

Under the provisions of section 818(e)(2), the entire \$13,000 decrease in tax for 1957 attributable to the change in method of accounting required by section 818(a) shall be treated as an overpayment of tax for the taxable year 1959.

[T.D. 6558, 26 FR 2789, Apr. 4, 1961]

**§ 1.818-7 Denial of double deductions.**

Section 818(f) provides that the same item may not be deducted more than once under subpart B, part I, subchapter L, chapter 1 of the Code (relating to the determination of taxable investment income), and more than once under subpart C, part I, subchapter L, chapter 1 of the Code (relating to the determination of gain or loss from operations).

[T.D. 6558, 26 FR 2790, Apr. 4, 1961]

**§ 1.818-8 Special rules relating to consolidated returns and certain capital losses.**

Section 818(g) provides that, in the case of a life insurance company filing or required to file a consolidated return under section 1501 for a taxable year, the computations of the policyholders' share of investment yield under subparts B and C, part I, subchapter L, chapter 1 of the Code (including all determinations and computations incident thereto) shall be made as if such company were not filing a consolidated return. Thus, for example, if X and Y are life insurance companies which are entitled to file a consolidated return for 1975 and X has paid dividends to Y during such taxable year, Y must include such dividends in the computation of gross investment income under section 804(b). For other rules relating to the filing of consolidated returns, see sections 1501 through 1504 and the regulations thereunder.

[T.D. 7469, 42 FR 12181, Mar. 3, 1977]

**§ 1.819-1 Taxable years affected.**

Section 1.819-2 is applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code, are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

[T.D. 6558, 26 FR 2791, Apr. 4, 1961]

**§ 1.819-2 Foreign life insurance companies.**

(a) *Carrying on United States insurance business.* Section 819(a) provides that a foreign life insurance company carrying on a life insurance business within the United States, if with respect to its United States business it would qualify as a life insurance company under section 801, shall be taxable on its United States business under section 802 in the same manner as a domestic life insurance company. Thus, the life insurance company taxable income of such a foreign life insurance company shall not be determined in the manner provided by part I, subchapter N, chapter 1 of the Code (relating to determination of sources of income), but shall be determined in the manner provided by part I, subchapter L, chapter 1 of the Code (relating to life insurance companies). See section 842. Accordingly, in determining its life insurance company taxable income from its United States business, such a foreign life insurance company shall take into account the appropriate items of income irrespective of whether such items of income are from sources within or without the United States. A foreign life insurance company shall take into account the appropriate items of expenses, losses, and other deductions properly allocable to such items of income from its United States business. To the extent not inconsistent with the provisions of this paragraph, section 818(a), and section 819(b), all computations entering into the determination of taxes imposed by part I shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(b) *Adjustment where surplus held in the United States is less than specified minimum—(1) In general.* Section 819(b)(1) provides that if the minimum figure for the taxable year determined under section 819(b)(2) and subparagraph (2)(i) of this paragraph exceeds the surplus held in the United States as of the end of the taxable year (as defined in section 819(b)(2)(B) and subparagraph (2)(ii) of this paragraph) by a

foreign life insurance company carrying on a life insurance business within the United States and taxable under section 802, then:

(i) The amount of the policy and other contract liability requirements (determined under section 805 and § 1.805-4 without regard to this subparagraph), and

(ii) The amount of the required interest (determined under section 809(a)(2) and paragraph (d) of § 1.809-2 without regard to this subparagraph),

shall each be reduced by an amount determined by multiplying such excess by the current earnings rate (as defined in section 805(b)(2) and paragraph (a)(2) of § 1.805-5) of such company. Such current earnings rate shall be determined by reference to the assets held by the company in the United States.

(2) *Definitions.* For purposes of section 819(b)(1) and subparagraph (1) of this paragraph:

(i) The term *minimum figure*, in the case of a taxable year beginning after December 31, 1957, but before January 1, 1959, means the amount obtained by multiplying the company's total insurance liabilities on United States business by 9 percent. In the case of any taxable year beginning after December 31, 1958, such term means the amount obtained by multiplying the company's total insurance liabilities on United States business by the percentage determined and proclaimed by the Secretary as being applicable for such year.

(ii) The term *surplus held in the United States* means the excess of the assets held in the United States (as of the end of the taxable year) over the total insurance liabilities on United States business (as of the end of the taxable year).

