

“(B) NONELECTING CORPORATIONS.—In the case of a corporation (other than an electing corporation) which is a member of an electing group, any core qualifying activities of the corporation shall be treated as qualifying secondary activities (and not as core qualifying activities).”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109-135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which they relate, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

§ 1357. Items not subject to regular tax; depreciation; interest

(a) Exclusion from gross income

Gross income of an electing corporation shall not include its income from qualifying shipping activities.

(b) Electing group member

Gross income of a corporation (other than an electing corporation) which is a member of an electing group shall not include its income from qualifying shipping activities conducted by such member.

(c) Denial of losses, deductions, and credits

(1) General rule

Subject to paragraph (2), each item of loss, deduction (other than for interest expense), or credit of any taxpayer with respect to any activity the income from which is excluded from gross income under this section shall be disallowed.

(2) Depreciation

(A) In general

Notwithstanding paragraph (1), the adjusted basis (for purposes of determining gain) of any qualifying vessel shall be determined as if the deduction for depreciation had been allowed.

(B) Method

(i) In general

Except as provided in clause (ii), the straight-line method of depreciation shall apply to qualifying vessels the income from operation of which is excluded from gross income under this section.

(ii) Exception

Clause (i) shall not apply to any qualifying vessel which is subject to a charter entered into before the date of the enactment of this subchapter.

(3) Interest

(A) In general

Except as provided in subparagraph (B), the interest expense of an electing corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of such corporation's total assets.

(B) Electing group

In the case of a corporation which is a member of an electing group, the interest expense of such corporation shall be disallowed in the ratio that the fair market

value of such corporation's qualifying vessels bears to the fair market value of the electing groups total assets.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1455.)

REFERENCES IN TEXT

The date of the enactment of this subchapter, referred to in subsec. (c)(2)(B)(ii), is the date of enactment of Pub. L. 108-357, which was approved Oct. 22, 2004.

§ 1358. Allocation of credits, income, and deductions

(a) Qualifying shipping activities

For purposes of this chapter, the qualifying shipping activities of an electing corporation shall be treated as a separate trade or business activity distinct from all other activities conducted by such corporation.

(b) Exclusion of credits or deductions

(1) No deduction shall be allowed against the notional shipping income of an electing corporation, and no credit shall be allowed against the tax imposed by section 1352(a)(2).¹

(2) No deduction shall be allowed for any net operating loss attributable to the qualifying shipping activities of any person to the extent that such loss is carried forward by such person from a taxable year preceding the first taxable year for which such person was an electing corporation.

(c) Transactions not at arm's length

Section 482 applies in accordance with this subsection to a transaction or series of transactions—

(1) as between an electing corporation and another person, or

(2) as between an² person's qualifying shipping activities and other activities carried on by it.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1456.)

§ 1359. Disposition of qualifying vessels

(a) In general

If any qualifying vessel operator sells or disposes of any qualifying vessel in an otherwise taxable transaction, at the election of such operator, no gain shall be recognized if any replacement qualifying vessel is acquired during the period specified in subsection (b), except to the extent that the amount realized upon such sale or disposition exceeds the cost of the replacement qualifying vessel.

(b) Period within which property must be replaced

The period referred to in subsection (a) shall be the period beginning one year prior to the disposition of the qualifying vessel and ending—

(1) 3 years after the close of the first taxable year in which the gain is realized, or

(2) subject to such terms and conditions as may be specified by the Secretary, on such

¹ So in original. Probably should be section “1352(2).”

² So in original.

later date as the Secretary may designate on application by the taxpayer.

Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(c) Application of section to noncorporate operators

For purposes of this section, the term “qualifying vessel operator” includes any person who would be a qualifying vessel operator were such person a corporation.

(d) Time for assessment of deficiency attributable to gain

If a qualifying vessel operator has made the election provided in subsection (a), then—

(1) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by such operator (in such manner as the Secretary may by regulations prescribe) of the replacement qualifying vessel or of an intention not to replace, and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

(e) Basis of replacement qualifying vessel

In the case of any replacement qualifying vessel purchased by the qualifying vessel operator which resulted in the nonrecognition of any part of the gain realized as the result of a sale or other disposition of a qualifying vessel, the basis shall be the cost of the replacement qualifying vessel decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1456.)

Subchapter S—Tax Treatment of S Corporations and Their Shareholders

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PART I—IN GENERAL

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§ 1361. S corporation defined

(a) S corporation defined

(1) In general

For purposes of this title, the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

(2) C corporation

For purposes of this title, the term “C corporation” means, with respect to any taxable year, a corporation which is not an S corporation for such year.

(b) Small business corporation

(1) In general

For purposes of this subchapter, the term “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not—

(A) have more than 100 shareholders,

(B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual,

(C) have a nonresident alien as a shareholder, and

(D) have more than 1 class of stock.

(2) Ineligible corporation defined

For purposes of paragraph (1), the term “ineligible corporation” means any corporation which is—

(A) a financial institution which uses the reserve method of accounting for bad debts described in section 585,

(B) an insurance company subject to tax under subchapter L,

(C) a corporation to which an election under section 936 applies, or

(D) a DISC or former DISC.

(3) Treatment of certain wholly owned subsidiaries

(A) In general

Except as provided in regulations prescribed by the Secretary, for purposes of this title—

(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

(B) Qualified subchapter S subsidiary

For purposes of this paragraph, the term “qualified subchapter S subsidiary” means any domestic corporation which is not an ineligible corporation (as defined in paragraph (2)), if—

(i) 100 percent of the stock of such corporation is held by the S corporation, and

(ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

(C) Treatment of terminations of qualified subchapter S subsidiary status

(i) In general

For purposes of this title, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before