

Table of Contents

CHAPTER 1. BRIEF HISTORY AND OVERVIEW

I. INTRODUCTION

- § 1:1 In general
- § 1:2 Preenactment developments
- § 1:3 Original enactment

II. BASIC ELEMENTS OF SUBCHAPTER S BEFORE SUBCHAPTER S REVISION ACT OF 1982

- § 1:4 In general

A. ELIGIBILITY

- § 1:5 Shareholder limitations
- § 1:6 Corporate limitations

B. ELECTION, TERMINATION AND REVOCATION

- § 1:7 Election
- § 1:8 Termination and revocation

C. PASS-THROUGH NATURE OF SUBCHAPTER S

- § 1:9 Income and capital gain
- § 1:10 Losses
- § 1:11 Taxable year

D. DISTRIBUTIONS

- § 1:12 Overview of distribution rules
- § 1:13 Distribution of undistributed taxable income
- § 1:14 Distribution of previously taxed income
- § 1:15 Distributions from earnings and profits

E. BASIS

- § 1:16 Basis in stock
- § 1:17 Basis in debt

III. BASIC ELEMENTS OF SUBCHAPTER S AFTER SUBCHAPTER S REVISION ACT OF 1982

- § 1:18 Reasons for change

A. ELIGIBILITY

- § 1:19 Shareholder-level limitations
- § 1:20 Corporate-level limitations

B. ELECTION, TERMINATION AND REVOCATION

- § 1:21 Elections
- § 1:22 Terminations
- § 1:23 Revocations

C. PASS-THROUGH NATURE OF S CORPORATION

- § 1:24 Income and losses
- § 1:25 Taxable year
- § 1:26 Corporate-level tax on built-in gains
- § 1:27 Corporate-level tax on passive income
- § 1:28 Corporate-level tax on LIFO recapture

D. DISTRIBUTIONS

- § 1:29 Corporations with accumulated earnings and profits
- § 1:30 Corporations with no accumulated earnings and profits

E. BASIS

- § 1:31 Stock
- § 1:32 Debt

CHAPTER 2. CHOICE OF ENTITY

- § 2:1 Purpose and scope of chapter
- § 2:2 Partnerships of S corporations

I. COMPARISON OF S CORPORATIONS, C CORPORATIONS, PARTNERSHIPS, PARTNERSHIPS INCLUDING S CORPORATIONS AND LIMITED LIABILITY COMPANIES

A. DOUBLE TAX ISSUES

- § 2:3 Double taxation of entity earnings

B. ELIGIBILITY AND CLASSIFICATION ISSUES

- § 2:4 Eligibility of entity and owners
- § 2:5 Classification of entity—General
- § 2:6 —Partnerships and limited liability companies
- § 2:7 —Partnership of S corporations
- § 2:8 —S corporation

C. FORMATION ISSUES

- § 2:9 Recognition of gain or loss on transfer of property to entity—General

TABLE OF CONTENTS

- § 2:10 —Control requirements
- § 2:11 —Effect of transfer of encumbered property
- § 2:12 —Boot
- § 2:13 —Receipt of interest in entity for services
- § 2:14 Tax credit recapture
- § 2:15 Capitalization issues
- § 2:16 Character of gain or loss on sale of contributed property
- § 2:17 Allocation of tax items relative to contributed property
- § 2:18 Treatment of interest on debt incurred to acquire interest in entity
- § 2:19 Selection of taxable year
- § 2:20 Selection of accounting method

D. OPERATIONAL ISSUES

- § 2:21 Varying tax rates
- § 2:22 Control, participation in management and limited liability
- § 2:23 Pass through of tax items
- § 2:24 Allocation of tax items
- § 2:25 Current distributions
- § 2:26 Basis in interest in entity
- § 2:27 Applicability of at risk rules
- § 2:28 Passive loss rules
- § 2:29 Risk of loss of tax-favored status of entity
- § 2:30 Compensation
- § 2:31 State tax considerations
- § 2:32 Administrative matters

E. GENERAL CONSEQUENCES OF DISPOSITION OF INTERESTS IN THE ENTITY

- § 2:33 General consequences of sale of interests in entity
- § 2:34 Redemptions of interests in entity
- § 2:35 Liquidations and divisions of entity
- § 2:36 Tax-free transfers of interest in entity (mergers)
- § 2:37 Adjustment to basis of assets of entity
- § 2:38 Estate planning considerations

II. SUMMARY OF ADVANTAGES AND DISADVANTAGES OF S CORPORATIONS IN RELATION TO OTHER ENTITIES

- § 2:39 Introduction

A. S CORPORATION VERSUS C CORPORATION

- § 2:40 S corporation advantages—Ease of organization
- § 2:41 —Avoidance of double taxation
- § 2:42 —Corporate losses
- § 2:43 —Cash distributions

- § 2:44 —Personal holding company, accumulated earnings and
alternative minimum taxes
- § 2:45 —Accounting methods
- § 2:46 —Financial statements
- § 2:47 —Interest on debt used to acquire shares
- § 2:48 S corporation disadvantages—Single class of stock
- § 2:49 —Eligibility
- § 2:50 —Fiscal year
- § 2:51 —Certain fringe benefits
- § 2:52 —Qualified plan rules (prior law)
- § 2:53 —Tax rates
- § 2:54 —Alternative minimum tax
- § 2:55 —Inability of shareholders to use Section 1202
- § 2:56 —Applicability of Section 461(l)

B. S CORPORATIONS VERSUS PARTNERSHIPS AND LIMITED LIABILITY COMPANIES TAXED AS PARTNERSHIPS

- § 2:57 S corporation advantages—Certainty of tax classification
- § 2:58 —Management and limited liability
- § 2:59 —Passive loss rules
- § 2:60 —Tax-free merger treatment
- § 2:61 —Deemed distributions
- § 2:62 —Constructive termination rules
- § 2:63 —Absence of Section 751 treatment
- § 2:64 —Distributions not subject to self-employment tax
- § 2:65 S corporation disadvantages—Tax-free transfer of property
to S corporation
- § 2:66 —Inclusion of entity liabilities in basis of interest
- § 2:67 —Disproportionate tax allocations and distributions
- § 2:68 —Limitation on number of shareholders
- § 2:69 —Corporate-level taxes
- § 2:70 —Taxation of property distributions
- § 2:71 —State taxes

Appendix 2A. Comparison Table

CHAPTER 3. ELIGIBILITY TO ATTAIN STATUS AS S CORPORATION

§ 3:1 Introduction

I. ELIGIBLE CORPORATIONS

- § 3:2 Domestic corporation
- § 3:3 Ineligible corporations—General
- § 3:4 —Financial institutions
- § 3:5 S corporations with subsidiaries [current law]
- § 3:6 Other ineligible corporations
- § 3:7 Affiliated group limitation [prior law]

TABLE OF CONTENTS

- § 3:8 —Statutory exception [prior law]
- § 3:9 —Administrative exception [prior law]
- § 3:10 —Judicial exception [prior law]
- § 3:11 —Coping with affiliated group limitation [prior law]

II. PERMISSIBLE AND IMPERMISSIBLE SHAREHOLDERS

- § 3:12 Individuals
- § 3:13 Nonresident aliens
- § 3:14 Nominees, agents, guardians or custodians
- § 3:15 Corporations
- § 3:16 Partnerships
- § 3:17 Limited liability companies
- § 3:18 Estates
- § 3:19 Split interests
- § 3:20 Trusts—General
- § 3:21 —Grantor trusts
- § 3:22 —Section 678 trusts
- § 3:23 —Testamentary trusts
- § 3:24 —Qualified Subchapter S Trusts (QSSTs)
- § 3:25 —Voting trusts
- § 3:26 —Electing small business trusts (ESBTs)
- § 3:27 Tax-exempt entities
- § 3:28 —ESOPs
- § 3:29 —Other qualified employee benefit trusts
- § 3:30 —Individual retirement accounts (IRAs)—General
- § 3:31 — —Bank and depository institution holding company stock exception
- § 3:32 —Charitable organizations
- § 3:33 Indian tribes
- § 3:34 Temporarily ineligible shareholder

III. LIMITATION ON NUMBER OF SHAREHOLDERS

- § 3:35 Number of permissible shareholders
- § 3:36 Rules for determining number of shareholders—General
- § 3:37 —Husband and wife
- § 3:38 —Qualifying families
- § 3:39 —Restricted bank director stock
- § 3:40 —Restricted stock generally
- § 3:41 —Jointly held stock
- § 3:42 —Nominee, agent, guardian or custodian
- § 3:43 —Estates
- § 3:44 —Split interests
- § 3:45 —Trusts
- § 3:46 —Tax-exempt entities
- § 3:47 —Constraints on efforts to exceed limitation on number of shareholders

IV. REQUISITE CAPITAL STRUCTURE

- § 3:48 Single-class-of-stock requirement—General
- § 3:49 Distinctions in voting rights
- § 3:50 Distinctions in economic rights—General
- § 3:51 Retroactive corrective relief for corporations with non-identical governing provisions
- § 3:52 Distinctions in economic rights—Impact of differences in timing of distributions
- § 3:53 —Impact of unreasonable compensation
- § 3:54 —Impact of distinctions in fringe benefits
- § 3:55 —Impact of below-market loans
- § 3:56 —Impact of state corporate-level tax payments or withholding
- § 3:57 —Impact of distributions taking into account changes of ownership
- § 3:58 —Impact of adjustments to amount of distributions for state taxes
- § 3:59 —Impact of options, warrants and similar instruments
- § 3:60 —Treatment of TARP warrants
- § 3:61 —Impact of restricted stock
- § 3:62 —Impact of deferred compensation plans
- § 3:63 — —Impact of payment of fringe benefits
- § 3:64 — —Impact of ESOP distributions to plan participants
- § 3:65 — —Impact of split-dollar insurance
- § 3:66 —Impact of issuance of unauthorized shares
- § 3:67 —Impact of Section 338(h)(10) election
- § 3:68 —Impact of shareholder agreements
- § 3:69 — —Management
- § 3:70 — —Distributions
- § 3:71 — —Additional capital and loan requirements
- § 3:72 — —Buy-sell provisions
- § 3:73 — —Repurchase of restricted bank director stock
- § 3:74 — —Liquidation preferences
- § 3:75 Debt as second class of stock
- § 3:76 —Section 385 Regulations
- § 3:77 —Debt issued under TARP program
- § 3:78 Straight debt safe harbor
- § 3:79 Mixed-fund investments in S corporation electing qualified opportunity fund status

