

§ 301.9100-19T

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taxable as compensation. However, if the property is later forfeited, no deduction is allowed to any person with respect to such forfeiture. This election is not necessary in the case of property which is transferred subject only to a restriction which by its terms will never lapse.

(b) *Manner of making election.* The election referred to in paragraph (a) of this section is made by filing two copies of a written statement with the internal revenue officer with whom the person who performed the services files his return.

(c) *Additional copies.* The person who performed the services shall also submit a copy of the statement referred to in paragraph (b) of this section to the person for whom the services are performed, and, in addition, if the person who performs the services in connection with which restricted property is transferred and the transferee of such property are not the same person, the person who performs the services shall submit a copy of such statement to the transferee of the property.

(d) *Content of statement.* The statement shall indicate that it is being made under section 83(b) of the Code, and shall contain the following information:

(1) The name, address, taxpayer identification number and the taxable year (For example, "Calendar year 1969" or "Fiscal year ending May 31, 1970") of the person who performed the services;

(2) A description of each property with respect to which the election is being made;

(3) The date or dates on which the property is transferred;

(4) The nature of the restriction or restrictions to which the property is subject;

(5) The fair market value at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse) of each property with respect to which the election is being made; and

(6) The amount (if any) paid for such property.

(e) *Time for making election.* The statement referred to in paragraph (b) of this section shall be filed not later than 30 days after the date the property was transferred (or, if later, Janu-

ary 29, 1970). Any statement filed before February 15, 1970, may be amended not later than 30 days after the publication of this Treasury decision in the FEDERAL REGISTER in order to make it conform to the requirements of paragraph (d) of this section (January 17, 1970).

(f) *Revocability of election.* An election under section 83(b) may not be revoked except with the consent of the Commissioner.

[T.D. 7021, 35 FR 626, Jan. 17, 1970; 35 FR 889, Jan. 22, 1970. Redesignated by T.D. 8435, 57 FR 43895, Sept. 23, 1992]

§ 301.9100-19T Election relating to passive investment income of electing small business corporations.

(a) *In general.* Section 3(a) of the Act of April 14, 1966 (Pub. L. 89-389) amends section 1372(e)(5) of the Internal Revenue Code of 1954 (relating to passive investment income of electing small business corporations). This amendment, which applies to taxable years of electing small business corporations ending after April 14, 1966, provides, in general, that an election of a small business corporation under section 1372(a) of the Code shall not terminate for a taxable year of the corporation in which it has gross receipts more than 20 percent of which is passive investment income, if—

(1) Such taxable year is the first taxable year in which the corporation commenced the active conduct of any trade or business or the next succeeding taxable year; and

(2) The amount of passive investment income for such taxable year is less than \$3,000.

Section 3(b) of the Act of April 14, 1966, provides that the amendment made by section 3(a) thereof shall also apply to taxable years of a corporation beginning after December 31, 1962, and ending before April 15, 1966, if the corporation elects to have the amendment apply to such years, and all persons (or their personal representatives) who were shareholders of such corporation at any time during any of such years consent to such election and the application of the amendment. This section prescribes the time for, and manner of, making such election and consents, and also extends the time within which

certain new shareholders may consent to an election under section 1372(a) of the Code.

(b) *Application of amendment to taxable years beginning after December 31, 1962, and ending before April 15, 1966*—(1) *In general.* An election by a corporation under section 1372(a) of the Code shall not be treated as terminated under section 1372(e)(5) of the Code for any taxable year of the corporation beginning after December 31, 1962, and ending before April 15, 1966, if—

(i) Such taxable year is the first taxable year in which the corporation commenced the active conduct of any trade or business, or the next succeeding taxable year;

(ii) The amount of passive investment income for such taxable year is less than \$3,000;

(iii) The corporation makes an election, within such time and in such manner as provided in subparagraph (2) of this paragraph; and

(iv) All persons (or their personal representatives) who were shareholders of the corporation at any time during any taxable year of the corporation beginning after December 31, 1962, and ending before April 15, 1966, consent to such election, within such time and in such manner as provided in subparagraph (3) of this paragraph.

If an election by a corporation under section 1372(a) of the Code is not treated as terminated for a taxable year of the corporation as a result of an election and consents under this paragraph, such election under section 1372(a) of the Code shall be treated as being in effect with respect to all subsequent taxable years of the corporation unless it is otherwise terminated or revoked for any such subsequent year pursuant to section 1372(e) of the Code.

