



Department  
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# Corporations

For use in preparing  
**2001** Returns



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## Important Change for 2001

**Paid preparer authorization.** A corporation can allow the IRS to discuss its 2001 tax return with the paid preparer who signed it by checking the "Yes" box in the signature area of the return. This authorizes the IRS to call the paid preparer to ask any questions that may arise during the processing of the return. The corporation is also authorizing the paid preparer to perform certain actions. See the instructions for Form 1120 or 1120-A.

## Important Reminders

**Photographs of missing children.** The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling **1-800-THE-LOST (1-800-843-5678)** if you recognize a child.

**Accounting methods.** Certain small business taxpayers may be eligible to adopt or change to the cash method of accounting and may not be required to account for inventories. For more information, including the definition of a small business taxpayer, see Publication 538.

## Introduction

This publication discusses the general tax laws that apply to ordinary domestic corporations. It explains the tax law in plain language so it will be easier to understand. However, the information given does not cover every situation and is not intended to replace the law or change its meaning.

Some corporations may meet the qualifications for electing to be S corporations. For information on S corporations, see the instructions for Form 1120S, *U.S. Income Tax Return for an S Corporation*.

**Comments and suggestions.** We welcome your comments about this publication and your suggestions for future editions.

You can e-mail us while visiting our web site at [www.irs.gov](http://www.irs.gov).

You can write to us at the following address:

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We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

## Useful Items

You may want to see:

### Publication

- 535** Business Expenses
- 538** Accounting Periods and Methods
- 544** Sales and Other Dispositions of Assets
- 925** Passive Activity and At-Risk Rules

### Form (and Instructions)

- 1096** Annual Summary and Transmittal of U.S. Information Returns
- 1099-DIV** Dividends and Distributions
- 1120** U.S. Corporation Income Tax Return

- 1120-A** U.S. Corporation Short-Form Income Tax Return
- 1120-W** (WORKSHEET) Estimated Tax for Corporations
- 1120X** Amended U.S. Corporation Income Tax Return
- 1138** Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback
- 1139** Corporation Application for Tentative Refund
- 2220** Underpayment of Estimated Tax by Corporations
- 3800** General Business Credit
- 4466** Corporation Application for Quick Refund of Overpayment of Estimated Tax
- 4562** Depreciation and Amortization
- 4626** Alternative Minimum Tax—Corporations
- 5452** Corporate Report of Nondividend Distributions
- 7004** Application for Automatic Extension of Time To File Corporation Income Tax Return
- 8109** Federal Tax Deposit Coupon
- 8582-CR** Passive Activity Credit Limitations
- 8832** Entity Classification Election

See *How To Get Tax Help* near the end of this publication for information about getting publications and forms.

## Business Taxed as a Corporation

The rules you must use to determine whether a business is taxed as a corporation changed for businesses formed after 1996.

**Business formed before 1997.** A business formed before 1997 and taxed as a corporation under the old rules will generally continue to be taxed as a corporation.

**Business formed after 1996.** The following businesses formed after 1996 are taxed as corporations.

- A business entity formed under a federal or state law that refers to it as a corporation, body corporate, or body politic.
- An association.
- A business formed under a state law that refers to it as a joint-stock company or joint-stock association.
- An insurance company.
- Certain banks.
- A business wholly owned by a state or local government.
- A business specifically required to be taxed as a corporation by the Internal Revenue Code (for example, certain publicly traded partnerships).

Code (for example, certain publicly traded partnerships).

- Certain foreign businesses.
- Any other business that elects to be taxed as a corporation by filing Form 8832.

For more information, see the instructions for **Form 8832**.

## Exchange of Property for Stock

If you transfer property (or money and property) to a corporation solely in exchange for stock in that corporation (other than nonqualified preferred stock, described later), and immediately thereafter you are in control of the corporation, the exchange is usually not taxable. This rule applies both to individuals and to groups who transfer property to a corporation. It also applies whether the corporation is being formed or is already operating. It does not apply in the following situations.

- The corporation is an investment company.
- The property is transferred in a bankruptcy or similar proceeding in exchange for stock used to pay creditors.
- The stock is received in exchange for the corporation's debt (other than a security) or for interest on the corporation's debt (including a security) that accrued while you held the debt.



