally

B. MODIFIED ENDOWMENT CONTRACTS

- § 6B:48 Modified endowment contracts
- § 6B:49 Definition of modified endowment contracts
- § 6B:50 Penalty on premature distributions from modified endowment contracts

C. PRIVATE ANNUITIES

- § 6B:51 Unsecured private annuities
- § 6B:52 Secured private annuities
- § 6B:53 Annuities purchased from charitable organizations

D. OTHER RULES

- § 6B:54 Option to receive annuity in lieu of lump sum
- § 6B:55 Distribution in event of annuity holder's death
- § 6B:56 Self-employed persons
- § 6B:57 Application of basis rules to nonresident aliens

V. APPLICATION OF ANNUITY RULES

- § 6B:58 Application of annuity rules generally
- § 6B:59 Employer contributions
- § 6B:60 Annuity distinguished from accident or health benefits
- § 6B:61 Annuities in divorce situations

TABLE OF CONTENTS

§ 6B:62	Transfers to trust
§ 6B:63	Testamentary situations
§ 6B:64	Combined life insurance and annuity contracts
§ 6B:65	Combined long-term care insurance and annuity contracts
§ 6B:66	Railroad retirement benefits
§ 6B:67	Civil service retirement benefits
§ 6B:68	Survivor benefit plans
§ 6B:69	Annuities received by other than natural persons
§ 6B:70	Contracts issued by troubled insurers
§ 6B:71	Benefits from qualified pension plans

CHAPTER 7. EXCLUSIONS FROM INCOME

I. INTRODUCTION

§ 7:1	Overview
§ 7:2	Legislative history

II. GIFTS AND INHERITANCES

A. INTRODUCTION

§ 7:3	Gifts and inheritances
§ 7:4	Income from gifts and inheritances
§ 7:5	Gifts and inheritances of income from property
§ 7:6	Gifts and inheritances payable at intervals
§ 7:7	Basis for gifts and inheritances
§ 7:8	Interplay with provisions relating to distributions from trusts and estates

B. GIFTS

1. General

§ 7:9	Gift defined
§ 7:10	—Examples
§ 7:11	Gifts before sale of property

2. Minors, Employees, Employees' Estates and Employees' Surviving Spouses

§ 7:12	Gifts to minors
§ 7:13	Gifts to employees
§ 7:14	Gifts to employees' estates
§ 7:15	Gifts to employees' surviving spouses

3. Political Contributions and Testimonial
Dinners

§ 7:16 Political contributions and testimonial dinners

4. Loans and Cancellation of Indebtedness

§ 7:17 Below-market loans

§ 7:18 Cancellation of indebtedness

C. INHERITANCES

1. General

§ 7:19 Definition of bequests, devises, and inheritances

§ 7:20 Bequests and devises received by executors

2. Will Contests

§ 7:21 Settlements in will contests

§ 7:22 Character of claim in will contests

§ 7:23 Income as settlement from will contests

§ 7:24 Payment for services as settlement from will contests

III. TAX BENEFIT RULE

A. GENERAL

§ 7:25 Statement of tax benefit rule

§ 7:26 Year of recovery

§ 7:27 Cash basis taxpayers

§ 7:28 Compromise with service

§ 7:29 Burden of proof

§ 7:30 Amount of recovery

§ 7:31 Basis

§ 7:32 Recovery of bad debts

§ 7:33 Reserves for bad debts

§ 7:34 Cancellation of indebtedness as contribution to capital

§ 7:35 Debt held by estate

§ 7:36 Corporate acquisitions and liquidations

§ 7:37 Third parties and transferees

B. RECOVERY OF PARTICULAR TYPES OF
AMOUNTS

§ 7:38 Recovery of losses and expenses

§ 7:39 Employee benefit plans

§ 7:40 Community property

§ 7:41 Legal and accounting fees

§ 7:42 Fraud and embezzlement losses

TABLE OF CONTENTS

- § 7:43 Expiration of statute of limitations; proper or improper earlier deductions
- § 7:44 Insurance reimbursements
- § 7:45 Redemption of cooperative's notices of allocation
- § 7:46 Prepaid interest
- § 7:47 Charitable contributions
- § 7:48 Restoration of value of certain securities
- § 7:49 Research and experimental expenditures
- § 7:50 Taxes previously deducted
- § 7:51 Recovery of contested taxes
- § 7:52 Tax refunds
- § 7:53 Differential in tax rates, alternative minimum tax, accumulated earnings tax, and personal holding company tax
- § 7:54 Recovery of foreign expropriation losses
- § 7:55 —Tax treatment and basis

IV. LIFE INSURANCE PROCEEDS PAYABLE BY REASON OF DEATH

A. GENERAL

- § 7:56 Life insurance proceeds payable by reason of death—
Introduction
- § 7:57 Life insurance proceeds received by corporations
- § 7:58 Proceeds that are not from life insurance policies
- § 7:59 Life insurance contracts—Statutory requirements
- § 7:60 —Nonstatutory requirements
- § 7:61 Pre-1985 flexible premium life insurance contracts
- § 7:62 Pre-1985 flexible premium life insurance contracts
- § 7:63 —Guideline premiums with limited cash value test
- § 7:64 Pre-1985 flexible premium life insurance contracts
guideline premiums with limited cash value test—
Computational rules for guideline premiums
- § 7:65 Pre-1985 flexible premium life insurance contracts—
Cash value computation test
- § 7:66 Return of premiums paid

B. TRANSFERRED POLICIES

- § 7:67 Proceeds of policies transferred for valuable consideration
- § 7:68 Gratuitous transfers
- § 7:69 Transfers to partnerships or corporations

C. PROCEEDS PAID OTHER THAN AS LUMP-SUM AT DEATH

- § 7:70 Life insurance proceeds received in installments
(payments at date later than death)

- § 7:71 Amount held by insurer
- § 7:72 Exclusion amount
- § 7:73 Installment payments for life to sole beneficiary
- § 7:74 Installment payments to two or more beneficiaries—
Unrelated payments
- § 7:75 —Related payments
- § 7:76 Payments to secondary beneficiaries
- § 7:77 Interest payments
- § 7:78 Relationship of provisions regarding installment
payments and interest

V. EMPLOYEES' SURVIVOR OR DEATH BENEFITS

- § 7:79 Survivor benefits of public safety officers
- § 7:80 Employees' death benefits exclusion types of
employees' death benefits
- § 7:81 Employees' death benefits exclusion—Exceptions to
employees' death benefits exclusion

VI. SICKNESS AND DISABILITY BENEFITS

- § 7:82 Sickness and disability benefits—Introduction

A. COMPENSATION FOR INJURIES OR SICKNESS

1. Workers' Compensation

- § 7:83 Workers' compensation
- § 7:84 —Retirement benefits and sick leave
- § 7:85 Payments to survivors of deceased employees and
former spouses

2. Amounts Received as Damages for Personal Injuries

- § 7:86 Amounts received as damages for personal injuries
- § 7:87 Personal injuries—Physical and nonphysical

3. Accident and Health Insurance Other Than That Financed by Employers

- § 7:88 Amounts received through accident or health
insurance
- § 7:89 Contributors to accident or health insurance

4. Disability Benefits for Military and Certain Civilian Services

- § 7:90 Disability benefits for military and certain civilian
services

TABLE OF CONTENTS

- § 7:91 Veterans Administration disability benefits
- § 7:92 Disability benefits on account of terrorist attacks
- § 7:92.50 Disability-related payments to first responders

B. ACCIDENT AND HEALTH BENEFITS

1. General

- § 7:93 Amounts received under accident and health plans
- § 7:94 Noncontributory plans financed by employer
- § 7:95 Contributory plans financed by employer and employee
- § 7:96 Individual policies under insured contributory plans
- § 7:97 Group policies under insured contributory plans
- § 7:98 Noninsured contributory plans
- § 7:99 Dual-purpose plans

2. Benefits Excluded from Income

- § 7:100 Amounts expended for medical care
- § 7:101 Payments unrelated to absence from work

3. Self-Insured Medical Reimbursement Plans

- § 7:102 Self-insured medical reimbursement plans
- § 7:103 Health Reimbursement Arrangements (HRAs)
- § 7:104 Prohibited discrimination
- § 7:105 Nondiscriminatory benefits
- § 7:106 Highly compensated individuals
- § 7:107 Excess reimbursement of highly compensated individuals
- § 7:108 Multiple plans
- § 7:109 Exception for medical diagnostic procedures

C. CONTRIBUTIONS BY EMPLOYERS TO ACCIDENT AND HEALTH PLANS

- § 7:110 Contributions by employer to accident and health plans—Introduction
- § 7:111 Payments to former employees and those under Medicare
- § 7:112 Business interruption insurance
- § 7:113 Reimbursement of employees
- § 7:114 Self-employed individuals
- § 7:115 Medical savings accounts

D. MEDICARE ADVANTAGE ACCOUNTS

- § 7:116 Medicare advantage MSAs

VII. SCHOLARSHIPS AND EDUCATIONAL ASSISTANCE PROGRAMS

A. SCHOLARSHIPS

1. Current Provisions

- § 7:117 Qualified scholarships
- § 7:118 Qualified tuition reduction
- § 7:119 Performance of services
- § 7:120 Effective dates

B. EDUCATIONAL ASSISTANCE PROGRAMS

- § 7:121 Benefits under educational assistance programs
- § 7:122 Educational assistance program defined
- § 7:123 Purpose of exclusion for educational assistance programs

C. INTEREST ON UNITED STATES SAVINGS BONDS USED FOR EDUCATION EXPENSES

- § 7:124 Interest on United States savings bonds used to pay higher education expenses

VIII. FRINGE BENEFITS

A. GENERAL

- § 7:125 Fringe benefits
- § 7:126 Effect of qualification as fringe benefit
- § 7:127 Amount of includible portion of fringe benefits
- § 7:128 Valuation of fringe benefits
- § 7:129 Definition of employee

B. NO-ADDITIONAL-COST SERVICES

- § 7:130 No-additional-cost services
- § 7:131 Reciprocal agreements

C. QUALIFIED EMPLOYEE DISCOUNTS

- § 7:132 Qualified employee discounts
- § 7:133 Gross profit percentage for discounts on property
- § 7:134 Price to customers

D. SEPARATE LINES OF BUSINESS

- § 7:135 Separate lines of business
- § 7:136 Aggregation of lines of business

TABLE OF CONTENTS

§ 7:137 Employees performing services in more than one line of business

§ 7:138 Grandfathering of certain lines of business

E. NONDISCRIMINATION RULES

§ 7:139 Nondiscrimination rules

§ 7:140 Testing for discrimination

§ 7:141 Availability on substantially same terms

§ 7:142 Aggregation of employees

F. WORKING CONDITION FRINGE BENEFITS

§ 7:143 Working condition fringe benefits

§ 7:144 Application of working condition fringe rules to automobiles

§ 7:145 Qualified automobile demonstration use

§ 7:146 Employer-provided transportation for security reasons

§ 7:147 Employer-provided transportation for unsafe conditions

§ 7:148 Product testing as working condition fringe

§ 7:149 Cell phone as working condition fringe

§ 7:150 Substantiation rules

G. DE MINIMIS FRINGE BENEFITS

§ 7:151 De minimis fringe benefits

§ 7:152 Examples of de minimis fringe benefits

§ 7:153 Employer-operated eating facilities

H. QUALIFIED TRANSPORTATION FRINGE BENEFITS

§ 7:154 Qualified transportation fringe benefits

§ 7:155 Commuter highway transportation (van pools)

§ 7:156 Transit passes

§ 7:157 Qualified parking

I. QUALIFIED MOVING EXPENSE REIMBURSEMENTS

§ 7:158 Certain payments to military and intelligence community members

J. ON-PREMISES ATHLETIC FACILITIES

§ 7:159 On-premises athletic facilities

IX. PRIZES AND AWARDS

§ 7:160 Prizes and awards

- § 7:161 Employee achievement awards
- § 7:162 —Excludible amount
- § 7:163 Nonemployee achievement awards
- § 7:164 —Eligible fields of achievement
- § 7:165 —Selection process
- § 7:166 —Future service requirement
- § 7:167 —Transfer of award to government or charity
- § 7:168 Includible awards and prizes
- § 7:169 —Assignment of prize or award to third party

X. GROUP-TERM LIFE INSURANCE PURCHASED FOR EMPLOYEES

- § 7:170 Group-term life insurance purchased for employees
- § 7:171 Exceptions to inclusion under Section 79
- § 7:172 What constitutes group
- § 7:173 Permanent benefits in conjunction with group-term life insurance
- § 7:174 Nondiscrimination requirements

XI. CAFETERIA PLANS

- § 7:175 Income from cafeteria plans
- § 7:176 —Nondiscrimination requirements
- § 7:177 —Qualified benefits defined
- § 7:178 —Benefits deferring receipt of compensation
- § 7:179 —Revocation and new elections under cafeteria plans
- § 7:180 Flexible spending arrangements

XII. MISCELLANEOUS EXCLUSIONS

A. DEPENDENT CARE ASSISTANCE PROGRAMS

- § 7:181 Dependent care assistance programs
- § 7:182 Dependent care assistance program—Defined

B. RENTAL VALUE OF PARSONAGES

- § 7:183 Exclusion for rental value of parsonages
- § 7:184 Ministers qualifying for rental allowance exclusion
- § 7:185 Administrators and religious teachers

C. OTHER EXCLUSIONS

- § 7:186 Casualty insurance proceeds for increased living expenses
- § 7:187 Adoption assistance programs
- § 7:188 Foster care payments

TABLE OF CONTENTS

§ 7:189	Social Security benefits
§ 7:190	Exclusion of energy conservation subsidies provided by public utilities
§ 7:191	Cost-sharing payments under conservation programs
§ 7:192	General welfare exclusion
§ 7:193	Income of entities performing essential government functions
§ 7:194	Payments to evacuated Japanese-Americans
§ 7:195	Allowances for Peace Corps members and similar volunteers
§ 7:196	Members of armed forces serving in combat zones
§ 7:197	Prisoners of war in Vietnam
§ 7:198	Uniformed services fringe benefits
§ 7:199	Certain international shipping activities
§ 7:200	Meals and lodging furnished to employees
§ 7:201	Meals furnished to employees
§ 7:202	Lodging furnished to employees
§ 7:203	Qualified campus lodging
§ 7:204	Income earned prior to March 1, 1913
§ 7:205	Federal relocation and real property acquisition payments
§ 7:206	Income of Native Americans
§ 7:207	—Fishing rights of Native Americans
§ 7:208	—Indian Health Care Benefit Exclusion
§ 7:209	Assignments to Alaska Native Settlement Trusts.
§ 7:210	Money or property received by Holocaust victims or their heirs
§ 7:211	Restitution received by victims of human trafficking
§ 7:212	Wrongful incarceration awards
§ 7:213	Disaster relief payments
§ 7:214	Interest Received for Improper Seizure for Structuring Violation
§ 7:215	Benefits provided to volunteer firefighters and emergency medical responders

CHAPTER 8. TAX-ADVANTAGED BONDS

I. INTRODUCTION

§ 8:1	Overview
§ 8:2	Legislative history
§ 8:3	Constitutional considerations

II. STATE AND LOCAL BONDS

A. EFFECT ON TAXABLE INCOME

§ 8:4	Effect on taxable income
-------	--------------------------

- § 8:5 Alternative minimum tax
- § 8:6 Other federal tax consequences of state and local bonds