V. OTHER CONSIDERATIONS

- § 3:80 Prior termination of S corporation status
- § 3:81 —Qualified subchapter S subsidiary issues
- § 3:82 Prior and continued eligibility
- § 3:83 Dissolution of corporation under state law
- § 3:84 Bankruptcy of corporation
- § 3:85 Impact of S corporation status on generation skipping trust exemption

TABLE OF CONTENTS

CHAPTER 4. PERMITTED TAXABLE YEARS

§ 4:1 Introduction

I. CALENDAR YEAR

§ 4:2 General

§ 4:3 Procedure

II. FISCAL YEAR ESTABLISHED BY BUSINESS PURPOSE

§ 4:4 General

§ 4:5 Natural business year test

§ 4:6 —Procedure

§ 4:7 Ownership tax year test

§ 4:8 —Procedure

§ 4:9 Facts and circumstances test

§ 4:10 —Procedure

§ 4:11 Relationship with Section 444 election

III. FISCAL YEAR AUTHORIZED BY SECTION 444 ELECTION

§ 4:12 General

A. INELIGIBLE CORPORATIONS

§ 4:13 Prior effective Section 444 election

§ 4:14 Member of tiered structure

B. PERMISSIBLE FISCAL YEARS

§ 4:15 Newly organized corporations

§ 4:16 Existing corporations

C. ELECTION PROCEDURE

§ 4:17 Form for Section 444 election

§ 4:18 —Execution

§ 4:19 —Transmittal

§ 4:20 —Due date of election

D. LIABILITY FOR REQUIRED PAYMENTS

§ 4:21 General

§ 4:22 Exception for first year of newly organized corporations

§ 4:23 Exception for first year of certain existing corporations

§ 4:24 Exception for liability not exceeding \$500

§ 4:25 Computation of liability

§ 4:26 —Step 1: Determine corporation's base year

§ 4:27 —Step 2: Determine corporation's net income for base year

- § 4:28 —Step 3: Determine deferral ratio
- § 4:29 —Step 4: Determine amount of applicable payments for
base year
- § 4:30 —Step 5: Determine excess applicable payments for deferral
period of base year
- § 4:31 —Step 6: Determine net base year income
- § 4:32 —Step 7: Determine adjusted highest Section 1 tax rate
- § 4:33 —Step 8: Determine applicable percentage
- § 4:34 —Step 9: Determine net required payment balance
- § 4:35 —Step 10: Determine required payment
- § 4:36 Due date of required payments
- § 4:37 Medium of payments and transmittal
- § 4:38 Treatment of required payments
- § 4:39 Assessment and collection of required payments
- § 4:40 Interest due in respect to failure to make timely required
payment
- § 4:41 Penalties for failure to make timely payments

E. MISCELLANEOUS

- § 4:42 Annual tax return requirement
- § 4:43 Termination of Section 444 election
- § 4:44 Refunds of required payments
- § 4:45 Back-up Section 444 election
- § 4:46 Errors and omissions
- § 4:47 Special rule permitting shareholders to spread over a four-
year period the recognition of short taxable year income
resulting from certain changes in S corporation taxable
year [prior law]

IV. IRS FORMS

- § 4:48 Form 8716
- § 4:49 Form 8752

CHAPTER 5. ORGANIZATION AND CAPITALIZATION

- § 5:1 Introduction

I. INCORPORATION

- § 5:2 Domestic corporation requirement
- § 5:3 Impact of local law

II. STOCK

- § 5:4 Single-class-of-stock requirement
- § 5:5 —Distinctions in voting rights
- § 5:6 —Distinctions in economic rights
- § 5:7 —Preemptive rights

TABLE OF CONTENTS

- § 5:8 Voting trusts
- § 5:9 Advisability of restrictions on issuance and transfer of stock
- § 5:10 Impact of Section 1366(e)
- § 5:11 Stock options and special allocations
- § 5:12 Stock issued by an S corporation does not currently constitute “qualified small business stock”

III. DEBT

- § 5:13 Debt as second class of stock
- § 5:14 Basis of debt
- § 5:15 Income on repayment of debt
- § 5:16 Evidence of indebtedness
- § 5:17 Discharge of indebtedness
- § 5:18 Deductibility of interest
- § 5:19 Below-market debt
- § 5:20 Advantages of debt
- § 5:21 Disadvantages of debt

IV. TRANSFERS OF PROPERTY TO S CORPORATION

A. IMPACT ON SHAREHOLDERS

- § 5:22 General rule of nonrecognition
- § 5:23 —Transfer of property
- § 5:24 —Solely in exchange for stock
- § 5:25 —Control immediately after exchange
- § 5:26 Investment tax credit recapture
- § 5:27 Other exceptions to nonrecognition
- § 5:28 Basis of stock
- § 5:29 Taxable sale of property to corporation

B. IMPACT ON CORPORATION

- § 5:30 Nonrecognition upon issuance of stock
- § 5:31 Basis of property received

V. Section 1244 STOCK

- § 5:32 General
- § 5:33 Section 1244 stock defined
- § 5:34 Eligible shareholders
- § 5:35 Computation of ordinary loss

VI. ACCOUNTING MATTERS

- § 5:36 Choice of taxable year
- § 5:37 Adoption of taxable year
- § 5:38 Change of taxable year
- § 5:39 Choice of accounting methods
- § 5:40 Adoption of accounting method

§ 5:41 Change in accounting method

CHAPTER 6. ELECTING S CORPORATION STATUS

§ 6:1 Introduction

I. ELECTION BY CORPORATION

- § 6:2 Eligible corporation
- § 6:3 Form for election
- § 6:4 Execution of election form
- § 6:5 Effective date of election
- § 6:6 Designation of permitted taxable year
- § 6:7 Due date of election
- § 6:8 Extension to file election
- § 6:9 —General procedure for seeking relief for late elections
- § 6:10 —Simplified procedure for seeking relief for late S elections
- § 6:11 Simplified procedure for seeking joint relief for late S corporation election and late classification election
- § 6:12 Election by former member of affiliated group
- § 6:13 Election by newly organized corporation
- § 6:14 —No new S election required in connection with implementation of holding company structure and creation of new parent entity to hold stock of existing S corporation
- § 6:15 Election by association
- § 6:16 Transmittal and proof of filing
- § 6:17 Notification of acceptance of election form by the Service
- § 6:18 Errors and omissions—General
- § 6:19 —Inadvertent invalid election relief
- § 6:20 — —General procedure to obtain inadvertent invalid election relief
- § 6:21 —Simplified procedure to obtain inadvertent election relief caused by failure to timely file ESBT or QSST election
- § 6:22 Effect of election
- § 6:23 Revocation of election

II. CONSENT BY SHAREHOLDERS

- § 6:24 Time shareholders determined
- § 6:25 Identity of shareholders
- § 6:26 —Joint owners
- § 6:27 —Spouses
- § 6:28 —Minors
- § 6:29 —Estates
- § 6:30 —Trusts
- § 6:31 —Single member limited liability companies
- § 6:32 —Tax exempt entities
- § 6:33 —Nonvoting shares
- § 6:34 —Split interests

TABLE OF CONTENTS

§ 6:35	—Restricted stock
§ 6:36	—Stock options
§ 6:37	—Stock warrants
§ 6:38	—Incorporators
§ 6:39	—Subscribers
§ 6:40	—Powers of attorney
§ 6:41	—Multiple capacities
§ 6:42	Form for consent
§ 6:43	Due date of consent
§ 6:44	Extension to file consent
§ 6:45	Expedited procedure for seeking relief for late shareholder consents
§ 6:46	Transmittal and proof of filing
§ 6:47	Errors and omissions
§ 6:48	Effect of consent
§ 6:49	Revocation of consent

III. QSST ELECTION BY CURRENT INCOME BENEFICIARY

§ 6:50	Necessity of election
§ 6:51	Form for election—General
§ 6:52	—Form 2553
§ 6:53	—Separate statement
§ 6:54	— —Effective date
§ 6:55	— —Due date
§ 6:56	— —Transmittal and proof of filing
§ 6:57	Execution of election form
§ 6:58	—Protective QSST election authorized
§ 6:59	Extension to file election
§ 6:60	Errors and omissions
§ 6:61	Effect of election
§ 6:62	Affirmative refusal to consent
§ 6:63	Revocation of election
§ 6:64	Conversion to and from ESBT

IV. ESBT ELECTION BY TRUSTEE

§ 6:65	Necessity of election
§ 6:66	Form for election
§ 6:67	—Effective date
§ 6:68	—Due date
§ 6:69	—Execution of election form
§ 6:70	Transmittal and proof of filing
§ 6:71	Extension to file election
§ 6:72	Revocation of election
§ 6:73	Effect of ESBT election
§ 6:74	No protective election
§ 6:75	Conversion to and from QSST

V. FORMS

- § 6:76 Form 2553
- § 6:77 Instructions for Form 2553
- § 6:78 Proof of filing
- § 6:79 Separate statement for shareholder consent
- § 6:80 Separate statement for QSST election
- § 6:81 ESBT election

CHAPTER 7. IMPACT OF S ELECTION— SPECIAL TREATMENT OF S CORPORATION PASS-THROUGH ITEMS AND RELATED MATTERS

- § 7:1 Introduction

I. TREATMENT OF S CORPORATION AS SEPARATE FROM ITS SHAREHOLDERS

- § 7:2 General

II. CONSEQUENCES OF S ELECTION

- § 7:3 Status as pass-through entity
- § 7:4 Immediate tax consequences of S election
- § 7:5 Determination and realization of corporate tax items