(2) *Election by corporation.* An election by a corporation pursuant to subparagraph (1)(iii) of this paragraph shall be filed with the district director with whom the corporation was required to file its return of income (see section 6037 of the Code and the regulations thereunder) for the earliest of its taxable years beginning after December 31, 1962, and ending before April 15, 1966, for which an election terminated under section 1372(e)(5) of the Code. Such

election shall be filed within 3 years after the date prescribed by law (not including any extension thereof) on which such return was required to be filed, or within 90 days from February 28, 1967, whichever is later. (However, credit or refund of any overpayment attributable to the election may not be allowed or made if claim therefor has not been filed within the time prescribed by law; and, see subparagraph (3) of this paragraph providing that the statutory period for assessment of certain deficiencies against shareholders may not have expired on the date the election and consents under this paragraph are filed.) Such election shall be in the form of a statement, signed by a person authorized to sign the corporation's return of income, which shall expressly provide that the corporation elects the application of section 1372(e)(5) of the Internal Revenue Code, as amended by Pub. L. 89-389, with respect to its taxable years beginning after December 31, 1962, and ending before April 15, 1966. The statement shall set forth the name, address, and employer identification number of the corporation; the internal revenue officer with whom the corporation's returns of income have been filed for each of its taxable years beginning after December 31, 1962; the names and addresses of all persons who have been shareholders of the corporation at any time during each of its taxable years beginning after December 31, 1962; computations showing the amount of the corporation's overpayment or deficiency of tax for any taxable year which is attributable to the election under this paragraph; and computations showing each shareholder's portion of the undistributed taxable income (determined as provided in section 1373(b) of the Code) or net operating loss (determined as provided in section 1374(c) of the Code) for each taxable year of the corporation beginning after December 31, 1962, unless such computations were made on the corporation's returns of income for each of such years. In order for an election under this paragraph to be effective, it must be accompanied by the consents of certain shareholders as provided in subparagraph (3) of this paragraph.

(3) *Consents by shareholders.* An election by a corporation pursuant to this paragraph must be accompanied by the consent of each person who was a shareholder of the corporation at any time during any taxable year of the corporation beginning after December 31, 1962, and ending before April 15, 1966. This includes persons who may not be shareholders on the date the election is filed. Where stock of the corporation was owned by a husband and wife as community property (or the income from which was community property), or was owned by tenants in common, joint tenants, or tenants by the entirety, each person who had a community interest in such stock and each tenant in common, joint tenant, and tenant by the entirety must consent to the election. The consent of a minor shall be made by the minor or by his legal guardian, or by his natural guardian if no legal guardian has been appointed. The consent of an estate shall be made by the executor or administrator thereof. If a person who is required to file a consent under this subparagraph is deceased, the executor or administrator of such person's estate, or other person charged with the property of such person, shall file the required consent. The consent of each shareholder shall be in the form of a statement signed by the shareholder in which he states that he consents to the election by the corporation under this paragraph. Each of such statements shall set forth the name and address of the corporation and of the shareholder; the number of shares of stock of the corporation owned by such shareholder at any time during any taxable year of the corporation beginning after December 31, 1962; the date (or dates) on which such stock was acquired, and, if disposed of, the date (or dates) of disposition; and the internal revenue officer with whom the shareholder's income tax returns have been filed for each of such taxable years in which he owned any such stock. In addition, a consent under this paragraph is not effective unless (i) the statutory period for assessment of any deficiency for each taxable year for which there would be a deficiency attributable to the election and consents under this paragraph has not expired on the date

the election and consents under this paragraph are filed, and (ii) there is included in, or attached to, the statement of consent a written consent that the statutory period for assessment of any deficiency for any taxable year (to the extent that such deficiency is attributable to the election and consents under this paragraph) shall not expire before the expiration of 1 year after the date the election and consents under this paragraph are filed. Each of the statements of consent under this subparagraph shall be filed with the corporation's election under this paragraph. The consents of all shareholders may be incorporated in one statement.

(4) *Election and consents are binding.* The election and consents under this paragraph are binding and may not be withdrawn.