B. DEFINITIONS

- § 8:7 Bond and obligation
- § 8:8 Issue and issue date
- § 8:9 Ownership of obligations
- § 8:10 —Repurchase agreements
- § 8:11 Interest
- § 8:12 Interest received through intermediate entities
(certificates of participation)
- § 8:13 State and local issuing authorities
- § 8:14 —Bonds issued by Indian tribal governments; Tribal
Economic Development Bonds
- § 8:15 —Qualified Scholarship Funding Bonds

C. TYPES OF TAX-EXEMPT BONDS: GOVERNMENT PURPOSE BONDS AND PRIVATE ACTIVITY BONDS

- § 8:16 Government purpose bonds
- § 8:17 Private activity bonds, in general
- § 8:18 Reasonable expectations and post-issuance compliance
- § 8:19 Private business test
- § 8:20 —Special rules for output facilities
- § 8:21 Private loan financing test
- § 8:22 Deliberate actions causing an issue to become a
private activity bond and remedial actions for a
change in use

D. TAX-EXEMPT BONDS MAY NOT BE ARBITRAGE BONDS: YIELD RESTRICTIONS AND REBATE REQUIREMENTS

- § 8:23 Arbitrage yield restriction and rebate payment, in
general
- § 8:24 Yield restriction requirements
- § 8:24.50 —Retesting Upon Reissuance or Retirement
- § 8:25 —Issue price
- § 8:26 Exceptions to yield restriction requirement
- § 8:27 Yield reduction payment alternative
- § 8:28 Reimbursement bonds
- § 8:29 Allocation and anti-abuse rules for working capital
expenditures
- § 8:30 Allocation and anti-abuse rules for refunding bond
issues

TABLE OF CONTENTS

§ 8:31	Abusive transactions
§ 8:32	Rebate payment requirement
§ 8:33	Exceptions to rebate requirement
§ 8:34	—Small governmental issuer exception to rebate requirement
§ 8:35	—Temporary investment exception to rebate requirement
§ 8:36	—18-month exception to rebate requirement for capital project and mortgage loan bonds
§ 8:37	—Two-year exception to rebate requirement for proceeds used to finance construction expenditures
§ 8:38	Election to pay penalty in lieu of rebate
§ 8:39	Waiver of penalty for failure to pay rebate

E. ADDITIONAL REQUIREMENTS TO QUALIFY AS TAX-EXEMPT BONDS

§ 8:40	Additional requirements for tax exemption, in general
§ 8:41	Bonds must be registered
§ 8:42	Federally guaranteed bonds are not exempt
§ 8:43	Advance refunding bonds
§ 8:44	Pooled financing bonds
§ 8:45	Hedge bonds
§ 8:46	Prior exempt bonds
§ 8:47	Information reporting requirements

F. QUALIFIED PRIVATE ACTIVITY BONDS

§ 8:48	Qualification and types of private activity bonds, in general
1. Exempt Facility Bonds	
§ 8:49	Exempt facility bonds
§ 8:50	Special restrictions on use of proceeds of all exempt facilities bonds
§ 8:51	Governmental ownership required for certain airport, dock, wharf, mass commuting or hydroelectric generating facility bonds
§ 8:52	Private business use restrictions specific to airport, dock, wharf, mass commuting, and high-speed intercity rail facility bonds
§ 8:53	Bonds for airports and adjacent hotels
§ 8:54	Docks and wharves
§ 8:55	Mass commuting facilities
§ 8:56	High-speed intercity rail facilities
§ 8:57	Highway or surface freight transfer facilities
§ 8:58	Water facilities

- § 8:59 Sewage facilities
- § 8:60 Solid waste disposal facilities
- § 8:61 Qualified hazardous waste facilities
- § 8:62 Qualified residential rental projects
- § 8:63 Qualified public educational facilities
- § 8:64 Local electric and gas furnishings facilities
- § 8:65 Local district heating or cooling facilities
- § 8:66 Environmental enhancements of hydroelectric
generating facilities
- § 8:67 Qualified green building and sustainable design
projects
- § 8:67.50 Qualified broadband projects
- § 8:67.70 Carbon dioxide sequestration projects
- § 8:68 Enterprise zone facility bonds
- § 8:69 —District of Columbia enterprise zone bonds
- § 8:70 Recovery zone facility bonds
- § 8:71 New York Liberty Bonds
- § 8:72 Gulf Opportunity Zone Bonds
- § 8:73 Midwestern Disaster Area Bonds
- § 8:74 Hurricane Ike Disaster Area Bonds
- § 8:75 Suspension of Section 142(d) income limitations
after a natural disaster

2. Other Types of Private Activity Bonds

- § 8:76 Other types of qualified private activity bonds, in
general
- § 8:77 Qualified mortgage bonds and qualified mortgage
credit certificates
- § 8:78 —Recapture of subsidy provided by qualified mortgage
bonds and mortgage credit certificates
- § 8:79 Qualified veterans' mortgage bonds
- § 8:80 Qualified small-issue bonds
- § 8:81 Qualified redevelopment bonds
- § 8:82 Qualified student loan bonds
- § 8:83 Qualified Section 501(c)(3) bonds

3. Limitations on Qualified Private Activity Bonds

- § 8:84 Limitations on qualified private activity bonds, in
general
- § 8:85 Volume cap limitations
- § 8:86 Volume cap amount
- § 8:87 Substantial user bond ownership limit
- § 8:88 Bond average maturity limit
- § 8:89 Land acquisition limitation
- § 8:90 Existing property acquisition limit

TABLE OF CONTENTS

- § 8:91 Limits on financed issuance costs
- § 8:92 Limits on facilities financed with bond proceeds
- § 8:93 Public approval requirement
- § 8:94 Post-issuance changes in use of bond proceeds or bond-financed facilities
- § 8:95 Disqualifying use of bond financed facilities

III. TAX CREDIT BONDS

- § 8:96 Tax credit bonds issued before 2018, in general
- § 8:97 Qualified forestry conservation bonds issued before 2018
- § 8:98 New clean renewable energy bonds (new CREBs) issued before 2018
- § 8:99 Qualified energy conservation bonds issued before 2018
- § 8:100 Qualified zone academy bonds issued before 2018
- § 8:101 Qualified school construction bonds issued before 2018
- § 8:102 Tax credit Build America Bonds issued before 2018

IV. DIRECT PAYMENT TAX CREDIT BONDS

- § 8:103 Direct payment bonds, in general
- § 8:104 Direct payment option for specified tax credit bonds issued before 2018
- § 8:105 Direct payment Build America Bonds issued before 2018

CHAPTER 9. *[Reserved]*

Table of Contents

CHAPTER 10. CONSTRUCTIVE RECEIPT

I. INTRODUCTION

A. IN GENERAL

- § 10:1 Overview
- § 10:2 Historical development

B. OTHER CONCEPTS DISTINGUISHED

- § 10:3 Economic benefit and cash equivalency doctrines
- § 10:4 Claim of right
- § 10:5 Principal and agent
- § 10:6 Constructive payment as deduction

II. ELEMENTS OF CONSTRUCTIVE RECEIPT

- § 10:7 General rule
- § 10:8 Actual receipt by taxpayer agent
- § 10:9 Agreements to delay receipt
- § 10:10 Offsetting debt
- § 10:11 Waiver of right to receive income
- § 10:12 Certainty of receipt; debtor's financial condition
- § 10:13 —Dispute or litigation
- § 10:14 Substantial limitations or restrictions on taxpayer's exercise of control
- § 10:15 —Loss of valuable rights

III. APPLICATION OF DOCTRINE TO PARTICULAR TYPES OF INCOME

A. CHECKS; PERIODIC PAYMENTS

- § 10:16 Checks
- § 10:17 Periodic payment; elections of alternative benefits under for prizes and annuities

B. SALARY AND COMPENSATION

- § 10:18 Generally
- § 10:19 Deferred compensation and nonqualified plans

- § 10:20 Delayed compensation; Payments determined by amount of profit

C. DIVIDENDS AND INTEREST

- § 10:21 Interest
- § 10:22 Dividends (interest) on insurance policies
- § 10:23 Dividends
- § 10:24 —Liquidating dividends

D. BLOCKED FOREIGN INCOME

- § 10:25 Generally
- § 10:26 Alternative method of reporting blocked income—Election

E. OTHER ITEMS

- § 10:27 Funds and stock in escrow
- § 10:28 Executors' and trustees' commissions
- § 10:29 Condemnation awards

CHAPTER 11. CANCELLATION OF INDEBTEDNESS INCOME

I. INTRODUCTION

- § 11:1 Overview
- § 11:2 Historical developments
- § 11:3 Statutory scheme

II. REALIZATION OF DISCHARGE OF INDEBTEDNESS INCOME

- § 11:4 General application of realization of discharge of indebtedness income
- § 11:5 Discharge as gross income
- § 11:6 Debt that may be discharged
- § 11:7 Discharge of debt
- § 11:8 Discharges that are not income under Section 108
- § 11:9 Amount realized

III. EXCLUSIONS OF DISCHARGE OF INDEBTEDNESS INCOME

- § 11:10 Excluding income
- § 11:11 Title 11 bankruptcy cases and insolvency
- § 11:12 Qualified farm indebtedness

TABLE OF CONTENTS

- § 11:13 Qualified real property business indebtedness
- § 11:14 Treatment of exclusion

IV. SPECIAL RULES

A. RULES FOR CERTAIN ENTITIES

- § 11:15 Partnerships
- § 11:16 Subchapter S corporations

B. RULES FOR CERTAIN TRANSACTIONS

- § 11:17 Corporation-shareholder transactions
- § 11:18 Related party debt
- § 11:19 Acquisitions by securities dealers
- § 11:20 Certain discharges of student loans
- § 11:21 Discharge of Paycheck Protection Program loans and
Economic Injury Disaster loans

CHAPTER 12. METHODS OF ACCOUNTING

I. INTRODUCTION

- § 12:1 Overview
- § 12:2 Legislative history

II. BASIS AND PURPOSE OF TAX ACCOUNTING

- § 12:3 Differences between tax and financial accounting
- § 12:4 Purpose of tax accounting
- § 12:5 Purpose of financial accounting
- § 12:6 Generally accepted accounting principles
- § 12:7 —Examples
- § 12:8 Development of accounting concepts

III. GENERAL PRINCIPLES OF TAX ACCOUNTING

A. INTRODUCTION

- § 12:9 Development of tax accounting methods
- § 12:10 Relationship of financial statements to accounting
method
- § 12:11 Choice of accounting method
- § 12:12 Influencing factors in choice of accounting methods
- § 12:13 —General rules in choice of accounting method

B. PERMISSIBLE METHODS OF ACCOUNTING

- § 12:14 Cash method

- § 12:15 Accrual method
- § 12:16 —Prior law rule of 78
- § 12:17 Other permissible methods
- § 12:18 —Long standing practice

IV. TAX ACCOUNTING PRINCIPLES

A. CLEAR REFLECTION STANDARD

- § 12:19 Clear reflection of income
- § 12:20 —Accuracy
- § 12:21 Discretion of the Service
- § 12:22 Discretion of service—Influencing factors
- § 12:23 —Interest income and expense
- § 12:24 —Cost of goods sold
- § 12:25 Limitation on service's discretion
- § 12:26 —Methods advantageous to government
- § 12:27 —Example

B. CONSISTENCY IN USE OF ACCOUNTING METHOD

- § 12:28 Consistency in use of accounting method
- § 12:29 —Consistent treatment of income and deductions
- § 12:30 More than one business
- § 12:31 —Examples
- § 12:32 Exclusive use of one accounting method

C. ELECTION OF ACCOUNTING METHOD

- § 12:33 Initial election of accounting method
- § 12:34 —Method of accounting
- § 12:35 Extension of time for making election
- § 12:36 —Good faith and good cause shown
- § 12:37 Automatic extensions
- § 12:38 —Other extensions
- § 12:39 Good faith in request for extension
- § 12:40 Procedure for requesting extension
- § 12:41 Revocation of election

D. UNDUE POSTPONEMENT OR ACCELERATION OF TAXATION

- § 12:42 Avoiding undue postponement or acceleration of taxation
- § 12:43 —Annual reporting standard
- § 12:44 —Determining undue acceleration or postponement of income

TABLE OF CONTENTS

- § 12:45 Exceptions to annual reporting
- § 12:46 —Carrybacks and carryovers
- § 12:47 —Accrual
- § 12:48 Recognition of income subject to claim or return

E. BOOK ENTRIES

- § 12:49 In general
- § 12:50 —Effect of book entries
- § 12:51 —Financial and regulatory books
- § 12:52 Substance over name or label in book entries
- § 12:53 Presumption of correctness in book entries

V. TAXATION OF PREPAID ITEMS

A. ACCOUNTING FOR PREPAYMENTS AND PREPAID ITEMS

- § 12:54 Prepayments under cash method
- § 12:55 —Examples
- § 12:56 Prepayments under accrual method
- § 12:57 —Examples

B. SPECIAL CASES

1. Accounting for Banking Transactions

- § 12:58 Bank discount and loan commissions as income
- § 12:59 Expenses of securing loans
- § 12:60 —Loans to certain business entities
- § 12:61 —Types of financing activities
- § 12:62 Accounting for income from service warranty contracts
- § 12:63 —Case law examples

VI. TAXATION OF NOTIONAL PRINCIPAL CONTRACTS

A. DEFINITIONS AND TYPES

- § 12:64 Notional principal contracts
- § 12:65 —Definitions
- § 12:66 —Exclusions from definition
- § 12:67 —Types of common notional principal contracts
- § 12:67.50 —Use as tax shelters

B. METHODS OF ACCOUNTING FOR NOTIONAL PRINCIPAL CONTRACTS

- § 12:68 Taxation of notional principal contracts

- § 12:69 —Regulations
- § 12:70 Accounting method for notional principal contracts
- § 12:71 —Procedure to change method of accounting
- § 12:72 —Definitions

C. INCOME AND DEDUCTIONS FOR PERIODIC AND NONPERIODIC PAYMENTS

1. Periodic Payments

- § 12:73 Periodic payments
- § 12:74 —Example of accrual of periodic swap payments
- § 12:75 —Example of accrual of periodic swap payments by cash method taxpayer
- § 12:76 Income and deduction determination for periodic payments
- § 12:77 —Example of accrual of swap payments on index set in arrears

2. Nonperiodic Payments

- § 12:78 Nonperiodic payments
- § 12:79 —Example of nonperiodic payment on commodity swap amortization
- § 12:80 Alternative methods for swaps
- § 12:81 —Example of upfront interest rate swap payment
- § 12:82 Other nonperiodic swap payments
- § 12:83 —Example of backloaded interest rate swap payment
- § 12:84 Nonperiodic payments related to caps and floors
- § 12:85 —Example of cap premium amortized using general rule
- § 12:86 —Example of cap premium allocated to proper period

D. TIMING OF INCOME AND DEDUCTIONS FOR NOTIONAL PRINCIPAL CONTRACTS

- § 12:87 Alternative method for caps and floors that hedge debt instruments
- § 12:88 —Example of cap premium amortized using alternative method
- § 12:89 —Example of cap premium paid in level installments
- § 12:90 Swaps and hedges
- § 12:91 Termination payments

