

2003–2004 Edition

# International Income Taxation

## Code and Regulations

Selected Sections

*Richard Crawford Pugh*  
Coordinating Editor



**2003–2004 Edition**

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## **Code and Regulations** Selected Sections

As of June 1, 2003

*Coordinating Editor*

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## **Preface**

This volume represents an effort to collect the principal Code sections relating to the United States taxation of the income from international trade and investment, both inbound and outbound. Also included are the significant final, temporary, and proposed regulations associated with these Code sections. The volume is intended to serve as a convenient reference tool for lawyers, accountants, teachers, students, and others who work in this area. The volume reflects the state of the law and regulations as of June 1, 2003, including the Jobs and Growth Tax Relief Reconciliation Act of 2003. Suggestions from users as to additions and deletions that would increase the usefulness of the volume would be greatly appreciated.

Richard Crawford Pugh

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**June 2003**

## Contents

Internal Revenue Code, Selected Sections .....	1
Income Tax Regulations, Selected Sections .....	1001
Indexes	
Index to Code .....	2601
Index to Regulations.....	2701

# INTERNAL REVENUE CODE OF 1986

## Subtitle A—Income Taxes

### CHAPTER 1—NORMAL TAXES AND SURTAXES

#### Subchapter A—Determination of Tax Liability

#### PART I—TAX ON INDIVIDUALS

[Sec. 1]

#### SECTION 1. TAX IMPOSED.

[Sec. 1(a)]

(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

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

(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

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

[Sec. 1(b)]

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

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

[Sec. 1(c)]

(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

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

[Sec. 1(d)]

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

**Sec. 1(d)**

**If taxable income is:**

Not over \$18,450 .....	15% of taxable income.
Over \$18,450 but not over \$44,575 .....	\$2,767.50, plus 28% of the excess over \$18,450.
Over \$44,575 but not over \$70,000 .....	\$10,082.50, plus 31% of the excess over \$44,575.
Over \$70,000 but not over \$125,000 .....	\$17,964.25, plus 36% of the excess over \$70,000.
Over \$125,000 .....	\$37,764.25, plus 39.6% of the excess over \$125,000.

**The tax is:****[Sec. 1(e)]**

(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

- (1) every estate, and
- (2) every trust,

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

**If taxable income is:**

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

**The tax is:****[Sec. 1(f)]**

(f) PHASEOUT OF MARRIAGE PENALTY IN 15-PERCENT BRACKET; ADJUSTMENTS IN TAX TABLES SO THAT INFLATION WILL NOT RESULT IN TAX INCREASES.—

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

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

(A) except as provided in paragraph (8), by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table by the cost-of-living adjustment for such calendar year,

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

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

(3) COST-OF-LIVING ADJUSTMENT.—For purposes of paragraph (2), the cost-of-living adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for calendar year 1992.

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

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

(6) ROUNDING.—

(A) IN GENERAL.—If any increase determined under paragraph (2)(A), section 63(c)(4), section 68(b)(2) or section 151(d)(4) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

(B) TABLE FOR MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a married individual filing a separate return, subparagraph (A) (other than with respect to sections 63(c)(4) and 151(d)(3)(A)) shall be applied by substituting "\$25" for "\$50" each place it appears.

\* \* \*

**Sec. 1(e)**

## (8) PHASEOUT OF MARRIAGE PENALTY IN 15-PERCENT BRACKET.—

(A) IN GENERAL.—With respect to taxable years beginning after December 31, 2002, in prescribing the tables under paragraph (1)—

(i) the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (a) (and the minimum taxable income in the next higher taxable income bracket in such table) shall be the applicable percentage of the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (c) (after any other adjustment under this subsection), and

(ii) the comparable taxable income amounts in the table contained in subsection (d) shall be 1/2 of the amounts determined under clause (i).

(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

<i>For taxable years beginning in calendar year—</i>	<i>The applicable percentage is—</i>
2003 and 2004 . . . . .	200
2005 . . . . .	180
2006 . . . . .	187
2007 . . . . .	193
2008 and thereafter . . . . .	200.

