

*Example 2.* The same facts existed as in example 1, except that on June 30, 1955, the XYZ Corporation increased its investment in the stock of the A Corporation by the purchase of an additional 1,000 shares of that stock (instead of 500 shares) at a total cost of \$60,000. No part of the investment of the XYZ Corporation in the A Corporation qualified under the 5 percent limitation provided by section 851(b)(4)(A) as modified by section 851(e)(1), illustrated as follows:

Basis to the XYZ Corporation of the 1,000 shares of the A Corporation's stock acquired on June 30, 1954 .....	\$30,000
Basis of the 1,000 shares of the A Corporation's stock acquired on June 30, 1955 .....	60,000
Total .....	90,000

Basis of stock of A Corporation (\$90,000)/  
Value of XYZ Corporation's total assets at June 30, 1955, time of the latest acquisition (\$1,500,000)= 6 percent

*Example 3.* The same facts existed as in example 2 and on June 30, 1956, the XYZ Corporation increased its investment in the stock of the A Corporation by the purchase of an additional 100 shares of that stock at a total cost of \$6,000. On June 30, 1956, the value of the total assets of the XYZ Corporation was \$2,000,000 and on that date the investment in the A Corporation qualified under section 851(b)(4)(A) as modified by section 851(e)(1) illustrated as follows:

Basis to the XYZ Corporation of investments in the A Corporation's stock:	
1,000 shares acquired June 30, 1954 .....	\$30,000
1,000 shares acquired June 30, 1955 .....	60,000
100 shares acquired June 30, 1956 .....	6,000
Total .....	96,000

Basis of stock of A Corporation (\$96,000)/  
Value of XYZ Corporation's total assets at June 30, 1956, time of the latest acquisition (\$2,000,000)=4.8 percent

(c) *Limitation.* Section 851(e) and this section do not apply in the quarterly computation of 50 percent of the value of the assets of an investment company under subparagraph (A) of section 851(b)(4) and paragraph (c)(1) of § 1.851-2 for any taxable year if at the close of any quarter of such taxable year more than 25 percent of the value of its total assets (including the 50 percent or more mentioned in such subparagraph (A)) is represented by securities (other than Government securities or the securities of other regulated investment companies) of issuers as to each of which such investment company (1) holds more than 10 percent of the outstanding voting securities of such issuer, and (2) has continuously held any security of such issuer (or any se-

curity of a predecessor of such issuer) for 10 or more years preceding such quarter, unless the value of its total assets so represented is reduced to 25 percent or less within 30 days after the close of such quarter.

(d) *Definition of predecessor company.* As used in section 851(e) and this section, the term "predecessor company" means any corporation the basis of whose securities in the hands of the investment company was, under the provisions of section 358 or corresponding provisions of prior law, the same in whole or in part as the basis of any of the securities of the issuer and any corporation with respect to whose securities any of the securities of the issuer were received directly or indirectly by the investment company in a transaction or series of transactions involving nonrecognition of gain or loss in whole or in part. The other terms used in this section have the same meaning as when used in section 851(b)(4). See paragraph (c) of § 1.851-2 and § 1.851-3.

**§ 1.851-7 Certain unit investment trusts.**

(a) *In general.* For purposes of the Internal Revenue Code, a unit investment trust (as defined in paragraph (d) of this section) shall not be treated as a person (as defined in section 7701(a)(1)) except for years ending before January 1, 1969. A holder of an interest in such a trust will be treated as directly owning the assets of such trust for taxable years of such holder which end with or within any year of the trust to which section 851(f) and this section apply.

(b) *Treatment of unit investment trust.* A unit investment trust shall not be treated as an individual, a trust estate, partnership, association, company, or corporation for purposes of the Internal Revenue Code. Accordingly, a unit investment trust is not a taxpayer subject to taxation under the Internal Revenue Code. No gain or loss will be recognized by the unit investment trust if such trust distributes a holder's proportionate share of the trust assets in exchange for his interest in the trust. Also, no gain or loss will be recognized by the unit investment trust if such trust sells the holder's proportionate share of the trust assets and

distributes the proceeds from such share to the holder in exchange for his interest in the trust.

(c) *Treatment of holder of interest in unit investment trust.* (1) Each holder of an interest in a unit investment trust shall be treated (to the extent of such interest) as owning a proportionate share of the assets of the trust. Accordingly, if the trust distributes to the holder of an interest in such trust his proportionate share of the trust assets in exchange for his interest in the trust, no gain or loss shall be recognized by such holder (or by any other holder of an interest in such trust). For purposes of this paragraph, each purchase of an interest in the trust by the holder will be considered a separate interest in the trust. Items of income, gain, loss, deduction, or credit received by the trust or a custodian thereof shall be taxed to the holders of interests in the trust (and not to the trust) as though they had received their proportionate share of the items directly on the date such items were received by the trust or custodian.

