

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 shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term "affected shareholders" shall include all persons who are shareholders during the taxable year.

##### (b) Post-termination transition period

###### (1) In general

For purposes of this subchapter, the term "post-termination transition period" means—

- (A) the period beginning on the day after the last day of the corporation's last taxable year as an S corporation and ending on the later of—
  - (i) the day which is 1 year after such last day, or
  - (ii) the due date for filing the return for such last year as an S corporation (including extensions),
- (B) the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation's election and which adjusts a subchapter S item of income, loss, or deduction of the corporation

arising during the S period (as defined in section 1368(e)(2)), and

(C) the 120-day period beginning on the date of a determination that the corporation's election under section 1362(a) had terminated for a previous taxable year.

##### (2) Determination defined

For purposes of paragraph (1), the term "determination" means—

- (A) a determination as defined in section 1313(a), or
- (B) an agreement between the corporation and the Secretary that the corporation failed to qualify as an S corporation.

##### (3) Special rules for audit related post-termination transition periods

###### (A) No application to carryovers

Paragraph (1)(B) shall not apply for purposes of section 1366(d)(3).

###### (B) Limitation on application to distributions

Paragraph (1)(B) shall apply to a distribution described in section 1371(e) only to the extent that the amount of such distribution does not exceed the aggregate increase (if any) in the accumulated adjustments account (within the meaning of section 1368(e)) by reason of the adjustments referred to in such paragraph.

###### (c) Manner of making elections, etc.

Any election under this subchapter, and any revocation under section 1362(d)(1), shall be made in such manner as the Secretary shall by regulations prescribe.

(Added Pub. L. 97-354, § 2, Oct. 19, 1982, 96 Stat. 1685; amended Pub. L. 104-188, title I, §§ 1306-1307(b), Aug. 20, 1996, 110 Stat. 1780; Pub. L. 108-311, title IV, § 407(a), Oct. 4, 2004, 118 Stat. 1190.)

#### PRIOR PROVISIONS

A prior section 1377, added Pub. L. 85-866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1656; amended Pub. L. 94-455, title IX, § 902(b)(1), title XIX, § 1901(b)(32)(B)(iv), Oct. 4, 1976, 90 Stat. 1608, 1800, related to special rules applicable to earnings and profits of electing small business corporations, prior to the general revision of this subchapter by section 2 of Pub. L. 97-354.

#### AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108-311 added par. (3).  
 1996—Subsec. (a)(2). Pub. L. 104-188, § 1306, reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Under regulations prescribed by the Secretary, if any shareholder terminates his interest in the corporation during the taxable year and all persons who are shareholders during the taxable year agree to the application of this paragraph, paragraph (1) shall be applied as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination."  
 Subsec. (b)(1)(A) to (C). Pub. L. 104-188, § 1307(a), struck out "and" at end of subpar. (A)(ii), added subpar. (B), and redesignated former subpar. (B) as (C).  
 Subsec. (b)(2)(A) to (C). Pub. L. 104-188, § 1307(b), added subpar. (A), redesignated subpar. (C) as (B), and struck out former subpars. (A) and (B) which read as follows:

- "(A) a court decision which becomes final,
- "(B) a closing agreement, or".

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-311 effective as if included in the provisions of the Small Business Job Protection