

paragraph (1) of subsection (c) not apply to all distributions made during the taxable year for which the election is made.

**(B) Affected shareholder**

For purposes of subparagraph (A), the term “affected shareholder” means any shareholder to whom a distribution is made by the S corporation during the taxable year.

**(f) Restricted bank director stock**

If a director receives a distribution (not in part or full payment in exchange for stock) from an S corporation with respect to any restricted bank director stock (as defined in section 1361(f)), the amount of such distribution—

(1) shall be includible in gross income of the director, and

(2) shall be deductible by the corporation for the taxable year of such corporation in which or with which ends the taxable year in which such amount in<sup>1</sup> included in the gross income of the director.

(Added Pub. L. 97-354, § 2, Oct. 19, 1982, 96 Stat. 1680; amended Pub. L. 97-448, title III, § 305(d)(2), Jan. 12, 1983, 96 Stat. 2399; Pub. L. 98-369, div. A, title VII, § 721(r), July 18, 1984, 98 Stat. 970; Pub. L. 99-514, title XVIII, § 1879(m)(1)(B), Oct. 22, 1986, 100 Stat. 2910; Pub. L. 104-188, title I, § 1309(a)(2)-(c), Aug. 20, 1996, 110 Stat. 1783; Pub. L. 110-28, title VIII, § 8232(b), May 25, 2007, 121 Stat. 197.)

AMENDMENTS

2007—Subsec. (f). Pub. L. 110-28 added subsec. (f).  
1996—Subsec. (d). Pub. L. 104-188, § 1309(a)(2), inserted at end “In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year.”

Subsec. (e)(1)(A). Pub. L. 104-188, § 1309(c), substituted “as otherwise provided in this paragraph” for “as provided in subparagraph (B)” and “section 1367(a)(2)” for “section 1367(b)(2)(A)”.

Subsec. (e)(1)(C). Pub. L. 104-188, § 1309(b), added subpar. (C).

1986—Subsec. (e)(1)(A). Pub. L. 99-514 inserted “and no adjustment shall be made for Federal taxes attributable to any taxable year in which the corporation was a C corporation” before period at end.

1984—Subsec. (c). Pub. L. 98-369, § 721(r)(2), inserted “Except to the extent provided in regulations, if the distributions during the taxable year exceed the amount in the accumulated adjustments account at the close of the taxable year, for purposes of this subsection, the balance of such account shall be allocated among such distributions in proportion to their respective sizes.”

Subsec. (e)(1)(A). Pub. L. 98-369, § 721(r)(1), substituted “(except that no adjustment shall be made for income (and related expenses) which is exempt from tax under this title and the phrase ‘(but not below zero)’ shall be disregarded in section 1367(b)(2)(A)” for “(except that no adjustment shall be made for income which is exempt from tax under this title and no adjustment shall be made for any expense not deductible in computing the corporation’s taxable income and not properly chargeable to capital account)”.

1983—Subsec. (e)(3). Pub. L. 97-448 added par. (3).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-28 applicable to taxable years beginning after Dec. 31, 2006, with special rule for

<sup>1</sup> So in original. Probably should be “is”.

treatment as second class of stock, see section 8232(c) of Pub. L. 110-28, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104-188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1982, see section 1879(m)(2) of Pub. L. 99-514, set out as a note under section 1361 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 OF 1983 AMENDMENT

Pub. L. 97-448, title III, § 311(c)(4), Jan. 12, 1983, 96 Stat. 2411, provided that: “The amendments made by subsection (d) of section 305 [amending this section and sections 221, 1374, and 4975 of this title, enacting provisions set out as a note under section 1361 of this title, and amending provisions set out as a note under section 1361 of this title] shall take effect on the date of the enactment of the Subchapter S Revision Act of 1982 [Oct. 19, 1982].”

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.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

PART III—SPECIAL RULES

Sec. 1371. Coordination with subchapter C.  
1372. Partnership rules to apply for fringe benefit purposes.  
1373. Foreign income.  
1374. Tax imposed on certain built-in gains.  
1375. Tax imposed when passive investment income of corporation having accumulated earnings and profits exceeds 25 percent of gross receipts.

AMENDMENTS

1996—Pub. L. 104-188, title I, § 1311(b)(2)(D), Aug. 20, 1996, 110 Stat. 1784, substituted “accumulated” for “subchapter C” in item 1375.

1986—Pub. L. 99-514, title VI, § 632(d), Oct. 22, 1986, 100 Stat. 2277, substituted “built-in” for “capital” in item 1374.

**§ 1371. Coordination with subchapter C**

**(a) Application of subchapter C rules**

Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders.

**(b) No carryover between C year and S year****(1) From C year to S year**

No carryforward, and no carryback, arising for a taxable year for which a corporation is a C corporation may be carried to a taxable year for which such corporation is an S corporation.

**(2) No carryover from S year**

No carryforward, and no carryback, shall arise at the corporate level for a taxable year for which a corporation is an S corporation.

**(3) Treatment of S year as elapsed year**

Nothing in paragraphs (1) and (2) shall prevent treating a taxable year for which a corporation is an S corporation as a taxable year for purposes of determining the number of taxable years to which an item may be carried back or carried forward.

**(c) Earnings and profits****(1) In general**

Except as provided in paragraphs (2) and (3) and subsection (d)(3), no adjustment shall be made to the earnings and profits of an S corporation.

