

**(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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**§ 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 such cessation from the S corporation in exchange for its stock.

**(ii) Termination by reason of sale of stock**

If the failure to meet the requirements of subparagraph (B) is by reason of the sale of stock of a corporation which is a qualified subchapter S subsidiary, the sale of such stock shall be treated as if—

(I) the sale were a sale of an undivided interest in the assets of such corporation (based on the percentage of the corporation’s stock sold), and