(iii) The term *total insurance liabilities* means the sum of the total reserves (as defined in section 801(c) and paragraph (a) of § 1.801-5) as of the end of the taxable year plus (to the extent not included in total reserves) the items referred to in section 810(c) (3), (4), and (5) of paragraph (b) (3), (4), and (5) of § 1.810-2 as of the end of the taxable year; and

(iv) The term *assets* shall have the same meaning as that contained in sec-

tion 805(b)(4) and paragraph (a)(4) of § 1.805-5.

(3) *Illustration of principles.* The provisions of section 819(b) and this paragraph may be illustrated by the following example:

*Example.* For the taxable year 1958, P, a foreign life insurance company carrying on a life insurance business within the United States and taxable under section 802, has total insurance liabilities on United States business (as of the end of the taxable year) of \$940,000, assets held in the United States of \$1,000,000 (as of the end of the taxable year), policy and other contract liability requirements in the amount of \$30,000 required interest in the amount of \$20,000, and a current earnings rate of 4 percent. In order to determine whether section 819(b) applies for the taxable year 1958, P must first compute its minimum figure, for if the minimum figure is less than the surplus held in the United States (as of the end of the taxable year), no section 819(b) adjustments need be made. Since the minimum figure, \$84,600 (\$940,000, the total insurance liabilities on United States business multiplied by 9 percent, the percentage applicable for 1958), exceeds the surplus held in the United States, \$60,000 (the excess of the assets held in the United States, \$1,000,000, over the total insurance liabilities on United States business, \$940,000), by \$24,600, section 819(b) applies for the taxable year 1958. Thus, the amount of the policy and other contract liability requirements, \$30,000, and the amount of the required interest, \$20,000, shall each be reduced by \$984 (\$24,600, the amount of such excess, multiplied by 4 percent, the current earnings rate).

(4) *Segregated asset accounts.* For taxable years beginning after December 31, 1967, pursuant to the provisions of section 801(g):

(i) A foreign corporation carrying on a life insurance business which issues contracts based on segregated asset accounts shall separately compute in a manner consistent with this subparagraph the adjustment (if any) under section 819 to the amount of policy and other contract liability requirements and the amount of required interest properly attributable to each of such segregated asset accounts. The "minimum figure" used in section 819 in making the adjustment with respect to each of the segregated asset accounts shall be computed as provided in subdivision (ii) of this subparagraph in

lieu of the manner provided in subparagraphs (1), (2), and (3) of this paragraph.

(ii) The minimum figure applicable to a segregated asset account referred to in subdivision (i) of this subparagraph is the amount determined by multiplying the total insurance liabilities on U.S. business attributable to such a segregated asset account, by 1 percent.

(iii) The minimum figure as computed under subdivision (ii) of this subparagraph shall be compared only with the surplus held in the United States attributable to each segregated asset account referred to in subdivision (i) of this subparagraph. Such surplus is the excess of assets held in the United States properly attributable to such segregated asset account over the total insurance liabilities on U.S. business properly attributable to such account.

(iv) If the minimum figure applicable to accounts other than segregated asset accounts exceeds the surplus held in the United States attributable to such other accounts, for purposes of section 819 and this paragraph, the amount of such excess shall not exceed the company's overall excess, as defined in this subdivision. No adjustment under section 819 or this paragraph shall be made with respect to any account if there is no such overall excess. For purposes of this subdivision and of subdivision (v) of this subparagraph, the term "overall excess" means the amount, if any, by which the aggregate minimum figures applicable to segregated asset accounts plus the minimum figure applicable to accounts other than segregated asset accounts exceeds the surplus held in the United States with respect to the company's entire U.S. life insurance business, including segregated asset accounts as well as other accounts.

(v) In the case of a company which issues contracts based on one or more than one segregated asset account, if the minimum figure applicable to a segregated asset account exceeds the surplus held in the United States attributable to such account, then for purposes of section 819 and this paragraph, the amount of such excess shall not exceed the account limitation figure, as defined in this subdivision.