*Both the corporation and any person involved in a nontaxable exchange of property for stock must attach to their income tax returns a complete statement of all facts pertinent to the exchange. For more information, see section 1.351-3 of the regulations.*

**Control of a corporation.** To be in control of a corporation, you or your group of transferors must own, immediately after the exchange, at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the outstanding shares of each class of nonvoting stock of the corporation.

**Example 1.** You and Bill Jones buy property for \$100,000. You both organize a corporation when the property has a fair market value of \$300,000. You transfer the property to the corporation for all its authorized capital stock, which has a par value of \$300,000. No gain is recognized by you, Bill, or the corporation.

**Example 2.** You and Bill transfer the property with a basis of \$100,000 to a corporation in exchange for stock with a fair market value of \$300,000. This represents only 75% of each class of stock of the corporation. The other 25% was already issued to someone else. You and Bill recognize a taxable gain of \$200,000 on the transaction.

**Services rendered.** The term *property* does not include services rendered or to be rendered to the issuing corporation. The value of stock received for services is income to the recipient.

**Example.** You transfer property worth \$35,000 and render services valued at \$3,000 to a corporation in exchange for stock valued at \$38,000. Right after the exchange you own 85% of the outstanding stock. No gain is included in income on the exchange of property. However, you recognize ordinary income of \$3,000 as payment for services you rendered to the corporation.

**Property of relatively small value.** The term *property* does not include property of a relatively small value. Property transferred will be considered to be of relatively small value if its fair market value is less than 10% of the fair market value of the stock and securities already owned or to be received for services by the transferor.

**Stock received in disproportion to property transferred.** If a group of transferors exchange property for corporate stock, each transferor does not have to receive stock in proportion to his or her interest in the property transferred. However, if a disproportionate transfer takes place, it may be treated as if the stock were first received in proportion and then some of it used to make gifts, pay compensation for services, or satisfy the transferor's obligations.

**Money or other property received.** If, in an otherwise nontaxable exchange, you also receive money or property other than stock, you may have to recognize gain. You recognize gain, if any, only up to the amount of money plus the fair market value of the other property you receive. The rules for figuring the recognized gain in this situation generally follow those for a partially nontaxable exchange discussed in Publication 544 under *Like-Kind Exchanges*. If the property you exchange includes depreciable property, the recognized gain may have to be reported as ordinary income from depreciation. No loss to the recipient is recognized. See chapter 3 of Publication 544.

**Nonqualified preferred stock.** Nonqualified preferred stock is treated as property other than stock. Therefore, there could be gain. See *Money or other property received*, earlier. Generally, it is preferred stock with any of the following features.

- The holder has the right to require the issuer or a related person to redeem or buy the stock.
- The issuer or a related person is required to redeem or buy the stock.
- The issuer or a related person has the right to redeem the stock and, on the issue date, it is more likely than not that the right will be exercised.
- The dividend rate on the stock varies with reference to interest rates, commodity prices, or similar indices.

For a detailed definition of nonqualified preferred stock, see section 351(g)(2) of the Internal Revenue Code.

**Liabilities.** If the corporation assumes your liabilities, the exchange is generally not treated as if you received money or other property. There are two exceptions to this treatment.

- If the liabilities the corporation assumes are more than the adjusted basis in the property you transfer, gain is recognized up to the difference. However, if the liabilities assumed give rise to a deduction when paid, such as a trade account payable or interest, no gain is recognized.
- If there is no good business reason for the corporation to assume your liabilities, or if your main purpose in the exchange is to avoid federal income tax, the assumption is treated as if you received money in the amount of the liabilities.

For more information on the assumption of liabilities, see section 357(d) of the Internal Revenue Code.

**Example.** You transfer property to a corporation for stock. Immediately after the transfer you control the corporation. You also receive \$10,000 in the exchange. Your adjusted basis in the transferred property is \$20,000. The stock you receive has a fair market value of \$16,000. The corporation also assumes a \$5,000 mortgage on the property for which you are personally liable. Gain is recognized as follows.

Fair market value of stock received . . .	\$16,000
Cash received . . . . .	10,000
Liability assumed by corporation . . . .	5,000
Total received . . . . .	\$31,000
Minus: Adjusted basis of property transferred . . . . .	20,000
<b>Realized gain . . . . .</b>	<b>\$11,000</b>
<b>Recognized gain . . . . .</b>	<b>\$10,000</b>

The liability assumed is not treated as money or other property. The recognized gain is limited to \$10,000, the amount of cash received.

