

§§1.441-2, 1.442-1, 1.706-1. (Secs. 441, 442, 706; '86 Code.)

Rev. Rul. 78-96, 1978-1 C.B. 131.

**464.6 Accounting period; election.** Guidance is provided with respect to issues under section 10206 of the Omnibus Budget Reconciliation Act of 1987 that allows certain partnerships, S corporations, and personal service corporations to elect the use of a particular taxable year for Federal Income tax purposes.

Notice 88-10, 1988-1 C.B. 478.

**464.7 Accounting period; other than required taxable year.** Two issues relating to the election by a partnership, S corporation, or personal service corporation to use a taxable year other than its required taxable year are clarified.

Notice 88-85, 1988-2 400.

**464.8 Accounting period; other than that of all principal shareholders.** Procedures for approving a request by an electing small business corporation to change to or adopt a taxable year other than that of all its principal shareholders; also applicable to a request by a partnership for a change in accounting period. §§1.442-1, 1.706-1, 1.1371-2. (Sec. 601.204, S.P.R.; Secs. 442, 706, 1371, '86 Code.)

Rev. Proc. 72-51, 1972-2 C.B. 832.

**464.9 Adoption of accounting period.** Corporations electing S corporation status after October 19, 1982, and wishing to adopt a tax year ending other than on December 31, must comply with the terms and conditions set forth in Rev. Proc. 83-25. Rev. Rul. 66-68 obsolete. (Sec. 1378, '86 Code.)

Rev. Rul. 85-83, 1985-1 C.B. 291.

**464.10 At-risk rules; aggregation of partnership and S corporation activities.** Taxpayers will be allowed to aggregate certain partnership and S corporation activities, for purposes of the at-risk rules under section 465 of the Code, based on section 1.465-1T of the regulations.

Notice 89-39, 1989-1 C.B. 681.

**464.11 Avoidance of corporate tax.** The creation of a new domestic corporation to carry on a specific portion of the business of an existing domestic corporation for the primary purpose of gaining the benefits of subchapter "S" is not tax avoidance. §1.269-2, 1.1372-1. (Secs. 269, 1372; '86 Code.)

Rev. Rul. 76-363, 1976-2 C.B. 90.

**464.12 Basis of stock; land transferred to shareholder.** Taxpayer, with his partner, formed an electing small business corporation and transferred the partnership's assets and liabilities to the corporation. The corporation transferred to taxpayer land with a value exceeding his basis in the corporation's stock. *Held*, in acquiring the land taxpayer received a return of capital in the amount of his basis in the stock; accordingly, in deducting the amount of his pro rata share of the losses of the corporation, taxpayer was limited by the amount of his basis in the stock plus his basis in corporate indebtedness owed to him. (Sec. 1374, '86 Code.)  
Donald M. Perry, 49 T.C. 508, Acq., 1968-2 C.B. 2.

**464.13 Capital gain deductions; taxable years including November 1, 1978.** An example of the computation of the capital gain deduction is provided for an electing small business corporation that had a taxable year that included November 1, 1978 and that had net capital gains both before and after that date. §§1.1202-1, 1.1375-1. (Secs. 1202, 1375; '86 Code.)

Rev. Rul. 80-178, 1980-2 C.B. 236.

**464.14 Casualty insurance company; eligibility for subchapter S election.** A stock casualty insurance company may make an S corporation election as provided under the Subchapter S Revi-

sion Act of 1982. This election will not terminate unless section 1362(d) or certain provisions of the Act become operative. Rev. Rul. 74-437 obsolete as of January 1, 1983. §1.831-3. (Secs. 831, 1361; '86 Code.)

Rev. Rul. 84-126, 1984-2 C.B. 181.

**464.15 Constructive stock ownership test.** Section 544, relating to constructive ownership of stock for personal holding company purposes, has no application in determining whether a corporation qualifies as a small business corporation; if the corporation has more than ten shareholders it cannot qualify as a small business corporation, even though the shares are held by related individuals. §1.544-3. (Secs. 544, 1371; '86 Code.)

Rev. Rul. 59-187, 1959-1 C.B. 224.

**464.16 Contract renegotiation; excessive profits; tax credit.** Manner of determining the tax credit for an electing small business corporation when certain prior year excessive profits are eliminated because of a Federal contract renegotiation. (Sec. 1481, '86 Code.)

Rev. Rul. 73-74, 1973-1 C.B. 380.

**464.17 Contract renegotiation; excessive profits; tax credits.** Guidelines are given for electing small business corporations and their shareholders executing agreements consenting to the credit against the excessive profits of the corporation, determined under section 1481(b), and waiving the rights of all shareholders to refunds of the taxes on the excessive profits included in their gross income. §1.1371-1. (Sec. 601.105, S.P.R.; Secs. 1371, 1481, '86 Code.)

Rev. Proc. 75-46, 1975-2 C.B. 581.

**464.18 Defined; Qualified Subchapter S Trust (QSST).** A trust is not a Qualified Subchapter S Trust (QSST) if the terms of the trust instrument provide that if the trust does not hold shares of an S corporation, the trust may terminate during the life of the current income beneficiary and distribute its corpus to persons other than the beneficiary. (Sec. 1361, '86 Code.)

Rev. Rul. 89-55, 1989-1 C.B. 268.

**464.19 Disallowance of accrued bonus.** A shareholder of an electing small business corporation must include in gross income his pro rata share of a disallowed accrued bonus, with a corresponding increase in the basis of his stock, since the undistributed taxable income of the corporation is increased as the result of the disallowance. Further, payment of the bonus in a subsequent year will not reduce the current earnings and profits of the corporation for that year. Such payment will reduce the accumulated earnings and profits. §§1.267(a)-1, 1.1376-1, 1.1377-2. (Secs. 267, 1376, 1377; '86 Code.)

Rev. Rul. 70-306, 1970-1 C.B. 179.

**464.20 Distributions; decedent shareholder's estate.** Treatment of amounts distributed by an electing small business corporation to a decedent shareholder's estate of undistributed taxable income and of current earnings and profits. §§1.303-1, 1.1372-1, 1.1375-4. (Secs. 303, 1372, 1375; '86 Code.)

Rev. Rul. 71-272, 1971-1 C.B. 264.

**464.21 Distributions; following termination of election.** The character and taxability of cash distributions made by a corporation subsequent to the termination of its election to be treated as a small business corporation are determined under sections 301 and 316. However, cash distributions made within the first two and one-half months of the first year after such termination are treated as distributions of undistributed taxable income or non-dividend distributions, of the preceding year under reg. 1.1375-6. §§1.301-1, 1.316-1, 1.1372-1, 1.1375-4, 1.1375-6. (Secs. 301, 316, 1372, 1375; '86 Code.)

Rev. Rul. 71-102, 1971-1 C.B. 263.

## Small business corporations

**464.1 Accounting period; adoption, retention or change.** Guidance is provided for any partnership, S corporation or personal service corporation that desires to adopt, retain, or change its tax year. §§1.441-1, 1.442-1, 1.706-1, 1.1378-1. (Sec. 601.204, S.P.R.; Secs. 441, 442, 706, 1378, '86 Code.)

Rev. Proc. 87-32, 1987-2 C.B. 396.

**464.2 Accounting period; approval.** Procedures are provided under which certain corporations, which make an election to be an S corporation under the Subchapter S Revision Act of 1982, may be deemed to have obtained approval to adopt, retain, or change to an annual accounting period other than a tax year ending on December 31. §§1.442-1, 1.706-1. (Sec. 601.204, S.P.R.; Secs. 442, 706, 1378, '86 Code.)

Rev. Proc. 83-25, 1983-1 C.B. 689.

**464.3 Accounting period; business purpose for tax year.** Whether, in the situations described, the taxpayers have established, to the satisfaction of the Secretary, a business purpose for adopting, retaining, or changing their tax years. §§1.441-1, 1.706-1, 1.1378-1. (Secs. 441, 442, 706, 1378; '86 Code.)