\* \* \*

## [Sec. 1(h)]

## (h) MAXIMUM CAPITAL GAINS RATE.—

(1) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of—

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

(i) taxable income reduced by the net capital gain, or

(ii) the lesser of—

(I) the amount of taxable income taxed at a rate below 25 percent; or

(II) taxable income reduced by the adjusted net capital gain;

(B) 5 percent (0 percent in the case of taxable years beginning after 2007) of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of—

(i) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 25 percent, over

(ii) the taxable income reduced by the adjusted net capital gain;

(C) 15 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);

(D) 25 percent of the excess (if any) of—

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

(ii) the excess (if any) of—

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

(II) taxable income; and

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

(2) NET CAPITAL GAIN TAKEN INTO ACCOUNT AS INVESTMENT INCOME.—For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

(3) ADJUSTED NET CAPITAL GAIN.—For purposes of this subsection, the term “adjusted net capital gain” means the sum of—

(A) net capital gain (determined without regard to paragraph (11)) reduced (but not below zero) by the sum of—

(i) unrecaptured section 1250 gain, and

(ii) 28-percent rate gain, plus

(B) qualified dividend income (as defined in paragraph (11)).



(4) 28-PERCENT RATE GAIN.—For purposes of this subsection, the term “28-percent rate gain” means the excess (if any) of—

(A) the sum of—

- (i) collectibles gain; and
- (ii) section 1202 gain, over

(B) the sum of—

- (i) collectibles loss;
- (ii) the net short-term capital loss, and
- (iii) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

(5) COLLECTIBLES GAIN AND LOSS.—For purposes of this subsection—

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

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

(6) UNRECAPTURED SECTION 1250 GAIN.—For purposes of this subsection—

(A) IN GENERAL.—The term “unrecaptured section 1250 gain” means the excess (if any) of—

(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, over

(ii) the excess (if any) of—

- (I) the amount described in paragraph (5)(B); over
- (II) the amount described in paragraph (5)(A).

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

(7) SECTION 1202 GAIN.—For purposes of this subsection, the term “section 1202 gain” means the excess of—

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

(B) the gain excluded from gross income under section 1202.

(8) COORDINATION WITH RECAPTURE OF NET ORDINARY LOSSES UNDER SECTION 1231.—If any amount is treated as ordinary income under section 1231(c), such amount shall be allocated among the separate categories of net section 1231 gain (as defined in section 1231(c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

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

(10) PASS-THRU ENTITY DEFINED.—For purposes of this subsection, the term “pass-thru entity” means—

- (A) a regulated investment company;
- (B) a real estate investment trust;
- (C) an S corporation;
- (D) a partnership;
- (E) an estate or trust;
- (F) a common trust fund;

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

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

**(11) DIVIDENDS TAXED AS NET CAPITAL GAIN.—**

(A) **IN GENERAL.**—For purposes of this subsection, the term “net capital gain” means net capital gain (determined without regard to this paragraph) increased by qualified dividend income.

(B) **QUALIFIED DIVIDEND INCOME.**—For purposes of this paragraph—

(i) **IN GENERAL.**—The term “qualified dividend income” means dividends received during the taxable year from—

(I) domestic corporations, and

(II) qualified foreign corporations.

(ii) **CERTAIN DIVIDENDS EXCLUDED.**—Such term shall not include—

(I) any dividend from a corporation which for the taxable year of the corporation in which the distribution is made, or the preceding taxable year, is a corporation exempt from tax under section 501 or 521,

(II) any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.), and

(III) any dividend described in section 404(k).

\* \* \*

**(C) QUALIFIED FOREIGN CORPORATIONS.—**

(i) **IN GENERAL.**—Except as otherwise provided in this paragraph, the term “qualified foreign corporation” means any foreign corporation if—

(I) such corporation is incorporated in a possession of the United States, or

(II) such corporation is eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this paragraph and which includes an exchange of information program.

(ii) **DIVIDENDS ON STOCK READILY TRADABLE ON UNITED STATES SECURITIES MARKET.**—A foreign corporation not otherwise treated as a qualified foreign corporation under clause (i) shall be so treated with respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States.

(iii) **EXCLUSION OF DIVIDENDS OF CERTAIN FOREIGN CORPORATIONS.**—Such term shall not include any foreign corporation which for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, is a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in section 1246(b)), or a passive foreign investment company (as defined in section 1297).

(iv) **COORDINATION WITH FOREIGN TAX CREDIT LIMITATION.**—Rules similar to the rules of section 904(b)(2)(B) shall apply with respect to the dividend rate differential under this paragraph.