**Loss on exchange.** If you have a loss from an exchange and own, directly or indirectly, more than 50% of the corporation's stock, you cannot deduct the loss. For more information, see *Sales and Exchanges Between Related Persons* and its discussion, *Noneductible Loss*, in chapter 2 of Publication 544.

**Basis of stock or other property received.** The basis of the stock you receive is generally the adjusted basis of the property you transfer. Increase this amount by any amount treated as a dividend, plus any gain recognized on the exchange. Decrease this amount by any cash you received, the fair market value of any other property you received, and any loss recognized on the exchange. Also decrease this amount by the amount of any liability the corporation assumed from you, unless payment of the liability gives rise to a deduction when paid.

Further decreases may be required for the assumption of liabilities after October 18, 1999, if the basis of the stock would otherwise be higher than its FMV on the date of the exchange. This rule does not apply if the entity assuming the liability acquired either substantially all of the assets or the trade or business with which the liability is associated.

**Example.** Pam transfers \$1,000 to a newly formed corporation, Seaweed, in exchange for all of its common stock. Seaweed also assumes Pam's \$500 contingent product liability. Under prior law, Pam's basis in the stock would have been \$1,000. Under new law, in effect for liabilities assumed after October 18, 1999, Pam's basis is \$500(\$1,000 - \$500).

The basis of any other property you receive is its fair market value on the date of the trade.

**Basis of property transferred.** A corporation that receives property from you in exchange for its stock generally has the same basis you had in the property, increased by any gain you recognized on the exchange. However, the increase for the gain recognized may be limited. For more information, see section 362 of the Internal Revenue Code.

## Capital Contributions

This section explains the tax treatment of contributions from shareholders and nonshareholders.

**Paid-in capital.** Contributions to the capital of a corporation, whether or not by shareholders, are paid-in capital. These contributions are not taxable to the corporation.

**Basis.** The basis of property contributed to capital by a shareholder is the same in the corporation as the basis the shareholder had in the property, increased by any gain the shareholder recognized on the exchange.

The basis of property contributed to capital by a person other than a shareholder is zero.

If a corporation receives a cash contribution from a person other than a shareholder, the corporation must reduce the basis of any property acquired with the contribution by the amount of the cash received. The corporation has a 12-month period beginning on the day it received the contribution to acquire the property. If the amount contributed is more than the cost of the property acquired, then reduce, but not below zero, the basis of the other properties held by the corporation on the last day of the 12-month period in the following order.

- 1) Depreciable property.
- 2) Amortizable property.
- 3) Property subject to cost depletion but not to percentage depletion.
- 4) All other remaining properties.

Reduce the basis of property in each category to zero before going on to the next category.

There may be more than one piece of property in each category. Base the reduction of the basis of each property on the ratio of the basis of each piece of property to the total bases of all property in that category. If the corporation wishes to make this adjustment in some other way, it must get IRS approval. The corporation files a request for approval with its income tax return for the tax year in which it receives the contribution.

## Paying and Filing Income Taxes

The federal income tax is a pay-as-you-go tax. A corporation generally must make estimated tax

payments as it earns or receives income during its tax year. After the end of the year, the corporation must file an income tax return. This section will help you determine when and how to pay and file corporate income taxes.

## Estimated Tax

Generally, a corporation must make installment payments if it expects its estimated tax for the year to be \$500 or more. If the corporation does not pay the installments when they are due, it could be subject to an underpayment penalty. This section will explain how to avoid this penalty.

**When to pay estimated tax.** Installment payments are due by the 15th day of the 4th, 6th, 9th, and 12th months of the corporation's tax year.

**Example 1.** Your corporation's tax year ends December 31. Installment payments are due on April 15, June 15, September 15, and December 15.

**Example 2.** Your corporation's tax year ends June 30. Installment payments are due on October 15, December 15, March 15, and June 15.

If any due date falls on a Saturday, Sunday, or legal holiday, the installment is due on the next business day.

**How to figure each required installment.** Use **Form 1120-W** to figure each required installment of estimated tax. You will generally use one of the following two methods to figure each required installment. You should use the method that yields the smallest installment payments.

**Note:** In these discussions, "return" generally refers to the corporation's original return. However, an amended return is considered the original return if it is filed by the due date (including extensions) of the original return.

**Method 1.** Each required installment is 25% of the income tax the corporation will show on its return for the current year.