VII. TAXATION OF HEDGE TRANSACTIONS

A. METHODS OF ACCOUNTING FOR HEDGES

- § 12:92 Hedging transactions

TABLE OF CONTENTS

- § 12:93 Regulations
- § 12:94 —Method of accounting
- § 12:95 Hedges of items of inventory
- § 12:96 —Alternative methods for certain inventory hedges
- § 12:97 Hedges of debt instruments

B. VARIOUS HEDGE TRANSACTIONS

- § 12:98 Disposition of hedged asset or liability
- § 12:99 Other hedge transactions
- § 12:100 Hedge of aggregate risk
- § 12:101 Other rules regarding hedges

VIII. INCOME AND DEDUCTIONS IN RESPECT OF DECEDENT

- § 12:102 Historical development
- § 12:103 —1934 to 1942—Income “Accrued” under Provisions of 1934 Revenue Act and *Helvering v. Enright*
- § 12:104 — —Deductions of decedent
- § 12:105 Statutory provisions
- § 12:106 —Specific statutory examples
- § 12:107 Concept of income in respect of decedent
- § 12:108 —General categories of income in respect of decedent
- § 12:109 —Examples
- § 12:110 Deduction items in respect of decedent
- § 12:111 Deductions for estate taxes paid
- § 12:112 —Examples

CHAPTER 12A. CASH AND ACCRUAL METHODS OF ACCOUNTING; AND METHOD OF ACCOUNTING FOR LONG-TERM CONTRACTS

I. INTRODUCTION

A. OVERVIEW AND LEGISLATIVE HISTORY

- § 12A:1 Overview
- § 12A:2 Legislative history

B. BACKGROUND

1. Tax Accounting

- § 12A:3 Definition of tax accounting

§ 12A:4 Difference between tax accounting and financial accounting

§ 12A:5 Importance of tax accounting

2. Relevant Tax Accounting Topics

§ 12A:6 Accounting periods or taxable year generally

§ 12A:7 Methods of accounting generally

§ 12A:8 Change in method of accounting generally

II. CASH RECEIPTS AND DISBURSEMENTS METHOD OF ACCOUNTING

A. DEFINITION

§ 12A:9 Definition of cash method

§ 12A:10 Difference between cash method and accrual methods generally

B. AVAILABILITY OF CASH METHOD

1. Commissioner's Discretionary Use of Cash Method

§ 12A:11 Cash method may be chosen by Commissioner

2. Prohibited Use of Cash Method

a. Generally

§ 12A:12 Tax shelter

§ 12A:13 Purchases and sales of merchandise

§ 12A:14 Termination of business

§ 12A:15 Exempt corporation with unrelated business

§ 12A:16 Exempt trust with unrelated business

§ 12A:17 C corporation generally

§ 12A:18 Partnership with a C corporation partner generally

b. Certain Exceptions for C Corporation or Partnership with C Corporation Partner

i. Farming Business

§ 12A:19 Farming business

ii. Qualified Personal Service Corporation

§ 12A:20 Qualified personal service corporation

§ 12A:21 Function test for qualified personal service corporation

TABLE OF CONTENTS

§ 12A:22 Ownership test for qualified personal service corporation

iii. Entities Meeting Gross Receipts Requirements

§ 12A:23 Entities which meet gross receipts test

C. REQUIREMENTS IN USE OF CASH METHOD

§ 12A:24 Maintenance of records required for cash method

§ 12A:25 Book conformity required for cash method

§ 12A:26 Clear reflection of income required for cash method

III. INCOME UNDER CASH METHOD

A. REQUIREMENTS FOR REPORTING INCOME UNDER CASH METHOD

1. Receipt of Income

§ 12A:27 Actual receipt of income

§ 12A:28 Constructive receipt of income

2. Income Reported in Year of Receipt

§ 12A:29 Reporting of income in year of receipt

B. FORM OF INCOME

1. Receipt of Money and Financial Instruments

§ 12A:30 Receipt of cash

§ 12A:31 Receipt of foreign currency

§ 12A:32 Receipt of checks

§ 12A:33 Receipt of credit card payments

2. Receipt of Cash Equivalents

§ 12A:34 Cash equivalent doctrine

a. Receipt of Property or Services

§ 12A:35 Receipt of property

§ 12A:36 Receipt of services

b. Issue of Receipt of Intangible Property

§ 12A:37 Receipt of intangible property or deferred payment agreements generally

§ 12A:38 Receipt of note

§ 12A:39 Receipt of contract

§ 12A:40 Account receivable

C. TYPES OF INCOME UNDER CASH METHOD

1. Compensation

- § 12A:41 Salaries
- § 12A:42 Employee tips
- § 12A:43 Employee advances
- § 12A:44 Compensation subject to possible return
- § 12A:45 Insurance premiums paid by employer
- § 12A:46 Credit for services rendered
- § 12A:47 Stock
- § 12A:48 Loan converted to compensation payment

2. Deferred Compensation

- § 12A:49 Deferred compensation plans of state and local governments
- § 12A:50 Deferred compensation plans of tax-exempt organizations
- § 12A:51 Nonqualified deferred compensation from certain tax indifferent parties
- § 12A:52 Rabbi trusts

3. Investment Income and Securities

- § 12A:53 Dividends
- § 12A:54 Interest
- § 12A:55 Interest on frozen deposits in certain financial institutions
- § 12A:56 Bonds
- § 12A:57 Section 454 election

4. Income Related to Real Property and Other Rights

- § 12A:58 Escrow
- § 12A:59 Mortgage payment
- § 12A:60 Oil and gas tax shelters
- § 12A:61 Royalties

5. Other

- § 12A:62 Judgment award
- § 12A:63 Cash options for receipt of qualified prize
- § 12A:64 Business interruption insurance proceeds

IV. EXPENSES AND DEDUCTIONS UNDER CASH METHOD

A. REQUIREMENTS FOR DEDUCTING EXPENSES UNDER CASH METHOD

- § 12A:65 Actual payment required for cash method

TABLE OF CONTENTS

- § 12A:66 Expense deductible in year of payment
- § 12A:67 One-year rule (12-month rule or de minimis rule)

B. FORM OF PAYMENT

- § 12A:68 Payment by check
- § 12A:69 Payment by credit card
- § 12A:70 Payment by notes
- § 12A:71 Payment of expense with borrowed funds

C. TYPES OF EXPENSES AND DEDUCTIONS UNDER CASH METHOD

- § 12A:72 Compensation payments
- § 12A:73 Taxes
- § 12A:74 Interest expense
- § 12A:75 Charitable contributions
- § 12A:76 Litigation expenses
- § 12A:77 Bad debt deduction
- § 12A:78 Payment of expenses by surety
- § 12A:79 Payment in excess of fair market value
- § 12A:80 Security deposits and prepaid expenses

V. ACCRUAL METHODS OF ACCOUNTING

A. DEFINITION

- § 12A:81 Definition of accrual methods
- § 12A:82 Book entries

B. AVAILABILITY OF ACCRUAL METHODS

1. Commissioner's Discretionary Use of an Accrual Method

- § 12A:83 Accrual method may be chosen by commissioner

2. Required Use of Accrual Methods

- § 12A:84 Entities with significant inventory
- § 12A:85 Termination of business
- § 12A:86 Purchases and sales of merchandise

3. Prohibited Use of Accrual Methods

- § 12A:87 Special rule in case of death

C. REQUIREMENTS IN USE OF ACCRUAL METHODS

- § 12A:88 Maintenance of records required for accrual methods

- § 12A:89 Book conformity required for accrual method
- § 12A:90 Clear reflection of income required for accrual method

VI. INCOME UNDER ACCRUAL METHODS

A. REQUIREMENTS FOR REPORTING INCOME UNDER ACCRUAL METHODS

1. Requirement that All Events Test be Satisfied

- § 12A:91 All-events test generally
 - § 12A:91.50 Applicable Financial Statement Inclusion Rule
 - § 12A:92 All-events test and annual accounting period
 - a. All-Events Test Requiring Right to Receive Income
 - § 12A:93 Description of accrual method as applied to income
 - § 12A:94 Right to receive income is fixed/requirement that right to income is fixed
 - § 12A:95 Income subject to contingencies
 - § 12A:96 Contested funds
 - § 12A:97 Appeal of judgment award
 - b. All-Events Test Requiring Reasonably Accurate Amount
 - § 12A:98 Determination of amount of income with reasonable accuracy
 - § 12A:99 Reasonableness of estimate-quality of method versus accuracy of result
 - § 12A:100 Reasonable ascertainment, individual versus aggregated payees
- #### **2. Requirement of Collectibility**
- § 12A:101 Collectibility of income

B. TIME PERIOD FOR WHICH INCOME IS RECEIVED UNDER ACCRUAL METHODS

1. Deferred Payment Sales

- § 12A:102 Accounts receivable
 - i. Nonaccrual-Experience (NAE) Method
 - § 12A:103 Nonaccrual-experience (NAE) method generally
 - § 12A:104 Application of nonaccrual-experience (NAE) method
 - § 12A:105 Separate receivable system

TABLE OF CONTENTS

§ 12A:106 Periodic system

2. Prepaid Income

§ 12A:107 Advance payments for goods and services

§ 12A:108 Prior law: advance payments for sales

§ 12A:109 Prior Law: Gift Cards

C. TYPES OF INCOME UNDER ACCRUAL METHODS

1. Employee Compensation

§ 12A:110 Salaries and compensation

2. Reserves

§ 12A:111 Dealer reserves

§ 12A:112 Reserves for returnable articles

§ 12A:113 Reserves for care and maintenance of cemetery plots

3. Other Income

§ 12A:114 Utility services

§ 12A:115 Qualifying electric transmission transactions

§ 12A:116 Government contracts and mixed claims
commission awards

§ 12A:117 Tax refunds and credits

§ 12A:118 Discharge of indebtedness income

§ 12A:119 Trust for Gaming Revenues under the Indian
Gaming Regulatory Act

VII. EXPENSES AND DEDUCTIONS UNDER ACCRUAL METHODS

A. THE ALL-EVENTS TEST

§ 12A:120 Description of accrual methods as applied to expenses

§ 12A:121 All-events test

§ 12A:122 Examples: obligation to pay liability is fixed

§ 12A:123 Prong 2: Determination of amount of liability with reasonable accuracy

§ 12A:124 Prong 3: Economic performance rule

§ 12A:125 Recurring item exception

B. TYPES OF EXPENSES AND DEDUCTIONS UNDER ACCRUAL METHODS

1. Compensation

§ 12A:126 Salaries and compensation

- § 12A:127 Payment of bonuses
- § 12A:128 Future salaries and compensation
- § 12A:129 Authorization of salaries and compensation
- § 12A:130 Compensation based on profits
- § 12A:131 Vacation pay

2. Contingencies

- § 12A:132 Contractual contingencies
- § 12A:133 Expenses subject to contingencies

3. Contested Liabilities

- § 12A:134 Accrual of payment of contested liabilities
- § 12A:135 Contest of asserted liabilities

4. Transfers

- § 12A:136 Transfer to provide for satisfaction of asserted liabilities
- § 12A:137 Contest exists after transfer
- § 12A:138 Deduction otherwise allowable for taxable year of transfer or earlier year

5. Litigation

- § 12A:139 Effect of litigation on accrual of expenses
- § 12A:140 Effect of appeal on accrual of expenses

6. Related Persons

- § 12A:141 Related persons

7. Reserves

a. General

- § 12A:142 Use of reserves
- § 12A:143 Self-insurance
- § 12A:144 Reserves for cash discounts
- § 12A:145 Reserves for mining and solid waste reclamation and closing costs
- § 12A:146 Reserves for nuclear power plant decommissioning costs
- § 12A:147 Designated settlement funds
- § 12A:148 Reserves for workers compensation claims and tort claims

b. Trading Stamps & Coupons

- § 12A:149 Redemption of trading stamps and premium coupons
- § 12A:150 Taxes

TABLE OF CONTENTS

8. Interest

a. Generally

- § 12A:151 Interest accrual
- § 12A:152 Interest deductions
- § 12A:153 Interest on tax deficiencies

b. Rule of 78's

- § 12A:154 Generally
- § 12A:155 Extended warranty contracts

VIII. SPECIAL RULES FOR FARMING

A. METHOD OF ACCOUNTING

1. Cash Method

- § 12A:156 C corporation or partnership with C corporation partner engaged in farming business

2. Accrual Method

a. General Rule for Corporation or Partnership Engaged in Business of Farming

- § 12A:157 Exception for annual accrual accounting methods
- § 12A:158 Partnership engaged in business of farming if corporation is partner in partnership *[Deleted]*

b. Exceptions to General Rule

- § 12A:159 Nursery, sod farm, or tree business *[Deleted]*
- § 12A:160 S corporation engaged in business of farming *[Deleted]*
- § 12A:161 Other corporations engaged in business of farming *[Deleted]*
- § 12A:162 Family corporation engaged in business of farming which meets gross receipts test (prior law)
- § 12A:163 Certain closely held corporations engaged in business of farming (prior law)

c. Certain Annual Accrual Accounting Methods

- § 12A:164 Annual accrual accounting method for corporation in qualified farming business *[Deleted]*
- § 12A:165 Annual accrual accounting method for qualified partnership in qualified farming business *[Deleted]*

3. Crop Method

- § 12A:166 Crop method of accounting

B. INCOME ITEMS

1. Certain Income from Farming Business under Cash Method

a. Income of Farming Business Generally

- § 12A:167 Crop insurance proceeds and disaster payments
- § 12A:168 Exercise of crop insurance election
- § 12A:169 Livestock sold on account of drought, flood, or other weather-related conditions
- § 12A:170 Livestock sold on account of drought requirements for deferral of income
- § 12A:171 Time and manner of making drought election

2. Other Issues

- § 12A:172 Income from farming
- § 12A:173 Averaging of farm income
- § 12A:174 Treatment of livestock
- § 12A:175 Timing of income from certain purchase contract payments
- § 12A:176 Income from payments under agricultural support programs

3. Commodity Credit Loans

- § 12A:177 Commodity credit loans
- § 12A:178 Effect of election for commodity credit loans

4. Prepaid Farm Expenses

- § 12A:179 Prepaid farm supplies
- § 12A:180 Poultry costs
- § 12A:181 Treatment of livestock
- § 12A:182 Treatment of livestock
- § 12A:183 Deductions limited to amount at risk
- § 12A:184 Limitation on excess farm losses of certain taxpayers

IX. OTHER RULES AND DOCTRINES REGARDING ACCOUNTING METHODS GENERALLY

A. ITEMS OF INCOME

1. Prepaid Items; Deposits and Advances

- § 12A:185 Prepaid subscription income
- § 12A:186 Prepaid dues income of certain membership organizations

2. Qualified Sales

- § 12A:187 Qualified sales of magazines, paperbacks, and records

TABLE OF CONTENTS

- § 12A:188 Deposits compared with advances
- § 12A:189 Determining when deposits included in income
- § 12A:190 Lease deposits
- § 12A:191 Public utility security deposits

B. CLOSED TRANSACTIONS

1. Generally

- § 12A:192 When to report income from sale of property
- § 12A:193 Time of sale
- § 12A:194 Executory contracts

2. Factors

- § 12A:195 Passage of title
- § 12A:196 Passage of possession
- § 12A:197 Sale absent transfer of possession
- § 12A:198 Amount of purchase price received as affecting
when sale is completed
- § 12A:199 Escrow of purchase price
- § 12A:200 Examples of escrowed funds
- § 12A:201 Other factors affecting closing of transaction