\* \* \*

**[Sec. 1(i)]**

**(i) RATE REDUCTIONS AFTER 2000.—**

**(1) 10-PERCENT RATE BRACKET.—**

(A) **IN GENERAL.**—In the case of taxable years beginning after December 31, 2000—

(i) the rate of tax under subsections (a), (b), (c), and (d) on taxable income not over the initial bracket amount shall be 10 percent, and

(ii) the 15 percent rate of tax shall apply only to taxable income over the initial bracket amount but not over the maximum dollar amount for the 15-percent rate bracket.

(B) **INITIAL BRACKET AMOUNT.**—For purposes of this paragraph, the initial bracket amount is—

(i) \$14,000 (\$12,000 in the case of taxable years beginning after December 31, 2004, and before January 1, 2008) in the case of subsection (a),

(ii) \$10,000 in the case of subsection (b), and

(iii) 1/2 the amount applicable under clause (i) (after adjustment, if any, under subparagraph (C)) in the case of subsections (c) and (d).

(C) INFLATION ADJUSTMENT.—In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2000—

(i) except as provided in clause (ii), the Secretary shall make no adjustment to the initial bracket amounts for any taxable year beginning before January 1, 2009,

(ii) there shall be an adjustment under subsection (f) of such amounts which shall apply only to taxable years beginning in 2004, and such adjustment shall be determined under subsection (f)(3) by substituting "2002" for "1992" in subparagraph (B) thereof,

(iii) the cost-of-living adjustment used in making adjustments to the initial bracket amounts for any taxable year beginning after December 31, 2008, shall be determined under subsection (f)(3) by substituting "2007" for "1992" in subparagraph (B) thereof, and

(iv) the adjustments under clauses (ii) and (iii) shall not apply to the amount referred to in subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of \$50, such amount shall be rounded to the next lowest multiple of \$50.

(D) COORDINATION WITH ACCELERATION OF 10 PERCENT RATE BRACKET BENEFIT FOR 2001.—This paragraph shall not apply to any taxable year to which section 6428 applies.

(2) REDUCTIONS IN RATES AFTER JUNE 30, 2001.—In the case of taxable years beginning in a calendar year after 2000, the corresponding percentage specified for such calendar year in the following table shall be substituted for the otherwise applicable tax rate in the tables under subsections (a), (b), (c), (d), and (e).

<i>In the case of taxable years beginning during calendar year:</i>	<i>The corresponding percentages shall be substituted for the following percentages:</i>			
	<i>28%</i>	<i>31%</i>	<i>36%</i>	<i>39.6%</i>
2001 .....	27.5%	30.5%	35.5%	39.1%
2002 .....	27.0%	30.0%	35.0%	38.6%
2003 and thereafter .....	25.0%	28.0%	33.0%	35.0%

(3) ADJUSTMENT OF TABLES.—The Secretary shall adjust the tables prescribed under subsection (f) to carry out this subsection.

[Sec. 2]

## SEC. 2. DEFINITIONS AND SPECIAL RULES.

\* \* \*

[Sec. 2(d)]

(d) NONRESIDENT ALIENS.—In the case of a nonresident alien individual, the taxes imposed by sections 1 and 55 [relating to the alternative minimum tax] shall apply only as provided by section 871 or 877.

\* \* \*

## PART II—TAX ON CORPORATIONS

[Sec. 11]

### SEC. 11. TAX IMPOSED.

[Sec. 11(a)]

(a) CORPORATIONS IN GENERAL.—A tax is hereby imposed for each taxable year on the taxable income of every corporation.

[Sec. 11(b)]

(b) AMOUNT OF TAX.—

(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be the sum of—

(A) 15 percent of so much of the taxable income as does not exceed \$50,000,

## Sec. 2

(B) 25 percent of so much of the taxable income as exceeds \$50,000 but does not exceed \$75,000,

(C) 34 percent of so much of the taxable income as exceeds \$75,000 but does not exceed \$10,000,000, and

(D) 35 percent of so much of the taxable income as exceeds \$10,000,000.

In the case of a corporation which has taxable income in excess of \$100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) \$11,750. In the case of a corporation which has taxable income in excess of \$15,000,000, the amount of the tax determined under the foregoing provisions of this paragraph shall be increased by an additional amount equal to the lesser of (i) 3 percent of such excess, or (ii) \$100,000.