(c) *New shareholders.* Section 1372(e)(1) of the Code provides that an election by a corporation under section 1372(a) of the Code shall terminate if certain new shareholders do not consent to such election within the time prescribed by regulations. New shareholders of a corporation which makes an election under paragraph (b) of this section may not have consented to the corporation's election under section 1372(a) of the Code within such prescribed time as a result of a termination of such election under section 1372(e)(5) of the Code prior to the enactment of Pub. L. 89-389. Therefore, notwithstanding the provisions of section 1372(e)(1) of the Code, and the regulations thereunder, an election by a corporation under section 1372(a) of the Code shall not be treated as terminated for the failure of any new shareholder to file a timely consent under section 1372(e)(1) of the Code, for any of the taxable years of the corporation between and including the earliest taxable year determined under subparagraph (1) of this paragraph, and the taxable year during which the corporation files an election under paragraph (b) of this section, if—

(1) The corporation's election under section 1372(a) of the Code would have terminated for a taxable year under section 1372(e)(5) of the Code in the event it had not made an election under paragraph (b) of this section, and

(2) A proper consent under section 1372(e)(1) of the Code is filed by such new shareholder with the corporation's election under paragraph (b) of this section.

[T.D. 6912, 32 FR 3343, Feb. 28, 1967. Redesignated by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

§ 301.9100-20T Election to treat certain distributions as made on the last day of the taxable year.

(a) *In general.* Section 233(b) of the Revenue Act of 1964 (78 Stat. 112) amends the Internal Revenue Code of 1954 by adding to section 1375 a new subsection (e) (relating to certain distributions after close of taxable year). Section 1375(e) provides that a corporation, with the consent of its shareholders, may elect, for purposes of chapter 1 of the Code, to treat a distribution of money made after the close of the taxable year as made, and as received by its shareholders, on the last day of such taxable year if the following conditions are satisfied:

(1) The corporation makes a distribution of money to its shareholders on or before the 15th day of the third month following the close of a taxable year with respect to which it was an electing small business corporation within the meaning of section 1371(b);

(2) Such distribution is made pursuant to a resolution of the corporation's board of directors, adopted before the close of such taxable year, to distribute to its shareholders all or a part of the proceeds of one or more sales of capital assets, or of property described in section 1231(b), made during such taxable year; and

(3) Each shareholder on the day such distribution is received—

(i) Owns the same proportion of the stock of the corporation on such day as he owned on the last day of such taxable year, and

(ii) Consents to such election. Section 1375(e) applies only with respect to taxable years of corporations beginning after December 31, 1957.

(b) *Time and manner for making election*—(1) *Taxable years ending after February 26, 1964.* For taxable years ending after February 26, 1964, an election under section 1375(e) with respect to a taxable year shall be made by attaching to the corporation income tax re-

turn for such taxable year, filed not later than the time (including extensions thereof) prescribed by law, the following documents:

(i) A statement that the corporation elects the application of section 1375(e) and the date and amount of each distribution to which the election applies;

(ii) A copy of the resolution of the board of directors referred to in paragraph (a)(2) of this section; and

(iii) A statement of the consent of each shareholder of the corporation containing the information required by, and filed in the manner provided in, paragraph (c) of this section.

(2) *Taxable years beginning after December 31, 1957, and ending on or before February 26, 1964.* For taxable years beginning after December 31, 1957, and ending on or before February 26, 1964, an election under section 1375(e) with respect to a taxable year shall be made on or before June 25, 1964, by either attaching the documents described in subparagraph (1) of this paragraph to its income tax return for such taxable year, or by filing such documents with the district director with whom the corporation has filed, or intends to file, its income tax return for such taxable year.

(3) *Election is binding.* An election under subparagraph (1) or (2) of this paragraph is binding and may not be withdrawn.

(c) *Shareholders' consent.* The consent of a shareholder to an election under section 1375(e) shall be in the form of a statement signed by the shareholder in which such shareholder consents to the election of the corporation. Such shareholder's consent is binding and may not be withdrawn after a valid election is made by the corporation. Each person who is a shareholder of the electing corporation must consent to the election; thus, where stock of the corporation is owned by a husband and wife as community property (or the income from which is community property), or is owned by tenants in common, joint tenants, or tenants by the entirety, each person having a community interest in such stock and each tenant in common, joint tenant, and tenant by the entirety must consent to the election. The consent of a minor shall be made by the minor or by his