Rev. Rul. 87-57, 1987-2 C.B. 117.

**464.4 Accounting period; change.** Simplification of the allocation of a small business corporation's income between the sole selling shareholder and the sole purchasing shareholder is not a substantial business purpose for the granting of a change of annual accounting period from a calendar year to a fiscal year. §§1.442-1, 1.1372-1. (Secs. 442, 1372; '86 Code.)

Rev. Rul. 76-497, 1976-2 C.B. 128.

**464.5 Accounting period; change; 52-53 week taxable year.** An electing small business corporation, substantially all of whose income comes from partnerships that file partnership returns on a calendar year basis, may change to a 52-53 week year provided the taxpayer treats each 52-53 week year as a calendar year for purposes of reporting its distributive shares of partnership income, gains, losses, deductions, and credits.

**464.22 Distributions; long-term capital gain.** Treatment by an electing small business corporation and its sole shareholder of a distribution in excess of the corporation's taxable income and current earnings and profits that included a long-term capital gain upon which a tax was imposed under section 1378. §§1.1375-1, 1.1377-2, 1.1378-1. (Secs. 1375, 1377, 1378; '86 Code.)  
Rev. Rul. 73-590, 1973-2 C.B. 313.

**464.23 Distributions; nondividend; merger.** The surviving corporation of a statutory merger of two small business corporations may make nondividend distributions under section 1375(d) of the merging corporation's undistributed previously taxed income and, under section 1375(f), of the merging corporation's undistributed taxable income attributable to its final taxable year that ended on the merger date, if such distributions are made within the period specified in section 1375(f). §1.1375-4. (Sec. 1375, '86 Code.)  
Rev. Rul. 79-52, 1979-1 C.B. 283.

**464.24 Distributions; notes and debentures issued for partial return of cash dividends.** A subchapter S corporation issued checks to its shareholders on the last day of its taxable year under a pre-arranged plan whereby the shareholders, on the next day, issued checks to the corporation in exchange for notes and debentures to offset an overdraft caused by the distribution. *Held*, the distributions were distributions of property to the extent of the value of the notes and debentures on the day the original checks were issued rather than on the following day, and the earnings and profits of the subsequent year could not be used to determine the amount of taxable income received by the shareholders. (Sec. 1375, '86 Code.)  
George A. Roesel, 56 T.C. 14, Nonacq., 1978-1 C.B. 2.

**464.25 Distributions; proceeds from sale of plant.** An electing small business corporation may, subject to the limitations described in section 1375(a)(1), distribute to its shareholders, as long-term capital gain, the reportable gain it receives during the year from the sale of an oil mill plant on the installment basis. §1.1375-1. (Sec. 1375, '86 Code.)  
Rev. Rul. 65-292, 1965-2 C.B. 319.

**464.26 Distributions; qualified subchapter S trust income upon death of current income beneficiary.** The terms of a trust do not violate section 1361(d)(3)(B) if they require the trustee, in accordance with state law, to distribute the income for the period after the last distribution date and before the date of the beneficiary's death to either the estate of the deceased beneficiary or to the successor beneficiary. (Sec. 1361, '86 Code.)  
Rev. Rul. 92-64, 1992-2 C.B. 214.

**464.27 Distributions; redemption.** The tax consequences are given resulting from an electing small business corporation's redemption of stock after March 15, 1974, under a buy-out agreement for an amount that included the deceased shareholder's undistributed profits for 1973, the distribution to surviving shareholders of the balance of 1973 profits, and, after a new shareholder purchased decedent's shares, a distribution of estimated 1974 profits. §§1.1316-1, 1.1373-1, 1.1375-4. (Secs. 316, 1373, 1375; '86 Code.)  
Rev. Rul. 75-433, 1975-2 C.B. 118.

**464.28 Distributions; sole shareholder; section 333 liquidation.** A cash distribution to the sole shareholder of an electing small business corporation liquidated pursuant to section 333 is not a distribution of the shareholder's net share of previously taxed income. §§1.333-4, 1.1373-1, 1.1375-4. (Secs. 333, 1373, 1375; '86 Code.)  
Rev. Rul. 76-347, 1976-2 C.B. 253.

**464.29 Distributions from DISC.** A distribution made pursuant to section 805(b) of the Tax

Reform Act of 1984 by a former Domestic International Sales Corporation to its S corporation parent increases the accumulated adjustments account of the parent under section 1368(e) of the Code, and thereby under section 1367(a) of the Code increases the basis of the shareholders' stock in the S corporation. (Secs. 992, 1367, 1368, '86 Code.)  
Rev. Rul. 85-86, 1985-1 C.B. 291.

**464.30 Dividends; after close of year; accumulated earnings tax.** Dividends paid by a small business corporation on or before the 15th day of the third month after the beginning of the taxable year for which its election is effective are includible in the dividends paid deduction and must be taken into account in determining accumulated taxable income for the prior taxable year under section 535. Such distribution is taken into account in determining undistributed taxable income for the current taxable year under section 1373. §§1.316-1, 1.535-1, 1.545-1, 1.561-1, 1.562-1, 1.563-1, 1.1373-1. (Secs. 316, 535, 545, 561, 562, 563, 1373; '86 Code.)  
Rev. Rul. 72-152, 1972-1 C.B. 272.

**464.31 Dividends; estimated tax of shareholder.** Dividends that are distributed or treated as having been distributed by an electing small business corporation engaged exclusively in the business of farming do not qualify as income from farming under section 6073(b) for the purpose of filing declarations of estimated income tax required by section 6015. §§1.1373-1, 1.6015(f)-1, 1.6073-1. (Secs. 1373, 6015, 6073; '86 Code.)  
Rev. Rul. 76-141, 1976-1 C.B. 381.

**464.32 Dividends; net operating loss of shareholder.** Income from an electing small business corporation, which is dividend income as defined in section 316(a) or which is treated as dividend income under section 1373 and which is included in the gross income of one of its shareholders, is not income derived from such shareholder's trade or business for purposes of computing a net operating loss under section 172(c). §§1.175-3, 1.316-1, 1.1372-1, 1.1373-1. (Secs. 172, 316, 1372, 1373; '86 Code.)  
Rev. Rul. 66-327, 1966-2 C.B. 357.

**464.33 Dividends; reallocation among family members.** The Commissioner improperly reallocated as additional compensation to taxpayers who received salaries and dividends as shareholders-employees of small business corporation, the dividends received by their family members. (Secs. 482, 1375; '86 Code.)  
Charles Rocco, 57 T.C. 826, Acq., 1972-2 C.B. 3.

**464.34 Effective date under sections 1362 and 1363.** This notice provides information concerning the applicability of the proposed regulations under sections 1362 and 1363 after publication of the final regulations under those sections.  
Notice 92-56, 1992-2 C.B. 385.

**464.35 Election; change of facts on Form 2553.** A timely filed valid election to be treated as a small business corporation is not invalidated by the corporation's issuing a lesser number of shares of stock than shown on its Form 2553. §1.1372-1. (Sec. 1372, '86 Code.)  
Rev. Rul. 74-150, 1974-1 C.B. 241.

**464.36 Election; corporation formed to invest in single tract.** A small business corporation that was formed to acquire a tract of land for investment purposes and carried on no other activities sold the land at a gain. *Held*, the corporation's lack of business activity was not a bar to its subchapter S election and, since the tract would have been a capital asset in the hands of the share-

holders, the gain was a capital gain. (Secs. 1221, 1371, 1372, 1375; '86 Code.)

William B. Howell, 57 T.C. 546, Acq., 1974-1 C.B. 2.

**464.37 Election; corporation formed to invest in single tract.** A corporation that did not operate an active trade or business, but was merely a passive investor receiving only capital gains from its sale of unimproved real estate, did not have passive investment income and its election under subchapter S will not be terminated. §1.1372-1. (Sec. 1372, '86 Code.)  
Rev. Rul. 75-188, 1975-1 C.B. 276.

