

§ 1.34-3

26 CFR Ch. I (4-1-04 Edition)

who uses the standard deduction provided by section 141, the taxable income for the taxable year is the adjusted gross income for the taxable year reduced by the standard deduction prescribed in section 141 and the deductions for personal exemptions provided in section 151. Where the alternative tax on capital gains is imposed under section 1201(b), the taxable income for such taxable year is the taxable income as defined in section 63, which includes 50 percent of the excess of net long-term capital gain over net short-term capital loss.

(b) The application of the limitations in paragraph (a) of this section may be illustrated by the following example:

Example. Assume the following facts in the case of an individual whose taxable year is the calendar year:

1954

Computation of tax liability without regard to the dividend received credit:

(1) Gross income	\$7,500
(2) Deductions	2,900
(3) Taxable income	4,600
(4) Income tax liability	996
(5) Foreign tax credit	16
(6) Income tax liability minus foreign tax credit ..	980

Computation of limitation under section 34(b)(1):

(7) Dividends for which credit is allowable	\$2,500
(8) Dividends received credit under section 34(a); (2,500×0.04)	100
(9) Dividends received credit, as limited by section 34(b)(1); (item (6) or item (8) whichever is lesser)	100

Computation of limitation under section 34(b)(2):

(10) Taxable income	\$4,600
(11) Dividends received credit under section 34(b)(2); (4,600×0.02)	92

Dividends received credit allowable:
Item (6), item (9), or item (11), whichever is lesser

	\$92
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1955

Computation of tax liability without regard to the dividend received credit:

(12) Gross income	\$7,500
(13) Deductions	2,900
(14) Taxable income	4,600
(15) Income tax liability	996
(16) Foreign tax credit	816
(17) Income tax liability minus foreign tax credit ..	180

Computation of limitation under section 34(b)(1):

(18) Dividends for which credit is allowable	\$2,500
(19) Dividends received credit under section 34(a); (2,500×0.04)	100

(20) Dividends received credit as limited by section 34(b)(1); (item (17) or item (19) whichever is lesser)

	100
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Computation of limitation under section 34(b)(2):

(21) Taxable income	\$4,600
(22) Dividends received credit under section 34(b)(2); (4,600×0.04)	184

Dividends received credit allowable:
Item (17), item (19), or item (22), whichever is lesser

	\$100
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[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6777, 29 FR 17807, Dec. 16, 1964]

§ 1.34-3 Dividends to which the credit and exclusion apply.

(a) *General rule.* The credit under section 34 and the exclusion under section 116 apply only to distributions of property defined as dividends by section 316. Thus, the credit and the exclusion are not allowed with respect to patronage dividends paid by either exempt or taxable farm cooperatives. Nor are they allowed for distributions to non-stockholding policyholders by an insurance company having shares of stock or for any distribution by a mutual insurance company. See paragraph (b) of this section for an additional restriction with respect to stock life insurance companies. The credit and the exclusion are, however, allowed with respect to dividends paid on capital stock by nonexempt cooperatives and with respect to dividends paid on capital stock by building and loan associations. However, see paragraph (b) of this section with respect to so-called dividends paid by building and loan associations ineligible for the credit and the exclusion. The credit and the exclusion are allowed with respect to distributions from any organization taxed as a corporation if the distribution falls within the definition of a dividend in section 316.

(b) *Dividends from certain corporations.* (1) Section 34 (c) and (d) contains further restrictions on the type of distributions which are treated as dividends for purposes of the credit and exclusion. Thus, no credit or exclusion is applicable with respect to dividends received from a corporation organized under the China Trade Act, 1922; from stock life insurance companies before January 1, 1959, in taxable years ending

before such date; from corporations which during their taxable year of the distribution or their preceding taxable year were corporations to which section 931 applies (relating to income from sources within possessions of the United States); from corporations which during the taxable year of the distribution or the preceding taxable year are corporations exempt from tax either under section 501, relating to charitable, etc., organizations, or under section 521, relating to farmers' cooperative associations.

(2) So-called dividends paid by mutual savings banks, cooperative banks, and building and loan associations which are allowed as a deduction under section 591 are ineligible for the credit and exclusion.

(3) For special rules as to the limitation on the amount of dividends for which a credit and exclusion are allowable in the case of dividends paid by a regulated investment company, see section 854 and the regulations thereunder.

(4) See section 857(c) and paragraph (d) of § 1.857-4 for special rules which deny a credit under section 34 and exclusion under section 116 in the case of dividends received from a real estate investment trust with respect to a taxable year for which such trust is taxable under part II, subchapter M, chapter 1 of the Code.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6598, 27 FR 4092, Apr. 28, 1962; T.D. 6625, 27 FR 12541, Dec. 19, 1962]

§ 1.34-4 Taxpayers not entitled to credit and exclusion.

(a) The credit or exclusion is not available to nonresident aliens with respect to whom a tax is imposed for the taxable year under section 871(a). If the taxpayer elects under section 6014 to have the Government compute his tax, the credit is not taken into account in such computation although the taxpayer is allowed the exclusion under section 116.

(b) For treatment of dividends received by estates or trusts, and the allocation of such dividends between an estate or trust and the beneficiary thereof, see sections 642, 652, and 662 and the regulations thereunder. 3

(c) For treatment of dividends received by a partnership see section 702 and the regulations thereunder.

(d) For treatment of dividends received by a common trust fund, see section 584 and the regulations thereunder.

§ 1.34-5 Effective date; taxable years ending after July 31, 1954, subject to the Internal Revenue Code of 1939.

Pursuant to section 7851(a)(1)(C), the regulations prescribed in §§ 1.34-1 to 1.34-4, inclusive, shall also apply to taxable years beginning before January 1, 1954, and ending after July 31, 1954, and to taxable years beginning after December 31, 1953, and ending after July 31, 1954, but before August 17, 1954, though such years are subject to the Internal Revenue Code of 1939.

§ 1.34-6 Dividends received after December 31, 1964.

In the case of dividends received after December 31, 1964, section 34 and the regulations issued thereunder do not apply.

[T.D. 6777, 29 FR 17807, Dec. 16, 1964]

§ 1.35-1 Partially tax-exempt interest received by individuals.

(a) The credit against tax under section 35 shall be allowed only to individuals and if the requirements of both paragraphs (1) and (2) of section 35(a) are met. Where the alternative tax on capital gains is imposed under section 1201(b), the taxable income for such taxable year is the taxable income as defined in section 63, which includes 50 percent of the excess of net long-term capital gain over net short-term capital loss.

(b) For the treatment of partially tax-exempt interest in the case of amounts not allocable to any beneficiary of an estate or trust, see section 642(a)(1), and for treatment of amounts allocable to a beneficiary, see sections 652 and 662. For treatment of partially tax-exempt interest received by a partnership, see section 702(a)(7). For treatment of such interest received by a common trust fund, see section 584(c)(2).