3. Situations Involving Closing of Transaction

- § 12A:202 Transfers of real estate
- § 12A:203 Sales of personal property
- § 12A:204 Sales of stock or securities
- § 12A:205 Deferred payments
- § 12A:206 Reacquisition of property sold and rescission
- § 12A:207 Sales by alien property custodian

C. OPEN TRANSACTION DOCTRINE

- § 12A:208 Generally
- § 12A:209 *Burnet v. Logan*
- § 12A:210 Application of doctrine
- § 12A:211 Contracts and liquidations
- § 12A:212 When allocation of cost price impractical or
impossible
- § 12A:213 Sales subject to contingencies
- § 12A:214 Allocation between capital and income
- § 12A:215 Stock options

X. SPECIAL PROBLEMS

A. CLAIM OF RIGHT

1. General

- § 12A:216 Claim of right

- § 12A:217 Repayment in year of receipt
- § 12A:218 Prepaid income dues
- 2. Application of Claim of Right Doctrine
- § 12A:219 Examples of claim of right doctrine
- 3. Amounts Illegally Obtained
- § 12A:220 Amounts illegally obtained
- 4. Doctrine Not Applied
- § 12A:221 Examples
- 5. Public Utilities
- § 12A:222 Claim-of-right doctrine applied to public utilities
- 6. Section 1341 Relief
- a. General
- § 12A:223 Restoration of substantial amount held under claim of right
- § 12A:224 Decrease in prior year's tax
- § 12A:225 Deduction in excess of \$3,000
- § 12A:226 Additional rules for applicability of Section 1341
- § 12A:227 Treatment of carrybacks and carryovers
- § 12A:228 Self-limited effect of Section 1341
- b. Unrestricted Right to Income
- § 12A:229 Requirement of unrestricted right to income
- § 12A:230 Examples of unrestricted right existing
- § 12A:231 Reimbursement of compensation or expenses pursuant to agreement
- § 12A:232 Decree under local law

XI. SPECIALIZED METHODS OF ACCOUNTING

A. IN GENERAL

- § 12A:233 Specialized methods of accounting generally

B. LONG-TERM CONTRACTS

1. General

- § 12A:234 Long-term contract method
- § 12A:235 Long-term contract defined
- § 12A:236 Exceptions: long-term contract method not required
- § 12A:237 Other long-term contract methods *[Deleted]*

2. Methods of Accounting

a. Percentage of Completion Method

- § 12A:238 Percentage of completion method

TABLE OF CONTENTS

§ 12A:239	Allocation of costs to contracts
§ 12A:240	Timing of when costs are taken into account
	b. Modified Percentage of Completion Method
§ 12A:241	Modified percentage of completion method
	3. Look-Back Method
§ 12A:242	Look-back method
§ 12A:243	Look-back method in de minimis situations
§ 12A:244	Contracts excepted from look-back method
§ 12A:245	Treatment of look-back interest
§ 12A:246	Completion of contract and postcompletion adjustment
§ 12A:247	Simplified look-back method for pass-through entities
§ 12A:248	Operation of simplified method
§ 12A:249	Taxpayers who may use simplified method
	4. Special Rules
§ 12A:250	Severing and aggregating contracts
§ 12A:251	Independent research and development costs
§ 12A:252	Production period interest
	5. Regulatory Methods
§ 12A:253	Election under regulatory methods
§ 12A:254	Completed contract method
§ 12A:255	—Amounts in dispute
§ 12A:256	—Further application
§ 12A:257	Percentage of completion method under regulations
§ 12A:258	Other issues relating to accounting under regulatory methods
§ 12A:259	Determination of date of completion under completed contract method
§ 12A:260	Contracts in which performance has terminated

CHAPTER 12B. CHANGE IN METHOD OF ACCOUNTING

I. INTRODUCTION

§ 12B:1	Overview
§ 12B:2	Legislative history and early revenue procedures on accounting method changes
§ 12B:3	Prior non-automatic consent procedure Rev. Proc. 97-27 and prior automatic consent procedure Rev. Proc. 2011-14

- § 12B:4 History of and changes to the unified change procedure: Rev. Proc. 2015-13

II. ADOPTION AND CHANGE OF ACCOUNTING METHOD

- § 12B:5 Method of accounting defined
§ 12B:6 Adoption of initial method of accounting
§ 12B:7 Change in method of accounting
§ 12B:8 Effect of changing method without required Service consent
§ 12B:9 Categories of accounting method changes

III. RULES APPLICABLE TO TAXPAYER-INITIATED (VOLUNTARY) CHANGES

- § 12B:10 Effect of Service consent
§ 12B:11 Terms and conditions of change
§ 12B:12 Audit protection
§ 12B:13 Audit protection for taxpayers under examination
§ 12B:14 Section 481 adjustment
§ 12B:15 The cut-off method
§ 12B:16 Suspense accounts
§ 12B:17 Pre-filing agreements

IV. TAXPAYER INITIATED CHANGE—AUTOMATIC CONSENT

- § 12B:18 Automatic consent, generally
§ 12B:19 Application for automatic consent
§ 12B:20 Service review of automatic change requests

V. LIST OF AUTOMATIC ACCOUNTING METHOD CHANGES

- § 12B:21 Up-front payments for network upgrades received by utilities (Section 61)
§ 12B:22 Commodity credit loans (Section 77)
§ 12B:23 Deduction of certain trade or business expenses (Section 162)
§ 12B:24 Bad debts (Section 166)
§ 12B:25 Interest Expense and Amortizable Bond Premium (Sections 163 and 171)
§ 12B:26 Depreciation or amortization (Sections 56(a)(1), 167, 168, 197, 280F(a), or former 56(g)(4), 168, 1400I, 1400L, or 1400N(d))
§ 12B:27 Research and experimental expenditures (Section 174)

TABLE OF CONTENTS

§ 12B:28	Elective expensing for energy efficient commercial buildings (Section 179D)
§ 12B:29	Computer software expenditures (Sections 162, 167, and 197)
§ 12B:30	Start-up expenditures and organizational fees (Section 195, Section 248 and Section 709)
§ 12B:31	Capital expenditures (Section 263)
§ 12B:32	Uniform capitalization (UNICAP) methods (Section 263A)
§ 12B:33	Losses, expenses and interest with respect to transactions between related taxpayers (Section 267)
§ 12B:34	Deferred compensation (Section 404)
§ 12B:35	Methods of accounting (Section 446)
§ 12B:36	Taxable year of inclusion (Section 451)
§ 12B:37	Obligations issued at discount (Section 454)
§ 12B:38	Prepaid subscription income (Section 455)
§ 12B:39	Special Rules for Long-Term Contracts (Section 460)
§ 12B:40	Taxable year incurred (Section 461)
§ 12B:41	Rent (Section 467)
§ 12B:42	Inventories (Section 471)
§ 12B:43	LIFO inventories (Section 472)
§ 12B:44	Market-to-market accounting method (Section 475)
§ 12B:45	Bank reserves for bad debts (Section 585)
§ 12B:46	Insurance companies (Sections 807, 816, 832 and 833)
§ 12B:47	Discounted unpaid losses (Section 846)
§ 12B:48	REMIC inducement fees (Sections 860A to 860G)
§ 12B:49	Functional currency (Section 985)
§ 12B:50	Original issue discount (Sections 1272, 1273)
§ 12B:51	Market discount bonds (Section 1278)
§ 12B:52	Short-term obligations (Section 1281)

VI. TAXPAYER-INITIATED CHANGE—NON-AUTOMATIC CONSENT

§ 12B:53	Non-automatic consent, generally
§ 12B:54	Application for non-automatic consent
§ 12B:55	Service consideration and finalization of non-automatic change requests
§ 12B:56	Request to revise change year

VII. SERVICE-INITIATED (INVOLUNTARY) CHANGES

§ 12B:57	Service-initiated changes, generally
§ 12B:58	Authorized changes by Examination and by Appeals and government counsel

- § 12B:59 Notice of involuntary change
- § 12B:60 Effect of final Service-imposed method change
- § 12B:61 Non-accounting method changes
- § 12B:62 Reducing tax on Section 481 adjustments: Section 481(b)

VIII. OTHER ACCOUNTING METHOD CHANGES AND RULES

- § 12B:63 Change required by statute
- § 12B:64 Changes as a result of certain corporate acquisitions under Section 381
- § 12B:65 Changes authorized by provisions other than Section 446
- § 12B:66 Accounting method rules for foreign entities

CHAPTER 12C. ORIGINAL ISSUE DISCOUNT AND IMPUTED INTEREST

I. INTRODUCTION

- § 12C:1 Overview
- § 12C:2 Legislative history

II. ORIGINAL ISSUE DISCOUNT

A. GENERAL

- § 12C:3 Original issue discount, generally
- § 12C:4 Calculation of OID
- § 12C:5 Stated redemption price
- § 12C:6 Qualified stated interest
- § 12C:7 Anti-abuse rule

B. ISSUE PRICE

- § 12C:8 Issue price, generally
- § 12C:9 Publicly offered debt instruments issued for money
- § 12C:10 Nonpublicly offered debt instruments issued for money
- § 12C:11 Debt instruments issued for publicly traded property other than money
- § 12C:12 Publicly traded debt instruments issued for property
- § 12C:13 Debt instruments issued for property other than money when no public trading is involved
- § 12C:14 Debt instrument forming part of investment unit and convertible debt instruments

TABLE OF CONTENTS

C. ACCRUAL OF OID

- § 12C:15 Economic accrual of OID
- § 12C:16 Daily portions
- § 12C:17 Accrual period
- § 12C:18 Adjusted issue price

D. YIELD TO MATURITY

- § 12C:19 Yield to maturity, generally
- § 12C:20 Debt instrument subject to Section 1274
- § 12C:21 Debt instrument providing for contingent payments
- § 12C:22 Debt instruments providing for variable rates of interest
- § 12C:23 Debt instrument subject to put, call, or right to extend
- § 12C:24 Price level adjusted mortgages

E. SUBSEQUENT HOLDERS AND BASIS ADJUSTMENT

- § 12C:25 Reduction of OID for certain subsequent holders

F. EXCEPTIONS TO OID RULES

- § 12C:26 Exceptions to application of OID rules, generally
- § 12C:27 Tax-exempt obligations
- § 12C:28 United States savings bonds
- § 12C:29 Short-term obligations
- § 12C:30 Obligations issued by natural persons before March 2, 1984
- § 12C:31 Obligations issued between natural persons where \$10,000 de minimis requirement is satisfied
- § 12C:32 Debt instruments purchased at premium
- § 12C:33 Certain life insurance companies
- § 12C:34 Sale or exchange of nonpublicly traded property where Section 1274 not applicable

G. RETIREMENT OF DEBT INSTRUMENT

- § 12C:35 Treatment on retirement or sale or exchange of debt instrument

H. TAX-EXEMPT OBLIGATIONS

- § 12C:36 Original issue discount on tax-exempt obligations

III. IMPUTED INTEREST

A. INTRODUCTION

- § 12C:37 Imputed interest, generally

§ 12C:38 Applicable federal rate and test rate of interest

B. SECTION 1274

1. Generally

§ 12C:39 Section 1274, generally

§ 12C:40 Annuity contracts

§ 12C:41 Recharacterizing principal amount of debt instrument OID where stated interest is less than AFR

§ 12C:42 Imputed principal amount; debt instruments issued in potentially abusive situations

§ 12C:43 Debt instruments excepted from provisions of Section 1274

§ 12C:44 Integration

2. Special Considerations

§ 12C:45 Application of Section 1274 to debt instrument subject to put, call, or right to extend

§ 12C:46 Debt instruments connected with the sale or exchange of certain property

§ 12C:47 Contingent payments under OID rules

§ 12C:48 —Debt instruments subject to Section 1274 and contingent payments; treatment of noncontingent payments

§ 12C:49 Variable rate debt instruments

§ 12C:50 Adequacy of stated interest under variable rate debt instruments

§ 12C:51 OID on variable rate debt instruments

§ 12C:52 OID and qualified stated interest on variable rate debt instruments

§ 12C:53 Section 1274 and treatment of excessive interest

C. SECTION 483

1. Generally

§ 12C:54 Section 483, generally

§ 12C:55 Total unstated interest

§ 12C:56 Maximum rate of interest on sales of land between related parties

§ 12C:57 Accounting for total unstated interest

§ 12C:58 —Issue price under Section 483

§ 12C:59 Exceptions to Section 483

2. Special Considerations

§ 12C:60 Contingent payments

TABLE OF CONTENTS

- § 12C:61 Treatment of modified debt instruments under Section 483
- § 12C:62 Debt instruments associated with certain sales or exchanges

D. QUALIFIED DEBT INSTRUMENTS

- § 12C:63 Section 1274A and qualified debt instruments

IV. MARKET DISCOUNT

A. GENERAL

- § 12C:64 Market discount, generally
- § 12C:65 Concept of market discount
- § 12C:66 Recognition of market discount
- § 12C:67 Accrual of market discount

B. NONRECOGNITION TRANSACTIONS

- § 12C:68 Treatment of nonrecognition transactions, generally
- § 12C:69 Transferred basis property
- § 12C:70 Exchanged basis property

C. ELECTIONS AND DEFERRED DEDUCTION

- § 12C:71 Election to include market discount currently into income
- § 12C:72 Election to accelerate deduction for disallowed interest expense
- § 12C:73 Deferral of interest deduction

V. SHORT-TERM OBLIGATIONS

A. GENERAL

- § 12C:74 Short-term obligations, generally
- § 12C:75 Treatment of short-term obligations
- § 12C:76 Short-term government obligations
- § 12C:77 Short-term nongovernment obligations
- § 12C:78 Exceptions to ordinary income treatment rule
- § 12C:79 Current inclusion in income of discount on certain short-term obligations

B. SPECIAL RULES

- § 12C:80 Treatment of obligations held by pass-through entities
- § 12C:81 Deferral of interest deduction
- § 12C:82 Daily portion

§ 12C:83 Special rules relating to current inclusion of income

VI. STRIPPED BONDS

A. GENERAL

- § 12C:84 Stripped bonds and coupons, generally
- § 12C:85 Sellers of stripped bonds and coupons
- § 12C:86 Purchasers of stripped bonds and coupons
- § 12C:87 Stripped bonds purchased before July 2, 1982

B. STRIPPED TAX-EXEMPT BONDS

- § 12C:88 Stripped tax-exempt bonds
- § 12C:89 Stripped tax-exempt bonds purchased or sold after October 22, 1986, and before June 11, 1987

VII. NONREGISTERED OBLIGATIONS

- § 12C:90 Nonregistered obligations, generally
- § 12C:91 Denial of capital gain treatment for certain nonregistered obligations
- § 12C:92 Definition of registration-required obligation and obligations issued in registered form

VIII. HIGH-YIELD DISCOUNT OBLIGATIONS

- § 12C:93 High-yield original issue discount obligations

IX. BELOW MARKET LOANS

A. INTRODUCTION

- § 12C:94 Below market loans, generally
- § 12C:95 Historical development

B. APPLICATION

1. General

- § 12C:96 Coordination with other Code provisions
- § 12C:97 Broad definition of loan
- § 12C:98 Significance of AFR

2. Categories of Loans

- § 12C:99 Section 7872 applies to certain categories of loans
- § 12C:100 Gift loans
- § 12C:101 Compensation-related loans
- § 12C:102 Corporation-shareholder loans
- § 12C:103 Tax avoidance loans

