

or judicial determination resulting from a proceeding under subchapter D with respect to such taxable year may also include a determination that there is no entity for such taxable year.

(d) *Exceptions*—(1) *Partnership proceedings*. Paragraph (a) of this section shall not apply to:

(i) Entities for any taxable year in which such entity would be excepted from the provisions of subchapter C under section 6231(a)(1)(B) and the regulations thereunder (relating to the exception for small partnerships) if such entity were a partnership for such taxable year, and

(ii) Entities for any taxable year for which a partnership return was filed for the sole purpose of making the election described in section 761(a).

(2) *S corporation proceedings*. [Reserved]

(e) *Effective dates*. Paragraphs (a), (c)(1), and (d)(1) of this section shall apply with respect to any taxable year beginning after September 3, 1982, and with respect to any taxable year beginning on or before and ending after September 3, 1982, if with respect to that taxable year there is an agreement entered into pursuant to section 407(a)(3) of the Tax Equity and Fiscal Responsibility Act of 1982. Paragraphs (b) and (c)(2) of this section shall apply with respect to any taxable year beginning after December 31, 1982.

[T.D. 8128, 52 FR 6795, Mar. 5, 1987]

§ 301.6241-1T Tax treatment determined at corporate level.

(a) *In general*. For a taxable year of an S corporation beginning after December 31, 1982, a shareholder's treatment of a subchapter S item (as defined in § 301.6245-1T) on the shareholder's return may not be changed except as provided in sections 6241-6245 of the Code and the regulations thereunder. Thus, for example, if a shareholder treats an item on the shareholder's return consistently with the treatment of that item on the S corporation return, the Internal Revenue Service generally cannot adjust the treatment of that item on the shareholder's return except through a corporate-level proceeding. Similarly, the shareholder may not put a subchapter S item in issue in a proceeding relating to nonsubchapter S

items. For example, the shareholder may not offset a potential increase in taxable income based on changes in nonsubchapter S items by a potential decrease based on subchapter S items.

(b) *Restrictions inapplicable after items become nonsubchapter S items*. Section 6241 and paragraph (a) of this section cease to apply to items arising from an S corporation with respect to a shareholder when those items cease to be subchapter S items with respect to that shareholder under section 6231(b)(1) (as extended to and made applicable to subchapter S items under section 6244).

(c) *S corporation*—(1) *In general*. For purposes of subchapter D of chapter 63 of the Code, except as provided in paragraph (c)(2) of this section, the term "S corporation" means any corporation required to file a return under section 6037(a).

(2) *Exception for small S corporations*—(i) *Effective date*. This paragraph (c)(2) shall apply to any taxable year of an S corporation the due date of the return for which (determined without regard to extensions) is on or after January 30, 1987.

(ii) *Five or fewer shareholders*. For purposes of this paragraph (c), an S corporation shall not include a small S corporation. A small S corporation is defined as an S corporation with 5 or fewer shareholders, each of whom is a natural person or an estate. For purposes of this paragraph (c)(2), a husband and wife (and their estates) are treated as one shareholder. If stock (owned other than by a husband and wife) is owned by tenants in common or joint tenants, each tenant in common or joint tenant is considered to be a shareholder of the corporation. The limitation is applied to the number of natural persons and estates that were shareholders at any one time during the taxable year of the corporation. Thus, for example, an S corporation that at no time during the taxable year had more than 5 shareholders may be treated as a small S corporation even if, because of transfers of interests in the corporation, 6 or more natural persons or estates owned stock in the corporation for some portion of the taxable year.

(iii) *Special rule.* The exception provided in paragraph (c)(2)(ii) of this section does not apply to an S corporation for a taxable year if any shareholder in the corporation during that taxable year is a pass-through shareholder. For purposes of this paragraph (c)(2)(iii), a pass-through shareholder is—

(A) A trust;

(B) A nominee; or

(C) Other similar pass-through persons through whom other persons have an ownership interest in the stock of the S corporation. For purposes of the preceding sentence, a shareholder's estate shall not be treated as a pass-through shareholder.

(iv) *Determination made annually.* The determination of whether an S corporation meets the requirements for the exception under paragraph (c)(2)(ii) of this section shall be made for each taxable year of the corporation. Thus, an S corporation which does not qualify as a small S corporation in one taxable year may qualify as a small S corporation in another taxable year if the requirements for the exception under paragraph (c)(2)(ii) of this section are met with respect to that other taxable year.

(v) *Election to have subchapter D of chapter 63 apply—*(A) *In general.* Notwithstanding paragraph (c)(2)(ii) of this section, a small S corporation may elect to have the provisions of subchapter D of chapter 63 of the Code apply with respect to that corporation.

(B) *Method of election.* A small S corporation shall make the election described in paragraph (c)(2)(v)(A) of this section for a taxable year of the corporation by attaching a statement to the corporate return for the first taxable year for which the election is to be effective. The statement shall be identified as an election under § 301.6241-1T(c)(2)(v)(A), shall be signed by all persons who were shareholders of that corporation at any time during the corporate taxable year to which the return relates, and shall be filed at the time (determined with regard to any extensions of time for filing) and place prescribed for filing the corporate return.

(C) *Years covered by election.* The election shall be effective for the taxable year of the corporation to which the

return relates and all subsequent taxable years of the corporation unless revoked with the consent of the Commissioner.

[T.D. 8122, 52 FR 3002, Jan. 30, 1987]

§ 301.6245-1T Subchapter S items.

(a) *In general.* For purposes of subtitle F of the Internal Revenue Code of 1986, the following items which are required to be taken into account for the taxable year of an S corporation under subtitle A of the Code are more appropriately determined at the corporate level than at the shareholder level and, therefore, are subchapter S items:

(1) The S corporation aggregate and each shareholder's share of, and any factor necessary to determine, each of the following:

(i) Items of income, gain, loss, deduction, or credit of the corporation;

(ii) Expenditures by the corporation not deductible in computing its taxable income (for example, charitable contributions);

(iii) Items of the corporation that may be tax preference items under section 57(a) for any shareholder;

(iv) Items of income of the corporation that are exempt from tax;

(v) Corporate liabilities (including determinations of the amount of the liability, whether the corporate liability is to a shareholder of the corporation, and changes from the preceding year); and

(vi) Other amounts determinable at the corporate level with respect to corporate assets, investments, transactions, and operations necessary to enable the S corporation or the shareholders to determine—

(A) The general business credit provided by section 38;

(B) Recapture under section 47 of the credit provided by section 38;

(C) Amounts at risk in any activity to which section 465 applies;

(D) The depletion allowance under section 613A with respect to oil and gas wells;

(E) Amortization of reforestation expenses under section 194;

(F) The credit provided by section 34 for certain uses of gasoline and special fuels; and