

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, subsec. (d)(3) of this section and sections 1366(f)(3) and 1375 of this title shall apply, and section 1372(e)(5) of this title as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3) of Pub. L. 97-354, set out as a note under section 1361 of this title. For additional provisions relating to the treatment of certain elections under prior law for purposes of subsec. (g) of this section, see section 6(e) of Pub. L. 97-354, set out as a note under section 1361 of this title.

TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW

Pub. L. 104-188, title I, §1317(b), Aug. 20, 1996, 110 Stat. 1787, provided that: "For purposes of section 1362(g) of the Internal Revenue Code of 1986 (relating to election after termination), any termination under section 1362(d) of such Code in a taxable year beginning before January 1, 1997, shall not be taken into account."

SUBCHAPTER S ELECTION

Pub. L. 98-369, div. A, title I, §102(d)(3), July 18, 1984, 98 Stat. 623, as amended by Pub. L. 99-514, §2, title XVIII, §1808(a)(2), Oct. 22, 1986, 100 Stat. 2095, 2817, provided that: "If a commodities dealer or an options dealer—

"(A) becomes a small business corporation (as defined in section 1361(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) at any time before the close of the 75th day after the date of the enactment of this Act [July 18, 1984], and

"(B) makes the election under section 1362(a) of such Code before the close of such 75th day, then such dealer shall be treated as having received approval for and adopted a taxable year beginning on the first day during 1984 on which it was a small business corporation (as so defined) or such other day as may be permitted under regulations and ending on the date determined under section 1378 of such Code and such election shall be effective for such taxable year."

§ 1363. Effect of election on corporation**(a) General rule**

Except as otherwise provided in this subchapter, an S corporation shall not be subject to the taxes imposed by this chapter.

(b) Computation of corporation's taxable income

The taxable income of an S corporation shall be computed in the same manner as in the case of an individual, except that—

(1) the items described in section 1366(a)(1)(A) shall be separately stated,

(2) the deductions referred to in section 703(a)(2) shall not be allowed to the corporation,

(3) section 248 shall apply, and

(4) section 291 shall apply if the S corporation (or any predecessor) was a C corporation for any of the 3 immediately preceding taxable years.

(c) Elections of the S corporation**(1) In general**

Except as provided in paragraph (2), any election affecting the computation of items derived from an S corporation shall be made by the corporation.

(2) Exceptions

In the case of an S corporation, elections under the following provisions shall be made by each shareholder separately—

(A) section 617 (relating to deduction and recapture of certain mining exploration expenditures), and

(B) section 901 (relating to taxes of foreign countries and possessions of the United States).

(d) Recapture of LIFO benefits**(1) In general**

If—

(A) an S corporation was a C corporation for the last taxable year before the first taxable year for which the election under section 1362(a) was effective, and

(B) the corporation inventoried goods under the LIFO method for such last taxable year,

the LIFO recapture amount shall be included in the gross income of the corporation for such last taxable year (and appropriate adjustments to the basis of inventory shall be made to take into account the amount included in gross income under this paragraph).

(2) Additional tax payable in installments**(A) In general**

Any increase in the tax imposed by this chapter by reason of this subsection shall be payable in 4 equal installments.

(B) Date for payment of installments

The first installment under subparagraph (A) shall be paid on or before the due date (determined without regard to extensions) for the return of the tax imposed by this chapter for the last taxable year for which the corporation was a C corporation and the 3 succeeding installments shall be paid on or before the due date (as so determined) for the corporation's return for the 3 succeeding taxable years.

(C) No interest for period of extension

Notwithstanding section 6601(b), for purposes of section 6601, the date prescribed for the payment of each installment under this paragraph shall be determined under this paragraph.

(3) LIFO recapture amount

For purposes of this subsection, the term "LIFO recapture amount" means the amount (if any) by which—

(A) the inventory amount of the inventory asset under the first-in, first-out method authorized by section 471, exceeds

(B) the inventory amount of such assets under the LIFO method.

For purposes of the preceding sentence, inventory amounts shall be determined as of the close of the last taxable year referred to in paragraph (1).

