

IRC Section 1371(e)(2)

Election to Distribute Accumulated Earnings and Profits During a Post-Termination Transition Period

Overview

Section 1371(e) addresses the treatment of an S corporation's distributions of money after its 1362(a) election to be treated as an S corporation has been terminated or revoked. Generally, 1371(e)(1) provides that distributions of money with respect to stock during the "post-termination transition period" ("PTTP") will reduce stock basis to the extent of the accumulated adjustments account. Section 1371(e)(2), however, permits a former S corporation to elect to have 1371(e)(1) not to apply to all distributions made during the PTTP. If the election is made, the portion of the distribution during the PTTP that does not exceed the S corporation's accumulated E&P is treated as a dividend. The remaining distribution is applied against and reduces the adjusted basis of the shareholder's stock. The PTTP is defined in 1377(b).

In order to make the 1371(e)(2) election, the S corporation must have the written consent of each shareholder to whom a distribution was made during the PTTP (whether or not the distribution is a cash distribution). In addition, the election statement must be signed by an individual authorized to sign the corporation's income tax return.

When to File

The 1371(e)(2) election is made by attaching a statement to the corporation's income tax return for the C corporation year in which the PTTP ends. The election must be made no later than the due date, including extensions, of such C corporation return.

Where to File

The election statement must be attached to the corporation's timely-filed return, which is mailed to the designated Internal Revenue Service Center.

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1. Code Section: 1371, 1377

2. Topic: S Corporations

3. Return Type: 1120S

Authorities

IRC 1371(e), 1377(b); Reg. 18.1371-1