III. DETERMINATION AND REALIZATION OF CORPORATE INCOME

- § 7:6 Introduction
- § 7:7 Applicability of nonrecognition provisions
- § 7:8 Application of tax benefit rule and Section 111
- § 7:9 Discharge of indebtedness income and related matters
- § 7:10 —Common debt workout situations
- § 7:11 Taxable year and method of accounting
- § 7:12 Income arising from corporate transactions—Distribution of appreciated property
- § 7:13 —Issuance of stock for property
- § 7:14 —S corporation as shareholder (former and current law)
- § 7:15 —Transactions involving stock of another corporation
- § 7:16 Installment sales by the S corporation and of the S corporation's stock
- § 7:17 Other income items
- § 7:18 Shareholder's payment of corporate expenses

IV. SPECIAL TREATMENT OF CERTAIN DEDUCTIONS, LOSSES AND OTHER ITEMS

- § 7:19 Introduction
- § 7:20 Net operating losses

TABLE OF CONTENTS

§ 7:21	Organizational expenditures
§ 7:22	Dividends received deduction
§ 7:23	Corporate-level preference items under Section 291
§ 7:24	Treatment of fringe benefits
§ 7:25	Deductions and losses limited by Section 267
§ 7:26	Compensation paid in property
§ 7:27	Home-related deductions
§ 7:28	Personal exemptions
§ 7:29	Personal deductions
§ 7:30	Hobby losses
§ 7:31	Foreign taxes
§ 7:32	Charitable contributions made by an S corporation
§ 7:33	Interest
§ 7:34	Oil and gas depletion
§ 7:35	Mineral exploration expenditures
§ 7:36	Capital gain and loss
§ 7:37	—Determination of character of gain at corporate level
§ 7:38	—Section 1231 gain and loss
§ 7:39	Expensed property under Section 179
§ 7:40	Domestic manufacturing deduction (repealed)
§ 7:41	Domestic taxes
§ 7:42	Reforestation expenditures
§ 7:43	Pass-through of expenses relating to personal use property
§ 7:44	Alternative minimum tax
§ 7:45	Treatment of specific tax preference items
§ 7:46	Farm-related deductions
§ 7:47	Miscellaneous itemized deductions
§ 7:48	Regulated futures contracts and hedging transactions
§ 7:49	Claim of right doctrine
§ 7:50	Meal and entertainment expenses
§ 7:51	Income in respect of decedent
§ 7:52	Treatment of S corporations as corporations for non-subchapter S purposes
§ 7:53	Nonbusiness bad debt deductions of the S corporation
§ 7:54	Section 1244 stock held by the S corporation
§ 7:55	First time home buyer's credit and S corporations
§ 7:56	Treatment of S corporations as corporations under Section 170
§ 7:57	Treatment of S corporations as corporations for purposes of Section 165(g)(3)
§ 7:58	Treatment of S corporations under the carried interest rules
§ 7:59	Capitalization of reorganization expenses, including expenses of electing S status
§ 7:60	Dividends qualifying for long-term capital gain rates
§ 7:61	Golden parachute payments
§ 7:62	Qualified business income deduction under Section 199A

V. PASS THROUGH OF TAX ITEMS TO SHAREHOLDERS

§ 7:63	Introduction
--------	--------------

- § 7:64 Determining the ownership of shares for purposes of allocating S corporation tax items
- § 7:65 Separately stated and nonseparately stated items
- § 7:66 —State and local taxes
- § 7:67 Timing of pass through of tax items
- § 7:68 Amount of pass through of tax items
- § 7:69 Character of tax items that pass through
- § 7:70 Allocation of tax items among shareholders
- § 7:71 Elections to close books on transfer of shares
- § 7:72 Allocation in year of termination
- § 7:73 Service's power to reallocate tax items among family members
- § 7:74 Special problems related to estates and trusts

VI. TAX ELECTIONS

- § 7:75 Tax elections at corporate level
- § 7:76 Tax elections at shareholder level

VII. TAX CREDITS

- § 7:77 Introduction
- § 7:78 Pass through and allocation of credits
- § 7:79 Collateral adjustments required by use of certain pass-through credits
- § 7:80 General business credits
- § 7:81 —Investment tax credits and credit recapture
- § 7:82 —Other general business credits
- § 7:83 —Limitation on use of general business credit
- § 7:84 Credits for renewable electricity
- § 7:85 Certain refundable tax credits
- § 7:86 Foreign tax credit
- § 7:87 Gasoline and fuels credit

VIII. MISCELLANEOUS MATTERS

- § 7:88 Collateral effects of pass through of tax items
- § 7:89 Self-employment tax
- § 7:90 Wage withholding on disguised compensation payments
- § 7:91 Medicare Tax on Net Investment Income

IX. FORMS

- § 7:92 Election to close books on complete termination of shareholder's stock interest
- § 7:93 Election to close books on a qualifying disposition of stock

CHAPTER 8. SPECIAL ISSUES AFFECTING S CORPORATION WITH SUBCHAPTER C HISTORY

- § 8:1 Introduction

TABLE OF CONTENTS

I. ELIGIBILITY AND ELECTION

- § 8:2 General
- § 8:3 Limited number of permissible shareholders
- § 8:4 Single class of stock requirement
- § 8:5 Permitted taxable year
- § 8:6 Local law considerations
- § 8:7 Timing of S election and satisfaction of eligibility requirements

II. IMPACT ON ELECTION

- § 8:8 LIFO recapture
- § 8:9 Foreign loss recapture
- § 8:10 Investment tax credit recapture
- § 8:11 Qualified employee benefit plan problems [prior law]
- § 8:12 Fringe benefits
- § 8:13 Installment obligations
- § 8:14 Acquisition debt
- § 8:15 Deferred COD income [prior law]
- § 8:16 Computation of income
- § 8:17 —Percentage depletion [prior law]
- § 8:18 —Related party transactions
- § 8:19 —Method of accounting
- § 8:20 —Section 291
- § 8:21 —Section 183
- § 8:22 —Section 111
- § 8:23 —Subchapter C attributes—General
- § 8:24 — —Earnings and profits
- § 8:25 — —Loss carryforwards
- § 8:26 — —Other attributes
- § 8:27 Minimum taxes
- § 8:28 Estimated tax payments
- § 8:29 Qualified Small Business Stock Implications

III. CORPORATE-LEVEL TAX ON BUILT-IN GAINS

- § 8:30 Purpose and scope of tax

A. APPLICABILITY OF TAX

- § 8:31 Corporations subject to tax
- § 8:32 Net unrealized built-in gain
- § 8:33 Recognition period
- § 8:34 —Temporary reduction in recognition period provided by the American Recovery and Reinvestment Act of 2009, the Small Business Jobs Act of 2010, and the American Taxpayer Relief Act of 2012 [prior law]
- § 8:35 Recognition events
- § 8:36 —Excluded assets
- § 8:37 —Like kind exchanges

- § 8:38 —Installment sales
- § 8:39 Excess recognized built-in gain
- § 8:40 Taxable income

B. COMPUTATION OF TAX

- § 8:41 Regulations
- § 8:42 Net recognized built-in gain
- § 8:43 —Ceiling on net recognized built-in gain
- § 8:44 —Deductions offsetting net recognized built-in gain
- § 8:45 Rate of tax
- § 8:46 Credits offsetting tax
- § 8:47 Effect on shareholder pass through
- § 8:48 Impact of tax under Section 1375

C. MISCELLANEOUS

- § 8:49 Transitional rules
- § 8:50 Planning considerations

IV. CORPORATE-LEVEL TAX ON EXCESS PASSIVE INVESTMENT INCOME

- § 8:51 Purpose and scope of tax

A. APPLICABILITY OF TAX

- § 8:52 Subchapter C earnings and profits
- § 8:53 Excess passive investment income
- § 8:54 —Gross receipts defined generally
- § 8:55 — —Sales of certain capital assets
- § 8:56 — —Sales and exchanges of stock or securities
- § 8:57 — —Other special rules
- § 8:58 —Passive investment income defined generally
- § 8:59 — —Annuities
- § 8:60 — —Dividends
- § 8:61 — —Interest
- § 8:62 — —Rents
- § 8:63 — —Rents generally [prior law]
- § 8:64 — — —Real property [prior law]
- § 8:65 — — —Personal property [prior law]
- § 8:66 — — —Provider of property services [prior law]
- § 8:67 — —Service fee distinguished
- § 8:68 — —Royalties
- § 8:69 — —Sales or exchanges of stock or securities
- § 8:70 — —Income from partnership interests
- § 8:71 Taxable income
- § 8:72 Net passive income

B. COMPUTATION OF TAX

- § 8:73 Excess net passive income

TABLE OF CONTENTS

- § 8:74 —Taxable income limitation
- § 8:75 Rate of tax
- § 8:76 Credits offsetting tax
- § 8:77 Effect on shareholder pass through
- § 8:78 Impact of tax under Section 1374

C. MISCELLANEOUS

- § 8:79 Waiver of tax
- § 8:80 Termination of S election
- § 8:81 Planning considerations

V. CORPORATE-LEVEL TAX ON EXCESS CAPITAL GAINS

- § 8:82 Purpose and scope of tax

A. APPLICABILITY OF TAX

- § 8:83 Corporations subject to tax
- § 8:84 Duration of exposure to tax
- § 8:85 Excess net capital gain
- § 8:86 Excess taxable income

B. COMPUTATION OF TAX

- § 8:87 Amount of tax
- § 8:88 Credits offsetting tax
- § 8:89 Effect on shareholder pass through
- § 8:90 Impact of tax under Section 1375

