

22, 2004, 118 Stat. 1435; Pub. L. 110-172, §3(b), Dec. 29, 2007, 121 Stat. 2474; Pub. L. 115-141, div. U, title IV, § 401(a)(192), Mar. 23, 2018, 132 Stat. 1193.)

AMENDMENTS

2018—Subsec. (e). Pub. L. 115-141 substituted “section 704(e)(2)” for “section 704(e)(3)”.

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).

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),

(C) any nonseparately computed loss determined under subparagraph (B) of section 1366(a)(1),

(D) any expense of the corporation not deductible in computing its taxable income and not properly chargeable to capital account, and

(E) the amount of the shareholder's deduction for depletion 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)(11)(B).

The decrease under subparagraph (B) by reason of a charitable contribution (as defined in section 170(c)) of property shall be the amount equal to the shareholder's pro rata share of the adjusted basis of such property.

(b) Special rules

(1) Income items

An amount which is required to be included in the gross income of a shareholder and shown on his return shall be taken into account under subparagraph (A) or (B) of subsection (a)(1) only to the extent such amount is included in the shareholder's gross income on his return, increased or decreased by any adjustment of such amount in a redetermination of the shareholder's tax liability.

(2) Adjustments in basis of indebtedness

(A) Reduction of basis

If for any taxable year the amounts specified in subparagraphs (B), (C), (D), and (E) of subsection (a)(2) exceed the amount which reduces the shareholder's basis to zero, such excess shall be applied to reduce (but not below zero) the shareholder's basis in any indebtedness of the S corporation to the shareholder.

(B) Restoration of basis

If for any taxable year beginning after December 31, 1982, there is a reduction under subparagraph (A) in the shareholder's basis in the indebtedness of an S corporation to a shareholder, any net increase (after the application of paragraphs (1) and (2) of sub-

section (a)) for any subsequent taxable year shall be applied to restore such reduction in basis before any of it may be used to increase the shareholder's basis in the stock of the S corporation.

(3) Coordination with sections 165(g) and 166(d)

This section and section 1366 shall be applied before the application of sections 165(g) and 166(d) to any taxable year of the shareholder or the corporation in which the security or debt becomes worthless.

(4) Adjustments in case of inherited stock

(A) In general

If any person acquires stock in an S corporation by reason of the death of a decedent or by bequest, devise, or inheritance, section 691 shall be applied with respect to any item of income of the S corporation in the same manner as if the decedent had held directly his pro rata share of such item.

(B) Adjustments to basis

The basis determined under section 1014 of any stock in an S corporation shall be reduced by the portion of the value of the stock which is attributable to items constituting income in respect of the decedent.

(Added Pub. L. 97-354, § 2, Oct. 19, 1982, 96 Stat. 1679; amended Pub. L. 98-369, div. A, title VII, §§ 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 account 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