**464.38 Election; corporation leasing automobiles to shareholders.** A corporation, otherwise meeting the definition of a small business corporation under section 1371, that deals exclusively in leasing new automobiles to its individual shareholders, each of whom invests in the corporation an amount equal to the value of the car leased and indirectly receives the benefit of the investment credit and operating losses, will not be recognized for Federal income tax purposes. §1.1372-1. (Sec. 1372, '86 Code.)  
Rev. Rul. 77-470, 1977-2 C.B. 317.

**464.39 Election; estate; decedent's stock passing directly to legatee.** Where stock in a small business corporation owned by a decedent at the time of his death is properly subject to the possession of the executor or administrator of his estate for purposes of administration, the estate becomes a shareholder in the corporation and is, therefore, a "new shareholder" within the meaning of section 1372(e)(1), notwithstanding the fact that under applicable state law legal title to the stock passes directly to the legatees under the decedent's will or to his heirs at law. §1.1372-3. (Sec. 1372, '86 Code.)  
Rev. Rul. 62-116, 1962-2 C.B. 207.

**464.40 Election; extension of time.** A small business corporation will not be granted an extension of time within which to file an election not to be taxed as a corporation. §§1.1372-2, 1.6081-1. (Secs. 1372, 6081; '86 Code.)  
Rev. Rul. 60-183, 1960-1 C.B. 625.

**464.41 Election; extension of time; shareholder consents.** The Revenue Service will consider requests by certain shareholders for extension of time for filing the shareholder consents required in order for a corporation to elect to have its income taxed to the shareholder. Modified to provide that on or after March 10, 1964, such requests should be filed with the district director with whom the election was filed. §§1.1372-3, 1.9100-1. (Sec. 1372, '86 Code.)  
Rev. Proc. 61-30, 1961-2 C.B. 568; Rev. Proc. 64-20, 1964-1 (Part 1) C.B. 685.

**464.42 Election; failure to timely file; new election.** A corporation that failed to file a timely election to be treated as a small business corporation under section 1372(c) for its first taxable year is not required to request permission to make a new election under section 1372(f). §1.1372-5. (Sec. 1372, '86 Code.)  
Rev. Rul. 71-549, 1971-2 C.B. 319.

**464.43 Election; inadvertent termination; ineligible shareholder.** A small business corporation whose election was terminated because stock for a limited period of time was inadvertently transferred to an ineligible trust will be treated as continuing to be an S corporation under section 1362(f) for a period specified by the Service during which the stock was held by the ineligible trust. §§18.1361-1, 18.1362-3. (Secs. 1361, 1362; '86 Code.)  
Rev. Rul. 86-110, 1986-2 C.B. 150.

**464.44 Election; period for filing.** The date articles of incorporation are filed begins the one-month period for filing a small business corpora-

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tion's election where state law provides that the corporate existence begins and stock subscribers become "shareholders" on the date the articles are filed. §1.1372-2. (Sec. 1372, '86 Code.)

Rev. Rul. 72-257, 1972-1 C.B. 270.

**464.45 Election; proven oil or gas property; depletion.** The election to be treated as a small business corporation is not a transfer, within the meaning of section 613A(c)(9), of an interest in any proven oil or gas property. §1.1372-1. (Secs. 613A, 1372; '86 Code.)

Rev. Rul. 80-43, 1980-1 C.B. 133.

**464.46 Election; revocation; termination.** Guidance is provided to corporations who may wish to convert to S corporation status to obtain transition relief from the corporate level tax on built-in gains recognized by a former C corporation during the 10-year period after it becomes an S corporation. (Secs. 1362, 1374; '86 Code.)

Rev. Rul. 86-141, 1986-2 C.B. 151.

**464.47 Election; shareholder's consent; record holder of stock.** A taxpayer who is the record holder of a share of stock of a small business corporation without any beneficial interest therein, is not a shareholder. Therefore, such taxpayer is not required to consent to the election made by the corporation. Clarified by Rev. Rul. 75-261. §1.1372-3. (Sec. 1372, '86 Code.)

Rev. Rul. 70-615, 1970-2 C.B. 169.

**464.48 Election; shareholder's consent; record holder of stock.** A taxpayer who is the record holder of stock of an electing small business corporation under an "acknowledgement of trust" but without any beneficial interest in the stock is properly characterized as a nominee and not as a trustee for purposes of filing a consent to the corporation's election under section 1372(a). Rev. Rul. 70-615 clarified. §1.1372-3. (Sec. 1372, '86 Code.)

Rev. Rul. 75-261, 1975-2 C.B. 350.

**464.49 Election; taxable year.** Additional guidance is provided to certain partnerships, S corporations, and personal service corporations with respect to section 444 of the Code, that allows an election to use a taxable year that is different from the taxable year that such entities would otherwise be required to use.

Notice 88-49, 1988-1 C.B. 532.

**464.50 Election; 10 shareholder limitation.** A single business operated by 30 individuals was transferred to three separate corporations for the principal purpose of being able to make the election under section 1372(a) to be treated as small business corporations. The three corporations will be considered a single corporation with 30 shareholders solely for purposes of making the section 1372(a) election, and any election made will not be valid. §§1.1371-1, 1.1372-1. (Secs. 1371, 1372; '86 Code.)

Rev. Rul. 77-220, 1977-1 C.B. 263.

**464.51 Election; termination; amendment to certificate of incorporation.** An amendment to its certificate of incorporation by an electing small business corporation that enables shareholders over age 65 who meet certain other requirements to be admitted to a nursing home owned by the corporation at reduced rates does not create a second class of stock and thereby terminate its election. §1.1371-1. (Sec. 1371, '86 Code.)

Rev. Rul. 73-525, 1973-2 C.B. 311.

**464.52 Election; termination; bankruptcy of shareholder.** The filing of a voluntary petition in bankruptcy by a shareholder of an electing small business corporation terminates the corporation's election as of the beginning of the taxable year in which the petition is filed. §1.1372-4. (Sec. 1372, '86 Code.)

Rev. Rul. 74-9, 1974-1 C.B. 241.

**464.53 Election; termination; bankruptcy of sole shareholder.** The stock of a bankrupt Subchapter S corporation, wholly owned by a taxpayer who filed a petition in bankruptcy later the same year, that was abandoned as worthless by the bankruptcy trustee is considered to have been continuously owned by the taxpayer. Thus, the Subchapter S election was not immediately terminated by the bankruptcy of the taxpayer and he was entitled to deduct the corporation's operating loss. (Sec. 1371, '86 Code.)

Dan E. Mason, 68 T.C. 163, Nonacq., 1978-1 C.B. 2.

**464.54 Election; termination; distributions prior to reorganization.** An election under section 1372 is not terminated with respect to the taxable year in which an electing small business corporation undergoes reorganization within the meaning of section 368(a)(1)(C). Distributions made by the corporation to its stockholders of the estimated earnings and profits of the current year prior to the reorganization represent distributions of undistributed taxable income and not gain under section 356(a)(1). §§1.316-1, 1.356-1, 1.1372-1, 1.1375-6. (Secs. 316, 356, 1372, 1375; '86 Code.)

Rev. Rul. 71-266, 1971-1 C.B. 262.

**464.55 Election; termination; inadvertent; waiting period.** A small business corporation whose election was terminated as an unintended result of the sale of some of its stock to a nonresident alien on December 30, 1976, by a substantial shareholder, who repurchased the stock on the following January 15th, with no tax benefits being realized by the corporation or its shareholders, will be granted permission to make a new election prior to the expiration of the five-year waiting period. Distinguished by Rev. Rul. 78-307. §1.1372-5. (Sec. 1372, '86 Code.)

Rev. Rul. 78-274, 1978-2 C.B. 220.

**464.56 Election; termination; merger.** The statutory merger of an electing small business corporation into another corporation does not terminate its election under section 1372 with respect to its final taxable year ending on the date of the merger. §§1.368-1, 1.381(b)-1, 1.1372-4. (Secs. 368, 381, 1372; '86 Code.)

Rev. Rul. 64-94, 1964-1 (Part 1) C.B. 317.

