

**Effective:[See Text Amendments]**United States Code Annotated [Currentness](#)Title 26. Internal Revenue Code ([Refs & Annos](#))Subtitle A. Income Taxes ([Refs & Annos](#))Chapter 1. Normal Taxes and Surtaxes ([Refs & Annos](#))▣ [Subchapter H](#). Banking Institutions▣ [Part II](#). Mutual Savings Banks, Etc. ([Refs & Annos](#))**→→ § 597. Treatment of transactions in which Federal financial assistance provided**

**(a) General rule.**--The treatment for purposes of this chapter of any transaction in which Federal financial assistance is provided with respect to a bank or domestic building and loan association shall be determined under regulations prescribed by the Secretary.

**(b) Principles used in prescribing regulations.--**

**(1) Treatment of taxable asset acquisitions.**--In the case of any acquisition of assets to which [section 381\(a\)](#) does not apply, the regulations prescribed under subsection (a) shall--

**(A)** provide that Federal financial assistance shall be properly taken into account by the institution from which the assets were acquired, and

**(B)** provide the proper method of allocating basis among the assets so acquired (including rights to receive Federal financial assistance).

**(2) Other transactions.**--In the case of any transaction not described in paragraph (1), the regulations prescribed under subsection (a) shall provide for the proper treatment of Federal financial assistance and appropriate adjustments to basis or other tax attributes in connection with such assistance.

**(3) Denial of double benefit.**--No regulations prescribed under this section shall permit the utilization of any deduction (or other tax benefit) if such amount was in effect reimbursed by nontaxable Federal financial assistance.

**(c) Federal financial assistance.**--For purposes of this section, the term “Federal financial assistance” means--

**(1)** any money or other property provided with respect to a domestic building and loan association by the Federal

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Savings and Loan Insurance Corporation or the Resolution Trust Corporation pursuant to section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any other similar provision of law), and

(2) any money or other property provided with respect to a bank or domestic building and loan association by the Federal Deposit Insurance Corporation pursuant to section 11(f) or 13(c) of the Federal Deposit Insurance Act (or under any other similar provision of law),

regardless of whether any note or other instrument is issued in exchange therefor.

**(d) Domestic building and loan association.**--For purposes of this section, the term "domestic building and loan association" has the meaning given such term by [section 7701\(a\)\(19\)](#) without regard to subparagraph (C) thereof.

CREDIT(S)

(Added [Pub.L. 97-34, Title II, § 244\(a\)](#), Aug. 13, 1981, 95 Stat. 255; amended [Pub.L. 99-514, Title IX, § 904\(b\)\(1\)](#), Oct. 22, 1986, 100 Stat. 2385; [Pub.L. 100-647, Title IV, § 4012\(b\)\(2\)\(A\)](#) to (D)(i), (c)(1), Nov. 10, 1988, 102 Stat. 3657, 3658; [Pub.L. 101-73, Title XIV, § 1401\(a\)\(3\)\(A\)](#), Aug. 9, 1989, 103 Stat. 548; [Pub.L. 101-239, Title VII, § 7841\(e\)\(1\)](#), Dec. 19, 1989, 103 Stat. 2429; [Pub.L. 101-508, Title XI, § 11704\(a\)\(7\)](#), Nov. 5, 1990, 104 Stat. 1388-518.)

## HISTORICAL AND STATUTORY NOTES

## Revision Notes and Legislative Reports

1981 Acts. [Senate Report No. 97-144](#), [House Conference Report No. 97-215](#), and Statements by Legislative Leaders, see 1981 U.S. Code Cong. and Adm. News, p. 105.

1989 Acts. [House Report No. 101-247](#) and [House Conference Report No. 101-386](#), see 1989 U.S. Code Cong. and Adm. News, p. 1906.

[House Report No. 101-54](#) and House Conference Report No. 101-209, see 1989 U.S. Code Cong. and Adm. News, p. 86.

1990 Acts. [House Report No. 101-881](#) and [House Conference Report No. 101-964](#), see 1990 U.S. Code Cong. and Adm. News, p. 2017.

## References in Text

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Section 406(f) of the National Housing Act, referred to in subsec. (c)(1), is Act June 27, 1934, c. 847, Title IV, § 406(f), 48 Stat. 1259, which is classified to section 1729(f) of Title 12, Banks and Banking.