Therefore, no adjustment under section 819 or under this subparagraph shall be made with respect to any segregated asset account if the aggregate of the account limitation figures is zero, but nothing in this subdivision shall preclude an adjustment under section 819 with respect to accounts other than segregated asset accounts. For purposes of this subdivision, the term "account limitation figure" is a segregated assets account's proportionate share of the aggregate of the account limitation figures. Such aggregate of the account limitation figures is equal to the lesser of either the company's overall excess as defined in subdivision (iv) of this subparagraph, or the amount, if any, by which the aggregate of the minimum figures applicable to segregated asset accounts exceeds the surplus held in the United States with respect to all such segregated asset accounts. For purposes of this subdivision, a segregated asset account's proportionate share of the aggregate of the account limitation figures is determined by multiplying the amount of such aggregate of account limitation figures by a percentage, the numerator of which is the amount by which the minimum figure applicable to such account exceeds the surplus held in the United States attributable to such account, and the denominator of which is the aggregate of the amounts by which the minimum figure applicable to each segregated asset account exceeds the surplus held in the United States attributable to such account.

(vi) Subdivisions (i), (ii), (iii), (iv), and (v) of this subparagraph may be illustrated by the following examples:

*Example 1.* (a) For the taxable year 1968, T, a foreign life insurance company carrying on a life insurance business within the United States and taxable under section 802, has the following assets and total insurance liabilities with respect to such U.S. business:

	Regular account	Separate account A	Separate account B
Assets .....	\$9,300,000	\$1,810,000	\$515,000
Total insurance liabilities .....	8,000,000	1,800,000	500,000

It is further assumed that the percentage determined and proclaimed by the Secretary under section 819(a)(2)(A) for the taxable year 1968 is 15 percent.

(b) In order to determine whether any adjustment under section 819 must be made, T must compute the minimum figure applicable to its Regular Account as well as each of its Separate Accounts. The minimum figure for the Regular Account is \$1,200,000 (15 percent of \$8,000,000). The minimum figure applicable to Separate Account A is \$18,000 (1 percent of \$1,800,000). The minimum figure applicable to Separate Account B is \$5,000 (1 percent of \$500,000). The aggregate of the minimum figures is \$1,223,000 (\$1,200,000+\$18,000+\$5,000). The surplus held in the United States with respect to the Regular Account is \$1,300,000 (\$9,300,000-\$8,000,000), with respect to Separate Account A is \$10,000 (\$1,810,000-\$1,800,000) and with respect to Separate Account B is \$15,000 (\$515,000-\$500,000). The surplus held in the United States with respect to T's entire U.S. life insurance business is \$1,325,000 (\$1,300,000+\$10,000+\$15,000).

(c) Since the aggregate of the minimum figures (\$1,223,000) does not exceed the surplus held in the United States attributable to T's entire U.S. life insurance business (\$1,325,000), under subdivision (iv) of this subparagraph no adjustment under section 819 shall be made with respect to the Regular Account or either of the Separate Accounts.

*Example 2.* (a) The facts are the same as in example 1 except that the assets held in the United States with respect to the Regular Account is \$8,300,000 instead of \$9,300,000. Thus, the surplus held in the United States with respect to the Regular Account is \$300,000 (\$8,300,000-\$8,000,000), and the surplus held in the United States with respect to T's entire U.S. life insurance business is \$325,000 (\$300,000+\$10,000+\$15,000).

(b) Since the aggregate of the minimum figures with respect to the Separate Accounts, \$23,000 (\$18,000+\$5,000), does not exceed the surplus held in the United States with respect to both of such Separate Accounts, \$25,000 (\$10,000+\$15,000), under subdivision (v) of this subparagraph, no adjustment under section 819 must be made with respect to either of the Separate Accounts.

(c) The excess of the minimum figure for the Regular Account (\$1,200,000) over the surplus held in the United States with respect to the Regular Account (\$300,000) is equal to \$900,000 (\$1,200,000-\$300,000). However, the company's overall excess as defined in subdivision (iv) of this subparagraph, is \$898,000 (\$1,223,000-\$325,000). Under subdivision (iv) of this subparagraph the excess with respect to the Regular Account (\$900,000) is limited to the amount of overall excess (\$898,000). Thus, the amount of policy and other contract liability requirements with respect to T's Regular Account and the amount of required interest with respect to T's Regular Account (both computed without regard to section 819) shall each be reduced by an amount

equal to the product of \$898,000 and the current earnings rate computed only with respect to T's Regular Account.