**464.57 Election; termination; new election.** Where a small business corporation became inactive in order to avoid a possible confusion of identity with a partnership operated by several of its shareholders and its election was automatically terminated because it continued to receive investment income from securities owned prior to the election, permission to make a new election, will not be granted prior to the expiration of the five-year waiting period. Distinguished by Rev. Rul. 78-275. §1.1372-5. (Sec. 1372, '86 Code.)

Rev. Rul. 67-382, 1967-2 C.B. 298.

**464.58 Election; termination; new election.** Permission to make a new election to be treated as a small business corporation will be granted prior to the expiration of the five-year period prescribed by section 1372(f) to a corporation whose original sole owner, in a transaction that was not prearranged, has repurchased all its stock after having sold it to an unrelated third party who owned the stock for one taxable year and during that year caused the corporation to file a voluntary revocation of the original election. §1.1372-5. (Sec. 1372, '86 Code.)

Rev. Rul. 78-332, 1978-2 C.B. 223.

**464.59 Election; termination; new election.** Permission to make a new election to be treated as a small business corporation will be granted prior to expiration of the five-year period prescribed by section 1372(f) to a corporation whose prior election was terminated because its passive investment income exceeded 20 percent of its gross

receipts for a taxable year as a result of the corporation's business assets being leased to another party during a period when the owner-manager was temporarily disabled and no replacement manager could be found. §1.1372-5. (Sec. 1372, '86 Code.)

Rev. Rul. 78-333, 1978-2 C.B. 224.

**464.60 Election; termination; new election.** Permission to make a new election to be treated as a small business corporation will not be granted prior to expiration of the five-year period prescribed by section 1372(f) to a corporation whose prior election terminated when its stock was acquired by another corporation in a reorganization and whose stock was later reacquired by the original shareholders. §1.1372-5. (Sec. 1372, '86 Code.)

Rev. Rul. 78-364, 1978-2 C.B. 225.

**464.61 Election; termination; new election; waiting period.** A small business corporation engaged in the business of acquiring, developing, and subdividing land for sale to residential home builders, whose election was terminated under section 1372(e)(5) because its interest income from a time deposit it was required to maintain under a credit agreement exceeded 20 percent of its gross receipts for a year in which the home construction industry was economically depressed, will be granted permission to make a new election prior to the expiration of the five-year period. Rev. Rul. 67-382 distinguished. §1.1372-5. (Sec. 1372, '86 Code.)

Rev. Rul. 78-275, 1978-2 C.B. 221.

**464.62 Election; termination; personal property leasing income.** Amounts received from leasing various items of personal property are not rents, where the lessor provides delivery and pickup of the items and cleans, repairs, and stores them prior to lease. §§1.1371-1, 1.1372-4. (Secs. 1371, 1372; '86 Code.)

Rev. Rul. 64-232, 1964-2 C.B. 334.

**464.63 Election; termination; stock ownership in another corporation.** The momentary ownership by a small business corporation of all the single class of stock in another corporation in connection with a divisive reorganization under section 368(a)(1)(D) does not terminate the election of the corporation under section 1372. §§1.368-1, 1.1371-1, 1.1504-1. (Secs. 368, 1371, 1504; '86 Code.)

Rev. Rul. 72-320, 1972-1 C.B. 270.

**464.64 Election; termination; stock ownership in another corporation.** The purchase by an electing small business corporation of all the stock of another corporation in order to acquire its assets will not terminate the acquiring corporation's election under section 1372 even though it became a member of an affiliated group that came into existence at that time if liquidation of the acquired corporation occurs within 30 days of the purchase of the stock. §§1.1371-1, 1.1372-1, 1.1504-1. (Secs. 1371, 1372, 1504; '86 Code.)

Rev. Rul. 73-496, 1973-2 C.B. 312.

**464.65 Election; termination; stock sold to alien; resident of Puerto Rico.** A shareholder's sale of his stock in a small business corporation to an alien, resident of Puerto Rico, terminates the corporation's election. §§1.871-1, 1.876-1, 1.1371-1, 1.1372-1. (Secs. 871, 876, 1371, 1372, 7701; '86 Code.)

Rev. Rul. 73-478, 1973-2 C.B. 310.

**464.66 Election; termination; waiting period.** A small business corporation, formed to own and operate a motel, whose election was terminated because of excess rental income resulting from a lease entered into in an unsuccessful effort to sell the motel will not be granted permission to make a new election prior to the expiration of the five-year period prescribed by section 1372(f). Rev.

Rul. 78-274 distinguished. §1.1372-5. (Sec. 1372, '86 Code.)

Rev. Rul. 78-307, 1978-2 C.B. 222.

**464.67 Election; timely mailing; erroneous effective date.** The taxpayer incorporated early in 1969, electing a fiscal year ending November 30. On December 31, 1969, the taxpayer purportedly completed and mailed an election to be treated as a small business corporation to be effective for the fiscal year beginning December 1, 1969, although erroneously indicating January 1, 1969 as the effective date. Upon receipt of the election on January 6, 1970, the Service failed to retain the mailing envelope which would have established a mailing date under section 7502. *Held*, the mailing date and thereby, a timely filing of election was supported by extrinsic evidence; the election filed during the first month of the taxable year was valid notwithstanding the fact that an erroneous effective date was given on the election. (Acq. in result to the timely filing; Acq. to the date of election.) (Secs. 1372, 7502; '86 Code.)

Robert Hicks Thompson, 66 T.C. 737, Acq. in result & Acq., 1977-1 C.B. 1.

**464.68 Election and consent forms; timely mailing; presumption of delivery.** Testimony of timely mailing of taxpayer's election to be treated as a small business corporation and consents of its shareholders gave rise to a strong presumption of delivery, which evidence that the Service failed to find the documents in its files was not sufficient to rebut. (Sec. 1372, '86 Code.)

Mitchell Offset Plate Service, Inc., 53 T.C. 235, Acq., 1970-1 C.B. xvi.

**464.69 Employee fringe benefits; S corporations and partnerships.** For purposes of the employee fringe benefit provisions of the Code, a 2-percent shareholder who is also an employee of an S corporation is treated like a partner of a partnership. Employee fringe benefits paid or furnished by an S corporation to or for the benefit of its 2-percent shareholder-employees in consideration for services rendered, are treated for income tax purposes like partnership guaranteed payments under section 707(c). Rev. Rul. 72-596 revoked. §§1.106-1, 1.162-7, 1.707-1. (Secs. 106, 162, 707, 1372; '86 Code.)

Rev. Rul. 91-26, 1991-1 C.B. 184.

**464.70 Estimated tax; additions for underpayment.** The exception to the addition to the tax for underpayment of estimated tax may be applied in determining whether a corporation is subject to an addition to tax for underpayment of the tax subsequent to the year it was an electing small business corporation. §§1.1373-1, 1.6012-2, 1.6655-2. (Secs. 1373, 6012, 6655; '86 Code.)

Rev. Rul. 72-388, 1972-2 C.B. 643.

**464.71 Foreign tax credit.** The shareholders of an electing small business corporation are not entitled to a credit for income tax paid to a foreign government by the corporation. However, the corporation is entitled to a tax deduction, provided it does not take the benefits of section 901. §§1.164-1, 1.1373-1. (Secs. 164, 1373; '86 Code.)

Rev. Rul. 68-128, 1968-1 C.B. 381.

**464.72 Gross receipts; commodity futures trading.** The amount of gross receipts realized by a small business corporation from trading in commodity futures, for purposes of section 1372(e)(5) equals the gains that result from the differences between the contract prices of positions and the contract prices of the respective positions acquired to close the initial positions, unreduced by any fee or commission. §1.1372-4. (Sec. 1372, '86 Code.)

Rev. Rul. 79-294, 1979-2 C.B. 305.

**464.73 Individual retirement account holding S corporation stock.** A trust that qualifies as an individual retirement account under section 408(a) is not a permitted shareholder in an S corporation under section 1361. §§1.72-1, 1.408-2, 18.1361-1. (Secs. 72, 408, 1361; '86 Code.)