**(2) Adjustments for redemptions, liquidations, reorganizations, divisive, etc.**

In the case of any transaction involving the application of subchapter C to any S corporation, proper adjustment to any accumulated earnings and profits of the corporation shall be made.

**(3) Adjustments in case of distributions treated as dividends under section 1368(c)(2)**

Paragraph (1) shall not apply with respect to that portion of a distribution which is treated as a dividend under section 1368(c)(2).

**(d) Coordination with investment credit recapture****(1) No recapture by reason of election**

Any election under section 1362 shall be treated as a mere change in the form of conducting a trade or business for purposes of the second sentence of section 50(a)(4).

**(2) Corporation continues to be liable**

Notwithstanding an election under section 1362, an S corporation shall continue to be liable for any increase in tax under section 49(b) or 50(a) attributable to credits allowed for taxable years for which such corporation was not an S corporation.

**(3) Adjustment to earnings and profits for amount of recapture**

Paragraph (1) of subsection (c) shall not apply to any increase in tax under section 49(b) or 50(a) for which the S corporation is liable.

**(e) Cash distributions during post-termination transition period****(1) In general**

Any distribution of money by a corporation with respect to its stock during a post-termination transition period shall be applied against and reduce the adjusted basis of the

stock, to the extent that the amount of the distribution does not exceed the accumulated adjustments account (within the meaning of section 1368(e)).

**(2) Election to distribute earnings first**

An S corporation may elect to have paragraph (1) not apply to all distributions made during a post-termination transition period described in section 1377(b)(1)(A). Such election shall not be effective unless all shareholders of the S corporation to whom distributions are made by the S corporation during such post-termination transition period consent to such election.

(Added Pub. L. 97-354, §2, Oct. 19, 1982, 96 Stat. 1681; amended Pub. L. 98-369, div. A, title VII, §721(e), (o), (x)(3), July 18, 1984, 98 Stat. 967, 970, 971; Pub. L. 99-514, title XVIII, §1899A(33), (34), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 101-508, title XI, §11813(b)(23), Nov. 5, 1990, 104 Stat. 1388-555; Pub. L. 104-188, title I, §1310, Aug. 20, 1996, 110 Stat. 1784.)

## PRIOR PROVISIONS

A prior section 1371, added Pub. L. 85-866, title I, §64(a), Sept. 2, 1958, 72 Stat. 1650; amended Pub. L. 86-376, §2(a), Sept. 23, 1959, 73 Stat. 699; Pub. L. 88-272, title II, §233(a), Feb. 26, 1964, 78 Stat. 112; Pub. L. 94-455, title IX, §902(a)(1), (2), (c)(1), (2), Oct. 4, 1976, 90 Stat. 1608, 1609; Pub. L. 95-600, title III, §§341, 342, title VII, §701(y)(1), Nov. 6, 1978, 92 Stat. 2843, 2921; Pub. L. 96-589, §5(d), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97-34, title II, §§233(a), 234(a), (b), Aug. 13, 1981, 95 Stat. 250, 251; Pub. L. 97-448, title I, §102(i)(1), Jan. 12, 1983, 96 Stat. 2372, related to definitions applicable to election of small business corporations as to taxable status, prior to the general revision of this subchapter by section 2 of Pub. L. 97-354.

## AMENDMENTS

1996—Subsec. (a). Pub. L. 104-188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

“(1) IN GENERAL.—Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders.

“(2) S CORPORATION AS SHAREHOLDER TREATED LIKE INDIVIDUAL.—For purposes of subchapter C, an S corporation in its capacity as a shareholder of another corporation shall be treated as an individual.”

1990—Subsec. (d)(1). Pub. L. 101-508, §11813(b)(23)(A), substituted “section 50(a)(4)” for “section 47(b)”.

Subsec. (d)(2), (3). Pub. L. 101-508, §11813(b)(23)(B), substituted “section 49(b) or 50(a)” for “section 47”.

1986—Subsec. (e)(1). Pub. L. 99-514, §1899A(33), inserted “(within the meaning of section 1368(e))”.

Subsec. (e)(2). Pub. L. 99-514, §1899A(34), struck out “(within the meaning of section 1368(e))” after “to such election”.

1984—Subsec. (c)(1). Pub. L. 98-369, §621(e)(2), substituted “paragraphs (2) and (3) and subsection (d)(3)” for “paragraphs (2) and (3)”.

Subsec. (d)(3). Pub. L. 98-369, §721(e)(1), added par. (3).

Subsec. (e). Pub. L. 98-369, §721(o), amended subsec. (e) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (e)(2). Pub. L. 98-369, §721(x)(3), inserted “(within the meaning of section 1368(e))”.

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104-188, set out as a note under section 641 of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K 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.

## SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

**§ 1372. Partnership rules to apply for fringe benefit purposes****(a) General rule**

For purposes of applying the provisions of this subtitle which relate to employee fringe benefits—

- (1) the S corporation shall be treated as a partnership, and
- (2) any 2-percent shareholder of the S corporation shall be treated as a partner of such partnership.

**(b) 2-percent shareholder defined**

For purposes of this section, the term “2-percent shareholder” means any person who owns (or is considered as owning within the meaning 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 recognized 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 tax-