(c) *Distributions to shareholders*—(1) *In general.* In the case of a foreign life insurance company carrying on a life insurance business within the United States and taxable under section 802, section 819(c)(1) provides alternative methods for determining the amount of distributions to shareholders for purposes of section 815 (relating to distributions to shareholders) and section 802(b)(3) (relating to life insurance company taxable income). Such a foreign life insurance company may elect (in the manner provided by subparagraph (4) of this paragraph) for each taxable year whichever of the alternative methods provided by section 819(c)(1) and this subparagraph it desires, and the method elected for any one taxable year shall be effective only with respect to the taxable year for which the election is made. Such alternative methods are:

(i) The amount of the distributions to shareholders shall be the amount determined by multiplying the total amount of distributions to shareholders by the percentage which the minimum figure for the taxable year is of the excess of the assets of the company over the total insurance liabilities; or

(ii) The amount of the distributions for shareholders shall be the amount determined by multiplying the total amount of distributions for shareholders by the percentage which the total insurance liabilities on United States business for the taxable year is of the total insurance liabilities of the company.

(2) *Definitions.* For purposes of section 819(c)(1) and subparagraph (1) of this paragraph:

(i) The term *total amount of the distributions to shareholders* means all distributions (within the meaning of section 815 and § 1.815-2) by a foreign life insurance company to all of its shareholders whether or not in the United States;

(ii) The term *minimum figure for the taxable year* means the amount determined under section 819(b)(2)(A) and paragraph (b)(2) of this section;

(iii) The term *assets of the company* means all of the assets (as defined in section 805(b) (4) and paragraph (a) (4) of § 1.805-5) of the foreign life insurance company whether or not in the United States (as of the end of the taxable year); and

(iv) The term *total insurance liabilities of the company* means the total insurance liabilities (as defined in section 819(b)(2) and paragraph (b)(2) of this section) on all of its business whether or not in the United States (as of the end of the taxable year).

(3) *Illustration of principles.* The provisions of section 819(c)(1) and subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

*Example 1.* For the taxable year 1958, T, a foreign life insurance company carrying on a life insurance business within the United States and taxable under section 802, has a minimum figure of \$40,000, total amount of distributions to all shareholders (within the meaning of section 815) of \$5,000, assets (as of the end of the year) of \$500,000, total insurance liabilities (as of the end of the year) of \$450,000, and total insurance liabilities on United States business (as of the end of the year) of \$180,000. Based upon these facts, if T elects the method provided in section 819(c)(1)(A) and subparagraph (1)(i) of this paragraph, the amount of T's distributions to shareholders for the taxable year 1958 is \$4,000, that is, \$5,000 (the total amount of distributions to shareholders) multiplied by 80 percent (the percentage which the minimum figure for the taxable year, \$40,000, is of \$50,000, the excess of the assets of the company (\$500,000) over the total insurance liabilities (\$450,000)).

*Example 2.* The facts are the same as in example 1, except that for the taxable year 1958, T elects the method provided in section 819(c)(1)(B) and subparagraph (1)(ii) of this paragraph. Based upon these facts, the amount of T's distributions to shareholders for the taxable year 1958 is \$2,000, that is, \$5,000 (the total amount of distributions to shareholders) multiplied by 40 percent (the percentage which the total insurance liabilities on United States business (\$180,000) is of the total insurance liabilities of the company (\$450,000)).

(4) *Manner and effect of election.* (i) The election provided by section 819(c)(1) shall be made in a statement attached to the foreign life insurance company's income tax return for any taxable year for which the company desires the election to apply. The return

and statement must be filed not later than the date prescribed by law (including extensions thereof) for filing the return for such taxable year. The statement shall indicate the method elected, the name and address of the taxpayer, and shall be signed by the taxpayer (or his duly authorized representative).

(ii) An election made under section 819(c)(1) and this paragraph shall be effective only with respect to the taxable year for which the election is made. Thus, the company must make a new election for each taxable year for which it desires the election to apply. Once such election has been made for any taxable year it may not be revoked. However, for taxable years beginning prior to April 4, 1961, a company may revoke the election provided by section 819(c)(1) without obtaining consent from the Commissioner by filing, before July 4, 1961, a statement that the company desires to revoke such election. An amended return reflecting such revocation and the selection of the other percentage must accompany the statement for all taxable years for which returns have been filed with respect to such election.

