

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

2017—Subsec. (f). Pub. L. 115-97 added subsec. (f).

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 taxable year for which the corporation was a C corporation shall be allowed for purposes of this section as a deduction against the net recognized built-in gain of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, the amount of the net recognized built-in gain shall be treated as taxable income. Rules similar to the rules of the preceding sentences of this paragraph shall apply in the case of a capital loss carryforward arising in a taxable year for which the corporation was a C corporation.

**(3) Credits**

**(A) In general**

Except as provided in subparagraph (B), no credit shall be allowable under part IV of subchapter A of this chapter (other than under section 34) against the tax imposed by subsection (a).

**(B)<sup>1</sup> Business credit carryforwards from C years allowed**

Notwithstanding section 1371(b)(1), any business credit carryforward under section 39 arising in a taxable year for which the corporation was a C corporation shall be allowed as a credit against the tax imposed by subsection (a) in the same manner as if it were imposed by section 11. A similar rule shall apply in the case of the minimum tax credit under section 53 to the extent attributable to taxable years for which the corporation was a C corporation.

**(c) Limitations**

**(1) Corporations which were always S corporations**

Subsection (a) shall not apply to any corporation if an election under section 1362(a) has been in effect with respect to such corporation for each of its taxable years. Except as provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of the preceding sentence.

**(2) Limitation on amount of net recognized built-in gain**

The amount of the net recognized built-in gain taken into account under this section for any taxable year shall not exceed the excess (if any) of—

(A) the net unrealized built-in gain, over

(B) the net recognized built-in gain for prior taxable years beginning in the recognition period.

**(d) Definitions and special rules**

For purposes of this section—

**(1) Net unrealized built-in gain**

The term “net unrealized built-in gain” means the amount (if any) by which—

(A) the fair market value of the assets of the S corporation as of the beginning of its 1st taxable year for which an election under section 1362(a) is in effect, exceeds

(B) the aggregate adjusted bases of such assets at such time.

**(2) Net recognized built-in gain**

**(A) In general**

The term “net recognized built-in gain” means, with respect to any taxable year in the recognition period, the lesser of—

(i) the amount which would be the taxable income of the S corporation for such taxable year if only recognized built-in gains and recognized built-in losses were taken into account, or

(ii) such corporation’s taxable income for such taxable year (determined as provided in section 1375(b)(1)(B)).

**(B) Carryover**

If, for any taxable year described in subparagraph (A), the amount referred to in clause (i) of subparagraph (A) exceeds the amount referred to in clause (ii) of subparagraph (A), such excess shall be treated as a

<sup>1</sup> See Amendment of Subsection (b)(3)(B) note below.