Rev. Rul. 92-73, 1992-2 C.B. 224.

**464.74 Installment sales; change of accounting method.** The tax adjustment under reg. 1.453-7(b) is not applicable to a corporation that elects to be treated as a small business corporation during the same taxable year it changes from the accrual to the installment method of reporting income from installment sales. Also, the shareholders are not entitled to the tax adjustment. §§1.453-7, 1.1371-1. (Secs. 453, 1371; '86 Code.)

Rev. Rul. 73-114, 1973-1 C.B. 213.

**464.75 Installment sales; change of accounting method.** Procedures to be used by a small business corporation and its shareholders in making the computations required when changing from the accrual method to the installment method of accounting to report income from installment sales. §§1.453-7, 1.1372-1, 1.1376-1. (Secs. 453, 1372, 1376; '86 Code.)

Rev. Rul. 72-33, 1972-1 C.B. 130.

**464.76 Insurance premiums due.** Gross premiums due an accrual method small business corporation from its sale of insurance policies are gross receipts for purposes of section 1372(e)(5). §1.1372-4. (Sec. 1372, '86 Code.)

Rev. Rul. 69-192, 1969-1 C.B. 207.

**464.77 Interest paid; allocation.** Guidance is provided with respect to the allocation of interest expense in connection with certain transactions involving partnerships and S corporations (passthrough entities) and the allocation of interest expense on debt proceeds received in cash or deposited in a commingled account.

Notice 88-20, 1988-1 C.B. 487.

**464.78 Investment credit; shareholder's agreement; minor.** The agreement required of shareholders of an electing small business corporation with respect to section 38 property may be signed by the legal or natural guardian of a minor. Each signer must notify the District Director who has jurisdiction over his return. §1.47-4. (Sec. 47, '86 Code.)

Rev. Rul. 70-458, 1970-2 C.B. 3.

**464.79 Investment credit; shareholders agreement; notice of disposition.** Guidelines for filing a notice of disposition of section 38 property are provided for an electing small business corporation and each of its shareholders who executed a consent agreement. §§1.47-1, 1.47-4. (Sec. 601.602, S.P.R.; Sec. 47, '86 Code.)

Rev. Proc. 74-34, 1974-2 C.B. 489.

**464.80 Involuntary conversion gains; limitation period on assessments.** The exception under section 1033(a)(2)(C) to the general period for the assessment of any deficiency attributable to gain on an involuntary conversion applies to assessments against the shareholders of an electing small business corporation when the corporation has made an election to defer recognition of gain realized on a conversion. §§1.1033(a)-2, 1.1372-1. (Secs. 1033, 1372; '86 Code.)

Rev. Rul. 79-158, 1979-1 C.B. 281.

**464.81 Life insurance company; eligibility for subchapter S election.** A life insurance company does not qualify as a "small business corporation" as defined in section 1371(a) and is therefore not eligible to make an election under section 1372(a). §§1.802-4, 1.1371-1. (Secs. 802, 1371; '86 Code.)

Rev. Rul. 74-344, 1974-2 C.B. 273.

**464.82 Limitation on assessments.** The limitation period for assessing the income tax liability of an S corporation shareholder runs from the date on which the shareholder's return is filed. (Sec. 6501, '86 Code.)

Bufferd, U.S., Ct. D. 2057, 1993-2 C.B. 300.

**464.83 Liquidation; gain on sale of assets.** A corporation, operating as an electing small business corporation for the last two of its three years of existence, that sold its principle asset pursuant to a plan of complete liquidation described in section 337 and distributed all its assets to shareholders within 12 months of the date of adoption of the plan is not subject to the tax imposed by section 1378 on gain realized on the sale, and no part of the gain is includable in the shareholders' gross income under sections 1373 and 1375. However, under section 1001, the shareholders will realize gain on the liquidation to the extent the amounts distributed exceed the adjusted basis on their stock. §§1.1337-1, 1.1373-1, 1.1375-1, 1.1378-1. (Secs. 337, 1373, 1375, 1378; '86 Code.)

Rev. Rul. 78-89, 1978-1 C.B. 272.

**464.84 Net operating loss; debts owed partnership.** For purposes of the net operating loss allowed shareholders of a small business corporation, debts owed a partnership are not "indebtedness of the corporation to the shareholder" even though some of the shareholders own a majority interest in the partnership. §1.1374-1. (Sec. 1374, '86 Code.)

Rev. Rul. 69-125, 1969-1 C.B. 207.

**464.85 Net operating loss; loan payment by shareholder-guarantor.** Payment by a shareholder-guarantor of a loan made by a bank to an electing small business corporation is treated as an indebtedness of the corporation to the shareholder for purposes of computing his portion of a net operating loss. The basis of the indebtedness in the hands of the shareholder is reduced pursuant to the provisions of section 1376(b)(2). Clarified to explain that a shareholder's payment of the loan does not relate back to the prior corporate tax year for purposes of computing his portion of the net operating loss for that year. Amplified to explain that a shareholder's execution of a note and its acceptance by the bank caused the indebtedness of the corporation to accrue to the shareholder and created a basis in the indebtedness for purposes of computing his portion of the net operating loss, if any, in the year of execution of the note or in any subsequent year. §1.1374-1. (Sec. 1374, '86 Code.)

Rev. Rul. 70-50, 1970-1 C.B. 178; Rev. Rul. 71-288, 1971-2 C.B. 319; Rev. Rul. 75-144, 1975-1 C.B. 277.

**464.86 Net operating loss; research and development tax shelter.** Shareholders contributed cash to a small business corporation in exchange for stock, which was used as security, along with nonrecourse notes, to borrow most of the cash contributed. The lender simultaneously sold the notes at face value to a research and development company that was hired by the small business corporation and was paid the entire amount of the shareholders' contribution. The proceeds from such a financing arrangement are not included in the basis of the shareholders' stock for purposes of computing a net operating loss deduction resulting from the research and development expenses or, after December 31, 1978, for computing any deductions. §§1.465-1, 1.1374-1. (Secs. 465, 1374; '86 Code.)

Rev. Rul. 80-236, 1980-2 C.B. 240.

**464.87 Net operating loss; unpaid promissory note of shareholder.** A shareholder with a zero basis in the stock of an electing small business corporation may not claim a deduction for a net operating loss incurred by the corporation for a year in which the shareholder issued an unsecured demand promissory note to the corporation that

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remained unpaid at the end of the corporation's taxable year. §1.1374-1. (Sec. 1374, '86 Code.)  
Rev. Rul. 81-187, 1981-2 C.B. 338.

**464.88 Number of shareholders.** An electing small business corporation whose shareholders were 10 unrelated individuals, one of whom sold all the individual's stock to a new shareholder during the corporation's taxable year, did not exceed the 10-shareholder limitation of section 1371(a)(1). §1.1371-1. (Sec. 1371, '86 Code.)  
Rev. Rul. 78-390, 1978-2 C.B. 220.

**464.89 Partnership as shareholder.** A corporation having a partnership as a shareholder cannot qualify as a small, business corporation. (Sec. 1371, '86 Code.)  
Rev. Rul. 59-235, 1959-2 C.B. 192.

**464.90 Passive investment income; commodity futures.** Income derived by an electing small business corporation from the buying and selling of commodity futures is not passive investment income and does not cause the termination of the corporation's election. §1.1372-4. (Sec. 1372, '86 Code.)  
Rev. Rul. 72-457, 1972-2 C.B. 510.

**464.91 Passive investment income; debt assumed on property sold.** The amount of debt on property sold by an electing small business corporation that is assumed by the purchaser is includible in the corporation's gross receipts under section 1372(e)(5) in the year of the sale, §1.1372-4. (Sec. 1372, '86 Code.)  
Rev. Rul. 68-364, 1968-2 C.B. 371.