(2) The basis of the assets of such trust which are treated under subparagraph (1) of this paragraph as being owned by the holder of an interest in such trust shall be the same as the basis of his interest in such trust. Accordingly, the amount of the gain or loss recognized by the holder upon the sale by the unit investment trust of the holder's pro rata share of the trust assets shall be determined with reference to the basis, of his interest in the trust. Also, the basis of the assets received by the holder, if the trust distributes a holder's pro rata share of the trust assets in exchange for his interest in the trust, will be the same as the basis of his interest in the trust. If the unit investment trust sells less than all of the holder's pro rata share of the trust assets and the holder retains an interest in the trust, the amount of the gain or loss recognized by the holder upon the sale shall be determined with reference to the basis of his interest in the assets sold by the trust, and the basis of his interest in the trust shall be reduced accordingly. If the trust distributes a portion of the holder's pro rata share of the trust assets in exchange for a portion of his interest in

the trust, the basis of the assets received by the holder shall be determined with reference to the basis of his interest in the assets distributed by the trust, and the basis of his interest in the trust shall be reduced accordingly. For purposes of this subparagraph the basis of the holder's interest in assets sold by the trust or distributed to him shall be an amount which bears the same relationship to the basis of his total interest in the trust that the fair market value of the assets so sold or distributed bears to the fair market value of such total interest in the trust, such fair market value to be determined on the date of such sale or distribution.

(3) The period for which the holder of an interest in such trust has held the assets of the trust which are treated under subparagraph (1) of this paragraph as being owned by him is the same as the period for which such holder has held his interest in such trust. Accordingly, the character of the gain, loss, deduction, or credit recognized by the holder upon the sale by the unit investment trust of the holder's proportionate share of the trust assets shall be determined with reference to the period for which he has held his interest in the trust. Also, the holding period of the assets received by the holder if the trust distributes the holder's proportionate share of the trust assets in exchange for his interest in the trust will include the period for which the holder has held his interest in the trust.

(4) The application of the provisions of this paragraph may be illustrated by the following example:

*Example.* B entered a periodic payment plan of a unit investment trust (as defined in paragraph (d) of this section) with X Bank as custodian and Z as plan sponsor. Under this plan, upon B's demand, X must either redeem B's interest at a price substantially equal to the fair market value of the number of shares in Y, a management company, which are credited to B's account by X in connection with the unit investment trust, or at B's option distribute such shares of Y to B. B's plan provides for quarterly payments of \$1,000. On October 1, 1969, B made his initial quarterly payment of \$1,000 and X credited B's account with 110 shares of Y. On December 1, 1969, Y declared and paid a dividend of 25 cents per share, 5 cents of which was designated as a capital gain dividend pursuant to section 852(b)(3) and §1.852-4. X

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credited B's account with \$27.50 but did not distribute the money to B in 1969. On December 31, 1969, X charged B's account with \$1 for custodial fees for calendar year 1969. On January 1, 1970, B paid X \$1,000 and X credited B's account with 105 shares of Y. On April 1, 1970, B paid X \$1,000 and X credited B's account with 100 shares of Y. B must include in his tax return for 1969 a dividend of \$22 and a long-term capital gain of \$5.50. In addition, B is entitled to deduct the annual custodial fee of \$1 under section 212 of the Code.

(a) On April 4, 1970, at B's request, X sells the shares of Y credited to B's account (315 shares) for \$10 per share and distributes the proceeds (\$3,150) to B together with the remaining balance of \$26.50 in B's account. The receipt of the \$26.50 does not result in any tax consequences to B. B recognizes a long-term capital gain of \$100 and a short-term capital gain of \$50, computed as follows:

(1) B is treated as owning 110 shares of Y as of October 1, 1969. The basis of these shares is \$1,000, and they were sold for \$1,100 (110 shares at \$10 per share). Therefore, B recognizes a gain from the sale or exchange of a capital asset held for more than 6 months in the amount of \$100.

(2) B is treated as owning 105 shares of Y as of January 1, 1970, and 100 shares as of April 1, 1970. With respect to the shares acquired on April 1, 1970, there is no gain recognized as the shares were sold for \$1,000, which is B's basis of the shares. The shares acquired on January 1, 1970, were sold for \$1,050 (105 shares at \$10 per share), and B's basis of these shares is \$1,000. Therefore, B recognizes a gain of \$50 from the sale or exchange of a capital asset held for not more than 6 months.

(b) On April 4, 1970, at B's request, X distributes to B the shares of Y credited to his account and \$26.50 in cash. The receipt of the \$26.50 does not result in any tax consequences to B. B does not recognize gain or loss on the distribution of the shares of Y to him. The bases and holding periods of B's interests in Y are as follows:

Number of shares	Date acquired	Basis
110 .....	10-1-69	\$9.09
105 .....	1-1-70	9.52
100 .....	4-1-70	10.00

(d) *Definition.* A unit investment trust to which this section refers is a business arrangement (other than a segregated asset account, whether or not it holds assets pursuant to a variable annuity contract, under the insurance laws or regulations of a State) which (except for taxable years ending before Jan. 1, 1969)—

(1) Is a unit investment trust (as defined in the Investment Company Act of 1940);

(2) Is registered under such Act;

(3) Issues periodic payment plan certificates (as defined in such Act) in one or more series;

(4) Possesses, as substantially all of its assets, as to all such series, securities issued by—

(i) A single management company (as defined in such Act), and securities acquired pursuant to subparagraph (5) of this paragraph, or

(ii) A single other corporation; and

(5) Has no power to invest in any other securities except securities issued by a single other management company, when permitted by such Act or the rules and regulations of the Securities and Exchange Commission.