(4) Other definitions

For purposes of this subsection—

(A) LIFO method

The term "LIFO method" means the method authorized by section 472.

(B) Inventory assets

The term "inventory assets" means stock in trade of the corporation, or other prop-

erty of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(C) Method of determining inventory amount

The inventory amount of assets under a method authorized by section 471 shall be determined—

- (i) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or
- (ii) if clause (i) does not apply, by using cost or market, whichever is lower.

(D) Not treated as member of affiliated group

Except as provided in regulations, the corporation referred to in paragraph (1) shall not be treated as a member of an affiliated group with respect to the amount included in gross income under paragraph (1).

(5) Special rule

Sections 1367(a)(2)(D) and 1371(c)(1) shall not apply with respect to any increase in the tax imposed by reason of this subsection.

(Added Pub. L. 97-354, § 2, Oct. 19, 1982, 96 Stat. 1676; amended Pub. L. 98-369, div. A, title VII, § 721(a), (b)(1), (p), July 18, 1984, 98 Stat. 966, 970; Pub. L. 99-514, title V, § 511(d)(2)(C), title VI, § 632(b), title VII, § 701(e)(4)(J), Oct. 22, 1986, 100 Stat. 2249, 2277, 2343; Pub. L. 100-203, title X, § 10227(a), Dec. 22, 1987, 101 Stat. 1330-416; Pub. L. 100-647, title I, § 1006(f)(7), title II, § 2004(n), Nov. 10, 1988, 102 Stat. 3407, 3608; Pub. L. 109-135, title IV, § 411(a), Dec. 21, 2005, 119 Stat. 2636.)

AMENDMENTS

- 2005—Subsec. (d)(5). Pub. L. 109-135 added par. (5).
- 1988—Subsec. (d). Pub. L. 100-647, § 1006(f)(7), struck out subsec. (d) which related to distributions of appreciated property.
- Subsec. (d)(4)(D). Pub. L. 100-647, § 2004(n), added subpar. (D).
- Subsec. (e). Pub. L. 100-647, § 1006(f)(7), struck out subsec. (e) which provided that subsec. (d) not apply to reorganizations, etc.
- 1987—Subsec. (d). Pub. L. 100-203 added subsec. (d) relating to recapture of LIFO benefits.
- 1986—Subsec. (a). Pub. L. 99-514, § 701(e)(4)(J), struck out “and in section 58(d)” after “this subchapter”.
- Subsec. (c)(2). Pub. L. 99-514, § 511(d)(2)(C), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: “section 163(d) (relating to limitation on interest on investment indebtedness).”.
- Subsec. (e). Pub. L. 99-514, § 632(b), amended subsec. (e) generally, substituting “reorganizations, etc.” for “complete liquidations and reorganizations”, in heading and in text struck out reference to property in complete liquidation of the corporation.
- 1984—Subsec. (b)(4). Pub. L. 98-369, § 721(p), added par. (4).
- Subsec. (c)(2). Pub. L. 98-369, § 721(b)(1), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out subpar. (A) which provided “subsection (b)(5) or (d)(4) of section 108 (relating to income from discharge of indebtedness).”.
- Subsec. (d). Pub. L. 98-369, § 721(a)(2), substituted “Except as provided in subsection (e), if” for “If”.
- Subsec. (e). Pub. L. 98-369, § 721(a)(1), added subsec. (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-135, title IV, § 411(b), Dec. 21, 2005, 119 Stat. 2636, provided that: “The amendment made by this section [amending this section] shall take effect as if in-

cluded in section 10227 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203].”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(f)(7) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 2004(n) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, § 10227(b), Dec. 22, 1987, 101 Stat. 1330-417, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2) the amendment made by subsection (a) [amending this section] shall apply in the case of elections made after December 17, 1987.

“(2) EXCEPTION.—The amendment made by subsection (a) shall not apply in the case of any election made by a corporation after December 17, 1987, and before January 1, 1989, if, on or before December 17, 1987—

“(A) there was a resolution adopted by the board of directors of such corporation to make an election under subchapter S of chapter 1 of the Internal Revenue Code of 1986, or

“(B) there was a ruling request with respect to the business filed with the Internal Revenue Service expressing an intent to make such an election.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(2)(C) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99-514, set out as a note under section 163 of this title.