**464.92 Passive investment income; demurrage.** Demurrage received by an electing small business corporation that provides railroad transportation as a common carrier subject to regulation by the Interstate Commerce Commission is not passive investment income. §§1.1371-1, 1.1372-4. (Secs. 1371, 1372, '86 Code.)  
Rev. Rul. 70-110, 1970-1 C.B. 176.

**464.93 Passive investment income; gross receipts; joint venture.** An electing small business corporation's distributive share of gross receipts from a joint venture rather than its distributive share of ordinary loss is used in applying the passive investment income test of section 1372(e)(5). §§1.702-1, 1.1372-4. (Secs. 702, 1372, '86 Code.)  
Rev. Rul. 71-455, 1971-2 C.B. 318.

**464.94 Passive investment income; rental of tennis and handball courts.** Amounts an electing small business corporation receives for the use of its tennis and handball courts by players who are provided with a locker room and parking facilities, lesson fees with no additional charge made for the use of the court, and sales of sport items by a shop on the premises are not passive investment income. §1.1372-1. (Sec. 1372, '86 Code.)  
Rev. Rul. 76-48, 1976-1 C.B. 265.

**464.95 Passive investment income; rents; automobile leasing.** Amounts received by an electing small business corporation from the short term leasing of motor vehicles are not "rents" where the corporation, pursuant to its lease agreement, furnishes such services as gas and oil, tire upkeep, cleaning and polishing, oil changing and lubrication, and engine and body repair. §§1.1371-1, 1.1372-4. (Secs. 1371, 1372, '86 Code.)  
Rev. Rul. 65-40, 1965-1 C.B. 429.

**464.96 Passive investment income; rents; automobile leasing.** Amounts received by an electing small business corporation that, as part of its business of leasing motor vehicles under long-term leases, provides maintenance, repair, and other significant services to the lessee are not

rents. §§1.1371-1, 1.1372-4. (Secs. 1371, 1372, '86 Code.)  
Rev. Rul. 76-469, 1976-2 C.B. 252.

**464.97 Passive investment income; rents; distribution of motion pictures.** An electing small business corporation that distributes feature-length motion pictures to exhibitors for a share of the box office receipts and does support work, prepares advertising, furnishes advance personnel, inspects theaters with recommendations for changes where warranted, and delivers and picks up the films, or that itself rents theaters to exhibit the films and retains all the box office receipts, does not receive passive investment income within the meaning of section 1372(e)(5). §1.1372-1. (Sec. 1372, '86 Code.)  
Rev. Rul. 75-349, 1975-2 C.B. 349.

**464.98 Passive investment income; rents; leasing and chartering of aircraft.** Amounts received by an electing small business corporation from "dry" lease of an aircraft are rents within the meaning of section 1372(e)(5)(C), but amounts received from the full-service charter of an aircraft are not rents. §1.1372-4. (Sec. 1372, '86 Code.)  
Rev. Rul. 81-197, 1981-2 C.B. 166.

**464.99 Passive investment income; rents; personal property leasing.** Payments received for the use of personal property by corporations engaged in leasing (1) barricades, for use around construction areas, (2) golf carts, (3) cranes, and (4) men's clothing, do not constitute "rents" for purposes of the passive investment income test. Therefore, such payments will not cause the termination of a small business corporation's election under section 1372. §1.1372-4. (Sec. 1372, '86 Code.)  
Rev. Rul. 65-83, 1965-1 C.B. 430.

**464.100 Passive investment income; rents; storage of property.** Amounts received by an electing small business corporation for storing grain, providing refrigeration services, and operating a parking lot where an attendant parks the patrons' cars are not rents for purposes of the passive investment income test. However, amounts received for leasing space in a cotton warehouse are rents. §§1.1371-1, 1.1372-4. (Secs. 1371, 1372, '86 Code.)  
Rev. Rul. 65-91, 1965-1 C.B. 431.

**464.101 Passive investment income; rents; TV sets in hospital.** Payments received by an electing small business corporation for making TV sets available to hospital patients and for required services, including unlocking and locking, adjusting and repairing the sets, are not "rents" within the meaning of section 1372(e)(5). §§1.1371-1, 1.1372-4. (Secs. 1371, 1372, '86 Code.)  
Rev. Rul. 70-206, 1970-1 C.B. 177.

**464.102 Passive investment income; TV and radio broadcast receipts.** Gross receipts received by an electing small business corporation from television and radio networks for the right to broadcast football games are not passive investment income within the meaning of section 1372(e)(5)(C). §1.1372-4. (Sec. 1372, '86 Code.)  
Rev. Rul. 71-407, 1971-2 C.B. 318.

**464.103 Profit-sharing plan; contributions from accumulated profits.** The profit-sharing plan of an electing small business corporation does not fail to qualify merely because the plan document permits contributions to the plan from the corporation's accumulated profits as determined under generally accepted accounting principles, even though these amounts have previously been taxed to the shareholders under section 1373. Such contributions are deductible under section 404(a)(3). Rev. Rul. 71-257 super-

seded. §§1.401-1, 1.404(a)-9, 1.1372-1. (Secs. 401, 404, 1372, '86 Code.)  
Rev. Rul. 80-252, 1980-2 C.B. 130.

**464.104 Profit-sharing plan; shareholder-employee participants.** Where an electing small business corporation adopts a profit-sharing plan, qualification will not be denied merely because shareholder-employees are eligible to participate. §1.401-1. (Sec. 401, '86 Code.)  
Rev. Rul. 66-218, 1966-2 C.B. 120.

**464.105 Qualification; estate as shareholder.** The term "estate" as used in section 1371, relating to the definition of a small business corporation, includes only the estate of a decedent; however, a corporation may qualify as a small business corporation even though it has among its shareholders the estate of an individual who is under a disability, other than an individual in bankruptcy, since in such a case the individual rather than the estate is considered to be the shareholder. Rev. Rul. 65-90 superseded. §1.1371-1. (Sec. 1371, '86 Code.)  
Rev. Rul. 66-266, 1966-2 C.B. 356.

**464.106 Qualification; promotional and cash shareholders; preferences.** A corporation has more than one class of stock and does not qualify as a small business corporation where a state administrator, pursuant to local law, creates unequal voting power, dividend rights, and liquidation preferences among the promotional and cash shareholders of the corporation. §1.1371-1. (Sec. 1371, '86 Code.)  
Rev. Rul. 71-522, 1971-2 C.B. 316.

**464.107 Qualified subchapter trusts.** A trust that qualifies as a charitable remainder trust under section 664 cannot be the subject of a "qualified subchapter S trust" election under section 1361(d)(2). §§1.664-1, 18.1361-1. (Sec. 664, 1361, '86 Code.)  
Rev. Rul. 92-48, 1992-1 C.B. 301.

**464.108 Refunds; election under section 444.** Procedures are set forth for claiming a refund, for taxable years beginning in 1988, under section 7519 of the Code, relating to "required payments" of a partnership or S corporation for the use of a taxable year other than the required year.  
Notice 89-41, 1989-1 C.B. 681.

**464.109 Reinstatement of status.** Subchapter corporations whose status was invalidated may have their elections reinstated if they comply with certain conditions. §§1.442-1, 18.1362-1, 18.1378-1. (Sec. 601.204 S.P.R.; Secs. 442, 1362, 1378, '86 Code.)  
Rev. Proc. 84-25, 1984-1 C.B. 468.

**464.110 Rents; share-farming arrangement.** Amounts received by a corporation from farms which it owns and leases to individuals under a share-farming arrangement are not "rents" where the corporation participates to a material degree in the production of farm commodities through physical work or management decisions, or a combination of both. 1.1372-4. (Sec. 1372, '86 Code.)  
Rev. Rul. 61-112, 1961-1 C.B. 399.

**464.111 Reorganization; election after termination.** The consolidation of two electing small business corporations into a new corporation within the meaning of section 368(a)(1)(A) does not terminate the corporations' prior elections with respect to their final taxable year and the restriction on reelection is not applicable to the successor corporation. The new corporation, if qualified under section 1371, may elect, without prior approval, under section 1372 for the first taxable year beginning after the consolidation. §§1.368-1, 1.381(b)-1, 1.1372-5. (Secs. 368, 381, 1372, '86 Code.)  
Rev. Rul. 70-232, 1970-1 C.B. 177.