CHAPTER 9. LIMITATIONS ON SHAREHOLDER USE OF PASS-THROUGH LOSSES

- § 9:1 Introduction

I. BASIS LIMITATION ON PASS THROUGH OF LOSSES

- § 9:2 In general
- § 9:3 Original basis
- § 9:4 —Stock acquired in transactions other than nonrecognition transactions
- § 9:5 —Stock acquired in nonrecognition transactions
- § 9:6 —Stock received by gift or upon death
- § 9:7 —Converted C corporations
- § 9:8 Increases to basis in stock
- § 9:9 —Depletion
- § 9:10 —Increases in basis for items excluded from gross income
- § 9:11 —With respect to each share of stock
- § 9:12 Decreases to basis in stock

- § 9:13 —On a share-by-share basis
- § 9:14 —Effect of alternative minimum tax elections on basis
- § 9:15 Basis attributable to indebtedness of S corporation to shareholder
- § 9:16 —Test under the Regulations for determining whether indebtedness results in basis to the shareholder
- § 9:17 —Loans from related parties and guaranties
- § 9:18 —Original basis in indebtedness
- § 9:19 —Decreases in basis of debt
- § 9:20 —Restorations of debt basis
- § 9:21 —Effect of repayment of liabilities having reduced basis
- § 9:22 Timing and order of adjustments to stock basis
- § 9:23 —Transfers of shares before end of year
- § 9:24 —Order in which income, losses, and distributions adjust basis
- § 9:25 —Effect of worthlessness of stock or securities
- § 9:26 —Effect of liquidation on pass through of loss
- § 9:27 Timing and order of adjustments to debt basis
- § 9:28 Treatment of losses in excess of basis—In general
- § 9:29 —Determination of basis for purposes of loss limitation rules
- § 9:30 —Pass through when shareholder has differing bases in shares
- § 9:31 —Reduction in bases of multiple debts
- § 9:32 —Nature and character of loss carried forward
- § 9:33 —Years in which there are noncapital, nondeductible expenses
- § 9:34 —Charitable contributions, foreign taxes, and oil and gas depletion
- § 9:35 —Carryover to post-termination transition period
- § 9:36 —Effect of transfer of stock on losses carried over under Section 1366(d)(1)
- § 9:37 Means of increasing basis
- § 9:38 —Stock basis
- § 9:39 —Debt basis
- § 9:40 Special rules applicable to life tenants

II. AT RISK LIMITATION ON PASS THROUGH OF LOSSES

- § 9:41 Introduction
- § 9:42 Deduction limitation
- § 9:43 Role of corporation in determining amount at risk and applicability of at risk rules
- § 9:44 Shareholders to whom at risk rules apply
- § 9:45 Determination of amount at risk—In general
- § 9:46 —Stop loss arrangements
- § 9:47 —Economic amount at risk
- § 9:48 Increases and decreases in amount at risk—In general

TABLE OF CONTENTS

- § 9:49 —Effect of corporate-level debt on shareholder's amount at risk
- § 9:50 —Related-party loans
- § 9:51 —Loans from person having interest other than as creditor
- § 9:52 Allocation of amount at risk among various activities
- § 9:53 Time at which amount at risk is determined
- § 9:54 Amount at risk during post-termination transition period
- § 9:55 Activities to which at risk rules apply
- § 9:56 Separation and aggregation of activities
- § 9:57 Carryover of suspended Section 465 loss
- § 9:58 Dispositions of interests in activity, including disposition of stock
- § 9:59 Recapture in event of negative amount at risk
- § 9:60 At risk problems arising from election or termination of Subchapter S status

III. LIMITATIONS ON LOSSES FROM PASSIVE ACTIVITIES

- § 9:61 General operation of passive activity loss rules
- § 9:62 Applicability of the tax on net investment income
- § 9:63 Definition of activity
- § 9:64 Passive activities
- § 9:65 Effect of suspended losses
- § 9:66 Disposition of stock or interest in activity
- § 9:67 Distributions
- § 9:68 Compensation paid to shareholders
- § 9:69 Self-charged interest rule
- § 9:70 Interface among basis, at risk and PAL limitations
- § 9:71 Conversions of corporate status
- § 9:72 Losses allowable during post-termination transition period

IV. INVESTMENT INTEREST LIMITATION

- § 9:73 In general
- § 9:74 Scope and mechanics of the investment interest limitation
- § 9:75 Application of investment interest limitation to S corporations

V. BUSINESS INTEREST LIMITATION

- § 9:76 In general
- § 9:77 Exceptions to the business interest deduction rules
- § 9:78 Statutory rules applying the business interest limitation to S corporations
- § 9:79 General rules in the regulations affecting the deduction of business interest
- § 9:80 Effect of dispositions of S corporation stock on business interest deduction
- § 9:81 Treatment of S corporation businesses not subject to Section 163(j)

- § 9:82 Self-charged business interest
- § 9:83 Character of business interest items; effect under passive loss rules
- § 9:84 No double counting of business interest income and floor plan financing interest expense
- § 9:85 Effect of Sections 461(l), 465 and 469 on the business interest deduction
- § 9:86 Applicability of Section 382 to business interest carryforwards
- § 9:87 Effect on business interest deduction of termination of qualified Subchapter S subsidiary status
- § 9:88 Effect of securities trading activities of an S corporation on the business interest deduction
- § 9:89 Effect of debt-financed acquisitions of S corporation shares and debt-financed distributions

VI. TREATMENT AND ALLOCATION OF INTEREST

- § 9:90 Treatment and allocation of interest deductions in the Subchapter S context

VII. LIMITATIONS ON EXCESS BUSINESS LOSSES

- § 9:91 Limitation on excess business losses under Section 461(l)

CHAPTER 10. DISTRIBUTIONS

I. GENERAL

- § 10:1 Introduction
- § 10:2 Overview of shareholder-level consequences—Distributions by S corporation without accumulated earnings and profits
- § 10:3 —Distributions by S corporation with accumulated earnings and profits
- § 10:4 Overview of corporate-level consequences of noncash distributions

II. CONSEQUENCES OF DISTRIBUTIONS TO S CORPORATION

- § 10:5 Distributions of cash
- § 10:6 Nonliquidating distributions of property
- § 10:7 —Property distributions to which gain recognition rule applies
- § 10:8 —Consequences of applicability of gain recognition rule
- § 10:9 —Distributions of depreciated property
- § 10:10 —Distributions of 80% C corporation subsidiaries under section 336(e)
- § 10:11 Distributions in complete liquidation
- § 10:12 Accumulated adjustments account (AAA)—In general
- § 10:13 Accumulated earnings and profits—In general

TABLE OF CONTENTS

- § 10:14 —Adjustment for distributions
- § 10:15 —Adjustments for corporate transactions
- § 10:16 —Adjustments for investment tax credit recapture
- § 10:17 —Lack of other adjustments to earnings and profits

III. ACCUMULATED ADJUSTMENTS ACCOUNT

- § 10:18 Purposes for accumulated adjustments account
- § 10:19 Nature of accumulated adjustments account
- § 10:20 Computation of AAA
- § 10:21 Effect of distributions on AAA
- § 10:22 Effect of redemptions on AAA
- § 10:23 Effect of reorganizations on AAA
- § 10:24 Transfer or issuance of shares
- § 10:25 Timing of adjustments to AAA
- § 10:26 Alternative minimum tax

IV. EFFECTS OF DISTRIBUTIONS TO SHAREHOLDERS

A. DISTRIBUTIONS TO WHICH SUBCHAPTER S DISTRIBUTION RULES APPLY

- § 10:27 Distributions to which Section 1368 applies

B. DISTRIBUTIONS BY CORPORATIONS WITH NO ACCUMULATED EARNINGS AND PROFITS

- § 10:28 In general
- § 10:29 Maintaining stock basis share-by-share
- § 10:30 Timing of distributions [prior and current law]
- § 10:31 Taxation of Distributions When Suspended Losses are Carried Forward
- § 10:32 Transfers of shares other than end of year

C. DISTRIBUTIONS BY CORPORATIONS WITH ACCUMULATED EARNINGS AND PROFITS

- § 10:33 In general
- § 10:34 Multiple distributions that exceed AAA—In general
- § 10:35 —Transfers of stock
- § 10:36 —Timing of distributions [prior and current law]
- § 10:37 —Redemptions
- § 10:38 Tax-exempt income and related expenses
- § 10:39 Distributions of previously taxed income
- § 10:40 Means of eliminating accumulated earnings and profits—
Elections to treat actual distributions as dividends
- § 10:41 —Alternatives to cash distributions
- § 10:42 Elimination of Subchapter S earnings and profits [current law]

- § 10:43 —Differentiating Subchapter C and Subchapter S
accumulated earnings and profits

**D. DIFFERENCES IN TAXABLE YEARS OF
SHAREHOLDER AND CORPORATION**

- § 10:44 Shareholders having taxable years different from S
corporation

E. EFFECT OF DECLARING DISTRIBUTION

- § 10:45 In general

F. DISTRIBUTION OF NONCASH PROPERTY

- § 10:46 Taxation of noncash property distributions to shareholders

G. DISPROPORTIONATE DISTRIBUTIONS

- § 10:47 Disproportionate distributions—Second class of stock and
other concerns

**H. DEEMED DISTRIBUTIONS AND DEEMED
REDEMPTIONS**

- § 10:48 Deemed distributions and redemptions

V. SPECIAL RULES

- § 10:49 Distributions with respect to stock disregarded as
outstanding for Subchapter S purposes—General
§ 10:50 —Restricted bank director stock
§ 10:51 —Restricted stock in general

VI. POST-TERMINATION DISTRIBUTIONS

- § 10:52 In general

**VII. S CORPORATION'S PAYMENT OF OBLIGATIONS
TO ITS SHAREHOLDERS**

- § 10:53 Repayment of shareholder debt treated as debt
§ 10:54 Repayment of shareholder debt treated as equity

VIII. ADMINISTRATIVE MATTERS

- § 10:55 Filing necessary forms
§ 10:56 Information required to be reported on Schedules L, M-1
and M-2 of Form 1120-S