Amendment by section 632(b) of Pub. L. 99-514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99-514, set out as an Effective Date note under section 336 of this title.

Amendment by section 701(e)(4)(J) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as a note under section 1361 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(J) of Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amend-

ment relates, see section 1012(aa)(2), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

PART II—TAX TREATMENT OF SHAREHOLDERS

Sec.	
1366.	Pass-thru of items to shareholders.
1367.	Adjustments to basis of stock of shareholders, etc.
1368.	Distributions.

§ 1366. Pass-thru of items to shareholders

(a) Determination of shareholder's tax liability

(1) In general

In determining the tax under this chapter of a shareholder for the shareholder's taxable year in which the taxable year of the S corporation ends (or for the final taxable year of a shareholder who dies, or of a trust or estate which terminates, before the end of the corporation's taxable year), there shall be taken into account the shareholder's pro rata share of the corporation's—

(A) items of income (including tax-exempt income), loss, deduction, or credit the separate treatment of which could affect the liability for tax of any shareholder, and

(B) nonseparately computed income or loss.

For purposes of the preceding sentence, the items referred to in subparagraph (A) shall include amounts described in paragraph (4) or (6) of section 702(a).

(2) Nonseparately computed income or loss defined

For purposes of this subchapter, the term "nonseparately computed income or loss" means gross income minus the deductions allowed to the corporation under this chapter, determined by excluding all items described in paragraph (1)(A).

(b) Character passed thru

The character of any item included in a shareholder's pro rata share under paragraph (1) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(c) Gross income of a shareholder

In any case where it is necessary to determine the gross income of a shareholder for purposes of this title, such gross income shall include the shareholder's pro rata share of the gross income of the corporation.

(d) Special rules for losses and deductions

(1) Cannot exceed shareholder's basis in stock and debt

The aggregate amount of losses and deductions taken into account by a shareholder under subsection (a) for any taxable year shall not exceed the sum of—

(A) the adjusted basis of the shareholder's stock in the S corporation (determined with regard to paragraphs (1) and (2)(A) of section 1367(a) for the taxable year), and

(B) the shareholder's adjusted basis of any indebtedness of the S corporation to the

shareholder (determined without regard to any adjustment under paragraph (2) of section 1367(b) for the taxable year).

(2) Indefinite carryover of disallowed losses and deductions

(A) In general

Except as provided in subparagraph (B), any loss or deduction which is disallowed for any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder.

(B) Transfers of stock between spouses or incident to divorce

In the case of any transfer described in section 1041(a) of stock of an S corporation, any loss or deduction described in subparagraph (A) with respect to such stock shall be treated as incurred by the corporation in the succeeding taxable year with respect to the transferee.

(3) Carryover of disallowed losses and deductions to post-termination transition period

(A) In general

If for the last taxable year of a corporation for which it was an S corporation a loss or deduction was disallowed by reason of paragraph (1), such loss or deduction shall be treated as incurred by the shareholder on the last day of any post-termination transition period.

(B) Cannot exceed shareholder's basis in stock

The aggregate amount of losses and deductions taken into account by a shareholder under subparagraph (A) shall not exceed the adjusted basis of the shareholder's stock in the corporation (determined at the close of the last day of the post-termination transition period and without regard to this paragraph).

(C) Adjustment in basis of stock

The shareholder's basis in the stock of the corporation shall be reduced by the amount allowed as a deduction by reason of this paragraph.

(D) At-risk limitations

To the extent that any increase in adjusted basis described in subparagraph (B) would have increased the shareholder's amount at risk under section 465 if such increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in subparagraphs (A) through (C) shall apply to any losses disallowed by reason of section 465(a).

(4) Application of limitation on charitable contributions

In the case of any charitable contribution of property to which the second sentence of section 1367(a)(2) applies, paragraph (1) shall not apply to the extent of the excess (if any) of—

(A) the shareholder's pro rata share of such contribution, over

(B) the shareholder's pro rata share of the adjusted basis of such property.