Section 21A of the Federal Home Loan Bank Act, referred to in subsec. (c)(1), is Act July 22, 1932, c. 522, § 21A, as added Pub.L. 101-73, Title V, § 501(a), Aug. 9, 1989, 103 Stat. 363, which is classified to section 1441a of Title 12, Banks and Banking.

Section 11(f) or 13(c) of the Federal Deposit Insurance Act, referred to in subsec. (c)(2), are Act Sept. 21, 1950, c. 967, §§ 2[11(f)], 2[13(c)], 64 Stat. 884, 888, and are classified to section 1821(f) and 1823(c), respectively, of Title 12, Banks and Banking.

## Amendments

1990 Amendments. Subsec. (c). Pub.L. 101-508, § 11704(a)(7), substituted “For purposes of” for “The purposes of”.

1989 Amendments. Pub.L. 101-73, § 1401(b)(1), repealed amendment made by Pub.L. 99-514, § 904(b)(1). See 1986 Amendment note below.

Subsec. (a). Pub.L. 101-73 substituted provisions that treatment of any transaction in which Federal financial assistance is provided shall be by regulations prescribed by the Secretary for provisions excluding from gross income of a domestic building and loan association any money from the Federal Savings and Loan insurance Corporation pursuant to section 406(f) of the National Housing Act and from a bank any money received from the Federal Deposit Insurance Corporation pursuant to sections 13(c), 15(c)(1), and 15(c)(2) of the Federal Deposit Insurance Corporation.

Subsec. (b). Pub.L. 101-73 substituted provisions relating to the principles used in prescribing regulations for provisions mandating no reduction in basis of assets on account of money received from federal financial assistance.

Subsec. (b)(2). Pub.L. 101-239, § 7841(e)(1), substituted “in connection with such assistance” for “to reflect such treatment”.

Subsec. (c). Pub.L. 101-73 substituted provisions defining the term “Federal financial assistance” for provisions relating to reduction of tax attributes by 50 percent of amounts excludable under subsection (a).

Subsec. (d). Pub.L. 101-73 reenacted subsec. (d) without change.

1988 Amendments. Heading. Pub.L. 100-647, § 4012(b)(2)(D)(i), substituted “FSLIC or FDIC” for “FSLIC”.

Subsec. (a). Pub.L. 100-647, § 4012(b)(2)(A), added the sentence “Gross income of a bank does not include any

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amount of money or other property received from the Federal Deposit Insurance Corporation pursuant to sections 13(c), 15(c)(1), and 15(c)(2) of the Federal Deposit Insurance Act ([12 U.S.C. 1821\(f\)](#) and [1823\(c\)\(1\)](#) and [\(c\)\(2\)](#)), regardless of whether any note or other instrument is issued in exchange therefor.”

Subsec. (b). Pub.L. 100-647, § 4012(b)(2)(C), substituted “association or bank” for “association”.

Subsec. (c). Pub.L. 100-647, § 4012(c)(1), added subsec. (c).

Subsec. (d). Pub.L. 100-647, § 4012(b)(2)(B), added subsec. (d).

1986 Amendments. Pub.L. 99-514, Title IX, § 904(b)(1), (c)(2)(A), Oct. 22, 1986, 100 Stat. 2385, as amended Pub.L. 100-647, Title IV, § 4012(a)(2), Nov. 10, 1988, 102 Stat. 3656, applicable to transfers after Dec. 31, 1989, in taxable years ending after such date, with exceptions, directed repeal of this section, and was repealed by Pub.L. 101-73, Title XIV, § 1401(b)(1), Aug. 9, 1989, 103 Stat. 549, effective Oct. 22, 1986, as if amendments made by such section had not been enacted.

## Effective and Applicability Provisions

1990 Acts. Amendment by section 11704 of Pub.L. 101-508 shall take effect Nov. 5, 1990, see section 11704(b) of Pub.L. 101-508, set out as a note under section 56 of this title.

1989 Acts. Section 7841(e)(2) of Pub.L. 101-239 provided that: “The amendment made by this subsection [amending subsec. (b)(2) of this section] shall apply as if included in the amendments made by section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Pub.L. 101-73].”