IX. FORMS

- § 10:57 Election to bypass accumulated adjustments account
§ 10:58 Election to bypass previously taxed income account

TABLE OF CONTENTS

§ 10:59 Deemed dividend election

CHAPTER 11. COMPENSATION

§ 11:1 Introduction

I. GENERAL

§ 11:2 General effects of cash compensation

§ 11:3 General effects of noncash compensation

§ 11:4 Timing considerations

§ 11:5 Reasonableness of compensation

§ 11:6 Reallocation of income among family members

§ 11:7 Employment taxes and wage withholding

§ 11:8 —Ownership of qualified subchapter S subsidiary or other disregarded entity

§ 11:9 Self-employment taxes

II. COMPARISON OF COMPENSATION PAYMENTS AND STOCK DISTRIBUTIONS

§ 11:10 General discretion as to method of disbursement

A. PROFITABLE CORPORATION WITHOUT PRIOR C HISTORY

§ 11:11 Shareholder with stock basis

§ 11:12 Shareholder without stock basis

B. LOSS CORPORATION WITHOUT PRIOR C HISTORY

§ 11:13 Shareholder with stock basis

§ 11:14 Shareholder without stock basis

C. PROFITABLE CORPORATION WITH PRIOR C HISTORY

§ 11:15 Shareholder with stock basis

§ 11:16 Shareholder without stock basis

D. LOSS CORPORATION WITH PRIOR C HISTORY

§ 11:17 Shareholder with stock basis

§ 11:18 Shareholder without stock basis

E. LIMITATIONS ON DISCRETION AS TO METHOD OF DISBURSEMENT

§ 11:19 Recharacterization of salary payments as distributions

§ 11:20 Recharacterization of distributions as salary payments

§ 11:21 —Recharacterization under passive activity loss rules

III. FRINGE BENEFITS AND QUALIFIED PLANS

§ 11:22 Fringe benefits

- § 11:23 Medical reimbursement plan
- § 11:24 Keogh plans
- § 11:25 Employee stock ownership plans (“ESOPs”)
- § 11:26 Individual retirement accounts

IV. EXECUTIVE COMPENSATION

- § 11:27 General

A. STOCK PROGRAMS

- § 11:28 Nonvoting stock
- § 11:29 Restricted stock plans
- § 11:30 Junior stock plans
- § 11:31 Qualified equity grants and Section 83(i) election

B. OPTIONS AND CONVERTIBLE DEBENTURE PLANS

- § 11:32 Nonstatutory stock option plans
- § 11:33 Incentive stock option plans
- § 11:34 Convertible debenture plans

C. NONSTOCK INCENTIVE PROGRAMS

- § 11:35 General
- § 11:36 Annual bonus plans
- § 11:37 Performance unit plans
- § 11:38 Stock appreciation rights
- § 11:39 Phantom stock plans

D. OTHER EXECUTIVE ARRANGEMENTS

- § 11:40 Below-market loans
- § 11:41 Rabbi trusts
- § 11:42 Split-dollar insurance
- § 11:43 Golden parachute compensation arrangements
- § 11:44 Nonqualified deferred compensation

V. SUMMARY

- § 11:45 Executive compensation

CHAPTER 12. STOCK SALES, REDEMPTIONS AND PARTIAL LIQUIDATIONS

- § 12:1 Introduction

I. SALES OF STOCK

- § 12:2 Shareholder gain or loss—Amount and character; Effect on gain or loss of elections to close books

TABLE OF CONTENTS

- § 12:3 Adjustment to basis in corporate assets on sale of stock
- § 12:4 Effect of sale of stock on carryover of unused losses
- § 12:5 Effect of stock sale on S election
- § 12:6 Allocation of S corporation items in year of sale of stock
- § 12:7 Effect of sale of stock on accumulated adjustments account and accumulated earnings and profits
- § 12:8 Recapture rules that apply to the sale of stock
- § 12:9 Triggering payment of Section 965 net tax liability on transfer of shares
- § 12:10 Applicability of Medicare tax to sales of stock

II. REDEMPTIONS

- § 12:11 Characterizing redemption as distribution or exchange
- § 12:12 Shareholder gain or loss—Amount and character
- § 12:13 Carryover of unused losses by shareholders relative to redeemed shares
- § 12:14 Effect of redemption on income and loss of S corporation
- § 12:15 Interest on debt used to finance redemption
- § 12:16 Allocation of S corporation items in year of redemption
- § 12:17 Effect of redemption on S election
- § 12:18 Effect of redemption on accumulated adjustments account and accumulated earnings and profits
- § 12:19 Recapture rules for the redemption of stock treated as a sale or exchange
- § 12:20 Triggering payment of Section 965 net tax liability on redemption of shares

III. PARTIAL LIQUIDATIONS

- § 12:21 Partial liquidations—General
- § 12:22 Shareholder gain or loss—Amount and character
- § 12:23 Carryover of unused losses by shareholders
- § 12:24 Investment credit recapture by shareholders and S corporation
- § 12:25 Effect of partial liquidation on income and loss of S corporation
- § 12:26 Allocation of S corporation items in year of partial liquidation
- § 12:27 Effect of partial liquidation on S election
- § 12:28 Effect of partial liquidation on accumulated adjustments account and accumulated earnings and profits
- § 12:29 Recapture rules

CHAPTER 13. S CORPORATIONS IN REORGANIZATIONS AND DIVISIVE TRANSACTIONS

- § 13:1 Introduction

I. GENERAL REORGANIZATION RULES APPLICABLE TO ALL S CORPORATION REORGANIZATIONS

- § 13:2 Continuity of shareholder interest
- § 13:3 Continuity of business enterprise
- § 13:4 Treatment of QSUBs and single-member LLCs
- § 13:5 Capitalization of reorganization expenses, including expenses associated with S election

II. STATUTORY MERGERS AND CONSOLIDATIONS (A REORGANIZATIONS)

- § 13:6 In general
- § 13:7 Effect on S status of target corporation and acquiring corporation
- § 13:8 Ability of acquiring corporation to elect S status
- § 13:9 Carryover of corporate tax attributes
- § 13:10 Effect on accumulated adjustments account
- § 13:11 Carryover of built-in gain and LIFO recapture tax
- § 13:12 Allocation of S corporation items in year of transaction
- § 13:13 Carryover of unused losses at shareholder level
- § 13:14 Distributions
- § 13:15 Former Section 1374—Capital gains tax
- § 13:16 Carryover of corporate preference items
- § 13:17 Forward triangular merger
- § 13:18 Reverse triangular merger

III. STOCK-FOR-STOCK ACQUISITIONS (B REORGANIZATIONS)

- § 13:19 In general
- § 13:20 Effect on S status of target corporation and acquiring corporation
- § 13:21 Ability of target or acquiring corporation to make S election
- § 13:22 Carryover of corporate tax attributes
- § 13:23 Allocation of S corporation items in year of transaction
- § 13:24 Carryover of unused losses at shareholder level
- § 13:25 Distributions

IV. STOCK-FOR-ASSET ACQUISITIONS (C REORGANIZATIONS)

- § 13:26 In general
- § 13:27 Effect on S status of target corporation and acquiring corporation
- § 13:28 Ability of acquiring corporation to elect S status
- § 13:29 Carryover of corporate tax attributes
- § 13:30 Effect on accumulated adjustments account
- § 13:31 Carryover of built-in gain and LIFO recapture tax

TABLE OF CONTENTS

- § 13:32 Allocation of S corporation items in year of transaction
- § 13:33 Carryover of unused losses at shareholder level
- § 13:34 Distributions
- § 13:35 Former Section 1374—Capital gains tax
- § 13:36 Carryover of corporate preference items

V. NONDIVISIVE ASSET ACQUISITIONS (D REORGANIZATIONS)

- § 13:37 In general

VI. CORPORATE SEPARATIONS (D REORGANIZATIONS AND Section 355)

- § 13:38 In general
- § 13:39 Effect on S status of transferor corporation
- § 13:40 Ability of transferor corporation or controlled corporation to elect S status
- § 13:41 Allocation of earnings and profits
- § 13:42 Effect on accumulated adjustments account
- § 13:43 Carryover of built-in gain and LIFO recapture tax
- § 13:44 Allocation of S corporation items in year of separation
- § 13:45 Distributions
- § 13:46 Carryover of losses suspended under Section 1366(d)(1)
- § 13:47 Spin offs or split offs involving QSUBs
- § 13:48 Former Section 1374—Capital gains tax

VII. RECAPITALIZATIONS (E REORGANIZATIONS)

- § 13:49 In general

VIII. MERE CHANGES IN IDENTITY, FORM OR PLACE OF ORGANIZATION (F REORGANIZATIONS)

- § 13:50 In general

IX. INSOLVENCY REORGANIZATIONS (G REORGANIZATIONS)

- § 13:51 In general

X. S CORPORATION REORGANIZATION TRANSACTIONS INVOLVING QSUBS AND SINGLE-MEMBER LLCs

- § 13:52 General

XI. CASH MERGERS

- § 13:53 Cash mergers

CHAPTER 14. COMPLETE LIQUIDATIONS

- § 14:1 Introduction

I. CONSEQUENCES TO LIQUIDATING S CORPORATION

- § 14:2 Liquidating distributions and sales by S corporation
- § 14:3 Limitations on recognition of losses under section 336(d)
- § 14:4 Recapture of investment credit by S corporation
- § 14:5 Effect of Section 1374
- § 14:6 Effect of former Section 1374 (prior law)
- § 14:7 Effect of Section 1375
- § 14:8 Effect of liquidation on S election
- § 14:9 Allocation of income and loss in year of liquidation
- § 14:10 Treatment of installment obligations
- § 14:11 Effect of complete liquidation on accumulated adjustments account and corporate tax attributes
- § 14:12 Liquidating distributions in Section 332 liquidations
- § 14:13 Liquidating distributions and sales under Sections 338 and 336(e)
- § 14:14 Effect of Section 1375 on liquidating S corporation
- § 14:15 Triggering payment of Section 965 net tax liability on liquidation of S corporation
- § 14:16 Deferred COD income (prior law)