**Method 2.** Each required installment is 25% of the income tax shown on the corporation's return for the previous year.

To use **Method 2**:

- 1) The corporation must have filed a return for the previous year,
- 2) The return must have been for a full 12 months, and
- 3) The return must have shown a positive tax liability (not zero).

Also, if the corporation is a large corporation, it can use Method 2 to figure the first installment only.

A large corporation is one with at least \$1 million of modified taxable income in any of the last 3 years. Modified taxable income is taxable income figured without net operating loss or capital loss carrybacks or carryovers.

**Other methods.** If a corporation's income is expected to vary during the year because, for example, its business is seasonal, it may be able to lower the amount of one or more required

installments by using one or both of the following methods.

- 1) The annualized income installment method.
- 2) The adjusted seasonal installment method.

Use Schedule A of Form 1120-W to see if using one or both of these methods will lower the amount of any required installments.

**Refiguring required installments.** If after the corporation figures and deposits its estimated tax it finds that its tax liability for the year will be more or less than originally estimated, it may have to refigure its required installments to see if an underpayment penalty may apply. In this situation, an immediate catchup payment should be made to reduce any penalty resulting from the underpayment of any earlier installments.

**Underpayment penalty.** If the corporation does not pay a required installment of estimated tax by its due date, it may be subject to a penalty. The penalty is figured separately for each installment due date. The corporation may owe a penalty for an earlier due date, even if it paid enough tax later to make up the underpayment. This is true even if the corporation is due a refund when its return is filed.

**Form 2220.** Use Form 2220 to determine if a corporation is subject to the penalty for underpayment of estimated tax and, if so, the amount of the penalty.

If the corporation is charged a penalty, the amount of the penalty depends on the following three factors.

- 1) The amount of the underpayment.
- 2) The period during which the underpayment was due and unpaid.
- 3) The interest rate for underpayments published quarterly by the IRS in the Internal Revenue Bulletin.

A corporation generally does not have to file Form 2220 with its income tax return because the IRS will figure any penalty and bill the corporation. However, even if the corporation does not owe a penalty, complete and attach the form to the corporation's tax return if any of the following apply.

- 1) The annualized income installment method was used to figure any required installment.
- 2) The adjusted seasonal installment method was used to figure any required installment.
- 3) The corporation is a large corporation and Method 2 was used to figure its first required installment.

**How to pay estimated tax.** Unless you volunteer or are required to make electronic deposits, you should mail or deliver your payment with a completed **Form 8109** to an authorized financial institution. For more information, see the instructions for Form 1120-W.

**Electronic Federal Tax Payment System (EFTPS).** You may have to deposit taxes using EFTPS. You must use EFTPS to make deposits of all depository tax liabilities (including

social security, Medicare, withheld income, excise, and corporate income taxes) you incur in 2002 if you deposited more than \$200,000 in federal depository taxes in 2000 or you had to make electronic deposits in 2001. If you first meet the \$200,000 threshold in 2001, you must begin depositing using EFTPS in 2003. Once you meet the \$200,000 threshold, you must continue to make deposits using EFTPS in later years.

If you must use EFTPS but fail to do so, you may be subject to a 10% penalty.

If you are not required to use EFTPS because you did not meet the \$200,000 threshold during 1998, or during any subsequent year, then you may voluntarily make your deposits using EFTPS. However, if you are using EFTPS voluntarily, you will not be subject to the 10% penalty if you make a deposit using a paper coupon.

For information about EFTPS, access the IRS web site at [www.irs.gov](http://www.irs.gov) or see Publication 966, *Now a Full Range of Electronic Choices to Pay ALL Your Federal Taxes*.

To enroll in EFTPS, call:

- 1-800-945-8400
- 1-800-555-4477

**Quick refund of overpayments.** A corporation that has overpaid its estimated tax for the tax year may be able to apply for a quick refund. Use Form 4466 to apply for a quick refund of an overpayment of estimated tax. A corporation can apply for a quick refund if the overpayment is:

- At least 10% of its expected tax liability, **and**
- At least \$500.

Use Form 4466 to figure the corporation's expected tax liability and the overpayment of estimated tax.

File Form 4466 before the 16th day of the 3rd month after the end of the tax year, but **before** the corporation files its income tax return. An extension of time to file the corporation's income tax return will not extend the time for filing Form 4466. The IRS will act on the form within 45 days from the date you file it.

