

of section 318) on any day during the taxable year of the S corporation more than 2 percent of the outstanding stock of such corporation or stock possessing more than 2 percent of the total combined voting power of all stock of such corporation.

(Added Pub. L. 97-354, § 2, Oct. 19, 1982, 96 Stat. 1682.)

PRIOR PROVISIONS

A prior section 1372, added Pub. L. 85-866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1650; amended Pub. L. 87-29, § 2, May 4, 1961, 75 Stat. 64; Pub. L. 89-389, §§ 2(b)(2), 3(a), Apr. 14, 1966, 80 Stat. 114; Pub. L. 91-683, § 1(a), Jan. 12, 1971, 84 Stat. 2067; Pub. L. 94-455, title IX, § 902(c)(3), title XIX, §§ 1901(a)(149), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1609, 1788, 1834; Pub. L. 95-600, title III, § 343, Nov. 6, 1978, 92 Stat. 2843; Pub. L. 95-628, § 5(a), (b), Nov. 10, 1978, 92 Stat. 3628, related to manner, effect, termination, etc., of an election not to be subject to taxes imposed under this chapter, prior to the general revision of this subchapter by section 2 of Pub. L. 97-354.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, sections 1362(d)(3), 1366(f)(3), and 1375 of this title shall apply and subsec. (e)(5) of this section 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 existing fringe benefit plans and the application of this section, see section 6(d) of Pub. L. 97-354, set out as a note under section 1361 of this title.

**§ 1373. Foreign income**

**(a) S corporation treated as partnership, etc.**

For purposes of subparts A and F of part III, and part V, of subchapter N (relating to income from sources without the United States)—

- (1) an S corporation shall be treated as a partnership, and
- (2) the shareholders of such corporation shall be treated as partners of such partnership.

**(b) Recapture of overall foreign loss**

For purposes of section 904(f) (relating to recapture of overall foreign loss), the making or termination of an election to be treated as an S corporation shall be treated as a disposition of the business.

(Added Pub. L. 97-354, § 2, Oct. 19, 1982, 96 Stat. 1682.)

PRIOR PROVISIONS

A prior section 1373, added Pub. L. 85-866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1652; amended Pub. L. 89-389, § 2(b)(3), Apr. 14, 1966, 80 Stat. 114; Pub. L. 91-172, title III, § 301(b)(10), Dec. 30, 1969, 83 Stat. 586, related to taxation of corporation undistributed taxable income to shareholders, prior to the general revision of this subchapter by section 2 of Pub. L. 97-354.

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.

**§ 1374. Tax imposed on certain built-in gains**

**(a) General rule**

If for any taxable year beginning in the recognition period an S corporation has a net rec-

ognized built-in gain, there is hereby imposed a tax (computed under subsection (b)) on the income of such corporation for such taxable year.

**(b) Amount of tax**

**(1) In general**

The amount of the tax imposed by subsection (a) shall be computed by applying the highest rate of tax specified in section 11(b) to the net recognized built-in gain of the S corporation for the taxable year.

**(2) Net operating loss carryforwards from C years allowed**

Notwithstanding section 1371(b)(1), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed for purposes of this section as a deduction against the net recognized built-in gain of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, the amount of the net recognized built-in gain shall be treated as taxable income. Rules similar to the rules of the preceding sentences of this paragraph shall apply in the case of a capital loss carryforward arising in a taxable year for which the corporation was a C corporation.

**(3) Credits**

**(A) In general**

Except as provided in subparagraph (B), no credit shall be allowable under part IV of subchapter A of this chapter (other than under section 34) against the tax imposed by subsection (a).

**(B) Business credit carryforwards from C years allowed**

Notwithstanding section 1371(b)(1), any business credit carryforward under section 39 arising in a taxable year for which the corporation was a C corporation shall be allowed as a credit against the tax imposed by subsection (a) in the same manner as if it were imposed by section 11. A similar rule shall apply in the case of the minimum tax credit under section 53 to the extent attributable to taxable years for which the corporation was a C corporation.

**(4) Coordination with section 1201(a)**

For purposes of section 1201(a)—

(A) the tax imposed by subsection (a) shall be treated as if it were imposed by section 11, and

(B) the amount of the net recognized built-in gain shall be treated as the taxable income.

**(c) Limitations**

**(1) Corporations which were always S corporations**

Subsection (a) shall not apply to any corporation if an election under section 1362(a) has been in effect with respect to such corporation for each of its taxable years. Except as provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of the preceding sentence.