TABLE OF CONTENTS

- § 12C:104 Other below-market loans
- § 12C:105 Loans to continuing care facilities
- § 12C:106 Indirect loans

C. EXCEPTIONS AND LIMITATIONS

- § 12C:107 Exceptions and special rules
- § 12C:108 De minimis exception for certain gift loans
- § 12C:109 De minimis exception for compensation-related loans and corporation-shareholder loans
- § 12C:110 \$100,000 limitation on constructive interest
- § 12C:111 Regulatory authority to exempt any class of transactions
- § 12C:112 Application of below market loan rules to demand loans and term loans

D. CALCULATION AND TIMING

- § 12C:113 Constructive interest payment and imputed payment for demand loans
- § 12C:114 Constructive interest payment and imputed transfer for term nongift loans
- § 12C:115 Constructive interest and imputed payment for term gift loans

E. REGULATORY AUTHORITY AND REPORTING REQUIREMENT

- § 12C:116 General regulatory authority
- § 12C:117 Waiver of stated interest
- § 12C:118 Reporting requirement
- § 12C:119 Split-dollar insurance

CHAPTER 13. ACCOUNTING PERIODS

I. INTRODUCTION

- § 13:1 Overview
- § 13:2 Legislative history

II. TAXABLE YEARS

- § 13:3 Taxable income determined by taxable year
- § 13:4 Adopting an initial taxable year
- § 13:5 Retaining an adopted taxable year

III. REQUIRED AND PERMISSIBLE TAXABLE YEARS

- § 13:6 Taxable year of an individual

- § 13:7 Taxable year of a partnership
- § 13:8 Taxable year of an S corporation
- § 13:9 Taxable year of a personal service corporation
- § 13:10 Taxable year of a C corporation or affiliated group
- § 13:11 Taxable year of a specified foreign corporation
- § 13:12 Taxable year of a REIT or REMIC
- § 13:13 Taxable year of a trust or estate

IV. FISCAL YEAR ALTERNATIVES AND 52-53 WEEK TAXABLE YEARS

- § 13:14 Alternative to required taxable year: Business purpose/natural business year exception for partnerships, S corporations, and personal service corporations
- § 13:15 Alternative to required taxable year: Section 444 election for partnerships, S corporations, and personal service corporations
- § 13:16 —Effect of tiered structures on Section 444 election
- § 13:17 —Tiered structure de minimis rules
- § 13:18 —Section 7519 payments required from partnerships and S corporations making Section 444 election
- § 13:19 —Calculation of required Section 7519 payment
- § 13:20 —Formulas for calculating Section 7519 payment
- § 13:21 —Section 280H minimum distributions from personal service corporations making Section 444 election
- § 13:22 52-53 week taxable year

V. CHANGING TAXABLE YEARS

- § 13:23 Changing in taxable years, in general
- § 13:24 Automatic approval: partnerships, S corporations and personal service corporations and trusts
- § 13:25 Automatic approval: C corporations eligible for automatic approval
- § 13:26 —Terms and procedures for automatic approval for change of taxable year by C corporations
- § 13:27 Automatic approval: tax-exempt organizations
- § 13:28 Automatic approval: individuals
- § 13:29 General (non-automatic) procedure for requesting approval to change taxable year
- § 13:30 Changing an erroneous or improper taxable year

VI. SHORT PERIOD TAXABLE YEARS

- § 13:31 Short taxable years
- § 13:32 Filing date for short period returns
- § 13:33 Beginning or ending of short taxable year

TABLE OF CONTENTS

§ 13:34 Determining taxable income for short taxable year:
annualization method

§ 13:35 Alternative to annualization method

VII. FINAL TAXABLE YEARS

§ 13:36 Final taxable year of a corporation

§ 13:37 Final taxable year of a partnership

§ 13:38 —Distributive share of a partner whose interest in
the partnership varies during the partnership's
taxable year

§ 13:39 Final taxable year of an estate or trust

CHAPTER 14. CORRECTION OF ERRORS BARRED BY OPERATION OF LAW

§ 14:1 Overview

§ 14:2 Judicial and legislative history

§ 14:3 Equitable recoupment

§ 14:4 —Jurisdiction

§ 14:5 Setoff

§ 14:6 Estoppel

§ 14:7 Mitigation, generally

§ 14:8 Determinations

§ 14:9 Determinations regarding related taxpayers

§ 14:10 Circumstances of adjustment: double inclusion in
income

§ 14:11 Circumstances of adjustment: double allowance of a
deduction or credit

§ 14:12 Circumstances of adjustment: double exclusion of an
item of gross income

§ 14:13 Circumstances of adjustment: double disallowance of
a deduction or credit

§ 14:14 Circumstances of adjustment: correlative deductions
and inclusions for trusts or estates and legatees,
beneficiaries, and heirs

§ 14:15 Circumstances of adjustment: correlative deductions
and credits for certain related corporations

§ 14:16 Circumstances of adjustment: basis of property after
erroneous treatment of a prior transaction

§ 14:17 Correction not barred at the time of erroneous action

§ 14:18 Inconsistent positions

§ 14:19 Amount of mitigation adjustment

§ 14:20 Method of mitigation adjustment

§ 14:21 Mitigation for self-employment and social security
taxes

CHAPTER 15. INSTALLMENT SALES

I. INTRODUCTION

- § 15:1 Overview
- § 15:2 Legislative history

II. INSTALLMENT SALE DEFINED

- § 15:3 Definition of installment sale
- § 15:4 Sales of inventory, compensation for services ineligible
- § 15:5 Dispositions by dealers ineligible
- § 15:6 Sales of publicly traded property ineligible
- § 15:7 Sales of depreciable property between related parties ineligible
- § 15:8 Sales on revolving credit plans ineligible

III. CALCULATING GAIN ON INSTALLMENT SALES

- § 15:9 Determining taxable income from installment payments
- § 15:10 Gross profit ratio (gross profit, selling price, and adjusted basis, contract price and qualifying indebtedness)
- § 15:11 Allocation of selling price among multiple assets
- § 15:12 Effect of stated and imputed interest on gross profit ratio
- § 15:13 Depreciation recapture
- § 15:14 Contingent payment sales
- § 15:15 —Stated maximum selling price
- § 15:16 —No stated maximum selling price, fixed payment period
- § 15:17 —Neither stated maximum selling price nor fixed payment period
- § 15:18 —Income forecast method
- § 15:19 —Avoiding substantial distortion of income

IV. RECEIPT OF PAYMENT

- § 15:20 Payment defined
- § 15:21 Demand notes or readily tradable obligations
- § 15:22 Mortgages and other seller debt paid or assumed by buyer
- § 15:23 Escrow accounts
- § 15:24 Third-party guarantees and standby letters of credit
- § 15:25 Payment prior to sale

TABLE OF CONTENTS

V. LIMITATIONS ON USE OR DEFERRAL

- § 15:26 Loss on sale
- § 15:27 Interest and pledge rules
- § 15:28 —Interest charged to nondealers on deferral (the interest rule)
- § 15:29 —Pledging of nondealer installment obligations (the pledge rule)
- § 15:30 Election not to use installment method
- § 15:31 Reporting sales not on installment method
- § 15:32 Change in tax rate or characterization

VI. NONRECOGNITION TRANSACTIONS

- § 15:33 Like-kind exchanges including installment obligations
- § 15:34 Other nonrecognition transactions

VII. REPOSSESSION

- § 15:35 Gain or loss on repossession of real property
- § 15:36 Computation of gain or loss on repossession of real property
- § 15:37 *[Deleted]*
- § 15:38 Repossession of personal property

VIII. DISPOSITION OF INSTALLMENT OBLIGATIONS

- § 15:39 Tax on disposition of installment obligations
- § 15:40 Taxable dispositions
- § 15:41 —Modification as disposition
- § 15:42 —12-month corporate liquidations
- § 15:43 —Transfer to trust
- § 15:44 —Transfer to life insurance company
- § 15:45 Nontaxable dispositions
- § 15:46 —Partnership transactions
- § 15:47 —Liquidation of subsidiary
- § 15:48 Liquidation of subsidiary—Tax-free transfer to controlled corporation and tax-free reorganization
- § 15:49 —Liquidation of S corporation
- § 15:50 —Transfer at death

IX. RESALE OF INSTALLMENT OBLIGATIONS BY RELATED PARTIES

- § 15:51 Resale by related party
- § 15:52 Amount of gain on resale
- § 15:53 Exceptions to related party resale rule

CHAPTER 16. INVENTORY METHODS AND VALUATION

I. INTRODUCTION

- § 16:1 Overview
- § 16:2 Legislative history

II. GENERAL RULES

A. APPLICATION

- § 16:3 Inventories in general
- § 16:4 Interaction of Section 471 with Section 263A uniform capitalization rules
- § 16:5 Best accounting practices standard for inventories
- § 16:6 Clear reflection of income standard for inventories
- § 16:7 Taxpayers required to use inventories: merchandise as an income producing factor
- § 16:8 Taxpayers required to use inventories: sales and the requirement of title
- § 16:9 Small taxpayers not required to use inventories
- § 16:10 Items included in inventory
- § 16:11 Items excluded from inventory

B. ACCOUNTING METHOD ISSUES

- § 16:12 Change in inventory method = change in accounting method
- § 16:13 Revaluation of inventory
- § 16:14 Correction of accounting error or accounting method change?
- § 16:15 Book entries for inventories
- § 16:16 Prorating adjustments
- § 16:17 Consistency in computing opening and closing inventory
- § 16:18 Section 381 transfers
- § 16:19 Conversion of C corporation to S corporation
- § 16:20 Incorporation and successor entities
- § 16:21 Taxpayer's burden of proof

III. VALUATION — SECTION 471

- § 16:22 Valuation in general
- § 16:23 Cost method
- § 16:24 —Trade discounts and cash discounts
- § 16:25 —Returned/defective merchandise allowances
- § 16:26 Lower of cost or market

TABLE OF CONTENTS

- § 16:27 Lower of cost or market—Exceptions to use of market value (no open market; price lower than market)
- § 16:28 Acquisition costs (e.g., transportation, handling, commissions)
- § 16:29 Subnormal goods
- § 16:30 Excess inventory
- § 16:31 Shrinkage
- § 16:32 Property imported from related persons
- § 16:33 Special rule for retailers: retail method
- § 16:34 Special rules where one process yields multiple products: joint product costing (for use by miners)
- § 16:35 Special rules for farmers
- § 16:36 —Farm price method
- § 16:37 —Unit-livestock price method
- § 16:38 —Crop-cost method
- § 16:39 Special rules for dealers of automobiles and heavy equipment
- § 16:40 Special rules for remanufacturers of vehicle parts

IV. UNIFORM CAPITALIZATION RULES — SECTION 263A

A. IN GENERAL

- § 16:41 Uniform capitalization rules—Introduction
- § 16:42 Separate trades or businesses
- § 16:43 Property subject to UNICAP rules
- § 16:44 —Tangible personal property

B. MANUFACTURERS

- § 16:45 Allocation costs subject to UNICAP
- § 16:46 Direct costs
- § 16:47 Indirect costs
- § 16:48 —Bidding expenses
- § 16:49 —Environmental remediation costs
- § 16:50 —Taxes
- § 16:51 —Storage costs
- § 16:52 —Handling costs
- § 16:53 —Interest
- § 16:54 —Franchise and licensing costs
- § 16:55 Indirect costs excluded from inventory
- § 16:56 Service costs
- § 16:57 Allocation of costs among activities
- § 16:58 —Simplified production method
- § 16:59 —Simplified production method without historic absorption ratio

- § 16:60 —Simplified production method with historic absorption ratio
- § 16:60.50 Allocation of costs among activities—Modified simplified production method
- § 16:61 Allocating categories of costs
- § 16:62 —Allocation of service costs (direct reallocation and step-allocation methods)
- § 16:63 —Allocating mixed service costs: simplified service cost method
- § 16:64 Costs among related parties
- § 16:65 Optional capitalization of period costs

C. RETAILERS AND WHOLESALERS

- § 16:66 Uniform capitalization rules as applied to resellers
- § 16:67 Small reseller exception and de minimis production activities (prior law)
- § 16:68 Property acquired for resale
- § 16:69 Indirect costs included in inventory: purchasing costs
- § 16:70 Indirect costs included in inventory: handling costs
- § 16:71 Indirect costs included in inventory: storage and warehousing
- § 16:72 Indirect costs included in inventory: general and administrative expenses
- § 16:73 Costs not included in inventory
- § 16:74 Allocation of general and administrative expenses (mixed service costs) among reseller activities west's key number digest
- § 16:75 Simplified resale method
- § 16:76 —Simplified resale method with historic absorption ratio election
- § 16:77 Pre-1994 allocation

D. SELF-CONSTRUCTED PROPERTY AND INTEREST

- § 16:78 Self-constructed property
- § 16:79 Specific costs of self-constructed property that must be capitalized
- § 16:80 Interest
- § 16:81 —Production of property for interest capitalization purposes
- § 16:82 —Production period
- § 16:83 —Avoided cost method of calculating capitalized interest
- § 16:84 —Computation period
- § 16:85 —Simplified inventory method

TABLE OF CONTENTS

- § 16:86 —Intercompany transactions, consolidated groups and related persons
- § 16:87 —Units of property
- § 16:88 —Accumulated production expenditures
- § 16:89 —Other issues related to the capitalization of interest
- § 16:90 —Oil and gas activities

E. FARMERS AND RANCHERS

- § 16:91 Application of uniform capitalization rules to farmers and ranchers
- § 16:92 Plants
- § 16:93 Animals
- § 16:94 Making the expensing election
- § 16:95 Valuing inventories
- § 16:96 Groves, orchards and vineyards (prior law)

F. AUTHORS, PHOTOGRAPHERS AND ARTISTS

- § 16:97 Authors, photographers and artists
- § 16:98 —Prior law

G. PRIOR LAW: FULL ABSORPTION RULES

- § 16:99 Full absorption method and uniform capitalization rules
- § 16:100 Production costs (prior law)
- § 16:101 Allocation of indirect costs (prior law)
- § 16:102 Practical capacity concept (prior law)

V. MARK-TO-MARKET RULES FOR DEALERS AND TRADERS IN SECURITIES AND COMMODITIES

- § 16:103 Market-to-market rules in general
- § 16:104 Dealers in securities
- § 16:105 Traders in securities
- § 16:106 Dealers and traders in commodities
- § 16:107 Securities defined
- § 16:108 Exceptions to the mark-to-market rules
- § 16:109 Identification
- § 16:110 Character of gain/loss
- § 16:111 Valuation
- § 16:112 Accounting method changes

CHAPTER 16A. LIFO INVENTORIES

I. GENERAL

- § 16A:1 LIFO inventories—Overview

- § 16A:2 Legislative history
- § 16A:3 Proposal to repeal LIFO

II. GENERAL RULES FOR THE USE OF LIFO

- § 16A:4 Inventory identification methods—In general
- § 16A:5 Example—LIFO and FIFO comparison
- § 16A:6 Best accounting practices and clear reflection of income
- § 16A:7 Accrual method required

III. SPECIFIC REQUIREMENTS FOR ADOPTION AND USE OF LIFO

- § 16A:8 Requirements for adoption and use of LIFO—In general
- § 16A:9 Making the LIFO election
- § 16A:10 Inventory determined at cost
- § 16A:11 Opening LIFO inventory at cost
- § 16A:12 Closing LIFO inventory at cost
- § 16A:13 Financial conformity rule
- § 16A:14 Goods eligible for LIFO
- § 16A:15 Change of inventory method or application

