

On January 5, 1959, A sold his share of stock in the X regulated investment company for \$17.50, which sale resulted in a loss of \$2.50. Under section 852(b)(4) and this paragraph, A must treat \$2 of such loss (an amount equal to the capital gain dividend received with respect to such share of stock) as a loss from the sale or exchange of a capital asset held for more than 6 months.

(Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; 860(e) (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)))

[T.D. 6500, 25 FR 11910, Nov. 26, 1960, as amended by T.D. 6531, 26 FR 413, Jan. 19, 1961; T.D. 6598, 27 FR 4091, Apr. 28, 1962; T.D. 6777, 29 FR 17809, Dec. 16, 1964; T.D. 6921, 32 FR 8755, June 20, 1967; T.D. 7187, 37 FR 13256, July 6, 1972; T.D. 7337, 39 FR 44972, Dec. 30, 1974; T.D. 7728, 45 FR 72650, Nov. 3, 1980; T.D. 7936, 49 FR 2106, Jan. 18, 1984]

**§ 1.852-5 Earnings and profits of a regulated investment company.**

(a) Any regulated investment company, whether or not such company meets the requirements of section 852(a) and paragraphs (a)(1) (i) and (ii) of § 1.852-1, shall apply paragraph (b) of this section in computing its earnings and profits for a taxable year beginning after February 28, 1958. However, for a taxable year of a regulated investment company beginning before March 1, 1958, paragraph (b) of this section shall apply only if the regulated investment company meets the requirements of section 852(a) and paragraphs (a)(1) (i) and (ii) of § 1.852-1.

(b) In the determination of the earnings and profits of a regulated investment company, section 852(c) provides that such earnings and profits for any taxable year (but not the accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for the taxable year. Thus, if a corporation would have had earnings and profits of \$500,000 for the taxable year except for the fact that it had a net capital loss of \$100,000, which amount was not deductible in determining its taxable income, its earnings and profits for that year if it is a regulated investment company would be \$500,000. If the regulated investment company had no accumulated earnings and profits at the beginning of the taxable year, in determining its accumulated earnings and profits as of the beginning of the following taxable year,

the earnings and profits for the taxable year to be considered in such computation would amount to \$400,000 assuming that there had been no distribution from such earnings and profits. If distributions had been made in the taxable year in the amount of the earnings and profits then available for distribution, \$500,000, the corporation would have as of the beginning of the following taxable year neither accumulated earnings and profits nor a deficit in accumulated earnings and profits, and would begin such year with its paid-in capital reduced by \$100,000, an amount equal to the excess of the \$500,000 distributed over the \$400,000 accumulated earnings and profits which would otherwise have been carried into the following taxable year.

**§ 1.852-6 Records to be kept for purpose of determining whether a corporation claiming to be a regulated investment company is a personal holding company.**

(a) Every regulated investment company shall maintain in the internal revenue district in which it is required to file its income tax return permanent records showing the information relative to the actual owners of its stock contained in the written statements required by this section to be demanded from the shareholders. The actual owner of stock includes the person who is required to include in gross income in his return the dividends received on the stock. Such records shall be kept at all times available for inspection by any internal revenue officer or employee, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

(b) For the purpose of determining whether a domestic corporation claiming to be a regulated investment company is a personal holding company as defined in section 542, the permanent records of the company shall show the maximum number of shares of the corporation (including the number and face value of securities convertible into stock of the corporation) to be considered as actually or constructively owned by each of the actual owners of any of its stock at any time during the last half of the corporation's taxable year, as provided in section 544.