## Income Tax Return

This section will help you determine when and how to report a corporation's income tax.

**Who must file.** Unless exempt under section 501 of the Internal Revenue Code, all domestic corporations in existence for any part of a taxable year (including corporations in bankruptcy) must file an income tax return whether or not they have taxable income.

**Which form to file.** A corporation must generally file **Form 1120** to report its income, gains, losses, deductions, credits, and to figure its income tax liability. However, a corporation may file **Form 1120-A** if its gross receipts, total income, and total assets are each under \$500,000 and it meets certain other requirements. Also, certain organizations must file special returns. For more information, see the instructions for Forms 1120 and 1120-A.

**When to file.** Generally, a corporation must file its income tax return by the 15th day of the 3rd month after the end of its tax year. A new corporation filing a short-period return must generally file by the 15th day of the 3rd month after the short period ends. A corporation that has dissolved must generally file by the 15th day of the 3rd month after the date it dissolved.

**Example 1.** A corporation's tax year ends December 31. It must file its income tax return by March 15th.

**Example 2.** A corporation's tax year ends June 30. It must file its income tax return by September 15th.

If the due date falls on a Saturday, Sunday, or legal holiday, the due date is extended to the next business day.

**Extension of time to file.** File *Form 7004* to request a 6-month extension of time to file a corporation income tax return. The IRS will grant the extension if you complete the form properly, file it, and pay any tax due by the original due date for the return.

Form 7004 does not extend the time for paying the tax due on the return. Interest, and possibly penalties, will be charged on any part of the final tax due not shown as a balance due on Form 7004. The interest is figured from the original due date of the return to the date of payment.

For more information, see the instructions for Form 7004.

**Penalty for late filing of return.** A corporation that does not file its tax return by the due date, including extensions, may be penalized 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. If the corporation is charged a penalty for late payment of tax (discussed next) for the same period of time, the penalty for late filing is reduced by the amount of the penalty for late payment. The minimum penalty for a return that is over 60 days late is the smaller of the tax due or \$100. The penalty will not be imposed if the corporation can show the failure to file on time was due to a reasonable cause. Corporations that have a reasonable cause to file late must attach a statement explaining the reasonable cause.

**Penalty for late payment of tax.** A corporation that does not pay the tax when due may be penalized 1/2 of 1% of the unpaid tax for each month or part of a month the tax is not paid, up to a maximum of 25% of the unpaid tax. The penalty will not be imposed if the corporation can show that the failure to pay on time was due to a reasonable cause.

**Trust fund recovery penalty.** If income, social security, and Medicare taxes that a corporation must withhold from employee wages are not withheld or are not deposited or paid to the United States Treasury, the trust fund recovery penalty may apply. The penalty is the full amount of the unpaid trust fund tax. This penalty may apply to you if these unpaid taxes cannot be immediately collected from the business.

The trust fund recovery penalty may be imposed on all persons who are determined by the IRS to be responsible for collecting, accounting for, and paying these taxes, and who acted willfully in not doing so.

A **responsible person** can be an officer or employee of a corporation, an accountant, or a voluntary director/trustee. A responsible person also may include one who signs checks for the corporation or otherwise has authority to cause the spending of business funds.

Willfully means voluntarily, consciously, and intentionally. A responsible person acts willfully if the person knows the required actions are not taking place.

For more information on withholding and paying these taxes, see Publication 15, *Circular E, Employer's Tax Guide*.

**Amended return.** Use *Form 1120X* to correct any error in a Form 1120 or Form 1120-A.

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## Income and Deductions

Rules on income and deductions that apply to individuals also apply, for the most part, to corporations. However, some of the following special provisions apply only to corporations.

### Below-Market Loans

A below-market loan is a loan on which no interest is charged or on which interest is charged at a rate below the applicable federal rate. A below-market loan generally is treated as an arm's-length transaction in which the borrower is considered as having received both the following:

- A loan in exchange for a note that requires payment of interest at the applicable federal rate, and
- An additional payment.

Treat the additional payment as a gift, dividend, contribution to capital, payment of compensation, or other payment, depending on the substance of the transaction.

See *Below-Market Loans* in chapter 5 of Publication 535 for more information.

### Capital Losses

A corporation can deduct capital losses only up to the amount of its capital gains. In other words, if a corporation has an excess capital loss, it cannot deduct the loss in the current tax year. Instead, it carries the loss to other tax years and deducts it from capital gains that occur in those years.