Section 1401(c)(3) of Pub.L. 101-73 provided that:

“(A) **In general.**--The amendments made by subsection (a)(3) [amending this section and repealing section 904(c)(2)(B) of Pub.L. 99-514, set out below] shall apply to any amount received or accrued by the financial institution on or after May 10, 1989, except that such amendments shall not apply to transfers on or after such date pursuant to an acquisition to which the amendment made by subsection (a)(1) [amending section 368(a)(3)(D) of this title] does not apply.

“(B) **Interim rule.**--In the case of any payment pursuant to a transaction on or after May 10, 1989, and before the date on which the Secretary of the Treasury (or his delegate) takes action in exercise of his regulatory authority under section 597 of the Internal Revenue Code of 1986 (as amended by subsection (a)(3)) [this section], the taxpayer may rely on the legislative history for the amendments made by subsection (a)(3) [amending this section] in determining the proper treatment of such payment.”

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[Section 1401(c)(4) of Pub.L. 101-73 provided that: “The provisions of subsection (b)(1) [repealing section 904 of Pub.L. 99-514, other than subsection (c)(2)(B) thereof, relating to clarification of treatment of amounts excluded under this section] shall take effect on the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986].”]

[Section 1401(c)(5) of Pub.L. 101-73, provided that: “The amendment made by subsection (b)(2) [amending section 4012(c)(3) of Pub.L. 100-647, set out as a note under this section] shall take effect on the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988].”]

1988 Acts. Section 4012(b)(2)(E) of Pub.L. 100-647 provided that: “The amendments made by this paragraph [amending the heading and subsecs. (a), (b) and (d) of this section] shall apply to any transfer--

“(i) after the date of the enactment of this Act [Nov. 10, 1988], and before January 1, 1990, unless such transfer is pursuant to an acquisition occurring on or before such date of enactment, and

“(ii) after December 31, 1989, if such transfer is pursuant to an acquisition occurring after such date of enactment and before January 1, 1990.”

Section 4012(c)(3) of Pub.L. 100-647, as amended Pub.L. 101-73, Title XIV, § 1401(b)(2), Aug. 9, 1989, 103 Stat. 549, provided that: “The amendments made by this subsection [enacting subsec. (c) of this section and provisions set out as a note under this section] shall apply to any transfer--

“(A) after December 31, 1988, and before January 1, 1990, unless such transfer is pursuant to an acquisition occurring before January 1, 1989, and

“(B) after December 31, 1989, if such transfer is pursuant to an acquisition occurring after December 31, 1988, and before January 1, 1990.

In the case of any bank or any institution treated as a domestic building and loan association for purposes of section 597 of the 1986 Code [this section] by reason of the amendment made by subsection (b)(2)(B) [enacting subsec. (d) of this section], the amendments made by this subsection shall also apply to any transfer before January 1, 1989, to which the amendments made by subsection (b)(2) [amending this section and enacting a provision set out as a note under this section] apply.”

1981 Acts. Section 246(c) of Pub.L. 97-34 provided that: “The amendment made by section 244 [enacting this section] shall apply to any payment made on or after January 1, 1981.”

## Effective Date of Repeal

Pub.L. 99-514, Title IX, § 904(c)(2), Oct. 22, 1986, 100 Stat. 2385, as amended Pub.L. 100-647, Title IV, § 4012(a)

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(2), (c)(2), Nov. 10, 1988, 102 Stat. 3656, 3660, providing that repeal of this section applicable to transfers after Dec. 31, 1989, in taxable years ending after such date, with exceptions, and relating to clarification of treatment of amounts excluded under this section was repealed by Pub.L. 101-73, Title XIV, § 1401(a)(3)(B), (b)(1), Aug. 9, 1989, 103 Stat. 549.

## Transfer of Functions

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see Pub.L. 101-73, Title IV, §§ 401 to 406, Aug. 9, 1989, 103 Stat. 354 to 363, set out as a note under [12 U.S.C.A. § 1437](#).

## Severability of Provisions

If any provision of Pub.L. 101-73 or the application thereof to any person or circumstance is held invalid, the remainder of Pub.L. 101-73 and the application of the provision to other persons not similarly situated or to other circumstances not to be affected thereby, see section 1221 of Pub.L. 101-73, set out as a note under section 1811 of Title 12, Banks and Banking.

## Clarification of Prior Law

Section 1401(c)(7) of Pub.L. 101-73 provided that: "Any reference to the Federal Savings and Loan Insurance Corporation in section 597 of the Internal Revenue Code of 1986 [this section] (as in effect on the day before the date of the enactment of this Act [Aug. 9, 1989]) shall be treated as including a reference to the Resolution Trust Corporation and the FSLIC Resolution Fund".