II. CONSEQUENCES TO S CORPORATION SHAREHOLDERS

- § 14:17 Shareholder gain or loss—Amount and character
- § 14:18 Basis of property received
- § 14:19 Recapture of investment credit by shareholders
- § 14:20 Carryover of unused losses
- § 14:21 *[Deleted]*

III. OTHER CONSIDERATIONS

- § 14:22 Termination of Section 444 election
- § 14:23 Acceleration of tax on LIFO recapture
- § 14:24 Reporting requirements of S corporation and shareholders

CHAPTER 15. ACQUISITIONS OF STOCK OR ASSETS INVOLVING S CORPORATIONS

I. INTRODUCTION

- § 15:1 General
- § 15:2 —Partnership and C corporation acquisitions distinguished

II. CONVERSION OF ACQUIRED C CORPORATION TO S CORPORATION

- § 15:3 General

TABLE OF CONTENTS

III. EFFECTS OF PURCHASE OF STOCK IN CORPORATION BY PERSONS INTENDING TO RETAIN EXISTENCE AND S STATUS OF TARGET CORPORATION

A. EFFECTS OF PURCHASE OF S STOCK TO PURCHASER

- § 15:4 Retention of S status
- § 15:5 Interest deductions attributable to acquisition indebtedness
- § 15:6 —Basis limitation
- § 15:7 —At risk rules
- § 15:8 —Passive loss rules
- § 15:9 —Investment interest, business interest limitations
- § 15:10 AAA balance
- § 15:11 Effect of redemption of stock
- § 15:12 Allocation of acquired S corporation's tax items for year of purchase
- § 15:13 Preacquisition and postacquisition distributions
- § 15:14 Basis step-up

B. EFFECTS OF SALE OF STOCK TO SELLER

- § 15:15 Character of gain on sale and allocation of tax items
- § 15:16 Distributions
- § 15:17 Effects of redemption

IV. TAXABLE ASSET OR STOCK ACQUISITIONS BY OR FROM S CORPORATIONS

A. TAXABLE ASSET ACQUISITIONS BY OR FROM AN S CORPORATION

1. *Effect of Acquisition on S Election of Acquiring Corporation*

- § 15:18 General considerations
- § 15:19 Ineligible shareholders
- § 15:20 Numerical shareholder limitation
- § 15:21 Second class of stock
- § 15:22 Assets that generate passive income
- § 15:23 Inability to reelect S status

2. *Effect of Acquisition on S Election of Selling Corporation*

- § 15:24 Acquisition of assets

3. *Corporate-Level Taxes Imposed on Acquiring S Corporation*

- § 15:25 Future taxes on built-in gain

§ 15:26 Acquisition of passive income generating assets

4. *Corporate-Level Taxes Imposed on Selling S Corporation*

§ 15:27 Corporate-level taxes

5. *Allocation of Tax Items of Acquiring S Corporation*

§ 15:28 Continued maintenance of S status by buyer

§ 15:29 Termination of S status by buyer

6. *Allocation of Tax Items of Selling S Corporation*

§ 15:30 Continued maintenance of S status by seller

§ 15:31 Termination of S status by seller

7. *Post-Termination Transition Period Distributions and Losses*

§ 15:32 Distributions

§ 15:33 Losses

8. *Distributions from Eligible Terminated S Corporations*

§ 15:34 Distributions from Eligible Terminated S Corporation

9. *Distributions by Acquiring S Corporation*

§ 15:35 Distributions by acquiring S corporation

10. *Distributions by Selling Corporation*

§ 15:36 Distributions by selling corporation

11. *Acquisition Indebtedness*

§ 15:37 Acquisition indebtedness

12. *Acquisitions of Undivided Interests in S Corporation Assets*

§ 15:38 Acquisitions of undivided interests in S corporation assets

B. TAXABLE STOCK ACQUISITIONS BY OR OF AN S CORPORATION

§ 15:39 Scope

1. *Effect on S Status of Acquiring Corporation*

§ 15:40 Transfer of stock to ineligible shareholders

§ 15:41 Second class of stock issues

§ 15:42 Numerical shareholder limitation

§ 15:43 Nature of assets acquired

§ 15:44 Five-year no reelection rule

TABLE OF CONTENTS

2. *Effect on S Status of Target Corporation*

§ 15:45 Effect on S status of target corporation

3. *Corporate-Level Taxes*

§ 15:46 Built-in gain

§ 15:47 Tax on excess net passive income

4. *Allocation of Tax Items in a Straight Sale of Stock of an S Corporation; Liabilities Paid by Purchaser*

§ 15:48 Allocation of tax items in a straight sale of stock of an S corporation

5. *Transfer of Acquired Corporation's Assets to Acquiring Corporation in the Stock Sale Context*

§ 15:49 Liquidation of acquired corporation

§ 15:50 Tax consequences of liquidation of subsidiary

§ 15:51 Applicability of step transaction doctrine to liquidation of acquired subsidiary

§ 15:52 Applicability of Section 338 or Section 338(h)(10)

§ 15:53 Elections under Section 336(e)

6. *Taxable Stock Acquisitions Triggering Asset Acquisitions Where Some Shareholders Wish to Sell and Others Do Not*

§ 15:54 Taxable stock acquisitions triggering asset acquisitions where some shareholders wish to sell and others do not

V. REORGANIZATIONS

§ 15:55 Reorganizations involving S corporations

Table of Contents

CHAPTER 16. TERMINATION OF STATUS AS AN S CORPORATION

§ 16:1 Introduction

I. REVOCATION BY CORPORATION

- § 16:2 In general
- § 16:3 Effective date of revocation
- § 16:4 Form for revocation
 - § 16:5 —Execution
 - § 16:6 —Transmittal and proof of filing
- § 16:7 Form for shareholder consent to revocation
 - § 16:8 —Execution
 - § 16:9 —Transmittal and proof of filing
- § 16:10 Extension to file revocation
- § 16:11 Rescission of revocation

II. VIOLATIONS OF CONTINUING ELIGIBILITY STANDARDS

- § 16:12 In general
- § 16:13 Failure to retain status as small business corporation
- § 16:14 Use of nonpermitted taxable year
- § 16:15 Excess passive investment income
- § 16:16 Impact of lack of possession of administrative acceptance letter
- § 16:17 Impact of filing of federal entity income tax returns inconsistent with corporation's S status
- § 16:18 Effective date of termination
- § 16:19 Constraint on intentional termination

III. EFFECT OF TERMINATION

- § 16:20 In general
- § 16:21 Separate taxable years
- § 16:22 General pro rata allocation between separate taxable years
 - § 16:23 —Exception for election to close books
 - § 16:24 —Exception for 50% sale
 - § 16:25 —Exception for Section 338 election
- § 16:26 Tax returns for separate years
- § 16:27 Estimated taxes
- § 16:28 Minimum taxes
- § 16:29 High yield discount obligations
- § 16:30 Method of accounting

- § 16:31 Percentage depletion [prior law]
- § 16:32 Recapture of foreign losses
- § 16:33 Investment tax credit recapture
- § 16:34 Opportunity for reelection
- § 16:35 Acquisition debt
- § 16:36 Deferred COD income [prior law]
- § 16:37 S corporation attributes
- § 16:38 —Earnings and profits
- § 16:39 —Previously taxed income account
- § 16:40 —Accumulated adjustments account
- § 16:41 —Losses suspended by basis limitation
- § 16:42 —Losses suspended by at risk limitation
- § 16:43 —Losses suspended by passive activity loss limitation
- § 16:44 Post-termination entity classification of associations
- § 16:45 Reconsolidation of consolidated group
- § 16:46 Triggering of Section 965 deferred repatriation gain

IV. POST-TERMINATION TRANSITION PERIOD

- § 16:47 In general
- § 16:48 Post-termination transition period defined—General
- § 16:49 Post-termination transition period—Acquisition of assets
- § 16:50 Post-termination transition period distributions
- § 16:51 Election to treat qualifying post-termination transition period distributions as taxable dividends
- § 16:52 Losses suspended by basis limitation
- § 16:53 Losses suspended by at risk limitation
- § 16:54 Post-termination transition period accounting
- § 16:55 —Distributions by an eligible terminated S Corporation after its post-transition termination period

V. WAIVER OF INADVERTENT TERMINATION

- § 16:56 In general
- § 16:57 Applicable terminations
- § 16:58 Termination must be inadvertent
- § 16:59 Reacquired eligibility within reasonable period
- § 16:60 Required adjustments
- § 16:61 Relationship with reelection before expiration of five years
- § 16:62 General waiver procedure
- § 16:63 Errors and omissions—Simplified procedure for waiver of inadvertent termination caused by failure to timely file ESBT or QSST election

VI. OTHER

- § 16:64 Use of rescission to avoid termination consequences

VII. FORMS

- § 16:65 Revocation of S election

TABLE OF CONTENTS

- § 16:66 Consent to revocation of S election
- § 16:67 Election to close corporate books upon termination of S status
- § 16:68 Election to bypass accumulated adjustments account during post-termination transition period
- § 16:69 Request for waiver of inadvertent termination

CHAPTER 17. ADMINISTRATIVE AND PROCEDURAL CONSIDERATIONS

- § 17:1 Introduction

I. CORPORATE LEVEL ELECTIONS

- § 17:2 Election of S corporation status
- § 17:3 Election to revoke S corporation status
- § 17:4 Election to bypass accumulated adjustments account
- § 17:5 Election to bypass previously taxed income
- § 17:6 Election to make deemed dividend
- § 17:7 Election to close corporation's books
- § 17:8 Election to bypass accumulated adjustments account during post-termination transition period
- § 17:9 Income tax elections at corporate level
- § 17:10 —Intangible drilling and development costs
- § 17:11 —Research and development costs
- § 17:12 —Election out of installment reporting
- § 17:13 —Involuntary conversion of property
- § 17:14 —Certain tax credits
- § 17:15 —Cancellation of indebtedness
- § 17:16 —Other corporate-level income tax elections