(2) CERTAIN PERSONAL SERVICE CORPORATIONS NOT ELIGIBLE FOR GRADUATED RATES.—Notwithstanding paragraph (1), the amount of the tax imposed by subsection (a) on the taxable income of a qualified personal service corporation (as defined in section 448(d)(2)) shall be equal to 35 percent of the taxable income.

**[Sec. 11(c)]**

(c) EXCEPTIONS.—Subsection (a) shall not apply to a corporation subject to a tax imposed by—

(1) section 594 (relating to mutual savings banks conducting life insurance business),

(2) subchapter L (sec. 801 and following, relating to insurance companies), or

(3) subchapter M (sec. 851 and following, relating to regulated investment companies and real estate investment trusts).

**[Sec. 11(d)]**

(d) FOREIGN CORPORATIONS.—In the case of a foreign corporation, the taxes imposed by subsection (a) and section 55 [relating to the alternative minimum tax] shall apply only as provided by section 882.

## **PART IV—CREDITS AGAINST TAX**

### **Subpart B—Foreign Tax Credit, Etc.**

**[Sec. 27]**

#### **SEC. 27. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF THE UNITED STATES; POSSESSION TAX CREDIT.**

**[Sec. 27(a)]**

(a) FOREIGN TAX CREDIT.—The amount of taxes imposed by foreign countries and possessions of the United States shall be allowed as a credit against the tax imposed by this chapter to the extent provided in section 901.

**[Sec. 27(b)]**

(b) SECTION 936 CREDIT.—In the case of a domestic corporation, the amount provided by section 936 (relating to Puerto Rico and possession tax credit) shall be allowed as a credit against the tax imposed by this chapter.

**[Sec. 30A]**

#### **SEC. 30A. PUERTO RICO ECONOMIC ACTIVITY CREDIT.**

**[Sec. 30A(a)]**

(a) ALLOWANCE OF CREDIT.—

(1) IN GENERAL.—Except as otherwise provided in this section, if the conditions of both paragraph (1) and paragraph (2) of subsection (b) are satisfied with respect to a qualified domestic corporation, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the taxable income, from sources without the United States, from—

(A) the active conduct of a trade or business within Puerto Rico, or

(B) the sale or exchange of substantially all of the assets used by the taxpayer in the active conduct of such trade or business.

In the case of any taxable year beginning after December 31, 2001, the aggregate amount of taxable income taken into account under the preceding sentence (and in applying subsection (d)) shall not exceed the adjusted base period income of such corporation, as determined in the same manner as under section 936(j).

(2) QUALIFIED DOMESTIC CORPORATION.—For purposes of paragraph (1), the term "qualified domestic corporation" means a domestic corporation—

(A) which is an existing credit claimant with respect to Puerto Rico, and

(B) with respect to which section 936(a)(4)(B) does not apply for the taxable year.

(3) SEPARATE APPLICATION.—For purposes of determining—

(A) whether a taxpayer is an existing credit claimant with respect to Puerto Rico, and

(B) the amount of the credit allowed under this section,

this section (and so much of section 936 as relates to this section) shall be applied separately with respect to Puerto Rico.

#### [Sec. 30A(b)]

(b) CONDITIONS WHICH MUST BE SATISFIED.—The conditions referred to in subsection (a) are—

(1) 3-YEAR PERIOD.—If 80 percent or more of the gross income of the qualified domestic corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession (determined without regard to section 904(f)).

(2) TRADE OR BUSINESS.—If 75 percent or more of the gross income of the qualified domestic corporation for such period or such part thereof was derived from the active conduct of a trade or business within a possession.

#### [Sec. 30A(c)]

(c) CREDIT NOT ALLOWED AGAINST CERTAIN TAXES.—The credit provided by subsection (a) shall not be allowed against the tax imposed by—

(1) section 59A (relating to environmental tax),

(2) section 531 (relating to the tax on accumulated earnings),

(3) section 541 (relating to personal holding company tax), or

(4) section 1351 (relating to recoveries of foreign expropriation losses).

#### [Sec. 30A(d)]

(d) LIMITATIONS ON CREDIT FOR ACTIVE BUSINESS INCOME.—The amount of the credit determined under subsection (a) for any taxable year shall not exceed the sum of the following amounts:

(1) 60 percent of the sum of—

(A) the aggregate amount of the qualified domestic corporation's qualified possession wages for such taxable year, plus

(B) the allocable employee fringe benefit expenses of the qualified domestic corporation for such taxable year.