First, carry a net capital loss back 3 years. Deduct it from any total net capital gain that occurred in that year. If you do not deduct the full loss, carry it forward 1 year (2 years back) and then 1 more year (1 year back). If any loss remains, carry it over to future tax years, 1 year at a time, for up to 5 years. When you carry a net capital loss to another tax year, treat it as a short-term loss. It does not retain its original identity as long-term or short-term.

**Example.** In 2001, a calendar year corporation has a net short-term capital gain of \$3,000 and a net long-term capital loss of \$9,000. The short-term gain offsets some of the long-term loss, leaving a net capital loss of \$6,000. The

corporation treats this \$6,000 as a short-term loss when carried back or forward.

The corporation carries the \$6,000 short-term loss back 3 years to 1998. In 1998, the corporation had a net short-term capital gain of \$8,000 and a net long-term capital gain of \$5,000. It subtracts the \$6,000 short-term loss first from the net short-term gain. This results in a net capital gain for 1998 of \$7,000. This consists of a net short-term capital gain of \$2,000 (\$8,000 - \$6,000) and a net long-term capital gain of \$5,000.

**S corporation status.** A corporation may not carry a capital loss from, or to, a year for which it is an S corporation.

**Rules for carryover and carryback.** When carrying a capital loss from one year to another, the following rules apply.

- When figuring the current year's net capital loss, you cannot combine it with a capital loss carried from another year. In other words, you can carry capital losses only to years that would otherwise have a total net capital gain.
- If you carry capital losses from 2 or more years to the same year, deduct the loss from the earliest year first.
- You cannot use a capital loss carried from another year to produce or increase a net operating loss in the year to which you carry it back.

**Refunds.** When you carry back a capital loss to an earlier tax year, refigure your tax for that year. If your corrected tax is less than you originally owed, you can apply for a refund. File Form 1120X to report the corrected tax.

### Charitable Contributions

A corporation can claim a limited deduction for charitable contributions made in cash or other property. The contribution is deductible if made to, or for the use of, a qualified organization. For more information on qualified organizations, see Publication 526, *Charitable Contributions*.

You cannot take a deduction if any of the net earnings of an organization receiving contributions benefit any private shareholder or individual.

**Publication 78.** You can ask any organization whether it is a qualified organization and most will be able to tell you. Or you can check IRS Publication 78, *Cumulative List of Organizations*, which lists most qualified organizations. The publication is available on the Internet at [www.irs.gov](http://www.irs.gov) or your local library may have a copy. You can also call Tax Exempt/Government Entities Customer Service at 1-877-829-5500 to find out if an organization is qualified.

**Cash method corporation.** A corporation using the cash method of accounting deducts contributions in the tax year paid subject to the limit discussed later.

**Accrual method corporation.** A corporation using an accrual method of accounting can choose to deduct unpaid contributions for the tax year the board of directors authorizes them if it pays them within 2½ months after the close of

that tax year. Make the choice by reporting the contribution on the corporation's return for the tax year. A copy of the resolution authorizing the contribution and a declaration stating that the board of directors adopted the resolution during the tax year must accompany the return. An officer authorized to sign the return must sign the declaration under penalty of perjury.

**Limit.** A corporation cannot deduct charitable contributions that exceed 10% of its taxable income for the tax year. Figure taxable income for this purpose without the following.

- The deduction for charitable contributions.
- The deduction for dividends received.
- Any net operating loss carryback to the tax year.
- Any capital loss carryback to the tax year.

**Carryover of excess contributions.** You can carry over, within certain limits, to each of the subsequent five years any charitable contributions made during the current year that exceed the 10% limit. You lose any excess not used within that period. For example, if a corporation has a carryover of excess contributions paid in 2000 and it does not use all the excess on its return for 2001, it can carry the rest over to 2002, 2003, 2004, and 2005. Do not deduct a carryover of excess contributions in the carryover year until after you deduct contributions made in that year (subject to the 10% limit). You cannot deduct a carryover of excess contributions to the extent it increases a net operating loss carryover.

**More information.** For more information on the charitable contribution deduction, see the instructions for Forms 1120 and 1120-A.

## Corporate Preference Items

A corporation must make special adjustments to certain items before it takes them into account in determining its taxable income. These items are known as corporate preference items and they include the following.

