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.

Amendment by section 2004(n) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, § 10227(b), Dec. 22, 1987, 101 Stat. 1330–417, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2) the amendment made by subsection (a) [amending this section] shall apply in the case of elections made after December 17, 1987.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply in the case of any election made by a corporation after December 17, 1987, and before January 1, 1989, if, on or before December 17, 1987—

''(A) there was a resolution adopted by the board of directors of such corporation to make an election under subchapter S of chapter 1 of the Internal Revenue Code of 1986, or

''(B) there was a ruling request with respect to the business filed with the Internal Revenue Service expressing an intent to make such an election.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(2)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 632(b) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 701(e)(4)(J) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 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.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(J) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PART II—TAX TREATMENT OF SHAREHOLDERS

Sec.
1366. Pass-thru of items to shareholders.
1367. Adjustments to basis of stock of shareholders, etc.
1368. Distributions.

§ 1366. Pass-thru of items to shareholders

(a) Determination of shareholder's tax liability

(1) In general

In determining the tax under this chapter of a shareholder for the shareholder's taxable year in which the taxable year of the S corporation ends (or for the final taxable year of a shareholder who dies, or of a trust or estate which terminates, before the end of the corporation's taxable year), there shall be taken into account the shareholder's pro rata share of the corporation's—

(A) items of income (including tax-exempt income), loss, deduction, or credit the separate treatment of which could affect the liability for tax of any shareholder, and

(B) nonseparately computed income or loss.

For purposes of the preceding sentence, the items referred to in subparagraph (A) shall include amounts described in paragraph (4) or (6) of section 702(a).

(2) Nonseparately computed income or loss defined

For purposes of this subchapter, the term ''nonseparately computed income or loss'' means gross income minus the deductions allowed to the corporation under this chapter, determined by excluding all items described in paragraph (1)(A).

(b) Character passed thru

The character of any item included in a shareholder's pro rata share under paragraph (1) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(c) Gross income of a shareholder

In any case where it is necessary to determine the gross income of a shareholder for purposes of this title, such gross income shall include the shareholder's pro rata share of the gross income of the corporation.

(d) Special rules for losses and deductions

(1) Cannot exceed shareholder's basis in stock and debt

The aggregate amount of losses and deductions taken into account by a shareholder under subsection (a) for any taxable year shall not exceed the sum of—

(A) the adjusted basis of the shareholder's stock in the S corporation (determined with regard to paragraphs (1) and (2)(A) of section 1367(a) for the taxable year), and

(B) the shareholder's adjusted basis of any indebtedness of the S corporation to the shareholder (determined without regard to any adjustment under paragraph (2) of section 1367(b) for the taxable year).

(2) Indefinite carryover of disallowed losses and deductions

(A) In general

Except as provided in subparagraph (B), any loss or deduction which is disallowed for

any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder.

(B) Transfers of stock between spouses or incident to divorce

In the case of any transfer described in section 1041(a) of stock of an S corporation, any loss or deduction described in subparagraph (A) with respect such stock shall be treated as incurred by the corporation in the succeeding taxable year with respect to the transferee.

(3) Carryover of disallowed losses and deductions to post-termination transition period

(A) In general

If for the last taxable year of a corporation for which it was an S corporation a loss or deduction was disallowed by reason of paragraph (1), such loss or deduction shall be treated as incurred by the shareholder on the last day of any post-termination transition period.

(B) Cannot exceed shareholder's basis in stock

The aggregate amount of losses and deductions taken into account by a shareholder under subparagraph (A) shall not exceed the adjusted basis of the shareholder's stock in the corporation (determined at the close of the last day of the post-termination transition period and without regard to this paragraph).

(C) Adjustment in basis of stock

The shareholder's basis in the stock of the corporation shall be reduced by the amount allowed as a deduction by reason of this paragraph.

(D) At-risk limitations

To the extent that any increase in adjusted basis described in subparagraph (B) would have increased the shareholder's amount at risk under section 465 if such increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in subparagraphs (A) through (C) shall apply to any losses disallowed by reason of section 465(a).

(4) Application of limitation on charitable contributions

In the case of any charitable contribution of property to which the second sentence of section 1367(a)(2) applies, paragraph (1) shall not apply to the extent of the excess (if any) of—

(A) the shareholder's pro rata share of such contribution, over

(B) the shareholder's pro rata share of the adjusted basis of such property.

(e) Treatment of family group

If an individual who is a member of the family (within the meaning of section 704(e)(3))[1] of one or more shareholders of an S corporation renders services for the corporation or furnishes capital to the corporation without receiving reasonable compensation therefor, the Secretary shall make such adjustments in the items taken into account by such individual and such shareholders as may be necessary in order to reflect the value of such services or capital.

(f) Special rules

(1) Subsection (a) not to apply to credit allowable under section 34

Subsection (a) shall not apply with respect to any credit allowable under section 34 (relating to certain uses of gasoline and special fuels).

(2) Treatment of tax imposed on built-in gains

If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a), the amount so imposed shall be treated as a loss sustained by the S corporation during such taxable year. The character of such loss shall be determined by allocating the loss proportionately among the recognized built-in gains giving rise to such tax.