(2) The sum of—

(A) 15 percent of the depreciation allowances for the taxable year with respect to short-life qualified tangible property,

(B) 40 percent of the depreciation allowances for the taxable year with respect to medium-life qualified tangible property, and

(C) 65 percent of the depreciation allowances for the taxable year with respect to long-life qualified tangible property.

(3) If the qualified domestic corporation does not have an election to use the method described in section 936(h)(5)(C)(ii) (relating to profit split) in effect for the taxable year, the amount of the qualified possession income taxes for the taxable year allocable to nonsheltered income.

### Sec. 30A(b)

**[Sec. 30A(e)]**

(e) ADMINISTRATIVE PROVISIONS.—For purposes of this title—

(1) the provisions of section 936 (including any applicable election thereunder) shall apply in the same manner as if the credit under this section were a credit under section 936(a)(1)(A) for a domestic corporation to which section 936(a)(4)(A) applies,

(2) the credit under this section shall be treated in the same manner as the credit under section 936, and

(3) a corporation to which this section applies shall be treated in the same manner as if it were a corporation electing the application of section 936.

**[Sec. 30A(f)]**

(f) DENIAL OF DOUBLE BENEFIT.—Any wages or other expenses taken into account in determining the credit under this section may not be taken into account in determining the credit under section 41.

**[Sec. 30A(g)]**

(g) DEFINITIONS.—For purposes of this section, any term used in this section which is also used in section 936 shall have the same meaning given such term by section 936.

**[Sec. 30A(h)]**

(h) APPLICATION OF SECTION.—This section shall apply to taxable years beginning after December 31, 1995, and before January 1, 2006.

**Subpart C—Refundable Credits**

**[Sec. 33]**

**SEC. 33. TAX WITHHELD AT SOURCE ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.**

There shall be allowed as a credit against the tax imposed by this subtitle the amount of tax withheld at source under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and on foreign corporations).

**PART VI—ALTERNATIVE MINIMUM TAX**

**[Sec. 55]**

**SEC. 55. ALTERNATIVE MINIMUM TAX IMPOSED.**

**[Sec. 55(a)]**

(a) GENERAL RULE.—There is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to the excess (if any) of—

- (1) the tentative minimum tax for the taxable year, over
- (2) the regular tax for the taxable year.

**[Sec. 55(b)]**

(b) TENTATIVE MINIMUM TAX.—For purposes of this part—

(1) AMOUNT OF TENTATIVE TAX.—

(A) NONCORPORATE TAXPAYERS.—

(i) IN GENERAL.—In the case of a taxpayer other than a corporation, the tentative minimum tax for the taxable year is the sum of—

- (I) 26 percent of so much of the taxable excess as does not exceed \$175,000, plus
- (II) 28 percent of so much of the taxable excess as exceeds \$175,000.

The amount determined under the preceding sentence shall be reduced by the alternative minimum tax foreign tax credit for the taxable year.

**Sec. 55(b)**

(ii) **TAXABLE EXCESS.**—For purposes of this subsection, the term “taxable excess” means so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(iii) **MARRIED INDIVIDUAL FILING SEPARATE RETURN.**—In the case of a married individual filing a separate return, clause (i) shall be applied by substituting “\$87,500” for “\$175,000” each place it appears. For purposes of the preceding sentence, marital status shall be determined under section 7703.

(B) **CORPORATIONS.**—In the case of a corporation, the tentative minimum tax for the taxable year is—

(i) 20 percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, reduced by

(ii) the alternative minimum tax foreign tax credit for the taxable year.

(2) **ALTERNATIVE MINIMUM TAXABLE INCOME.**—The term “alternative minimum taxable income” means the taxable income of the taxpayer for the taxable year—

(A) determined with the adjustments provided in section 56 and section 58, and

(B) increased by the amount of the items of tax preference described in section 57.

If a taxpayer is subject to the regular tax, such taxpayer shall be subject to the tax imposed by this section (and, if the regular tax is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of the preceding sentence).

