

(2) during a reasonable period of time after it was determined that it did have accumulated earnings and profits at the close of such taxable year such earnings and profits were distributed,

the Secretary may waive the tax imposed by subsection (a) for such taxable year.

(Added Pub. L. 97-354, § 2, Oct. 19, 1982, 96 Stat. 1684; amended Pub. L. 98-369, div. A, title IV, § 474(r)(28), title VII, § 721(v), July 18, 1984, 98 Stat. 844, 971; Pub. L. 99-514, title VI, § 632(c)(3), Oct. 22, 1986, 100 Stat. 2277; Pub. L. 100-647, title I, § 1006(f)(5)(B)-(D), Nov. 10, 1988, 102 Stat. 3406; Pub. L. 104-188, title I, § 1311(b)(2)(A)-(C), Aug. 20, 1996, 110 Stat. 1784; Pub. L. 109-135, title IV, § 412(qq), Dec. 21, 2005, 119 Stat. 2640.)

PRIOR PROVISIONS

A prior section 1375, added Pub. L. 85-866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1654; amended Pub. L. 88-272, title II, §§ 201(d)(13), 233(b), Feb. 26, 1964, 78 Stat. 32, 112; Pub. L. 89-389, §§ 1(a), (b), 2(b)(4), Apr. 14, 1966, 80 Stat. 111, 114; Pub. L. 91-172, title III, § 301(b)(11), Dec. 30, 1969, 83 Stat. 586; Pub. L. 94-455, title XIX, §§ 1901(a)(151), (b)(33)(Q), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1788, 1802, 1834; Pub. L. 95-600, title VII, § 703(j)(6), Nov. 6, 1978, 92 Stat. 2941, related to special rules applicable to distributions of electing small business corporations, prior to the general revision of this subchapter by section 2 of Pub. L. 97-354.

A prior section 1376, added Pub. L. 85-866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1655, related to adjustment to basis of stock of, and indebtedness owing, shareholders, prior to the general revision of this subchapter by section 2 of Pub. L. 97-354.

AMENDMENTS

2005—Subsec. (d)(1), (2). Pub. L. 109-135 substituted “accumulated” for “subchapter C”.

1996—Pub. L. 104-188, § 1311(b)(2)(C), substituted “accumulated” for “subchapter C” in section catchline.

Subsec. (a)(1). Pub. L. 104-188, § 1311(b)(2)(A), substituted “accumulated” for “subchapter C”.

Subsec. (b)(3). Pub. L. 104-188, § 1311(b)(2)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

“(3) PASSIVE INVESTMENT INCOME; ETC.—The terms ‘subchapter C earnings and profits’, ‘passive investment income’, and ‘gross receipts’ shall have the same respective meanings as when used in paragraph (3) of section 1362(d).”

1988—Subsec. (b)(1)(B). Pub. L. 100-647, § 1006(f)(5)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “The amount of the excess net passive income for any taxable year shall not exceed the corporation’s taxable income for the taxable year (determined in accordance with section 1374(d)(4)).”

Subsec. (b)(4). Pub. L. 100-647, § 1006(f)(5)(C), added par. (4).

Subsec. (c). Pub. L. 100-647, § 1006(f)(5)(D), amended subsec. (c) generally, in heading substituting “Credits not allowable” for “Special rules”, and in text substituting “No credit” for “(1) DISALLOWANCE OF CREDIT.—No credit”, and striking out par. (2) which related to coordination with section 1374.

1986—Subsec. (b)(1)(B). Pub. L. 99-514 substituted “section 1374(d)(4)” for “section 1374(d)”.

1984—Subsec. (c)(1). Pub. L. 98-369, § 474(r)(28), substituted “section 34” for “section 39”.

Subsec. (d). Pub. L. 98-369, § 721(v), added subsec. (d).

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 1988 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99-514, as amended, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(28) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 721(v) of 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

This section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, this section and sections 1362(d)(3) and 1366(f)(3) 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.

PART IV—DEFINITIONS; MISCELLANEOUS

Sec.

1377. Definitions and special rule.
1378. Taxable year of S corporation.
1379. Transitional rules on enactment.

§ 1377. Definitions and special rule

(a) Pro rata share

For purposes of this subchapter—

(1) In general

Except as provided in paragraph (2), each shareholder’s pro rata share of any item for any taxable year shall be the sum of the amounts determined with respect to the shareholder—

- (A) by assigning an equal portion of such item to each day of the taxable year, and
(B) then by dividing that portion pro rata among the shares outstanding on such day.

(2) Election to terminate year

(A) In general

Under regulations prescribed by the Secretary, if any shareholder terminates the shareholder’s interest in the corporation during the taxable year and all affected shareholders and the corporation agree to the application of this paragraph, paragraph (1) shall be applied to the affected shareholders as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination.

(B) Affected shareholders

For purposes of subparagraph (A), the term “affected shareholders” means the share-