(e) *Investment in two single management companies.* (1) A unit investment trust may possess securities issued by two or more separate single management companies (as defined in such Act) if—

(i) The trust issues a separate series of periodic payment plan certificates (as defined in such Act) with respect to the securities of each separate single management company which it possesses; and

(ii) None of the periodic payment plan certificates issued by the trust permits joint acquisition of an interest in each series nor the application of payments in whole or in part first to a series issued by one of the single management companies and then to any other series issued by any other single management company.

(2) If a unit investment trust possesses securities of two or more separate single management companies as described in subparagraph (1) of this paragraph and issues a separate series of periodic payment plan certificates with respect to the securities of each such management company, then the holder of an interest in a series shall be treated as the owner of the securities in the single management company represented by such interest.

(i) A holder of an interest in a series of periodic payment plan certificates of

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a trust who transfers or sells his interest in the series in exchange for an interest in another series of periodic payment plan certificates of the trust shall recognize the gain or loss realized from the transfer or sale as if the trust had sold the shares credited to his interests in the series at fair market value and distributed the proceeds of the sale to him.

(ii) The basis of the interests in the series so acquired by the holder shall be the fair market value of his interests in the series transferred or sold.

(iii) The period for which the holder has held his interest in the series so acquired shall be measured from the date of his acquisition of his interest in that series.

(f) *Cross references.* (1) For reporting requirements imposed on custodians of unit investment trusts described in this section, see §§ 1.852-4, 1.852-9, 1.853-3, 1.854-2, and 1.6042-2.

(2) For rules relating to redemptions of certain unit investment trusts not described in this section, see § 1.852-10.

[T.D. 7187, 37 FR 13254, July 6, 1972, as amended by T.D. 7187, 37 FR 20688, Oct. 3, 1972]

### § 1.852-1 Taxation of regulated investment companies.

(a) *Requirements applicable thereto—(1) In general.* Section 852(a) denies the application of the provisions of part I, subchapter M, chapter 1 of the Code (other than section 852(c), relating to earnings and profits), to a regulated investment company for a taxable year beginning after February 28, 1958, unless—

(i) The deduction for dividends paid for such taxable year as defined in section 561 (computed without regard to capital gain dividends) is equal to at least 90 percent of its investment company taxable income for such taxable year (determined without regard to the provisions of section 852(b)(2)(D) and paragraph (d) of § 1.852-3); and

(ii) The company complies for such taxable year with the provisions of § 1.852-6 (relating to records required to be maintained by a regulated investment company).

See section 853(b)(1)(B) and paragraph (a) of § 1.853-2 for amounts to be added to the dividends paid deduction, and section 855 and § 1.855-1, relating to

dividends paid after the close of the taxable year.

(2) *Special rule for taxable years of regulated investment companies beginning before March 1, 1958.* The provisions of part I of subchapter M (including section 852(c)) are not applicable to a regulated investment company for a taxable year beginning before March 1, 1958, unless such company meets the requirements of section 852(a) and subparagraph (1) (i) and (ii) of this paragraph.

(b) *Failure to qualify.* If a regulated investment company does not meet the requirements of section 852(a) and paragraph (a)(1) (i) and (ii) of this section for the taxable year, it will, even though it may otherwise be classified as a regulated investment company, be taxed in such year as an ordinary corporation and not as a regulated investment company. In such case, none of the provisions of part I of subchapter M (other than section 852(c) in the case of taxable years beginning after February 28, 1958) will be applicable to it. For the rules relating to the applicability of section 852(c), see § 1.852-5.

[T.D. 6598, 27 FR 4091, Apr. 28, 1962]

### § 1.852-2 Method of taxation of regulated investment companies.

(a) *Imposition of normal tax and surtax.* Section 852(b)(1) imposes a normal tax and surtax, computed at the rates and in the manner prescribed in section 11, on the investment company taxable income, as defined in section 852(b)(2) and § 1.852-3, for each taxable year of a regulated investment company. The tax is imposed as if the investment company taxable income were the taxable income referred to in section 11. In computing the normal tax under section 11, the regulated investment company's taxable income and the dividends paid deduction (computed without regard to the capital gains dividends) shall both be reduced by the deduction for partially tax-exempt interest provided by section 242.

(b) *Taxation of capital gains—(1) In general.* Section 852(b)(3)(A) imposes (i) in the case of a taxable year beginning before January 1, 1970, a tax of 25 percent, or (ii) in the case of a taxable year beginning after December 31, 1969, a tax determined as provided in section