II. SHAREHOLDER LEVEL ELECTIONS AND CONSENTS

- § 17:17 Consent to S corporation status
- § 17:18 Consent to revocation of S corporation status
- § 17:19 Consent to bypass accumulated adjustments account
- § 17:20 Consent to bypass previously taxed income
- § 17:21 Consent to make deemed dividend
- § 17:22 Consent to close corporation's books
- § 17:23 Consent to bypass accumulated adjustments account during post-termination transition period
- § 17:24 Income tax elections at shareholder level
- § 17:25 Mining exploration expenditures
- § 17:26 Foreign taxes
- § 17:27 Elections relating to alternative minimum tax
- § 17:28 Election relating to qualified rehabilitation expenditures

III. WITHHOLDING REQUIREMENTS

- § 17:29 Salary and wage withholding

- § 17:30 Self-Employment taxes on S corporation income
- § 17:31 Withholding on distributions

IV. ESTIMATED TAX PAYMENTS

- § 17:32 Estimated tax payments for shareholders of S corporation
- § 17:33 Estimated tax payments for S corporation

V. TAX AND INFORMATION RETURNS

- § 17:34 Corporate returns and forms
- § 17:35 Penalty for late filing of corporate return
- § 17:36 Impact of filing of federal income tax returns inconsistent with corporation's S status
- § 17:37 Shareholder returns

VI. AUDIT AND REFUND PROCEDURES STATUTES OF LIMITATION; INTEREST; AND PENALTIES

- § 17:38 Overview of prior law
- § 17:39 Post-1996 consistency rule
- § 17:40 Eligible Small Business Carry Backs for 2008 Years
- § 17:41 Termination of S Status in Forward Cash Merger; Liability for Corporate-Level Tax
- § 17:42 Statute of limitations for shareholders
- § 17:43 Statute of limitations with respect to loss of corporation's Subchapter S status and corporate-level taxes
- § 17:44 Applicable Interest and Penalties
- § 17:45 S corporations and the partnership audit rules
- § 17:46 Consolidated audit and refund procedures [Prior law]
- § 17:47 —Income tax deficiency procedures [Prior law]
- § 17:48 —Refund procedures [Prior law]
- § 17:49 —Subchapter S items—Definition [Prior law]
- § 17:50 —Consistency requirement [Prior Law]
- § 17:51 —Exception—Small S corporation [Prior Law]
- § 17:52 —Tax matters person [Prior Law]
- § 17:53 Statute of limitations [Prior Law]

VII. FORMS

- § 17:54 Small S corporation election to apply consolidated audit procedures [Prior Law]
- § 17:55 Form 1120-S and instructions
- § 17:56 Form 1120-S supporting schedules

CHAPTER 18. S CORPORATION AND SHAREHOLDER AGREEMENTS

- § 18:1 Introduction

I. BUY-SELL AGREEMENTS—BASIC FORMS AND PROCEDURES

- § 18:2 General

TABLE OF CONTENTS

- § 18:3 Cross-purchase agreement
- § 18:4 —Effect of life insurance under a cross-purchase agreement
- § 18:5 Redemption agreement
- § 18:6 —Effect of life insurance under a redemption agreement
- § 18:7 Provisions in shareholders agreements relating to termination of employment

II. ELECTING AND PRESERVING S CORPORATION STATUS

- § 18:8 Electing S corporation status
- § 18:9 Preserving S corporation status
- § 18:10 —Transfers to permissible shareholders
- § 18:11 —Limit on number of shareholders
- § 18:12 —Shares held by QSST
- § 18:13 —Shares held by ESBTs
- § 18:14 —Transfers to creditors
- § 18:15 —Single-class-of-stock requirement: Including effect of indebtedness, deferred compensation agreements and buy-sell agreements
- § 18:16 —Other considerations

III. TERMINATING S CORPORATION STATUS

- § 18:17 Revoking S corporation status
- § 18:18 Termination of S corporation status
- § 18:19 —Reelecting S corporation status
- § 18:20 Fiduciary obligation to maintain S corporation status

IV. ALLOCATING TAX ITEMS ON TRANSFER OF SHARES

- § 18:21 Allocating tax items on termination of S corporation status
- § 18:22 Allocating tax items on termination of shareholder's interest in S corporation or on transfer of substantial amounts of stock

V. DISTRIBUTIONS TO SHAREHOLDERS

- § 18:23 Amount and timing of tax distributions
- § 18:24 —Effect of tax distributions on single class of stock requirement
- § 18:25 Distributions of appreciated property
- § 18:26 Distributions—Election to treat as taxable dividends
- § 18:27 Distributions after termination of S corporation status

VI. OTHER CONSIDERATIONS

- § 18:28 Impact of shareholder agreement on generation skipping trust exemption
- § 18:29 Sample agreement

CHAPTER 19. ESTATE PLANNING WITH THE S CORPORATION

§ 19:1 Introduction

I. ESTATES AS S CORPORATION SHAREHOLDERS

- § 19:2 Estates as direct shareholders
- § 19:3 Estates as deemed shareholders
- § 19:4 S corporation in existence at death of shareholder—
General
- § 19:5 —Effect of death of shareholder on basis of assets in
corporation and on basis of stock
- § 19:6 —Pass through and allocation of income or loss
- § 19:7 Carryover of unused losses to estate
- § 19:8 Income in respect of a decedent
- § 19:9 Effect on S election
- § 19:10 Termination of S election
- § 19:11 Transfer of stock
- § 19:12 Fiduciary considerations
- § 19:13 Conversion of corporation to S status
- § 19:14 —Consent to S election by estate
- § 19:15 —Fiduciary considerations
- § 19:16 Administrative powers needed by personal representative

II. TRUSTS AS S CORPORATION SHAREHOLDERS

- § 19:17 Grantor trusts
- § 19:18 Section 678 trusts
- § 19:19 Qualified subchapter S trusts (QSSTs)
- § 19:20 —Distribution of income
- § 19:21 —Single income beneficiary
- § 19:22 —Corpus distribution limitation
- § 19:23 —Termination of income interest
- § 19:24 —Death of QSST beneficiary
- § 19:25 —QSST election for each S corporation and other
considerations
- § 19:26 —Multiple trust owners and successor income beneficiaries
- § 19:27 Electing small business trusts (ESBTs)
- § 19:28 —Permissible beneficiaries and current potential
beneficiaries
- § 19:29 —Acquisition by purchase
- § 19:30 —Election of ESBT status and inadvertent election relief
- § 19:31 —QSSTs and ESBTs
- § 19:32 —Section 678 and grantor trusts
- § 19:33 —Effect of ESBT election
- § 19:34 —Termination or revocation of ESBT status
- § 19:35 —Income taxation of ESBTs
- § 19:36 —Estimated tax payments
- § 19:37 —Section 444 Rules

TABLE OF CONTENTS

- § 19:38 —Generation-skipping transfer tax planning
- § 19:39 Voting trusts
- § 19:40 Charitable remainder trusts, charitable lead trusts and sprinkling trusts
- § 19:41 Marital trusts
- § 19:42 Qualified terminable interest property (QTIP) trusts
- § 19:43 Trusts taxable as associations
- § 19:44 Special problems for trusts owning S corporation stock

III. INTER VIVOS PLANNING CONSIDERATIONS

- § 19:45 General considerations
- § 19:46 Inter vivos sale of S corporation stock
- § 19:47 Inter vivos gifts
- § 19:48 Inter vivos gift of voting and nonvoting stock
- § 19:49 —Income shifting
- § 19:50 —Irrevocable trusts
- § 19:51 —Gifts to minors
- § 19:52 —Retaining control
- § 19:53 Chapter 14 and other valuation considerations
- § 19:54 S corporation's establishment of charitable remainder trusts

IV. POSTMORTEM PLANNING WITH S CORPORATION STOCK

- § 19:55 Providing liquidity to the estate
- § 19:56 Estate tax deferral under Section 6166
- § 19:57 Ineligible shareholder/beneficiary
- § 19:58 —Disclaimers
- § 19:59 —Modification of trusts
- § 19:60 —Sales among eligible and ineligible beneficiaries
- § 19:61 Redemptions

V. THE FAMILY S CORPORATION

- § 19:62 Tax savings potential of family S corporations
- § 19:63 Reallocation of tax items
- § 19:64 Problems of family S corporations

CHAPTER 20. USES OF AN S CORPORATION IN PARTICULAR INDUSTRIES OR INVESTMENTS

- § 20:1 Introduction

I. SYNDICATIONS

- § 20:2 In general
- § 20:3 Limit on number of investors
- § 20:4 Limit on types of investors

- § 20:5 Absence of special allocations and preferential distributions
- § 20:6 Classification issues
- § 20:7 Investors' participation in management
- § 20:8 Losses in excess of cash investment
- § 20:9 Formation issues
- § 20:10 Accrual of expenses with respect to shareholders or partners
- § 20:11 Risk of termination of S status—Importance of restrictions on transfer of shares
- § 20:12 Tax issues that should be disclosed to investors

II. OIL AND GAS ACTIVITIES

- § 20:13 In general
- § 20:14 Determination of depletion allowance at shareholder level
- § 20:15 Inapplicability of basis limitation
- § 20:16 Decreases to stock basis
- § 20:17 Percentage depletion in excess of property basis
- § 20:18 Allocation, reallocation and adjustments to depletable basis
- § 20:19 Effect of formation of S corporation on percentage depletion allowance—Prior and current law
- § 20:20 Effect on depletion and recapture of election by prior C corporation
- § 20:21 Effect on depletion and recapture of termination of S election
- § 20:22 Restricted stock
- § 20:23 Effect of transfer of stock—Prior and current law
- § 20:24 Effect of property sales and distributions of property
- § 20:25 Passive loss and at risk rules