(5) *Application of section 815.* Once the amount of distributions to shareholders is determined under the provisions of section 819(c)(1) and this paragraph, the rules of section 815 (relating to distributions to shareholders) shall apply to the shareholders surplus account and the policyholders surplus account of a foreign stock life insurance company in the same manner as they would apply to a domestic stock life insurance company.

(d) *Distributions pursuant to certain mutualizations.* Section 819(c)(2) provides that for purposes of applying section 815(e) and paragraph (e) of § 1.815-6 (relating to a special rule for certain mutualizations) in the case of a foreign life insurance company subject to tax under section 802:

(1) The paid-in capital and paid-in surplus referred to in section 815(e)(1)(A) of a foreign life insurance company is the portion of such capital and surplus determined by multiplying

such amounts by the percentage selected for the taxable year under section 819(c)(1) and paragraph (c)(1) of this section; and

(2) The excess referred to in section 815(e)(2)(A)(i) (without the adjustment provided by section 815(e)(2)(B)), is whichever of the following is the greater:

(i) The minimum figure for 1958 determined under section 819(b)(2)(A); or

(ii) The surplus held in the United States (as defined in section 819(b)(2)(B)) determined as of December 31, 1958.

(e) *No United States insurance business.* Foreign life insurance companies not carrying on an insurance business within the United States shall not be taxable under part I, subchapter L, chapter 1 of the Code, but shall be taxable as other foreign corporations. See section 881 and the regulations thereunder.

[T.D. 6558, 26 FR 2791, Apr. 4, 1961; 26 FR 3276, Apr. 18, 1961, as amended by T.D. 6970, 33 FR 12044, Aug. 24, 1968]

EDITORIAL NOTE: For a determination with respect to the percentage to be used by foreign life insurance companies in computing income tax for the taxable year 1984 and the estimated tax for taxable year 1985, see 51 FR 883, Jan. 9, 1986.

MUTUAL INSURANCE COMPANIES (OTHER THAN LIFE AND CERTAIN MARINE INSURANCE COMPANIES AND OTHER THAN FIRE OR FLOOD INSURANCE COMPANIES WHICH OPERATE ON BASIS OF PERPETUAL POLICIES OR PREMIUM DEPOSITS)

**§ 1.821-1 Tax on mutual insurance companies other than life or marine or fire insurance companies subject to the tax imposed by section 831.**

(a) *In general.* (1) For taxable years beginning after December 31, 1953, but before January 1, 1955, and ending after August 16, 1954, all mutual insurance companies, including foreign insurance companies carrying on an insurance business within the United States, not taxable under section 801 or 831 and not specifically exempt under the provisions of section 501(c)(15), are subject to the tax imposed by section 821 on their investment income or on their gross income, whichever tax is the greater, except interinsurers and recip-

rocal underwriters which are taxed only on their investment income. For the alternative tax, in lieu of the tax imposed by section 821 (a) or (b), where the net long-term capital gain for any taxable year exceeds the net short-term capital loss, see section 1201(a) and the regulations thereunder.

(2) The taxable income of mutual insurance companies subject to the tax imposed by section 821 differs from the taxable income of other corporations. See section 821(a)(2) and section 822. Such companies are entitled, in computing mutual insurance company taxable income, to the deductions provided in part VIII (section 241 and following, except section 248), subchapter B, chapter 1 of the Code. The gross amount of income during the taxable year from interest, the deduction under section 822(c)(1) for wholly tax-exempt interest, and the deduction under section 242 for partially tax-exempt interest, are decreased by the appropriate amortization of premium and increased by the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures or other evidences of indebtedness held by a mutual insurance company subject to the tax imposed by section 821. See section 822(d)(2) and § 1.822-3.

(3) All provisions of the Code and of the regulations in this part not inconsistent with the specific provisions of section 821 are applicable to the assessment and collection of the tax imposed by section 821 (a) or (b) and mutual insurance companies subject to the tax imposed by section 821 are subject to the same penalties as are provided in the case of returns and payment of income tax by other corporations. The return shall be on Form 1120M.

(4) Foreign mutual insurance companies not carrying on an insurance business within the United States are not taxable under section 821 (a) or (b), but are taxable as other foreign corporations. See section 881.

(5) Mutual insurance companies subject to the tax imposed by section 821, except interinsurers or reciprocal underwriters, with mutual insurance company taxable income (computed without regard to the deduction provided in section 242 for partially tax-exempt interest) of over \$3,000 or with