- **Gain on the disposition of section 1250 property.** For more information, see *Section 1250 Property* under *Depreciation Recapture* in chapter 3 of Publication 544.
- **Percentage depletion for iron ore and coal (including lignite).** For more information, see *Mines and Geothermal Deposits* under *Mineral Property* in chapter 10 of Publication 535.
- **Amortization of pollution control facilities.** For more information, see *Pollution Control Facilities* in chapter 9 of Publication 535 and section 291(a)(5) of the Internal Revenue Code.
- **Mineral exploration and development costs.** For more information, see *Exploration Costs and Development Costs* in chapter 8 of Publication 535.

For more information on corporate preference items, see section 291 of the Internal Revenue Code.

## Dividends-Received Deduction

A corporation can deduct a percentage of certain dividends received during its tax year. This section discusses the general rules that apply. For more information, see the instructions for Forms 1120 and 1120-A.

**Dividends from domestic corporations.** A corporation can deduct, within certain limits, 70% of the dividends received if the corporation receiving the dividend owns **less than 20%** of the corporation distributing the dividend. If the corporation owns 20% or **more** of the distributing corporation's stock, it can, subject to certain limitations, deduct 80% of the dividends received.

**Ownership.** Determine ownership, for these rules, by the amount of voting power and value of the paying corporation's stock (other than certain preferred stock) the receiving corporation owns.

**Small business investment companies.** Small business investment companies can deduct 100% of the dividends received from taxable domestic corporations.

**Dividends from regulated investment companies.** Regulated investment company dividends received are subject to certain limits. Capital gain dividends received from a regulated investment company do not qualify for the deduction. For more information, see section 854 of the Internal Revenue Code.

**No deduction allowed for certain dividends.** Corporations cannot take a deduction for dividends received from the following entities.

- 1) A real estate investment trust (REIT).
- 2) A corporation exempt from tax under section 501 or 521 of the Internal Revenue Code either for the tax year of the distribution or the preceding tax year.
- 3) A corporation whose stock was held less than 46 days during the 90-day period beginning 45 days before the stock became ex-dividend with respect to the dividend. Ex-dividend means the holder has no **rights** to the dividend.
- 4) A corporation whose preferred stock was held less than 91 days during the 180-day period beginning 90 days before the stock became ex-dividend with respect to the dividend if the dividends received are for a period or periods totaling more than 366 days.
- 5) Any corporation, if your corporation is under an obligation (pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

**Dividends on deposits.** Dividends on deposits or withdrawable accounts in domestic building and loan associations, mutual savings banks, cooperative banks, and similar organizations are interest, not dividends. They do not qualify for this deduction.

**Limit on deduction for dividends.** The total deduction for dividends received or accrued is generally limited (in the following order) to:

- 1) 80% of the difference between taxable income and the 100% deduction allowed for dividends received from affiliated corporations, or by a small business investment company, for dividends received or accrued from 20%-owned corporations, then
  - 2) 70% of the difference between taxable income and the 100% deduction allowed for dividends received from affiliated corporations, or by a small business investment company, for dividends received or accrued from less-than-20%-owned corporations (reducing taxable income by the total dividends received from 20%-owned corporations).
- Figuring the limit.** In figuring the limit, determine taxable income without the following items.
- 1) The net operating loss deduction.
  - 2) The deduction for dividends received.
  - 3) Any adjustment due to the nontaxable part of an extraordinary dividend (see *Extraordinary Dividends*, later).
  - 4) Any capital loss carryback to the tax year.

**Effect of net operating loss.** If a corporation has a net operating loss (NOL) for a tax year, the limit of 80% (or 70%) of taxable income does not apply. To determine whether a corporation has an NOL, figure the dividends-received deduction without the 80% (or 70%) of taxable income limit.

**Example 1.** A corporation loses \$25,000 from operations. It receives \$100,000 in dividends from a 20%-owned corporation. Its taxable income is \$75,000 ( $[(\$25,000) + \$100,000]$ ) before the deduction for dividends received. If it claims the full dividends-received deduction of \$80,000 ( $[\$100,000 \times 80\%]$ ) and combines it with an operations loss of \$25,000, it will have an NOL of (\$5,000). Therefore, the 80% of taxable income limit does not apply. The corporation can deduct the full 20%, or \$80,000.