IV. COMPUTING LIFO INVENTORY VALUE

- § 16A:16 LIFO valuation—In general
- § 16A:17 Specific goods method
- § 16A:18 Dollar-value method
- § 16A:19 Double-extension method
- § 16A:20 Index method
- § 16A:21 Link-chain method
- § 16A:22 Inventory Price Index Computation (IPIC) method
- § 16A:23 Simplified method for small businesses
- § 16A:24 Simplified method for small businesses (prior law)
- § 16A:25 Retail method
- § 16A:26 Alternative LIFO method and vehicle pool method (for cars and trucks)
- § 16A:27 Current year cost

V. POOLING OF ITEMS

- § 16A:28 Pooling—In general
- § 16A:29 Pooling under the specific goods method
- § 16A:30 Pooling under the dollar-value method by manufacturers and processors (natural business units)

TABLE OF CONTENTS

- § 16A:31 Pooling under the dollar-value method by
wholesalers, retailers, jobbers and distributors
(major lines or types of goods)
- § 16A:32 Special pooling rules for taxpayers using IPIC
computation
- § 16A:33 Combining or separating pools
- § 16A:34 Items
- § 16A:35 Base-year cost of new items entering a pool

VI. MISCELLANEOUS MATTERS

- § 16A:36 Qualified liquidations of LIFO inventories
- § 16A:37 Treatment of inventory in nontaxable corporate
reorganizations and liquidations
- § 16A:38 Recapture on conversion from C to S corporation
- § 16A:39 Discontinuing the use of LIFO

CHAPTER 17. DETERMINATION OF TAXPAYER

I. INTRODUCTION

- § 17:1 Overview
- § 17:2 Historical development

II. FACTORS RELEVANT IN DETERMINING PROPER TAXPAYER

- § 17:3 Assignment of income doctrine
- § 17:4 Resulting benefits indicate proper taxpayer
- § 17:5 Effect of bare legal title
- § 17:6 Payment to third parties with taxpayer's approval
- § 17:7 Subsequent use of income does not determine
taxpayer
- § 17:8 Retroactive transfer; escrow
- § 17:9 Receipts subject to the claims of others; claim of right
doctrine
- § 17:10 Contracts affecting division of profit
- § 17:11 Payments received by mistake
- § 17:12 Corporate reorganization and liquidation
- § 17:13 Corporation and shareholders as same or separate
entities; alter ego
- § 17:14 Reallocation of income under Section 482

III. RECEIPT FOR THE BENEFIT OF ANOTHER

- § 17:15 Monies received by one taxpayer for the benefit of
another

- § 17:16 —Payments contrary to public policy
- § 17:17 Agents
- § 17:18 —Personal earnings of corporate officers and
directors
- § 17:19 Conduits
- § 17:20 Nominees
- § 17:21 Trustees

IV. JOINT OWNERSHIP AND MARRIED COUPLES

- § 17:22 Effect of marriage
- § 17:23 Jointly owned property
- § 17:24 Tenants by the entirety

CHAPTER 18. *[Reserved]*

Table of Contents

CHAPTER 25E. COMPENSATION

I. INTRODUCTION

§ 25E:1 Overview

II. PAYMENT AS COMPENSATION

§ 25E:2 Legislative history

§ 25E:3 Intent to pay compensation

§ 25E:4 Payments of compensation in stock or other property

§ 25E:5 Corporate distributions and compensation distinguished

§ 25E:6 Compensation for services rendered to multiple employers

III. PAYMENT FOR PERSONAL SERVICES

§ 25E:7 Payment must be made for personal services

§ 25E:8 Compensation for past services

§ 25E:9 Payments for services rendered to predecessor employer

§ 25E:10 Unfunded pensions and certain death benefits paid to family or dependents of deceased employees

§ 25E:11 Payments to employees called for military service

§ 25E:12 Limitations on executive compensation

IV. REASONABLENESS OF PAYMENT

§ 25E:13 Reasonableness of compensation payment

§ 25E:14 Factors in determining reasonableness

§ 25E:15 Employee qualifications

§ 25E:16 Nature, extent, and scope of employee's work

§ 25E:17 Time contributed to business

§ 25E:18 Employer's salary scale

§ 25E:19 Prevailing rates of compensation in industry

§ 25E:20 Size and complexity of business

§ 25E:21 Ratio of compensation to business income

§ 25E:22 General economic conditions

§ 25E:23 Prior compensation history of employee

§ 25E:24 Date when compensation is determined as test

§ 25E:25 Bonuses to employees

- § 25E:26 Evidentiary value of directors' actions
- § 25E:27 Opinion testimony as to reasonableness
- § 25E:28 Contingent compensation agreements
- § 25E:29 Contingent compensation plans in closely held corporate situations
- § 25E:30 Comparison of compensation with distributions to shareholders
- § 25E:31 Compensation paid in closely held corporations
- § 25E:32 Treatment of amounts determined not to be reasonable

V. COMMISSIONS AND GOLDEN PARACHUTE PAYMENTS

- § 25E:33 Commissions
- § 25E:34 Golden parachute payments
- § 25E:35 Amounts exempt from the definition of parachute payment
- § 25E:36 Identifying a change in control or ownership
- § 25E:37 Computation of amount disallowed deduction
- § 25E:38 Excise tax on receipt of greenmail

VI. PAYMENTS TO BENEFIT PLANS

- § 25E:39 Deductions for payments to employee benefit plans general
- § 25E:39.50 Welfare benefit plans and funds
- § 25E:40 Contributions must be ordinary and necessary business expenses

VII. BOOKKEEPING ENTRIES AND BURDEN OF PROOF

- § 25E:41 Effect of formal designation including bookkeeping entries
- § 25E:42 Burden of proof

CHAPTER 25F. TRANSPORTATION EXPENSES

I. INTRODUCTION

- § 25F:1 Overview
- § 25F:2 Legislative history

II. BASIC CONCEPTS

- § 25F:3 Transportation expenses defined

TABLE OF CONTENTS

- § 25F:4 —Commuting expenses distinguished
- § 25F:5 Ordinary and necessary business expenses
- § 25F:6 No deduction for qualified transportation fringe benefits, including employee parking
- § 25F:7 Prior Law: the 2% floor and 3% ceiling on itemized deductions

III. DEDUCTIONS FOR LISTED PROPERTY INCLUDING VEHICLES

- § 25F:8 Deduction amount: deductible expenses and limitations, generally
- § 25F:9 Substantiating deductible expenses for listed property
- § 25F:10 Listed property definition and limitations
- § 25F:11 Apportionment: business versus personal use
- § 25F:12 Standard mileage rate
- § 25F:13 —Parking and tolls not included
- § 25F:14 Actual expenses and substantiation requirements
- § 25F:15 —Simplified substantiation: representative sampling
- § 25F:16 —Exceptions
- § 25F:17 Depreciation and “luxury” vehicle limits
- § 25F:18 Section 179 expensing
- § 25F:19 Trade-ins (like kind exchanges)
- § 25F:20 Leased luxury vehicles
- § 25F:21 Leased listed property other than vehicles
- § 25F:22 Employee deduction for use of employee-owned property
- § 25F:23 Employer deduction for provision of property to employee

IV. EMPLOYEE USE OF EMPLOYER-PROVIDED VEHICLES (FRINGE BENEFITS)

- § 25F:24 Use of employer’s automobile as a fringe benefit
- § 25F:25 Valuation of personal use of employer-provided vehicles
- § 25F:26 —Lease valuation rule
- § 25F:27 —Cents-per-mile valuation rule
- § 25F:28 —Commuting valuation rule
- § 25F:29 Flights on employer-provided aircraft
- § 25F:30 —SIFL mileage rates for non-commercial flights
- § 25F:31 —Conversion of business frequent flyer miles to personal use

V. REIMBURSEMENT ARRANGEMENTS

- § 25F:32 Tax consequences of reimbursement arrangements

- § 25F:33 Substantiation by employees
- § 25F:34 Fixed mileage rate allowance
- § 25F:35 —Returning amounts in excess of expenses
- § 25F:36 —Reasonable period
- § 25F:37 Simplified substantiation: fixed and variable rate allowance (FAVR)
- § 25F:38 Simplified substantiation: written policy statement
- § 25F:39 Vehicle considered exclusively for personal use
- § 25F:40 Accountable versus nonaccountable plans
- § 25F:41 Withholding and maintaining records

CHAPTER 25G. BUSINESS USE OF RESIDENCES

I. INTRODUCTION

- § 25G:1 Overview
- § 25G:2 Legislative history

II. BUSINESS OR RENTAL USE OF HOME FOR WHICH DEDUCTIONS ARE ALLOWED

A. GENERALLY

- § 25G:3 Uses of home for which deductions are allowed

B. BUSINESS USE OF HOME

- § 25G:4 Required trade or business
- § 25G:5 Regular use
- § 25G:6 —Storage of inventory or samples
- § 25G:7 —Day care services
- § 25G:8 Exclusive use
- § 25G:9 —Principal place of business
- § 25G:10 —Place to meet patients, clients or customers
- § 25G:11 —Separate structures
- § 25G:12 Prior law: Convenience of employer
- § 25G:13 Rental to employer

C. RENTAL USE OF HOME AND VACATION HOME

- § 25G:14 Rental use of homes
- § 25G:15 Section 280A(e) allocation of expenses for rental dwelling unit used as a residence
- § 25G:16 Section 280A(c)(5) gross income limitation applied to rental expenses

TABLE OF CONTENTS

III. DEDUCTION AMOUNT

- § 25G:17 Deduction limitations
- § 25G:18 Gross income
- § 25G:19 Expenses with respect to a dwelling unit
- § 25G:20 Order of deductions
- § 25G:21 Portion of home attributable to business use

IV. PROPERTY AND USE TRIGGERING SECTION 280A

- § 25G:22 Dwelling unit
- § 25G:23 —Rental pool
- § 25G:24 Residence
- § 25G:25 Personal use of a residence
- § 25G:26 —Attribution rules
- § 25G:27 —Exceptions to attribution rules
- § 25G:28 Repair or maintenance is not personal use

V. OTHER ISSUES

- § 25G:29 Coordination with Section 183 “hobby losses”
- § 25G:30 Coordination with Section 469 passive activity loss rule
- § 25G:31 Coordination with Section 465 at-risk rule
- § 25G:32 Coordination with Section 162 travel expenses
- § 25G:33 Recordkeeping
- § 25G:34 Sale of property after Section 280A deduction taken
- § 25G:35 Optional safe harbor amount available beginning in 2013

CHAPTER 25H. SPECIAL AREAS OF DEDUCTION

I. INTRODUCTION

- § 25H:1 Overview
- § 25H:2 Historical development

II. PROFESSIONAL EXPENSES

- § 25H:3 Professional expenses generally
- § 25H:4 Referral fees
- § 25H:5 Clothing
- § 25H:6 Clothing—Protective clothing and uniforms
- § 25H:7 Equipment
- § 25H:8 Educators’ expense deduction (teachers’ supplies)

III. EDUCATIONAL EXPENSES

- § 25H:9 Deduction for tuition and related expenses (not available after 2020)
- § 25H:10 Work-related educational expenses
- § 25H:11 Work-related educational expenses—When expenses are not deductible
- § 25H:12 Work-related educational expenses—Education required by employer
- § 25H:13 Work-related educational expenses—Deductible expenses (including transportation and travel expenses)
- § 25H:14 Work-related educational expenses—Temporary absence from work
- § 25H:15 Work-related educational expenses—Postgraduate education
- § 25H:16 Work-related educational expenses—Attorneys' education expenses
- § 25H:17 Work-related educational expenses—Teachers and other educators
- § 25H:18 Treatment by employee of reimbursed expenses

IV. INSURANCE PREMIUMS

- § 25H:19 Insurance defined
- § 25H:20 Employer deduction for health insurance premiums
- § 25H:21 Self-employed deduction for health insurance premiums
- § 25H:22 Long-term care insurance
- § 25H:23 Casualty insurance
- § 25H:24 Casualty insurance—Self insurance
- § 25H:25 Casualty insurance—Payments to captive insurance companies
- § 25H:26 Life insurance
- § 25H:27 Insurance of bank deposits

V. PAYMENTS CONTRARY TO PUBLIC POLICY

- § 25H:28 Illegal payments to government officials or employees
- § 25H:29 Illegal payments to persons other than government officials or employees
- § 25H:30 Kickbacks, rebates, and bribes under Medicare and Medicaid
- § 25H:31 Fines and penalties paid to government
- § 25H:32 Treble damage payments under antitrust laws
- § 25H:33 Illegal drug sales
- § 25H:34 Lobbying expenses

TABLE OF CONTENTS

- § 25H:35 Lobbying expenses—Allocation between lobbying and other expenses
- § 25H:36 Indirect contributions to political parties

VI. FARMING EXPENSES

- § 25H:37 Farming expenses generally
- § 25H:38 Prepaid farming supplies
- § 25H:39 Farm labor
- § 25H:40 Repairs and maintenance of farm property
- § 25H:41 Interest
- § 25H:42 Fertilizer
- § 25H:43 Taxes
- § 25H:44 Insurance
- § 25H:45 Rent or lease payments

VII. MISCELLANEOUS EXPENSES

- § 25H:46 Materials and supplies
- § 25H:47 Expenses relating to tax-exempt income
- § 25H:48 Expenses relating to tax-exempt income—Financial institutions
- § 25H:49 Interest paid on deposits held by financial institutions
- § 25H:50 Reserve funds
- § 25H:51 Reserve funds—Nuclear decommissioning reserve funds
- § 25H:52 Trade discounts and rebates
- § 25H:53 Employer contributions to unemployment funds

CHAPTER 26. DEDUCTION OF INTEREST

I. INTRODUCTION

- § 26:1 Overview
- § 26:2 Legislative History

II. NATURE OF INTEREST AND INDEBTEDNESS

A. NATURE OF INTEREST

- § 26:3 What Constitutes Interest
- § 26:4 What Constitutes Indebtedness
- § 26:5 Other Considerations Concerning Existence of Debt
- § 26:6 Bank Deposits
- § 26:7 New Loan To Pay Principal and Interest

B. NECESSITY OF LIABILITY

- § 26:8 Liability of Taxpayer

- § 26:9 Examples of Deductible Interest
- § 26:10 Examples of Nondeductible Interest

C. SHAM TRANSACTIONS

- § 26:11 Sham Transactions and Transactions Lacking Economic Substance
- § 26:12 Examples of Legitimate and Sham Transactions
- § 26:13 Treatment of Nonrecourse Loans
- § 26:14 Valuation of Nonrecourse Loans

III. DEBT DISTINGUISHED FROM EQUITY

A. GENERAL

- § 26:15 Debt Versus Equity Introduction
- § 26:16 General Characteristics of Debt and Equity
- § 26:17 Supreme Court Pronouncements on Debt-Equity Issue
- § 26:18 Debt-Equity Guidelines—Section 385 and Case Law
- § 26:19 Advances Treated as Debt or Equity
- § 26:20 Hybrid Securities