(3) **MAXIMUM RATE OF TAX ON NET CAPITAL GAIN OF NONCORPORATE TAXPAYERS.**—The amount determined under the first sentence of paragraph (1)(A)(i) shall not exceed the sum of—

(A) the amount determined under such first sentence computed at the rates and in the same manner as if this paragraph had not been enacted on the taxable excess reduced by the lesser of—

(i) the net capital gain; or

(ii) the sum of—

(I) the adjusted net capital gain, plus

(II) the unrecaptured section 1250 gain, plus

(B) 5 percent (0 percent in the case of taxable years beginning after 2007) of so much of the adjusted net capital gain (or, if less, taxable excess) as does not exceed the amount on which a tax is determined under section 1(h)(1)(B), plus

(C) 15 percent of the adjusted net capital gain (or, if less, taxable excess) in excess of the amount on which tax is determined under subparagraph (B), plus

(D) 25 percent of the amount of taxable excess in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h) but computed with the adjustments under this part.

#### [Sec. 55(c)]

(c) **REGULAR TAX.**—

(1) **IN GENERAL.**—For purposes of this section, the term “regular tax” means the regular tax liability for the taxable year (as defined in section 26(b)) reduced by the foreign tax credit allowable under section 27(a), the section 936 credit allowable under section 27(b), and the Puerto Rico economic activity credit under section 30A. Such terms shall not include any increase in tax under section 49(b) or 50(a) or subsection (j) or (k) of section 42.

(2) **CROSS REFERENCES.**—

For provisions providing that certain credits are not allowable against the tax imposed by this section, see sections 26(a), 29(b)(6), 30(b)(3), and 38(c).

#### [Sec. 55(d)]

(d) **EXEMPTION AMOUNT.**—For purposes of this section—

(1) **EXEMPTION AMOUNT FOR TAXPAYERS OTHER THAN CORPORATIONS.**—In the case of a taxpayer other than a corporation, the term “exemption amount” means—

### Sec. 55(c)

(A) \$45,000 (\$58,000 in the case of taxable years beginning in 2003 and 2004) in the case of—

- (i) a joint return, or
- (ii) a surviving spouse,

(B) \$33,750 (\$40,250 in the case of taxable years beginning in 2003 and 2004) in the case of an individual who—

- (i) is not a married individual, and
- (ii) is not a surviving spouse,

(C) 50 percent of the dollar amount applicable under paragraph (1)(A) in the case of a married individual who files a separate return, and

(D) \$22,500 in the case of an estate or trust.

For purposes of this paragraph, the term "surviving spouse" has the meaning given to such term by section 2(a), and marital status shall be determined under section 7703.

(2) CORPORATIONS.—In the case of a corporation, the term "exemption amount" means \$40,000.

(3) PHASE-OUT OF EXEMPTION AMOUNT.—The exemption amount of any taxpayers shall be reduced (but not below zero) by an amount equal to 25 percent of the amount by which the alternative minimum taxable income of the taxpayer exceeds—

(A) \$150,000 in the case of a taxpayer described in paragraph (1)(A) or (2),

(B) \$112,500 in the case of a taxpayer described in paragraph (1)(B), and

(C) \$75,000 in the case of a taxpayer described in subparagraph (C) or (D) of paragraph (1).

In the case of a taxpayer described in paragraph (1)(C), alternative minimum taxable income shall be increased by the lesser of (i) 25 percent of the excess of alternative minimum taxable income (determined without regard to this sentence) over the minimum amount of such income (as so determined) for which the exemption amount under paragraph (1)(C) is zero, or (ii) such exemption amount (determined without regard to this paragraph).

**[Sec. 55(e)]**

(e) EXEMPTION FOR SMALL CORPORATIONS.—

(1) IN GENERAL.—

(A) \$7,500,000 GROSS RECEIPTS TEST.—The tentative minimum tax of a corporation shall be zero for any taxable year if the corporation's average annual gross receipts for all 3-taxable-year periods ending before such taxable year does not exceed \$7,500,000. For purposes of the preceding sentence, only taxable years beginning after December 31, 1993, shall be taken into account.

(B) \$5,000,000 GROSS RECEIPTS TEST FOR FIRST 3-YEAR PERIOD.—Subparagraph (A) shall be applied by substituting "\$5,000,000" for "\$7,500,000" for the first 3-taxable-year period (or portion thereof) of the corporation which is taken into account under subparagraph (A).