## Annual Reports on Transactions in Which Federal Financial Assistance Provided

Pub.L. 101-73, Title XIV, § 1403, Aug. 9, 1989, 103 Stat. 551, which required the Secretary of the Treasury to submit annual reports to the Senate and to the Committee on Ways and Means of the House of Representatives on transactions with respect to which Federal financial assistance subject to this section was provided, terminated, effective May 15, 2000, pursuant to Pub.L. 104-66, § 3003, as amended, set out as a note under [31 U.S.C.A. § 1113](#). See, also, page 142 of House Document No. 103-7.

## CODE OF FEDERAL REGULATIONS

Bridge banks and agency control, see [26 CFR § 1.597-4](#).

Effective date, see [26 CFR § 1.597-7](#).

Limitation on collection of income tax, see [26 CFR § 1.597-6](#).

Other rules, see [26 CFR § 1.597-3](#).

Taxable transfers, see [26 CFR § 1.597-5](#).

Taxation of federal financial assistance, see [26 CFR § 1.597-2](#).

Transitional rules for federal financial assistance, see [26 CFR § 1.597-8](#).

#### LIBRARY REFERENCES

##### American Digest System

[Internal Revenue](#)  [3956](#).

Key Number System Topic No. [220](#).

##### Corpus Juris Secundum

[CJS Internal Revenue § 413](#), Savings Institutions.

#### RESEARCH REFERENCES

##### Encyclopedias

[Am. Jur. 2d Federal Taxation P 20477](#), Contributions to Domestic Building and Loan Associations and Banks Under Federal Financial Assistance (Ffa) Programs.

[Am. Jur. 2d Federal Taxation P 20478](#), What is Federal Financial Assistance (Ffa).

##### Forms

[Nichols Cyclopedia of Legal Forms Annotated § 52:9](#), Other Possible Tax Status of Credit Union.

##### Treatises and Practice Aids

[Mertens: Law of Federal Income Taxation § 34A:3](#), Organizations Subject to Cooperative Treatment.

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[Mertens: Law of Federal Income Taxation § 29:162](#), Thrift Institutions.

[Mertens: Law of Federal Income Taxation § 38:112](#), Banks and Trust Companies.

[Mertens: Law of Federal Income Taxation § 45E:232](#), Tax Attributable to Amount Included as Dividend--Pro Rata Share.

## NOTES OF DECISIONS

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
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

Repeal of covered asset loss deduction [1](#)

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[1](#). Repeal of covered asset loss deduction



Congress's retroactive abolition of built-in loss deduction for acquiring institutions, which deprived acquiring institutions of substantial part of benefit of their contract with government, constituted breach of implied covenant of good faith and fair dealing by government, although no statute expressly entitled acquiring institutions to deduct built-in losses. [Centex Corp. v. U.S., C.A.Fed.2005, 395 F.3d 1283](#), rehearing and rehearing en banc denied. [Public Contracts](#)  [345](#); [United States](#)  [73\(22\)](#)



[2](#). Agreements



Provision in assistance agreement that governed acquisition of failing thrifts by financial institution, which allowed institution to seek reimbursement from government for payments made to federal agency that related to tax deductions that were subsequently disallowed, did not provide exclusive remedy for government's breach of implied covenant of good faith and fair dealing through enactment of legislation that prevented institution from claiming reimbursed net liabilities of failing thrifts as tax deductions, as provided by agreement, and thus provision did not preclude government's liability for damages arising from its breach. [Local Oklahoma Bank, N.A. v. U.S., C.A.Fed.2006, 452 F.3d 1371](#). [Public Contracts](#)  [403](#); [United States](#)  [74\(3\)](#)



Proper remedy for breach of contract which occurred when Congress eliminated tax deduction for covered asset losses sustained by financial institutions when they sold or wrote off certain assets of failing thrifts acquired by them was to restore reduction in reimbursement to institutions for covered asset losses by Federal Savings and Loan Insurance Corporation (FSLIC), a reduction which resulted from agreement to share tax deduction benefits with the

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
FSLIC. [First Nationwide Bank v. U.S., C.A.Fed.2005, 431 F.3d 1342](#). [Public Contracts](#)  [416\(3\)](#); [United States](#)  [74\(13\)](#)