B. FACTORS

1. General

- § 26:21 Factors Distinguishing Debt from Equity
- § 26:22 Rejected Criteria

2. Specific Factors

- § 26:23 Intent
- § 26:24 Business Purpose
- § 26:25 Fixed Maturity Date
- § 26:26 Shareholder Rights
- § 26:27 Preferred Payment Position at Maturity
- § 26:28 Fixed Rate and Payment Provisions
- § 26:29 Redemption or Retirement Provisions
- § 26:30 Transferability and Convertibility
- § 26:31 Likelihood of Repayment

C. THIN CAPITALIZATION

- § 26:32 Thin Capitalization
- § 26:33 Thin Capitalization Determination for New Businesses
- § 26:34 Risk of Advance

TABLE OF CONTENTS

IV. QUALIFIED RESIDENCE INTEREST

A. INTRODUCTION

- § 26:35 Qualified residence interest—Introduction
- § 26:36 Qualified Residence Interest Defined
- § 26:37 Qualified Residence

B. RESIDENCE REQUIREMENT

- § 26:38 Second Residence
- § 26:39 Cooperative Housing Corporation Stock
- § 26:40 Time-Sharing Arrangements

C. INDEBTEDNESS REQUIREMENT

- § 26:41 Acquisition Indebtedness
- § 26:42 Accrued Interest
- § 26:43 Home Equity Indebtedness
- § 26:43.50 Residence interest if debt in excess of limitations

D. Secured Indebtedness

- § 26:44 Pre-October 13, 1987, Indebtedness
- § 26:45 Debts Secured by Qualified Residence
- § 26:46 Determination of Qualified Residence Interest When Secured Debt Exceeds Adjusted Purchase Price
- § 26:47 Average Balance

V. PERSONAL INTEREST AND INVESTMENT INTEREST

A. PERSONAL INTEREST

- § 26:48 Disallowance of Personal Interest
- § 26:49 Qualified Student Loan Interest

B. INVESTMENT INTEREST

- § 26:50 Investment Interest Limitation
- § 26:51 Definitions Relating to Investment Interest Limitation
- § 26:52 Other Rules Regarding Investment Interest

C. PRIOR LAW

- § 26:53 Phase-In of Disallowance (Prior Law)
- § 26:54 —Qualified Residence Interest
- § 26:55 Investment Interest Limitation (Prior Law)

VI. CORPORATE ACQUISITION INDEBTEDNESS

A. LIMITATION ON DEDUCTION

- § 26:56 Corporate Acquisition Indebtedness
- § 26:57 Corporate Acquisition Test
- § 26:58 Subordination Test
- § 26:59 Convertibility Test
- § 26:60 Debt-Equity Test
- § 26:61 Projected Earnings Test
- § 26:62 Obligations Not Subject to Corporate Acquisition Indebtedness Rules

B. SPECIAL RULES AND DEFINITIONS

- § 26:63 Rules Regarding Limitation on Corporate Acquisition Indebtedness
- § 26:64 Affiliated Groups
- § 26:65 Definitions Relating to Treatment of Affiliated Groups
- § 26:66 Special Rules for Lending Institutions
- § 26:67 Acquisitions of Foreign Corporations
- § 26:68 Statement Attached to Return (Prior Law)

VII. TAX-EXEMPT OBLIGATIONS

A. DENIAL OF INTEREST DEDUCTION

- § 26:69 Interest on Wholly Owned Tax-Exempt Obligations
- § 26:70 Temporary Investment in Tax-Exempt Obligations
- § 26:71 Financial Institutions

B. SERVICE GUIDELINES

- § 26:72 Service Guidelines—Introduction
- § 26:73 Guidelines for Individuals
- § 26:74 Guidelines for Partnerships
- § 26:75 Guidelines for Corporations
- § 26:76 Guidelines for Dealers in Tax-Exempt Obligations
- § 26:77 Two Percent De Minimis Rule
- § 26:78 Direct Evidence
- § 26:79 Circumstantial Evidence

VIII. LIMITATION FOR EARNINGS STRIPPING

A. DENIAL OF INTEREST DEDUCTION

- § 26:80 Limitation on the Deduction of Business Interest
- § 26:81 Debt to Equity Ratio (Prior Law)
- § 26:82 to 26:86 *[Deleted]*

TABLE OF CONTENTS

§ 26:87 Interest Not Subject to Tax (Prior Law)

B. SPECIAL RULES

§ 26:88 Affiliated Groups (Prior Law)

§ 26:89 Limitation on Carryforward of Tax Attributes (Prior Law)

§ 26:90 Relationship to Other Provisions Affecting Deductibility of Interest (Prior Law)

§ 26:91 Application of Earnings Stripping Rules to Foreign Corporations (Prior Law)

IX. OTHER RULES REGARDING DEDUCTION OF INTEREST

A. CAPITALIZATION OF INTEREST

§ 26:92 Capitalization of Interest

B. INTEREST CHARGE SEPARATELY STATED

§ 26:93 Installment Purchases Where Interest Charge Is Not Separately Stated

C. ORIGINAL ISSUE DISCOUNT

§ 26:94 Original Issue Discount

§ 26:95 Deduction of Original Issue Discount

§ 26:96 Exceptions and Special Rules

D. LIFE INSURANCE ENDOWMENTS OR ANNUITY CONTRACTS

§ 26:97 Interest on Certain Life Insurance, Endowment, or Annuity Contracts

§ 26:98 Single Premium Life Insurance Contracts

§ 26:99 Systematic Borrowing

§ 26:100 Borrowings on Policies Covering Officers, Employees, and Those With Financial Interests

E. COOPERATIVE HOUSING CORPORATIONS

§ 26:101 Interest Paid by Cooperative Housing Corporations

§ 26:102 Timing

§ 26:103 Proportionate Share

§ 26:104 Qualifying as Cooperative Housing Corporation

§ 26:105 Single Class of Stock

§ 26:106 Right of Occupancy

§ 26:107 Distributions

- § 26:108 Gross Income
- § 26:109 Multiple Shareholder Requirement
- § 26:110 Tenant-Stockholder
- § 26:110.50 Corporate Debt Payable in Stock

X. OTHER TYPES OF INTEREST PAYMENTS

A. TAXES

- § 26:111 Interest on Taxes and Penalties

B. POINTS AND REAL ESTATE CHARGES

- § 26:112 Points
- § 26:113 Points on Refinancing of Loan
- § 26:114 Other Real Estate Charges

C. OBLIGATIONS NOT IN REGISTERED FORM

- § 26:115 Certain Obligations Not In Registered Form
- § 26:116 Obligations Issued to Foreign Persons
- § 26:117 Requirements To Qualify for Foreign Exception (Debt Issued Before March 19, 2012)
- § 26:118 Requirements for Post-September 7, 1990 and Pre-March 19, 2012 Obligations

XI. ALLOCATION OF INTEREST AND DEBT

A. ALLOCATION RULES

- § 26:119 Allocation Between Personal Interest, Investment Interest, and Passive Losses
- § 26:120 Compound Interest
- § 26:121 Debt Used To Pay Interest
- § 26:122 Debt Used To Pay Borrowing Costs
- § 26:123 Debt Repayment
- § 26:124 Debt Refinancing
- § 26:125 Debt Reallocation
- § 26:126 Treatment of Pass-Through Entities

B. DEPOSITS TO ACCOUNT

- § 26:127 Debt Proceeds Deposited in Borrower's Account
- § 26:128 Nonloan Proceeds in Account
- § 26:129 Additional Ordering Rules
- § 26:130 Optional Method for Reallocation
- § 26:131 Debt Proceeds Received in Cash

C. COORDINATION WITH OTHER PROVISIONS

- § 26:132 Coordination With Capitalization Provisions

TABLE OF CONTENTS

- § 26:133 Coordination With Disallowance Provisions
- § 26:134 Coordination With Deferral Provisions
- § 26:135 Other Coordinating Provisions

D. TRANSITIONAL RULES

- § 26:136 Transitional Rules

CHAPTER 27. DEDUCTION OF TAXES

I. INTRODUCTION

- § 27:1 Overview
- § 27:2 Historical development

II. DEFINITION OF TAXES

- § 27:3 Taxes defined
- § 27:4 Penalties and interest on taxes

III. TAXES EXPRESSLY DEDUCTIBLE

- § 27:5 Taxes expressly deductible, generally
- § 27:6 State, local, and foreign real property taxes
- § 27:7 State and local personal property taxes
- § 27:8 State and local income, war profits, and excess profits taxes
- § 27:9 State and local sales taxes
- § 27:10 Foreign income, war profits, and excess profits taxes
- § 27:11 Generation-skipping tax
- § 27:12 Environmental tax *[Deleted]*
- § 27:13 Self-employment taxes
- § 27:14 Qualified motor vehicle taxes (2009) *[Deleted]*

IV. TAXES DEDUCTIBLE AS BUSINESS EXPENSES IF INCURRED IN PROFIT-SEEKING ACTIVITY

- § 27:15 Taxes deductible as business expenses if incurred in profit-seeking activity, generally
- § 27:16 Social security, unemployment and state family and medical leave taxes

V. TAXES NONDEDUCTIBLE REGARDLESS OF ACTIVITY IN WHICH INCURRED

- § 27:17 Taxes nondeductible regardless of activity in which incurred, generally
- § 27:18 Federal income, war profits, and excess profits taxes
- § 27:19 Estate, inheritance, legacy, succession, and gift taxes

§ 27:20 Foreign income, war profits, and excess profits taxes

VI. TAXES THAT MUST BE CAPITALIZED

A. GENERAL

§ 27:21 Capitalization of taxes paid or accrued in acquisition or disposition of property

§ 27:22 Transfer taxes

§ 27:23 Election to capitalize certain taxes

B. SPECIAL ASSESSMENTS

§ 27:24 Taxes assessed against local benefits

§ 27:25 Examples of special assessments

VII. YEAR OF DEDUCTION

A. IN GENERAL

§ 27:26 Year of deduction, generally

B. CASH BASIS TAXPAYERS

§ 27:27 Cash basis taxpayers

C. ACCRUAL BASIS TAXPAYERS

§ 27:28 Accrual basis taxpayers

§ 27:29 All events test

§ 27:30 Economic performance test

§ 27:31 Accrual of state income taxes

§ 27:32 Accrual of property taxes

§ 27:33 Ratable accrual of real property taxes

§ 27:34 Accrual of state franchise and capital stock taxes

§ 27:35 Accrual of foreign taxes

§ 27:36 Limitation on acceleration of accrual of taxes

§ 27:37 Example of limitation on acceleration of accrual of taxes

§ 27:38 Amendment of tax statutes

D. CONTESTED TAXES

§ 27:39 Contested taxes

§ 27:40 Effect of refund of contested taxes

§ 27:41 Unconstitutional taxes

VIII. TAXPAYERS ENTITLED TO DEDUCTION

A. GENERAL

§ 27:42 Taxpayers entitled to deduction

TABLE OF CONTENTS

- § 27:43 Income taxes of spouses and other joint owners of property
- § 27:44 Taxes paid by shareholders for corporation
- § 27:45 Taxes paid by corporation for shareholders

B. REAL PROPERTY TAXES

1. General

- § 27:46 Real property taxes
- § 27:47 Real property taxes of spouses
- § 27:48 Real property taxes paid by beneficial interest holders and tenants in common

2. Apportionment on Transfer of Property

- § 27:49 Apportionment of real property taxes between seller and purchaser
- § 27:50 Apportionment on other transfers
- § 27:51 Year of deduction of apportioned real estate taxes: Cash basis taxpayers
- § 27:52 Year of deduction of apportioned real estate taxes: Accrual basis taxpayers
- § 27:53 Successive sales and excess deductions
- § 27:54 Delinquent taxes

CHAPTER 28. DEDUCTION OF LOSSES

I. INTRODUCTION

- § 28:1 Overview
- § 28:2 Historical development

II. TAXPAYERS ENTITLED TO LOSS DEDUCTIONS

- § 28:3 Property interest requirement
- § 28:4 Burden of proof

III. LOSS REQUIREMENT

A. ACTUAL LOSSES

- § 28:5 Actual loss requirement
- § 28:6 Losses in excess of basis
- § 28:7 Anticipated but unrealized losses
- § 28:8 Losses from nonobligatory payments
- § 28:9 Losses from sham transactions
- § 28:10 Tests applicable for determining sham transactions
- § 28:11 Evidence of sham transactions
- § 28:12 Wash sales of stocks or securities

- § 28:13 Other sales with reacquisition rights
- § 28:14 Sale-Leaseback transactions
- § 28:15 Purchase-Leaseback transactions
- § 28:16 Transactions involving insurance policies
- § 28:17 Property seized or expropriated by foreign governments

B. CLOSED AND COMPLETED TRANSACTION REQUIREMENT

- § 28:18 Nature of allowable losses
- § 28:19 Worthlessness
- § 28:20 Worthlessness of special use property
- § 28:21 Partial reduction of value
- § 28:22 Disruption of income activities
- § 28:23 Transactions controlled by taxpayers
- § 28:24 Events after a taxpayer's death

C. IDENTIFIABLE EVENT REQUIREMENT

- § 28:25 Identifiable event requirement
- § 28:26 Examples of identifiable events
- § 28:27 Corporate liquidation and other acts as identifiable events
- § 28:28 Bankruptcy and receivership as identifiable event

D. EFFECT OF AVAILABLE INSURANCE OR COMPENSATION

- § 28:29 General principles
- § 28:30 Adjustments to basis
- § 28:31 Recovery by insurance or otherwise
- § 28:32 Loss subject to partial insurance coverage or reimbursement
- § 28:33 Prospect of recovery
- § 28:34 Obligation to pursue recovery
- § 28:35 Effect of litigation on prospect of recovery
- § 28:36 Potential liability for liquidated damages
- § 28:37 Unexpected recoveries

E. RELATED-PARTY TRANSACTIONS

- § 28:38 General principles
- § 28:39 Effect of indirect sales and exchanges
- § 28:40 Effect of subsequent sales and exchanges
- § 28:41 Related parties defined
- § 28:42 Losses from transfers between family members

TABLE OF CONTENTS

- § 28:43 Losses from transfers between former spouses
- § 28:44 Losses from transfers between corporations and majority stockholders
- § 28:45 Losses from transfers between commonly controlled corporations
- § 28:46 Losses between commonly controlled corporations and partnerships
- § 28:47 Losses from transfers between Section 501 organizations and controlling persons
- § 28:48 Losses from transfers between trust grantors and fiduciaries
- § 28:49 Losses from transfers between estate executors and beneficiaries
- § 28:50 Special rules applicable to controlled groups

IV. TAX ITEMS SUBJECT TO ADDITIONAL RULES

A. TAX ITEMS SUBJECT TO ADDITIONAL RULES

- § 28:51 General principles

B. GENERAL EXPENDITURES

- § 28:52 Business expenditures
- § 28:53 Personal expenditures
- § 28:54 Payments made without legal obligation

C. CAPITAL EXPENDITURES

- § 28:55 Losses distinguished from capital expenditures
- § 28:56 Expenditures for improvements
- § 28:57 Surrender of stock to corporation
- § 28:58 Legal expenses
- § 28:59 Assumption of liabilities
- § 28:60 Shareholder transfers in connection with employee services

V. TRADE, BUSINESS, AND NONPROFIT LOSSES

- § 28:61 Trade or business losses
- § 28:62 Evidence to show existence of trade or business
- § 28:63 Utilization of corporate entities