**464.112 Reorganization; election terminated; consolidated return.** All of the stock of an

electing small business corporation was acquired by a corporation before the start of business on October 16, 1978, in a B reorganization. They filed a consolidated return for the acquiring corporation's taxable year ended December 31, 1978. The small business corporation's election is not terminated for the separate taxable year ending October 15, 1978, but is terminated for taxable years beginning after that date. Rev. Rul. 72-201 revoked. §§1.1372-4, 1.1502-76. (Secs. 1372, 1502; '86 Code.)

Rev. Rul. 80-169, 1980-1 C.B. 188.

**464.113 Reorganization; successor corporation.** A corporation that purchased all the stock of an electing small business corporation, whose shareholders were not related to the shareholders of the purchasing corporation, and that liquidated it and acquired its assets, is not a successor corporation within the meaning of section 1372(f). The purchasing corporation may qualify as a small business corporation. §1.1372-5. (Sec. 1372, '86 Code.)

Rev. Rul. 77-155, 1977-1 C.B. 264.

**464.114 Reorganization; termination of election.** A reorganization under section 368(a)(1)(F) does not cause the termination of a small business corporation's election. §1.1371-2. (Sec. 1371, '86 Code.)

Rev. Rul. 64-250, 1964-2 C.B. 333.

**464.115 Reorganization; termination of election.** The election and the taxable year of a small business corporation are not terminated where, in a statutory merger, it acquires the assets of another corporation that is not an electing small business corporation. §§1.1368-1, 1.1372-4. (Secs. 368, 1372; '86 Code.)

Rev. Rul. 69-566, 1969-2 C.B. 165.

**464.116 Repayment of loan to shareholder-creditor.** Where a shareholder-creditor of an electing small business corporation has reduced his basis in the corporation's note by the amount by which his share of the corporation's net operating loss sustained in a prior year exceeded his basis in the corporation's stock, the repayment of the note (exclusive of interest) is considered to be an amount received in exchange for a capital asset, where the note is a capital asset in the shareholder's hands. Installments received in retirement of the note must be allocated in part to a return of the shareholder's basis in the loan and in part to income. §§1.1232-1, 1.1376-2. (Secs. 1232, 1376; '86 Code.)

Rev. Rul. 64-162, 1964-1 (Part 1) C.B. 304.

**464.117 Repayment of loan to shareholder-creditor.** A shareholder-creditor of an electing small business corporation derives ordinary income from the repayment of a loan made on open account to the extent that the repayments exceed his basis in the loan. §1.1376-1. (Sec. 1376, '86 Code.)

Rev. Rul. 68-537, 1968-2 C.B. 372.

**464.118 Repeal of general public utilities doctrine.** Guidance is provided to corporations that seek to obtain relief from the repeal of the *General Utilities* doctrine under section 633(d)(8) of the Tax Reform Act of 1986, as amended by section 1006(g)(7) of the Technical and Miscellaneous Revenue Act of 1988, by electing to be an S corporation.

Notice 88-134, 1988-2 C.B. 559.

**464.119 S election consent on behalf of deceased shareholder.** If a shareholder of a small business corporation dies before consenting to the corporation's election under section 1362(a), an executor or an administrator of the shareholder's estate may consent to the election on behalf of the

deceased shareholder. §18.1362-2. (Secs. 1362, 6903; '86 Code.)

Rev. Rul. 92-82, 1992-2 C.B. 238.

**464.120 Section 38 property; disposition; reorganization.** Shareholders of an electing small business corporation who exchange all of their stock for 75 percent of the outstanding stock of a corporation which is not an electing small business corporation in a section 368(a)(1)(B) reorganization will not be treated as having made a disposition of "section 38 property" and, thus, no recapture of the investment credit occurs as a result of the reorganization. §§1.47-4, 1.48-5. (Secs. 47, 48; '86 Code.)

Rev. Rul. 69-168, 1969-1 C.B. 24.

**464.121 Section 1244 stock; cancellation of note with excess value; computation of loss.** Where "section 1244 stock" was received in exchange for the cancellation of a note of a small business corporation at a time when the basis of the note exceeded its fair market value, in computing the ordinary loss on such stock, its basis must be reduced by such excess in accordance with section 1244(d). §1.1244(d)-1. (Sec. 1244, '86 Code.)

Rev. Rul. 66-293, 1966-2 C.B. 305.

**464.122 Section 1244 stock; existence of plan.** Upon examination of the original certificate of incorporation and the bylaws adopted May 21, 1960, and a handwritten document indicating that 5,000 shares of stock would be issued within 2 years and by no later than May 1962, it was held there was intention to adopt a plan within the provisions of section 1244. (Sec. 1244, '86 Code.)

William O. Hayden, 52 T.C. 1112, Acq., 1970-1 C.B. xvi.

**464.123 Section 1244 stock; lending institution.** An individual's loss sustained on the sale of a wholly owned corporation's stock that qualified as section 1244 stock when it was issued, the corporation for the five most recent taxable years ended before the date of the sale deriving over 50 percent of its gross receipts from interest on loans, does not qualify for ordinary loss treatment. §1.1244(c)-1. (Sec. 1244, '86 Code.)

Rev. Rul. 75-431, 1975-2 C.B. 346.

**464.124 Section 1244 stock; plan; adoption of second plan.** The adoption of a second plan by a small business corporation to issue section 1244 stock after termination of the first plan will start the running of a new two-year period. §1.1244(c)-1. (Sec. 1244, '86 Code.)

Rev. Rul. 68-491, 1968-2 C.B. 340.

**464.125 Section 1244 stock; plan; board of directors' minutes.** The minutes of a corporation's board of directors' meeting can qualify as a plan within the meaning of section 1244(c)(1)(A) if the minutes contain all the elements of a plan required by that section and the regulations thereunder. However, minutes which merely authorized the issuance of common stock and failed to specify the maximum amount to be received or the particular period of time during which the stock would be offered, do not qualify as such a plan. §1.1244(c)-1. (Sec. 1244, '86 Code.)

Rev. Rul. 66-67, 1966-1 C.B. 191.

**464.126 Section 1244 stock; plan adopted after stock purchase.** The stock of a small business corporation was subscribed and fully paid for prior to the adoption of a plan to issue stock which would qualify for the special treatment provided under section 1244. Just prior to complete liquidation of the corporation, a written plan was adopted to issue the stock under a plan qualifying under section 1244, and stock certificates were issued to the shareholders. *Held*, the stock was in fact issued prior to the adoption of the plan and the loss sustained on the stock does not qualify for the ordi-

nary loss treatment provided by section 1244. §1.1244(c)-1. (Sec. 1244, '86 Code.)

Rev. Rul. 67-256, 1967-2 C.B. 294.

**464.127 Separate share of a trust as a qualified subchapter S trust.** Separate and independent share of a trust, within the meaning of section 663(c) cannot qualify as a qualified S subchapter trust if there is a remote possibility that the corpus of the trust will be distributed during the lifetime of the current income beneficiary to someone other than the beneficiary. §§1.663(c)-3, 18.1361-1. (Secs. 663, 1361; '86 Code.)

Rev. Rul. 93-31, 1993-1 C.B. 186.

**464.128 Shareholder; 5-year requirement; losses.** Taxpayer reported, in 1 calendar year, three separate losses of \$50,000 or more from the operation of a farm through an electing small business corporation that was liquidated and operated as a sole proprietorship. For purposes of the 5-year requirement of section 270, the business losses covering three different time periods during 1 calendar year, in excess of \$50,000 each, are aggregated and considered as losses in a single taxable year. §§1.270-1, 1.1374-2. (Secs. 270, 1374; '86 Code.)

Rev. Rul. 69-584, 1969-2 C.B. 42.