Provision of thrift bailout agreement that the best efforts clause of agreement would not be “construed to include an obligation to pay money, unless specifically required by the language of this Agreement or to take impractical or unreasonable actions,” did not preclude right to monetary damages based on claim of acquirer of failing thrifts that government breached implied covenant of good faith and fair dealing when Congress enacted legislation which retroactively eliminated tax benefits of agreement. [Temple-Inland, Inc. v. U.S., Fed.Cl.2004, 59 Fed.Cl. 550](#). [Public Contracts](#)  [416\(3\)](#); [United States](#)  [74\(13\)](#)

Government breached implied covenant of good faith and fair dealing in thrift bailout agreement when Congress enacted the Guarini legislation in 1993 which retroactively eliminated tax deduction for covered asset losses (CALs) sustained by acquirer when it disposed of assets of failing thrifts; pursuant to agreement, acquirer was entitled to deduct the losses and keep 75% of the tax savings, while government took the remaining 25%, and government made implicit promise not to exercise its taxing power to eliminate the means by which the benefits were generated and thereby divert to itself one hundred percent of the benefits. [Temple-Inland, Inc. v. U.S., Fed.Cl.2004, 59 Fed.Cl. 550](#). [Public Contracts](#)  [345](#); [United States](#)  [73\(22\)](#)

Doctrine of prior material breach did not bar financial institutions from recovering on their claim that enactment of Guarini legislation in 1993 breached provision of assistance agreement allowing tax deduction for covered asset losses; assuming that institutions materially breached the agreement before the Guarini legislation, conduct of the government in accepting performance since the breach constituted election to continue the contract. [First Heights Bank, FSB v. U.S., Fed.Cl.2001, 51 Fed.Cl. 659](#), affirmed [422 F.3d 1311](#). [Public Contracts](#)  [351](#); [United States](#)  [73\(3\)](#)



### 3. Estoppel



Bank which prevailed on claim that government breached contract when Congress enacted the Guarini legislation in 1993 which retroactively eliminated tax deduction for covered asset losses incurred in acquisition of failing thrift was not estopped from asserting a larger damages figure than that incorporated in prior tax return filed by bank. [National Australia Bank v. U.S., Fed.Cl.2004, 63 Fed.Cl. 352](#), affirmed in part, reversed in part and remanded [452 F.3d 1321](#), motion denied [74 Fed.Cl. 435](#). [Estoppel](#)  [63](#)

### 4. Calculation of deduction



Court of Federal Claims did not abuse its discretion in adopting government's methodology for calculating interest offset claim of financial institution, in institution's *Winstar*-related action alleging that government breached its contracts with passage of legislation which disallowed covered asset loss deductions; although clause in agreement provided that institution reserved right to have its interest offset claim calculated according to its methodology, government in subsequent clause reserved “right to assert that the Interest Offset Claim should be computed in a



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manner other than the manner in which [institution] has computed it.” [Local Oklahoma Bank, N.A. v. U.S., C.A.Fed.2006, 452 F.3d 1371](#). [Public Contracts](#)  [416\(3\)](#); [United States](#)  [74\(13\)](#)

Government did not establish that thrift holding company's figure of \$555,791,213 in lost covered asset loss (CAL) deductions should be reduced by approximately \$150 million, reducing damages for government's breach of implied covenant of good faith and fair dealing in thrift bailout agreement when Congress enacted the Guarini legislation in 1993 which retroactively eliminated tax deduction for covered asset losses (CALs), based on its assertion that proper tax treatment of the write off of loans between thrift and its subsidiaries required such reduction, as company was entitled to base its claim on state of its closed tax returns. [Temple-Inland Inc. v. U.S., Fed.Cl.2005, 68 Fed.Cl. 561](#). [Public Contracts](#)  [415\(8\)](#); [United States](#)  [74\(13\)](#)

##### 5. Damages



Bank established with reasonable certainty expectancy damages incurred as result of United States' breach of its implied covenant of good faith and fair dealing due to enactment of Guarini legislation, which eliminated tax deductions promised to bank when it acquired assets of failing thrift, despite United States' contention that bank did not know tax basis for any of its covered assets, where tax experts testified that gross book value for book purposes and tax basis of asset were equivalent. [National Australia Bank v. U.S., C.A.Fed.2006, 452 F.3d 1321](#), motion denied [74 Fed.Cl. 435](#). [Public Contracts](#)  [415\(8\)](#); [United States](#)  [74\(13\)](#)



