

## 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.)

**Editorial Notes**

## 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.

**Statutory Notes and Related Subsidiaries**

## 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.)

**Editorial Notes**

## 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.

**Statutory Notes and Related Subsidiaries**

## 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 car-