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## **Internal Revenue Code Section 1363(d)**

Effect of election on corporation.

(a) General rule. Except as otherwise provided in this subchapter [IRC Sections 1361 et seq.], an S corporation shall not be subject to the taxes imposed by this chapter [IRC Sections 1 et seq.].

(b) Computation of corporation's taxable income. The taxable income of an S corporation shall be computed in the same manner as in the case of an individual, except that—

(1) the items described in section 1366(a)(1)(A) [IRC Sec. 1366(a)(1)(A)] shall be separately stated,

(2) the deductions referred to in section 703(a)(2) [IRC Sec. 703(a)(2)] shall not be allowed to the corporation,

(3) section 248 [IRC Sec. 248] shall apply, and

(4) section 291 [IRC Sec. 291] shall apply if the S corporation (or any predecessor) was a C corporation for any of the 3 immediately preceding taxable years.

(c) Elections of the S Corporation.

(1) In general. Except as provided in paragraph (2), any election affecting the computation of items derived from an S corporation shall be made by the corporation.

(2) Exceptions. In the case of an S corporation, elections under the following provisions shall be made by each shareholder separately—

(A) section 617 [IRC Sec. 617] (relating to deduction and recapture of certain mining exploration expenditures), and

(B) section 901 [IRC Sec. 901] (relating to taxes of foreign countries and possessions of the United States).



(d) Recapture of LIFO benefits.

(1) In general. If--

(A) an S corporation was a C corporation for the last taxable year before the first taxable year for which the election under section 1362(a) [IRC Sec. 1362(a)] was effective, and

(B) the corporation inventoried goods under the LIFO method for such last taxable year,

the LIFO recapture amount shall be included in the gross income of the corporation for such last taxable year (and appropriate adjustments to the basis of inventory shall be made to take into account the amount included in gross income under this paragraph).

(2) Additional tax payable in installments.

(A) In general. Any increase in the tax imposed by this chapter [IRC Sections 1 et seq.] by reason of this subsection shall be payable in 4 equal installments.

(B) Date for payment of installments. The first installment under subparagraph (A) shall be paid on or before the due date (determined without regard to extensions) for the return of the tax imposed by this chapter [IRC Sections 1 et seq.] for the last taxable year for which the corporation was a C corporation and the 3 succeeding installments shall be paid on or before the due date (as so determined) for the corporation's return for the 3 succeeding taxable years.

(C) No interest for period of extension. Notwithstanding section 6601(b) [IRC Sec. 6601(b)], for purposes of section 6601 [IRC Sec. 6601], the date prescribed for the payment of each installment under this paragraph shall be determined under this paragraph.

(3) LIFO recapture amount. For purposes of this subsection, the term 'LIFO recapture amount' means the amount (if any) by which—

(A) the inventory amount of the inventory asset under the first-in, first-out method authorized by section 471 [IRC Sec. 471], exceeds

(B) the inventory amount of such assets under the LIFO method.

For purposes of the preceding sentence, inventory amounts shall be determined as of the close of the last taxable year referred to in paragraph (1).

(4) Other definitions. For purposes of this subsection—

(A) LIFO method. The term 'LIFO method' means the method authorized by section 472 [IRC Sec. 472].

(B) Inventory assets. The term 'inventory assets' means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(C) Method of determining inventory amount. The inventory amount of assets under a method authorized by section 471 [IRC Sec. 471] shall be determined—

(i) if the corporation uses the retail method of valuing inventories under section 472 [IRC Sec. 472], by using such method, or

(ii) if clause (i) does not apply, by using cost or market, whichever is lower.

(D) Not treated as member of affiliated group. Except as provided in regulations, the corporation referred to in paragraph (1) shall not be treated as a member of an affiliated group with respect to the amount included in gross income under paragraph (1).

(5) Special rule. Sections 1367(a)(2)(D) and 1371(c)(1) [IRC Sections 1367(a)(2)(D) and 1371(c)(1)] shall not apply with respect to any increase in the tax imposed by reason of this subsection.