(C) FIRST TAXABLE YEAR CORPORATION IN EXISTENCE.—If such taxable year is the first taxable year that such corporation is in existence, the tentative minimum tax of such corporation for such year shall be zero.

(D) SPECIAL RULES.—For purposes of this paragraph, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

(2) PROSPECTIVE APPLICATION OF MINIMUM TAX IF SMALL CORPORATION CEASES TO BE SMALL.—In the case of a corporation whose tentative minimum tax is zero for any prior taxable year by reason of paragraph (1), the application of this part for taxable years beginning with the first taxable year such corporation ceases to be described in paragraph (1) shall be determined with the following modifications:

(A) Section 56(a)(1) (relating to depreciation) and section 56(a)(5) (relating to pollution control facilities) shall apply only to property placed in service on or after the change date.

(B) Section 56(a)(2) (relating to mining exploration and development costs) shall apply only to costs paid or incurred on or after the change date.

(C) Section 56(a)(3) (relating to treatment of long-term contracts) shall apply only to contracts entered into on or after the change date.



(D) Section 56(a)(4) (relating to alternative net operating loss deduction) shall apply in the same manner as if, in section 56(d)(2), the change date were substituted for "January 1, 1987" and the day before the change date were substituted for "December 31, 1986" each place it appears.

(E) Section 56(g)(2)(B) (relating to limitation on allowance of negative adjustments based on adjusted current earnings) shall apply only to prior taxable years beginning on or after the change date.

(F) Section 56(g)(4)(A) (relating to adjustment for depreciation to adjusted current earnings) shall not apply.

(G) Subparagraphs (D) and (F) of section 56(g)(4) (relating to other earnings and profits adjustments and depletion) shall apply in the same manner as if the day before the change date were substituted for "December 31, 1989" each place it appears therein.

(3) EXCEPTION.—The modifications in paragraph (2) shall not apply to—

(A) any item acquired by the corporation in a transaction to which section 381 applies, and

(B) any property the basis of which in the hands of the corporation is determined by reference to the basis of the property in the hands of the transferor, if such item or property was subject to any provision referred to in paragraph (2) while held by the transferor.

(4) CHANGE DATE.—For purposes of paragraph (2), the change date is the first day of the first taxable year for which the taxpayer ceases to be described in paragraph (1).

(5) LIMITATION ON USE OF CREDIT FOR PRIOR YEAR MINIMUM TAX LIABILITY.—In the case of a taxpayer whose tentative minimum tax for any taxable year is zero by reason of paragraph (1), section 53(c) shall be applied for such year by reducing the amount otherwise taken into account under section 53(c)(1) by 25 percent of so much of such amount as exceeds \$25,000. Rules similar to the rules of section 38(c)(3)(B) shall apply for purposes of the preceding sentence.

[Sec. 56]

## SEC. 56. ADJUSTMENTS IN COMPUTING ALTERNATIVE MINIMUM TAXABLE INCOME.

\* \* \*

[Sec. 56(g)]

(g) ADJUSTMENTS BASED ON ADJUSTED CURRENT EARNINGS.—

(1) IN GENERAL.—The alternative minimum taxable income of any corporation for any taxable year shall be increased by 75 percent of the excess (if any) of—

(A) the adjusted current earnings of the corporation, over

(B) the alternative minimum taxable income (determined without regard to this subsection and the alternative tax net operating loss deduction).

(2) ALLOWANCE OF NEGATIVE ADJUSTMENTS.—

(A) IN GENERAL.—The alternative minimum taxable income for any corporation of any taxable year shall be reduced by 75 percent of the excess (if any) of—

(i) the amount referred to in subparagraph (B) of paragraph (1), over

(ii) the amount referred to in subparagraph (A) of paragraph (1).

(B) LIMITATION.—The reduction under subparagraph (A) for any taxable year shall not exceed the excess (if any) of—

(i) the aggregate increases in alternative minimum taxable income under paragraph (1) for prior taxable years, over

(ii) the aggregate reductions under subparagraph (A) of this paragraph for prior taxable years.

(3) ADJUSTED CURRENT EARNINGS.—For purposes of this subsection, the term "adjusted current earnings" means the alternative minimum taxable income for the taxable year—

(A) determined with the adjustments provided in paragraph (4), and

(B) determined without regard to this subsection and the alternative tax net operating loss deduction.

## Sec. 56