VI. LOSSES FROM CLAIMED FOR-PROFIT ACTIVITIES

A. LOSSES FROM ACTIVITIES NOT ENGAGED IN FOR PROFIT

§ 28:64 General principles

B. DEDUCTION AMOUNT

§ 28:65 Calculation of deduction amount

§ 28:66 Effect of capital gains on deduction calculation

§ 28:67 Effect of multiple undertakings

§ 28:68 Allocations to separate activities

C. EVIDENCE REGARDING TAXPAYER'S MOTIVE

§ 28:69 General principles

§ 28:70 Existence of economic substance

§ 28:71 Manner of carrying on activity

§ 28:72 Expertise of taxpayer or advisors

§ 28:73 Time and effort expended by taxpayer

§ 28:74 Expectation of property appreciation

§ 28:75 Taxpayer's success in other activities

§ 28:76 History of income and losses

§ 28:77 Amount of occasional profits

§ 28:78 Taxpayer's financial status

§ 28:79 Elements of personal pleasure or recreation

D. FOR-PROFIT DETERMINATIONS

§ 28:80 Losses from sales of residential property

§ 28:81 Losses from annuity contracts

§ 28:82 Losses from early withdrawal penalties

§ 28:83 Examples of transactions entered into for profit

§ 28:84 Example of transactions not entered into for profit

E. MOTIVES OF ARTIFICIAL ENTITIES

§ 28:85 S corporations

§ 28:86 Partnerships

F. STATUTORY PRESUMPTION OF PROFIT MOTIVE

§ 28:87 Effect of profit in other taxable years (three-year safe harbor)

§ 28:88 Election to postpone for-profit determination

TABLE OF CONTENTS

VII. CASUALTY LOSSES

§ 28:89 Casualty losses, generally

A. AMOUNT OF DEDUCTION

- § 28:90 Casualty loss of business or investment property
- § 28:91 Amount of deduction for personal use property of individuals
- § 28:92 Qualified disaster losses (declared before February 10, 2025)
- § 28:93 Year of deduction
- § 28:94 Establishing amount of loss; decline in value
- § 28:95 Establishing amount of loss; repair costs
- § 28:96 Establishing amount of loss; safe harbors for personal-use residential real property in federally declared disasters
- § 28:97 Effect of insurance or reimbursement casualty losses
- § 28:98 Casualties interfering with unrealized property rights
- § 28:99 Deduction disallowed as against public policy
- § 28:100 Taxpayer's burden of proof

B. CASUALTY DEFINED

- § 28:101 General requirements for a casualty
- § 28:102 Losses from declared disasters
- § 28:103 Effect of governmentally ordered demolition or relocation
- § 28:104 Casualty loss: storms, floods, and other water damage
- § 28:105 Casualty loss: negligent acts
- § 28:106 Casualty loss: drought
- § 28:107 Casualty loss: insects and animals
- § 28:108 Casualty loss: "other casualty"
- § 28:109 Election to treat certain obligations as losses
- § 28:110 Land and crops loss

C. DEDUCTION OF CASUALTY LOSSES

- § 28:111 Casualty loss of personal use property
- § 28:112 Adjustments for losses involving personal use property
- § 28:113 Effect of buyer resistance; decline in property value
- § 28:114 Effect of other ownership interests

D. YEAR OF DEDUCTION

- § 28:115 Effect of unknown extent of loss

VIII. LOSSES RELATED TO BUILDING MODIFICATIONS

- § 28:116 Demolitions of structures
- § 28:117 “Structures” defined for Section 280b purposes
- § 28:118 Safe harbors for losses from structural modifications
- § 28:119 Demolitions in Presidentially declared disaster areas
- § 28:120 GO zone elections
- § 28:121 Losses sustained prior to demolitions

IX. THEFT LOSSES

- § 28:122 General principles
- § 28:123 Property ownership requirement
- § 28:124 Events qualifying as “thefts”
- § 28:125 Events not qualifying as “thefts”
- § 28:126 Effect of close or family relationships
- § 28:127 Adequate evidence requirement
- § 28:128 Amount of deduction
- § 28:129 Year of deduction
- § 28:130 Effect of recovery or compensation

X. ABANDONMENT LOSSES

- § 28:131 General principles
- § 28:132 Abandonment defined
- § 28:133 Calculation of abandonment-loss deduction
- § 28:134 Examples of abandonment actions
- § 28:135 Effect of retention of title
- § 28:136 Abandonment of corporate existence or restructuring
- § 28:137 Abandonment of economic opportunities
- § 28:138 Abandonment of intangible property
- § 28:139 Cancellation of leases and contracts

XI. LOSSES FROM SECURITIES

A. WORTHLESS SECURITIES

- § 28:140 General principles
- § 28:141 Security defined
- § 28:142 Substantiation of worthlessness
- § 28:143 Stock without current liquidation value
- § 28:144 Stock without potential earning power
- § 28:145 Effect of stock sales
- § 28:146 Effect of other acts by shareholders
- § 28:147 Identifiable events indicating worthlessness
- § 28:148 Worthless securities of affiliated corporations

TABLE OF CONTENTS

B. REGISTRATION-REQUIRED OBLIGATIONS

- § 28:149 Losses from registration-required obligations
- § 28:150 Registration-required obligation exceptions

XII. GAMBLING LOSSES

- § 28:151 General principles
- § 28:152 Professional gambling activities
- § 28:153 Time for claiming gambling loss deductions
- § 28:154 Substantiation of gambling losses

XIII. LOSSES FROM ILLEGAL TRANSACTIONS

- § 28:155 General principles
- § 28:156 Losses related to active participation in criminal conspiracies
- § 28:157 Losses from illegal gambling activities
- § 28:158 Losses from illegal bribes, kickbacks, and similar payments
- § 28:159 Losses from payments of fines and penalties
- § 28:160 Losses from arson
- § 28:161 Losses from payments of antitrust damages
- § 28:162 Losses from illegal drug trafficking

XIV. LOSSES FROM FARMING OR RANCHING

- § 28:163 General principles
- § 28:164 Losses by part-time farmers or ranchers
- § 28:165 Loss of prospective crops
- § 28:166 Livestock losses

XV. CURRENCY VALUATION LOSSES

- § 28:167 Foreign currency valuation losses
- § 28:168 Domestic currency valuation losses
- § 28:169 Limitation on loss deductions for tax-exempt use property

CHAPTER 29. DEDUCTION OF NET OPERATING LOSSES

I. INTRODUCTION

- § 29:1 Overview
- § 29:2 Legislative history
- § 29:3 Development of computation of NOLs based on 1939 Code

II. NET OPERATING LOSS DEDUCTION

- § 29:4 Net operating loss introduction
- § 29:5 Deduction of net operating loss
- § 29:6 Expiration of statute of limitations
- § 29:7 Taxpayers entitled to net operating loss deduction
- § 29:8 Law applicable to computations
- § 29:9 Computation of net operating loss deduction
- § 29:10 Example: Operation of Section 172

III. COMPUTATION OF NET OPERATING LOSS

A. CARRYBACK AND CARRYOVER

1. Loss Years

- § 29:11 Net operating loss carryovers, generally
- § 29:12 Net operating loss carryback and carryover
- § 29:13 Order of carryback or carryforward
- § 29:14 Years to which loss is carried
- § 29:15 Election to forego carryback of loss
- § 29:16 Prior Law: Taxable income for years subject to alternative tax
- § 29:17 Percentage limitations on certain deductions
- § 29:18 Short taxable year
- § 29:19 Electing five-year carryback for 2018, 2019 and 2020 NOLs
- § 29:20 NOL carryback in deemed liquidation

2. Special Loss Types and Taxing Situations

- § 29:21 Bankruptcy
- § 29:22 NOLs under the alternative minimum tax
- § 29:23 Prior Law: Specified liability loss
- § 29:24 Prior Law: Product liability losses
- § 29:25 Farming losses and insurance company losses
- § 29:26 Cascading carrybacks (interaction with foreign tax credit rules)

B. CORPORATE TAXPAYERS

1. Ordinary and Capital Losses

a. General

- § 29:27 Net operating loss of corporation
- § 29:28 Effect of cessation of trade or business
- § 29:29 Examples: Computation of corporate NOLs
- § 29:30 Effect of treatment of capital losses under Section 1212

b. Losses of Consolidated Groups

- § 29:31 Affiliated group of corporations

TABLE OF CONTENTS

§ 29:32	Prior Law: Specified liability loss of a consolidated group
§ 29:33	Limitation on net operating losses that are treated as dual consolidated losses
§ 29:34	Application of dual consolidated losses
	2. Special Corporations
§ 29:35	Real estate investment trusts
§ 29:36	Personal holding companies
§ 29:37	S corporations
	3. Corporate Equity Reduction Transaction
§ 29:38	Prior Law: Limitation on carrybacks of interest deductions of corporate equity reduction transactions
§ 29:39	Prior Law: Corporate equity reduction transaction defined
§ 29:40	Prior Law: Net operating loss carryback limitation for corporate equity reduction transaction
§ 29:41	Prior Law: Method of allocation for corporate equity reduction transactions
§ 29:42	Prior Law: Examples of corporate equity reduction transactions
	C. NONCORPORATE TAXPAYERS
	1. Ordinary and Capital Losses
	a. Noncorporate Taxpayers and Nonbusiness Deductions
§ 29:43	Net operating loss of noncorporate taxpayers
§ 29:44	Continuation of other modifications
§ 29:45	Nonbusiness deductions
§ 29:46	Capital gains and losses
§ 29:47	Casualty and theft losses
§ 29:48	Retirement contributions
	b. Capital Losses
§ 29:49	Small business stock
§ 29:50	Small business investment stock and Section 1244 stock
§ 29:51	Deductions for capital gains and losses
	2. Trade or Business and Investment Activities
	a. Taxpayers Engaged in a Trade or Business
§ 29:52	Deductions attributable to noncorporate taxpayer's trade or business
§ 29:53	Taxes and litigation expenses
§ 29:54	Deductions

- § 29:55 Identification of trade or business
- § 29:56 Corporation's business separate from that of its shareholders
- § 29:57 Attributability to taxpayer's trade or business
 - b. Taxpayers Engaged in Investment Activities
- § 29:58 Losses in connection with investment activities
- § 29:59 Investments benefiting and promoting principal business
- § 29:60 Investment in rental properties
- 3. Individual Taxpayers
 - a. Joint and Individual Returns
- § 29:61 Joint returns filed in all years
- § 29:62 NOL incurred in separate return year and carried to joint return year
- § 29:63 NOL in joint return year to separate return year
 - b. Special Situations
- § 29:64 Divorced taxpayer
- § 29:65 Death of one spouse
- § 29:66 Community property state
- 4. Trusts and Estates
- § 29:67 Trusts and estates
- 5. Compliance, Reporting, and Audit Issues
- § 29:68 Statute of limitations, interest, burden of proof, and other items
- § 29:69 Statute of limitations
- § 29:70 Interest on NOL refunds
- § 29:71 Examination of closed years in determination of NOL deduction
- § 29:72 Effect of closing agreement
- § 29:73 Requirements as to filing returns
- § 29:74 Burden of proof

IV. CORPORATE ACQUISITIONS; SECTIONS 381 AND 382

A. COMPUTATION OF NET OPERATING LOSSES IN ACQUISITIONS

- § 29:75 Carryover of net operating losses by successor corporations; Introduction

TABLE OF CONTENTS

- § 29:76 Transactions subject to Section 381 and 382 limitations
- § 29:77 One acquiring corporation
- § 29:78 Percentage of target acquired in acquisition
- § 29:79 Taxable year
- § 29:80 No carryback of postmerger losses
- § 29:81 Aggregate net operating loss carryover
- § 29:82 Interest affected by NOLs

B. SECTION 382 LIMITATIONS

1. General

- § 29:83 Section 382, generally

2. Section 382 Limitations

- § 29:84 Operation of Section 382
- § 29:85 Loss corporations
- § 29:86 Postchange year
- § 29:87 Change date
- § 29:88 Consistency rules
- § 29:89 Interaction with consolidated return rules
- § 29:90 Single entity approach
- § 29:91 Loss groups and subloss groups
- § 29:92 Application of Section 382 limitation on loss group

3. Valuation of Loss Corporation

- § 29:93 Value of old loss corporation
- § 29:94 Valuation of old loss corporation in bankruptcy
- § 29:95 Election for restoring value to another component member
- § 29:96 Reduction of loss corporation's value for redemptions
- § 29:97 Reduction of loss corporation's value for capital contributions
- § 29:98 Reduction of loss corporation's value for substantial nonbusiness assets
- § 29:99 Long-term tax-exempt rate

4. Ownership Change

- § 29:100 Ownership change
- § 29:101 Testing date and period
- § 29:102 Meaning of ownership change
- § 29:103 Percentage of ownership change
- § 29:104 Five-percent shareholder
- § 29:105 Determining what stock is included in measuring ownership change
- § 29:106 Ownership interests not constituting stock as stock

§ 29:107 Ownership change as result of multiple transactions

5. Ownership and Equity Shifts

§ 29:108 Owner shift

§ 29:109 Examples of owner shifts

§ 29:110 Equity structure shift

§ 29:111 Examples of equity structure shifts

§ 29:112 Restricting transfers

C. BUILT-IN GAINS AND LOSSES

1. Net Unrealized Built-in Gain and Loss

§ 29:113 Net unrealized built-in gain or loss, generally

§ 29:114 Safe harbor approaches for net unrealized built-in gain and loss

§ 29:115 Consequences of net unrealized built-in gain and loss

§ 29:116 Net unrealized built-in gain or loss in stock acquisitions and redemptions

§ 29:117 De minimis threshold requirement

2. Recognized Built-in Gain and Loss

§ 29:118 Recognized built-in gain, generally

§ 29:119 Recognized built-in loss, generally

§ 29:120 Safe harbor approaches for recognized built-in gains and losses

§ 29:121 Limitation on use of preacquisition losses to offset built-in gains

§ 29:122 Recognized gain and losses under installment obligations

D. ENTERPRISE AND OWNERSHIP RULES

1. Continuity of Business Enterprise

§ 29:123 Continuity of business enterprise requirements

2. Attribution Rules

§ 29:124 Attribution, aggregation, and segregation rules, generally

§ 29:125 Attribution rules

§ 29:126 Attribution from entities

§ 29:127 Option attribution rules

§ 29:128 Regulations prescribed for option attribution

3. Stock Ownership and Segregation

§ 29:129 Stock acquired by reason of death, gift, divorce, or separation

TABLE OF CONTENTS

- § 29:130 Aggregation rules
- § 29:131 Segregation rules
- § 29:132 Exceptions to the Segregation Rules
- § 29:133 Holding companies

E. SECTION 269 AND SECTION 383 LIMITATIONS

1. Bankruptcy and Insolvency

- § 29:134 Bankruptcy, Section 269, and Section 383, generally
- § 29:135 Insolvency rule; Section 382(1)(5)
- § 29:136 Recalculation of NOLs due to application of Section 382(1)(5)
- § 29:137 Insolvency rule; Section 382(1)(6)
- § 29:138 Application of Section 269 to bankruptcy proceedings
- § 29:139 Limitations under Section 269 and other provisions

2. Credit Limitations

- § 29:140 Section 383
- § 29:141 —Definitions
- § 29:142 Ordering rules
- § 29:143 Section 383 credit limitations
- § 29:144 Allocation of NOLs or taxable income for change year
- § 29:145 Effective dates