

§§ 721(d), (w), 722(e)(2), July 18, 1984, 98 Stat. 967, 971, 974; Pub. L. 104-188, title I, §§ 1313(a), 1702(h)(14), Aug. 20, 1996, 110 Stat. 1785, 1874; Pub. L. 109-280, title XII, § 1203(a), Aug. 17, 2006, 120 Stat. 1066; Pub. L. 110-343, div. C, title III, § 307(a), Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111-312, title VII, § 752(a), Dec. 17, 2010, 124 Stat. 3321; Pub. L. 112-240, title III, § 325(a), Jan. 2, 2013, 126 Stat. 2333; Pub. L. 113-295, div. A, title I, § 137(a), Dec. 19, 2014, 128 Stat. 4019; Pub. L. 114-113, div. Q, title I, § 115(a), Dec. 18, 2015, 129 Stat. 3049.)

AMENDMENTS

2015—Subsec. (a)(2). Pub. L. 114-113 struck out “The preceding sentence shall not apply to contributions made in taxable years beginning after December 31, 2014.” at end of concluding provisions.

2014—Subsec. (a)(2). Pub. L. 113-295 substituted “December 31, 2014” for “December 31, 2013” in concluding provisions.

2013—Subsec. (a)(2). Pub. L. 112-240 substituted “December 31, 2013” for “December 31, 2011” in concluding provisions.

2010—Subsec. (a)(2). Pub. L. 111-312 substituted “December 31, 2011” for “December 31, 2009” in concluding provisions.

2008—Subsec. (a)(2). Pub. L. 110-343 substituted “December 31, 2009” for “December 31, 2007” in concluding provisions.

2006—Subsec. (a)(2). Pub. L. 109-280, which directed the addition of concluding provisions to section 1367(a)(2), without specifying the act to be amended, was executed to subsec. (a)(2) of this section, which is section 1367 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1996—Subsec. (a)(2)(E). Pub. L. 104-188, § 1702(h)(14), substituted “section 613A(c)(11)(B)” for “section 613A(c)(13)(B)”.

Subsec. (b)(4). Pub. L. 104-188, § 1313(a), added par. (4).
1984—Subsec. (a)(2)(E). Pub. L. 98-369, § 722(e)(2), substituted “for any oil and gas property held by the S corporation to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such shareholder under section 613A(c)(13)(B)” for “under section 611 with respect to oil and gas wells”.

Subsec. (b)(2)(B). Pub. L. 98-369, § 721(w), substituted “for any taxable year beginning after December 31, 1982, there is” for “for any taxable year there is”.

Subsec. (b)(3). Pub. L. 98-369, § 721(d), inserted “and 166(d)” in heading and text.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, § 115(b), Dec. 18, 2015, 129 Stat. 3049, provided that: “The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2014.”

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, § 137(b), Dec. 19, 2014, 128 Stat. 4020, provided that: “The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2013.”

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title III, § 325(b), Jan. 2, 2013, 126 Stat. 2333, provided that: “The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2011.”

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, § 752(b), Dec. 17, 2010, 124 Stat. 3321, provided that: “The amendment made by

this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2009.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title III, § 307(b), Oct. 3, 2008, 122 Stat. 3869, provided that: “The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2007.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title XII, § 1203(b), Aug. 17, 2006, 120 Stat. 1066, provided that: “The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2005.”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, § 1313(b), Aug. 20, 1996, 110 Stat. 1785, provided that: “The amendment made by subsection (a) [amending this section] shall apply in the case of decedents dying after the date of the enactment of this Act [Aug. 20, 1996].”

Amendment by section 1702(h)(14) of Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 721(d), (w) 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.

Pub. L. 98-369, div. A, title VII, § 722(e)(3)(B), July 18, 1984, 98 Stat. 974, provided that: “The amendment made by paragraph (2) [amending this section] shall apply to taxable years beginning after December 31, 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.

§ 1368. Distributions

(a) General rule

A distribution of property made by an S corporation with respect to its stock to which (but for this subsection) section 301(c) would apply shall be treated in the manner provided in subsection (b) or (c), whichever applies.

(b) S corporation having no earnings and profits

In the case of a distribution described in subsection (a) by an S corporation which has no accumulated earnings and profits—

(1) Amount applied against basis

The distribution shall not be included in gross income to the extent that it does not exceed the adjusted basis of the stock.

(2) Amount in excess of basis

If the amount of the distribution exceeds the adjusted basis of the stock, such excess shall be treated as gain from the sale or exchange of property.

(c) S corporation having earnings and profits

In the case of a distribution described in subsection (a) by an S corporation which has accumulated earnings and profits—

(1) Accumulated adjustments account

That portion of the distribution which does not exceed the accumulated adjustments ac-

count shall be treated in the manner provided by subsection (b).

(2) Dividend

That portion of the distribution which remains after the application of paragraph (1) shall be treated as a dividend to the extent it does not exceed the accumulated earnings and profits of the S corporation.

(3) Treatment of remainder

Any portion of the distribution remaining after the application of paragraph (2) of this subsection shall be treated in the manner provided by subsection (b).

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.

(d) Certain adjustments taken into account

Subsections (b) and (c) shall be applied by taking into account (to the extent proper)—

- (1) the adjustments to the basis of the shareholder's stock described in section 1367, and
- (2) the adjustments to the accumulated adjustments account which are required by subsection (e)(1).

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.

(e) Definitions and special rules

For purposes of this section—

(1) Accumulated adjustments account

(A) In general

Except as otherwise provided in this paragraph, the term “accumulated adjustments account” means an account of the S corporation which is adjusted for the S period in a manner similar to the adjustments under section 1367 (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(a)(2)) and no adjustment shall be made for Federal taxes attributable to any taxable year in which the corporation was a C corporation.

(B) Amount of adjustment in the case of redemptions

In the case of any redemption which is treated as an exchange under section 302(a) or 303(a), the adjustment in the accumulated adjustments account shall be an amount which bears the same ratio to the balance in such account as the number of shares redeemed in such redemption bears to the number of shares of stock in the corporation immediately before such redemption.

(C) Net loss for year disregarded

(i) In general

In applying this section to distributions made during any taxable year, the amount

in the accumulated adjustments account as of the close of such taxable year shall be determined without regard to any net negative adjustment for such taxable year.

(ii) Net negative adjustment

For purposes of clause (i), the term “net negative adjustment” means, with respect to any taxable year, the excess (if any) of—

- (I) the reductions in the account for the taxable year (other than for distributions), over
- (II) the increases in such account for such taxable year.

(2) S period

The term “S period” means the most recent continuous period during which the corporation has been an S corporation. Such period shall not include any taxable year beginning before January 1, 1983.

(3) Election to distribute earnings first

(A) In general

An S corporation may, with the consent of all of its affected shareholders, elect to have 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 in¹ 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).

¹ So in original. Probably should be “is”.

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 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.

Sec.
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, divisives, 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).