**464.129 Shareholder; accounting period change.** A taxpayer whose principal source of income is dividends from an electing small business corporation will not be granted permission to change from a calendar year to fiscal year ending March 31 to coincide with the availability of dividend information from the corporation and to enable the taxpayer to make a more accurate fourth quarter estimated tax payment. §§1.442-1, 1.1371-1, 1.6015(a)-1. (Secs. 442, 1371, 6015; '86 Code.)

Rev. Rul. 76-407, 1976-2 C.B. 127.

**464.130 Shareholder; estate.** The estate of a deceased shareholder that holds stock in a small business corporation solely to facilitate the payment of Federal estate tax will continue to be an eligible shareholder within the meaning of section 1371(a) for the period during which the estate complies with the provisions of section 6166. §§1.641(b)-3, 1.1371-1. (Secs. 641, 1371, 6166; '86 Code.)

Rev. Rul. 76-23, 1976-1 C.B. 264.

**464.131 Shareholder; limitations on investment interest expense deduction.** Investment interest is taken into account separately from other deductible items by a partner or an S corporation shareholder and combined with any other investment interest of the partner or shareholder in determining whether the deduction limit of section 163(d)(1) is exceeded. §1.702-1. (Secs. 163, 702, 1366; '86 Code.)

Rev. Rul. 84-131, 1984-2 C.B. 37.

**464.132 Shareholder; use of net operating loss to avoid estimated tax penalty.** A shareholder of an electing small business corporation cannot use any portion of the corporation's NOL for the taxable year in determining the applicability of the exceptions to the penalty for the underpayment of the shareholder's installment of estimated tax due before the end of the corporation's taxable year. However, the shareholder may use the entire portion of the allocable loss in order to determine the applicability of the exceptions in the case of an installment due after the corporation's taxable year ends. §§1.1374-1, 1.6015(a)-1, 1.6153-1, 1.6654-2. (Secs. 1374, 6015, 6153, 6654; '86 Code.)

Rev. Rul. 81-144, 1981-1 C.B. 588.

**464.133 Shareholder; usufructuary.** The taxpayer and her husband owned all of the stock in a small business corporation as community property. Upon his death, his shares in the corporation were bequeathed to his children, with a usufruct

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for life to the taxpayer. The taxpayer, a usufructuary under the law of Louisiana, is considered a shareholder of a small business corporation. §1.1371-1. (Sec. 1371, '86 Code.)

Rev. Rul. 64-249, 1964-2 C.B. 332.

**464.134 Shareholder consents; guardian of minor.** The custodian holding stock in a small business corporation for a minor under the Uniform Gifts to Minors Act or the Model Gifts of Securities to Minors Act may consent, in that capacity, to the election of the corporation as a subchapter S corporation under section 1372 if the custodian is the legal guardian or natural guardian of the minor. Amplified to indicate that a custodian who is also the minor's legal or natural guardian will be considered to have made the consent in his capacity as guardian. §1.1372-3. (Sec. 1372, '86 Code.)

Rev. Rul. 66-116, 1966-1 C.B. 198; Rev. Rul. 68-227, 1968-1 C.B. 381.

**464.135 Shareholder consents; minor reaching majority.** A minor, whose stock in a small business corporation is held by a custodian under the California Uniform Gifts to Minors Act and similar state laws, is not required to file a consent as a new shareholder when he attains majority and receives his stock from the custodian. §1.1372-3. (Sec. 1372, '86 Code.)

Rev. Rul. 71-287, 1971-2 C.B. 317.

**464.136 Special stock issued to F.H.A.** Special stock required to be issued by a corporation to the Federal Housing Commissioner because the corporation holds property covered by mortgages insured by the F.H.A. does not represent an equity interest in the corporation and is not considered a class of stock. §§1.1371-1, 1.1372-1. (Secs. 1371, 1372; '86 Code.)

Rev. Rul. 64-309, 1964-2 C.B. 333.

**464.137 Stock options and warrants; convertible debentures.** Where an electing small business corporation issues options and warrants to acquire its stock, or issues debentures convertible into its stock, the corporation's election is not terminated nor is its eligibility to make an election affected. §§1.1371-1, 1.1372-4. (Secs. 1371, 1372; '86 Code.)

Rev. Rul. 67-269, 1967-2 C.B. 298.

**464.138 Stock purchase agreement.** A stock purchase agreement executed between a corporation and its shareholders, that does not affect the shareholder's rights in the corporation's profits and assets, will not create a second class of stock for purposes of section 1361(b)(1)(D). (Sec. 1361, '86 Code.)

Rev. Rul. 85-161, 1985-41 I.R.B. 22.

**464.139 Taxable income; bad debts; pass-thru of items to shareholders.** An S corporation that has a nonbusiness bad debt under section 166 must separately state the debt as a short-term capital loss under section 166(d). (Secs. 166, 1363, 1366; '86 Code.)

Rev. Rul. 93-36, 1993-1 C.B. 187.

**464.140 Termination of election; estimated tax; failure to pay.** A company whose small business corporation election was terminated after the first day of the twelfth month of its taxable year is not liable for the addition to the tax for failure to pay estimated tax for that year. §§1.1371-1, 1.6154-1, 1.6655-1. (Secs. 1371, 6154, 6655; '86 Code.)

Rev. Rul. 73-25, 1973-1 C.B. 606.

**464.141 Timberland sale.** Gain realized by an electing small business corporation from the sale of timberland held primarily for the production of timber products and not for sale to customers is gain from the sale of real property used in a trade

or business. §§1.1231-1, 1.1375-1. (Secs. 1231, 1375; '86 Code.)

Rev. Rul. 73-222, 1973-1 C.B. 373.

**464.142 Trust; after-born grandchild of the grantor.** A trust, the terms of which provide that a portion of its corpus may be used to fund a new trust for an "after-born" grandchild of the grantor, is not a "qualified subchapter S trust" under section 1361(d)(3) of the Code. (Sec. 1361, '86 Code.)

Rev. Rul. 89-45, 1989-1 C.B. 267.

**464.143 Trusts; qualified subchapter S trusts.** A provision in a trust agreement that authorizes the trustee to accumulate trust income in the event that the trust does not to hold any shares of an S corporation does not preclude the trust's qualification as a "qualified subchapter S trust" (QSST). (Sec. 1361, '86 Code.)

Rev. Rul. 92-20, 1992-1 C.B. 685.

**464.144 Undistributed taxable income; deceased shareholder.** Where a shareholder of an electing small business corporation died before the end of the corporation's fiscal year and the executor of his estate filed a timely election as provided by reg. 1.1372-3(b), no part of the undistributed taxable income of the corporation for the taxable year, which is includable in the estate's gross income, is income in respect of a decedent and no deduction is allowable under section 691(c) of the Code. §§1.691(a)-1, 1.1373-1. (Secs. 691, 1373; '86 Code.)

Rev. Rul. 64-308, 1964-2 C.B. 176.

**464.145 Undistributed taxable income; jointly held stock; death of spouse.** Where stock in an electing small business corporation is owned by spouses as tenants by the entirety, each spouse's net share of the corporation's undistributed taxable income is determined in accordance with the applicable state law, and upon the death of a spouse, the decedent's right to receive distributions not considered dividends under section 1375 lapses and is not available to the survivor. Where the stock is held in a joint tenancy, and in community property states where the surviving spouse acquires exclusive ownership of the stock, the same reasoning applies. §1.1375-4. (Sec. 1375, '86 Code.)

Rev. Rul. 66-172, 1966-1 C.B. 198.

**464.146 Voting rights; shareholder agreements.** Disproportionate voting rights in stock of a small business corporation resulting from agreements among shareholders or between shareholders and third parties, not involving the corporation's formal ownership structure, does not create a second class of stock of an electing small business corporation. Rev. Rul. 63-226 revoked. §1.1371-1. (Sec. 1371, '86 Code.)

Rev. Rul. 73-611, 1973-2 C.B. 312; Parker Oil Co., 58 T.C. 985, Acq. in result, 1973-2 C.B. 3.