(3) Reduction in pass-thru for tax imposed on excess net passive income

If any tax is imposed under section 1375 for any taxable year on an S corporation, for purposes of subsection (a), each item of passive investment income shall be reduced by an amount which bears the same ratio to the amount of such tax as—

(A) the amount of such item, bears to

(B) the total passive investment income for the taxable year.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1677; amended Pub. L. 98–369, div. A, title IV, § 474(r)(26), title VII, § 735(c)(16), July 18, 1984, 98 Stat. 844, 985; Pub. L. 99–514, title VI, § 632(c)(2), title VII, § 701(e)(4)(K), Oct. 22, 1986, 100 Stat. 2277, 2343; Pub. L. 100–647, title I, § 1006(f)(5)(E), Nov. 10, 1988, 102 Stat. 3406; Pub. L. 101–239, title VII, § 7811(c)(7), Dec. 19, 1989, 103 Stat. 2407; Pub. L. 104–188, title I, §§ 1302(e), 1307(c)(3)(A), 1309(a)(1), 1312, Aug. 20, 1996, 110 Stat. 1779, 1782, 1783, 1784; Pub. L. 108–357, title II, § 235(a), Oct. 22, 2004, 118 Stat. 1435; Pub. L. 110–172, § 3(b), Dec. 29, 2007, 121 Stat. 2474.)

REFERENCES IN TEXT

Section 704(e)(3), referred to in subsec. (e), was redesignated section 704(e)(2) of this title by Pub. L. 114–74, title XI, § 1102(b), Nov. 2, 2015, 129 Stat. 639.

AMENDMENTS

2007—Subsec. (d)(4). Pub. L. 110–172 added par. (4).

2004—Subsec. (d)(2). Pub. L. 108–357 reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: "Any loss or deduction which is disallowed for any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder."

1996—Subsec. (a)(1). Pub. L. 104–188, § 1302(e), inserted ", or of a trust or estate which terminates," after "who dies" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 104–188, § 1309(a)(1), substituted "paragraphs (1) and (2)(A)" for "paragraph (1)".

Subsec. (d)(3)(D). Pub. L. 104–188, § 1312, added subpar. (D).

[1] See References in Text note below.

Subsec. (g). Pub. L. 104–188, § 1307(c)(3)(A), struck out subsec. (g) which provided a cross reference to subchapter D of chapter 63 of this title.

1989—Subsec. (f)(2). Pub. L. 101–239 substituted ''Treatment of tax imposed on built-in gains'' for ''Reduction in pass-thru for tax imposed on built-in gains'' in heading and amended text generally. Prior to amendment, text read as follows: ''If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a), the amount of each recognized built-in gain (within the meaning of section 1374) for such taxable year shall be reduced by its proportionate share of such tax.''

1988—Subsec. (f)(2). Pub. L. 100–647 substituted ''within the meaning of section 1374'' for ''as defined in section 1374(d)(2)''.

1986—Subsec. (f)(2). Pub. L. 99–514, § 632(c)(2), amended par. (2) generally. Prior to amendment, par. (2), reduction in pass-thru for tax imposed on capital gain, read as follows: ''If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a)—

''(A) the amount of the corporation's long-term capital gains for the taxable year shall be reduced by the amount of such tax, and

''(B) if the amount of such tax exceeds the amount of such long-term capital gains, the corporation's gains from sales or exchanges of property described in section 1231 shall be reduced by the amount of such excess.

For purposes of the preceding sentence, the term 'long-term capital gain' shall not include any gain from the sale or exchange of property described in section 1231.''

Pub. L. 99–514, § 701(e)(4)(K), struck out ''56 or'' before ''1374''.

1984—Subsec. (f). Pub. L. 98–369, § 474(r)(26), substituted ''section 34'' for ''section 39'' in heading and text.

Subsec. (f)(1). Pub. L. 98–369, § 735(c)(16), substituted ''and special fuels'' for '', special fuels, and lubricating oil''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 235(b), Oct. 22, 2004, 118 Stat. 1435, as amended by Pub. L. 109–135, title IV, § 403(c), Dec. 21, 2005, 119 Stat. 2620, provided that: ''The amendment made by this section [amending this section] shall apply to transfers after December 31, 2004.''

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 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 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 section 632(c)(2) of 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.

Amendment by section 701(e)(4)(K) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(26) 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 735(c)(16) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, subsec. (f)(3) of this section and sections 1362(d)(3) and 1375 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.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(K) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 1367. Adjustments to basis of stock of shareholders, etc.

(a) General rule

(1) Increases in basis

The basis of each shareholder's stock in an S corporation shall be increased for any period by the sum of the following items determined with respect to that shareholder for such period:

(A) the items of income described in subparagraph (A) of section 1366(a)(1),

(B) any nonseparately computed income determined under subparagraph (B) of section 1366(a)(1), and

(C) the excess of the deductions for depletion over the basis of the property subject to depletion.

(2) Decreases in basis

The basis of each shareholder's stock in an S corporation shall be decreased for any period (but not below zero) by the sum of the following items determined with respect to the shareholder for such period:

(A) distributions by the corporation which were not includible in the income of the shareholder by reason of section 1368,

(B) the items of loss and deduction described in subparagraph (A) of section 1366(a)(1),