III. TREATMENT OF S CORPORATIONS AS PARTNERS

A. CIRCUMSTANCES IN WHICH PARTNERSHIPS OF S CORPORATIONS MAY BE ADVANTAGEOUSLY EMPLOYED

- § 20:26 Special allocations and preferential distributions
- § 20:27 Investor participation in management
- § 20:28 Passive loss rules
- § 20:29 Classification concerns
- § 20:30 Receipt of interest for services
- § 20:31 Formation of the entity
- § 20:32 Later transfer of interest in entity
- § 20:33 Avoidance of subchapter S limitations

B. POTENTIAL DISADVANTAGES OF USING PARTNERSHIP OF S CORPORATIONS

- § 20:34 Administrative costs

TABLE OF CONTENTS

- § 20:35 Limitation on owners
- § 20:36 Basis in ownership interest
- § 20:37 Conduit nature of entity
- § 20:38 Distributions
- § 20:39 Section 754 adjustment
- § 20:40 Unitary basis in interest
- § 20:41 Liquidation in accordance with capital account balances
- § 20:42 Validity of partnership of S corporations
- § 20:43 Limitations on selecting the taxable year of S corporations

C. ALTERNATIVES TO USE OF PARTNERSHIP OF S CORPORATIONS

- § 20:44 Limited partnerships
- § 20:45 Limitation on number of shareholders
- § 20:46 Special allocations and preferential distributions
- § 20:47 Receipt of interest for services

IV. USING S CORPORATIONS IN INTERNATIONAL TRANSACTIONS

A. INTRODUCTORY CONSIDERATIONS FOR S CORPORATIONS OPERATING INTERNATIONALLY

- § 20:48 General Considerations

B. CORPORATE AND SHAREHOLDER CONSTRAINTS ON USING S CORPORATIONS IN THE INTERNATIONAL CONTEXT

- § 20:49 Only domestic corporations may elect Subchapter S or QSUB status—Structuring Alternatives
- § 20:50 Limitation on types of shareholders—Structuring alternatives to accommodate foreign investors

C. TREATMENT OF S CORPORATIONS AS PARTNERSHIPS IN THE INTERNATIONAL CONTEXT

- § 20:51 Treatment of S corporations as partnerships in the international context

D. FOREIGN INCOME, LOSS AND TAX CREDITS FOR S CORPORATIONS; IMPACT OF ANTI-DEFERRAL RULES; AND DISTRIBUTIONS FROM FOREIGN CORPORATIONS

- § 20:52 S corporation treatment of foreign tax credits, foreign income, and foreign loss
- § 20:53 Overall foreign loss recapture on election or termination of S status

- § 20:54 Deferral of taxation of income of S corporation foreign subsidiaries
- § 20:55 Taxation of Distributions from Foreign Corporations
- § 20:56 Post-2017 Section 246A foreign dividend deduction—
Inapplicability to S corporations

E. USING QSUBS AND PASS THROUGH ELECTIONS IN INTERNATIONAL TRANSACTIONS

- § 20:57 Planning techniques using QSUBs, the check-the-box election regime and other passthrough techniques

F. GENERAL CONSIDERATIONS IN OPERATING INTERNATIONALLY

- § 20:58 General considerations in operating abroad
- § 20:59 Mismatching characterization of entity problems and opportunities

G. FOREIGN TAX TREATIES AND S CORPORATION SHAREHOLDERS RESIDENT IN FOREIGN COUNTRIES

- § 20:60 Foreign country taxation and tax treaties
- § 20:61 US citizens resident in foreign countries who own S corporations

H. EXPORT INCENTIVES

- § 20:62 Use of export incentives

I. FOREIGN SUBSIDIARY INCOME INCLUSION UNDER SECTION 965 FOR THE 2017 YEAR

- § 20:63 Deemed repatriation of foreign earnings under Section 965 for 2017 years

V. CHARITABLE CONSIDERATIONS

- § 20:64 Charitable contributions made by S corporations
- § 20:65 Treatment of charitable organizations as shareholders of S corporations
- § 20:66 Deduction for contribution of S corporation stock to charities

VI. USE OF ESOPS

- § 20:67 S Corporations ESOPs—General considerations
- § 20:68 ESOP as permissible shareholder
- § 20:69 Taxation of S corporation income to an ESOP; Basis in shares
- § 20:70 ESOP must have broad-based employee participation

TABLE OF CONTENTS

- § 20:71 Maintenance of S corporation status on distribution of shares from ESOP
- § 20:72 Payments made on ESOP leveraged loans
- § 20:73 Section 269 applied to ESOPs
- § 20:74 Impact of section 415 on S corporation ESOPs

VII. OTHER ACTIVITIES OR INDUSTRIES

- § 20:75 General considerations applicable to all activities

A. REAL ESTATE ACTIVITIES

- § 20:76 Nonrecourse debt
- § 20:77 Distribution of refinancing proceeds
- § 20:78 Corporations having accumulated earnings and profits
- § 20:79 Formation
- § 20:80 Passive loss and at risk rules

B. STARTUP BUSINESSES

- § 20:81 Losses from business
- § 20:82 Formation of corporation
- § 20:83 Lower rates on C corporation earnings
- § 20:84 Compensation issues
- § 20:85 Need for shareholder agreement

C. VENTURE CAPITAL ACTIVITIES

- § 20:86 In general
 - 1. Single-Company Ventures
 - § 20:87 Elimination of double taxation
 - § 20:88 Start-up losses
 - § 20:89 Disposition of business
 - § 20:90 Limitation on shareholders and classes of stock
 - § 20:91 Compensation issues
 - 2. Multiple-Company Investment
 - § 20:92 In general
 - § 20:93 Single tax
 - § 20:94 Gain on property distributions
 - § 20:95 No consolidation
 - § 20:96 Small business investment companies

D. RESEARCH CREDITS AND DEDUCTIONS

- § 20:97 In general
- § 20:98 Pass through of credits
- § 20:99 Pass through of Section 174 deductions
- § 20:100 Shareholder and second class of stock limitations
- § 20:101 Joint venture arrangements with existing corporations

VIII. CHECKLISTS AND FORMS

- § 20:102 Checklist of Subchapter S items that should be disclosed to investors
- § 20:103 Short form of disclosure principally for Subchapter S tax items
- § 20:104 Long form of disclosure

CHAPTER 21. SUBSIDIARIES OF S CORPORATIONS

- § 21:1 Subsidiaries of S corporations—Background
- § 21:2 C corporation subsidiaries
- § 21:3 Qualified Subchapter S subsidiaries—Basic requirements
- § 21:4 Treatment of QSUB as a nonentity for tax purposes
- § 21:5 Effect of QSUB election—General
- § 21:6 —Applicability of step transaction doctrine
- § 21:7 —Consolidated return issues
- § 21:8 —Subchapter C carryover issues
- § 21:9 —QSUB elections for insolvent subsidiaries
- § 21:10 —QSUB elections for subsidiaries having liabilities in excess of basis
- § 21:11 —Acquisitions of partially-owned subsidiaries
- § 21:12 —Special rules for acquired S corporation
- § 21:13 Coordination of QSUB election with Section 338
- § 21:14 Section 338(h)(10)
- § 21:15 Merger transactions
- § 21:16 Termination of QSUB status; Sales of QSUB stock
- § 21:17 Carryover of Subchapter S attributes
- § 21:18 Treatment of QSUBs for state law purposes
- § 21:19 Using QSUB elections to accelerate pass-through status
- § 21:20 Applicability of Section 269(b)

APPENDICES

- APPENDIX 1. SELECTED INTERNAL REVENUE CODE SECTIONS AND TREASURY REGULATIONS
- APPENDIX 2. SUBCHAPTER S LEGISLATIVE HISTORY (REVISION ACT AND SUBSEQUENT DEVELOPMENTS)
- APPENDIX 3. PUBLICATION 589. TAX INFORMATION ON S CORPORATIONS
- APPENDIX 4. PROPOSED SUBCHAPTER S MODERNIZATION ACT OF 2003
- APPENDIX 5. COMMENTS ON BEHALF OF THE AMERICAN BAR ASSOCIATION SECTION OF TAXATION TO THE HOUSE SUBCOMMITTEE ON SELECT REVENUE MEASURES OF THE HOUSE WAYS AND MEANS COMMITTEE ON

TABLE OF CONTENTS

	THE SUBJECT OF THE SUBCHAPTER S MODERNIZATION ACT OF 2003
APPENDIX 6.	JOINT COMMITTEE ON TAXATION REPORT ON BACKGROUND AND LEGISLATIVE PROPOSALS RELATING TO S CORPORATIONS
APPENDIX 7.	GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN THE 108TH CONGRESS (2005)
APPENDIX 8.	S CORPORATION REFORM ACT OF 2006
APPENDIX 9.	OPTIONS TO IMPROVE TAX COMPLIANCE AND REFORM TAX EXPEDITURES
APPENDIX 10.	S CORPORATION MODERNIZATION ACT OF 2008 110th CONGRESS 2nd SESSION
APPENDIX 11.	S CORPORATION MODERNIZATION ACT OF 2009 111th CONGRESS 1st SESSION
APPENDIX 12.	PROMOTION AND EXPANSION OF PRIVATE EMPLOYEE OWNERSHIP ACT OF 2011 112th CONGRESS 1st SESSION
APPENDIX 13.	S CORPORATION MODERNIZATION ACT OF 2011 112th CONGRESS 1ST SESSION
APPENDIX 14.	S CORPORATION MODERNIZATION ACT OF 2013 113th CONGRESS 1st SESSION
APPENDIX 15.	S CORPORATION MODERNIZATION ACT OF 2015 114th CONGRESS 1st SESSION
APPENDIX 16.	S CORPORATION MODERNIZATION ACT OF 2017 115th CONGRESS 1st SESSION
APPENDIX 17.	PROMOTION AND EXPANSION OF PRIVATE EMPLOYEE OWNERSHIP ACT OF 2017 115th CONGRESS 1st SESSION

Table of Laws and Rules

Table of Cases

Index