Prior settlement payment by Federal Deposit Insurance Corporation (FDIC) did not include damages flowing from Guarini Legislation which retroactively eliminated covered asset loss (CAL) deductions and ensuing breach of contractual tax benefits; sections of settlement dealt with covered asset gains, Guarini Legislation affected only covered asset losses, and claimed CALs were distinct. [First Nationwide Bank v. U.S., C.A.Fed.2005, 431 F.3d 1342](#). [Public Contracts](#)  [408](#); [United States](#)  [74\(6\)](#)

Private acquiring institutions were not entitled to 100 percent of tax savings from built-in loss deductions, as damages for government's breach of assistance agreement, which originally was to be split evenly between Federal Deposit Insurance Corporation (FDIC) and those institutions, by termination agreement, which stated that if claim was brought against government based upon enactment of particular legislation, “the FDIC Manager shall not be obligated to pay the expenses of such litigation and shall not be entitled to share in any recoveries”; institutions were merely entitled to keep entirety of any award they received from government free from any claim by FDIC, rather than FDIC's share of savings. [Centex Corp. v. U.S., C.A.Fed.2005, 395 F.3d 1283](#), rehearing and rehearing en banc denied. [Public Contracts](#)  [416\(3\)](#); [United States](#)  [74\(13\)](#)



Government did not establish that thrift holding company failed to mitigate its damages from government's breach of implied covenant of good faith and fair dealing in thrift bailout agreement when Congress enacted the Guarini legislation in 1993 which retroactively eliminated tax deduction for covered asset losses (CALs), based on assertion that holding company could have avoided the loss of at least \$181.5 million of the deductions disallowed by accelerating deductions and amending its pre-Guarini tax returns. [Temple-Inland Inc. v. U.S., Fed.Cl.2005, 68](#)

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[Fed.Cl. 561](#), [Public Contracts](#)  [415\(8\)](#); [United States](#)  [74\(13\)](#)

Financial institutions who prevailed on claim that the government breached implied covenant of good faith and fair dealing when Congress enacted the Guarini legislation in 1993 which retroactively eliminated a tax deduction for covered asset losses (CALs) incurred when they sold or wrote off assets of failing thrifts were entitled to recover the net amount of the lost federal income tax benefit. [First Heights Bank, FSB v. U.S., Fed.Cl.2003, 57 Fed.Cl. 162](#), [Public Contracts](#)  [416\(3\)](#); [United States](#)  [74\(13\)](#)

#### 6. Proof of damages

Bank, as successor in interest to thrift holding company, offered sufficient evidence that it suffered \$103,155,357 in lost tax deductions as a result of government's breach of implied covenant of good faith and fair dealing when Congress enacted the Guarini legislation in 1993, which retroactively eliminated a tax deduction for covered asset losses sustained by financial institutions when they sold or wrote off assets of failing thrift acquired by them under assistance agreement with the Federal Savings and Loan Insurance Corporation (FSLIC); although bank could not produce an asset-by-asset list of each asset's tax basis, aggregate figures satisfied required legal standard for expectancy damages. [National Australia Bank v. U.S., Fed.Cl.2004, 63 Fed.Cl. 352](#), affirmed in part, reversed in part and remanded [452 F.3d 1321](#), motion denied [74 Fed.Cl. 435](#). [Public Contracts](#)  [416\(3\)](#); [United States](#)  [74\(11\)](#)

#### 7. Tax on damages

Bank which was entitled to damages for government's breach of assistance agreement allowing it to take covered asset loss (CAL) tax deductions which occurred when legislation was passed retroactively repealing CAL deduction, was not also entitled to have the damages award "grossed up" to reimburse it for income taxes it anticipated paying on the principal award, as award of damages for the government's breach would not constitute taxable income. [Local Oklahoma Bank, N.A. v. U.S., Fed.Cl.2004, 59 Fed.Cl. 713](#), affirmed [452 F.3d 1371](#). [Public Contracts](#)  [416\(3\)](#); [United States](#)  [74\(13\)](#)

I.R.C. § 597, 26 U.S.C.A. § 597

Current through P.L. 113-31 approved 8-9-13

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