

Example 1. Termination upon distribution of QSub stock to shareholders of parent. X, an S corporation, owns Y, a QSub. X distributes all of its Y stock to X's shareholders. The distribution terminates the QSub election because Y no longer satisfies the requirements of a QSub. Assuming Y is otherwise eligible to be treated as an S corporation, Y's shareholders may elect to treat Y as an S corporation effective on the date of the stock distribution without requesting the Commissioner's consent.

Example 2. Sale of 100 percent of QSub stock. X, an S corporation, owns Y, a QSub. X sells 100 percent of the stock of Y to Z, an unrelated S corporation. Z may elect to treat Y as a QSub effective on the date of purchase without requesting the Commissioner's consent.

[T.D. 8869, 65 FR 3852, Jan. 25, 2000; 65 FR 16318, Mar. 28, 2000]

§ 1.1361-6 Effective date.

Except as provided in §§ 1.1361-4(a)(3)(iii), 1.1361-4(a)(5)(i), and 1.1361-5(c)(2), the provisions of §§ 1.1361-2 through 1.1361-5 apply to taxable years beginning on or after January 20, 2000; however, taxpayers may elect to apply the regulations in whole, but not in part (aside from those sections with special dates of applicability), for taxable years beginning on or after January 1, 2000, provided all affected taxpayers apply the regulations in a consistent manner. To make this election, the corporation and all affected taxpayers must file a return or an amended return that is consistent with these rules for the taxable year for which the election is made. For purposes of this section, affected taxpayers means all taxpayers whose returns are affected by the election to apply the regulations.

[T.D. 8869, 65 FR 3854, Jan. 25, 2000]

§ 1.1362-0 Table of contents.

This section lists the captions that appear in the regulations under section 1362.

§ 1.1362-1 Election to be an S corporation.

- (a) In general.
- (b) Years for which election is effective.

§ 1.1362-2 Termination of election.

- (a) Termination by revocation.
 - (1) In general.
 - (2) When effective.

- (i) In general.
- (ii) Revocations specifying a prospective revocation date.

- (3) Effect on taxable year of corporation.
- (4) Rescission of a revocation.

- (b) Termination by reason of corporation ceasing to be a small business corporation.

- (1) In general.
- (2) When effective.
- (3) Effect on taxable year of corporation.

- (c) Termination by reason of excess passive investment income.

- (1) In general.
- (2) When effective.
- (3) Subchapter C earnings and profits.
- (4) Gross receipts.

- (i) In general.
- (ii) Special rules for sales of capital assets, stock and securities.

- (A) Sales of capital assets.
- (B) Sales of stock or securities.

- (1) In general.
- (2) Treatment of certain liquidations.
- (3) Definition of stock or securities.
- (4) General partner interests.

- (i) In general.
- (ii) Exception.
- (iii) Other exclusions from gross receipts.
- (5) Passive investment income.

- (i) In general.
- (ii) Definitions.
 - (A) Royalties.
 - (1) In general.
 - (2) Royalties derived in the ordinary course of a trade or business.

- (3) Copyright, mineral, oil and gas, and active business computer software royalties.

- (B) Rents.
- (1) In general.

- (2) Rents derived in the active trade or business of renting property.

- (3) Produced film rents.

- (4) Income from leasing self-produced tangible property.

- (C) Dividends.

- (D) Interest.

- (1) In general.

- (2) Interest on obligations acquired in the ordinary course of a trade or business.

- (E) Annuities.

- (F) Gross receipts from the sale of stock or securities.

- (G) Identified income.

- (iii) Special rules.

- (A) Options or commodities dealers.

- (B) Treatment of certain lending, financing and other businesses.

- (1) In general.

- (2) Directly derived.

- (C) Payment to a patron of a cooperative.

- (6) Examples.

§ 1.1362-3 Treatment of S termination year.

- (a) In general.
- (b) Allocations other than pro rata.
 - (1) Elections under section 1362(e)(3).

§ 1.1362-1

(2) Purchase of stock treated as an asset purchase.

(3) 50 percent change in ownership during S termination year.

(c) Special rules.

(1) S corporation that is a partner in a partnership.

(2) Tax for the C short year.

(3) Each short year treated as taxable year.

(4) Year for carryover purposes.

(5) Due date for S short year return.

(6) Year in which income from S short year is includible.

(d) Examples.

§ 1.1362-4 Inadvertent terminations.

(a) In general.

(b) Inadvertent termination.

(c) Corporation's request for determination of an inadvertent termination.

(d) Adjustments.

(e) Corporation and shareholder consents.

(f) Status of corporation.

§ 1.1362-5 Election after termination.

(a) In general.

(b) Successor corporation.

(c) Automatic consent after certain terminations.

§ 1.1362-6 Elections and consents.

(a) Time and manner of making elections.

(1) In general.

(2) Election to be an S corporation.

(i) Manner of making election.

(ii) Time of making election.

(A) In general.

(B) Elections made during the first 2½ months treated as made for the following taxable year.

(C) Definition of month and beginning of the taxable year.

(iii) Examples.

(3) Revocation of S election.

(i) Manner of revoking election.

(ii) Time of revoking election.

(iii) Examples.

(4) Rescission of a revocation.

(i) Manner of rescinding a revocation.

(ii) Time of rescinding a revocation.

(5) Election not to apply pro rata allocation.

(b) Shareholders' consents.

(1) Manner of consents in general.

(2) Persons required to consent.

(i) Community interest in stock.

(ii) Minor.

(iii) Estate.

(iv) Trust.

(3) Special rules for consent of shareholder to election to be an S corporation.

(i) In general.

(ii) Examples.

(iii) Extension of time for filing consents to an election.

(A) In general.

26 CFR Ch. I (4-1-01 Edition)

(B) Required consents.

§ 1.1362-7 Effective date.

(a) In general.

(b) Special effective date for passive investment income provisions.

§ 1.1362-8 Dividends received from affiliated subsidiaries.

(a) In general.

(b) Determination of active or passive earnings and profits.

(1) In general.

(2) Lower tier subsidiaries.

(3) De minimis exception.

(4) Special rules for earnings and profits accumulated by a C corporation prior to 80 percent acquisition.

(5) Gross receipts safe harbor.

(c) Allocating distributions to active or passive earnings and profits.

(1) Distributions from current earnings and profits.

(2) Distributions from accumulated earnings and profits.

(3) Adjustments to active earnings and profits.

(4) Special rules for consolidated groups.

(d) Examples.

(e) Effective date.

[T.D. 8449, 57 FR 55448, Nov. 25, 1992; 58 FR 3330, Jan. 8, 1993, as amended by T.D. 8869, 65 FR 3854, Jan. 25, 2000]

§ 1.1362-1 Election to be an S corporation.

(a) *In general.* Except as provided in § 1.1362-5, a small business corporation as defined in section 1361 may elect to be an S corporation under section 1362(a). An election may be made only with the consent of all of the shareholders of the corporation at the time of the election. See § 1.1362-6(a) for rules concerning the time and manner of making this election.

(b) *Years for which election is effective.* An election under section 1362(a) is effective for the entire taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, until the election is terminated.

[T.D. 8449, 57 FR 55449, Nov. 25, 1992]

§ 1.1362-2 Termination of election.

(a) *Termination by revocation—(1) In general.* An election made under section 1362(a) is terminated if the corporation revokes the election for any taxable year of the corporation for which the election is effective, including the first