**Example 2.** Assume the same facts as in Example 1, except that the corporation only loses \$15,000 from operations. Its taxable income is \$85,000 before the deduction for dividends received. After claiming the dividends-received deduction of \$80,000 ( $[\$100,000 \times 80\%]$ ), its taxable income is \$5,000. Because the corporation will not have an NOL after applying a full dividends-received deduction, its allowable dividends-received deduction is limited to 80% of its taxable income, or \$68,000 ( $[\$85,000 \times 80\%]$ ).

## Extraordinary Dividends

If a corporation receives an extraordinary dividend on stock held 2 years or less before the dividend announcement date, it generally must reduce its basis in the stock by the nontaxed part of the dividend. The nontaxed part is any dividends-received deduction allowable for the dividends.

**Extraordinary dividend.** An extraordinary dividend is any dividend on stock that equals or exceeds a certain percentage of the

corporation's adjusted basis in the stock. The percentages are:

- 1) 5% for stock preferred as to dividends, or
- 2) 10% for other stock.

Treat all dividends received that have ex-dividend dates within an 85-consecutive-day period as one dividend. Treat all dividends received that have ex-dividend dates within a 365-consecutive-day period as extraordinary dividends if the total of the dividends exceeds 20% of the corporation's adjusted basis in the stock.

**Disqualified preferred stock.** Any dividend on disqualified preferred stock is treated as an extraordinary dividend regardless of the period of time the corporation held the stock.

Disqualified preferred stock is any stock preferred as to dividends if any of the following apply.

- 1) The stock when issued has a dividend rate that declines (or can reasonably be expected to decline) in the future.
- 2) The issue price of the stock exceeds its liquidation rights or stated redemption price.
- 3) The stock is otherwise structured to avoid the rules for extraordinary dividends and to enable corporate shareholders to reduce tax through a combination of dividends-received deductions and loss on the disposition of the stock.

These rules apply to stock issued after July 10, 1989, unless it was issued under a written binding contract in effect on that date, and thereafter, before the issuance of the stock.

**More information.** For more information on extraordinary dividends, see section 1059 of the Internal Revenue Code.

## Going Into Business

When you go into business, certain costs you incur to get your business started are treated as capital expenses. See *Capital Expenses* in chapter 1 of Publication 535 for a discussion of how to treat these costs if you do not go into business.

You can choose to amortize certain costs over a period of 60 months or more. To qualify, the cost must be one of the following.

- 1) A business start-up cost.
- 2) An organizational cost.

**Business start-up costs.** Start-up costs are costs incurred for creating an active trade or business or for investigating the creation or acquisition of an active trade or business. Start-up costs include any amounts paid or incurred in connection with an activity engaged in for profit or for the production of income before the trade or business begins, in anticipation of the activity becoming an active trade or business.

**Qualifying costs.** A start-up cost is amortizable if it meets both of the following tests.

- 1) It is a cost you could deduct if you paid or incurred it to operate an existing active trade or business (in the same field).

- 2) It is a cost you pay or incur before the date your active trade or business begins.

Start-up costs include costs for the following:

- Surveys of potential markets.
- Analyses of available facilities, labor, supplies, etc.
- Advertisements for the opening.
- Salaries and wages for employees who are being trained, and their instructors.
- Travel and other necessary costs for securing prospective distributors, suppliers, or customers.
- Salaries and fees for executives and consultants, or for similar professional services.

**Nonqualifying costs.** Start-up costs do not include the following.

- Deductible interest.
- Taxes.
- Research and experimental costs.

**Purchasing an active trade or business.** Amortizable start-up costs include only costs incurred in the course of a general search for, or preliminary investigation of, the business. Investigative costs are costs that help you decide whether to purchase any business and which business to purchase. Alternatively, costs you incur in the attempt to purchase a specific business are capital expenses and you cannot amortize them.

**Disposition of business.** If you completely dispose of your business before the end of the amortization period, you can deduct any remaining deferred start-up costs to the extent allowable under section 165 of the Internal Revenue Code.

**Organizational costs.** The costs of organizing a corporation are the direct costs of creating the corporation.

**Qualifying costs.** You can amortize an organizational cost only if it meets all of the following tests.

- 1) It is for the creation of the corporation.
- 2) It is chargeable to a capital account.
- 3) It could be amortized over the life of the corporation, if the corporation had a fixed life.
- 4) It is incurred before the end of the first tax year in which the corporation begins business. A corporation using the cash method of accounting can amortize organizational costs incurred within the first tax year, even if it does not pay them in that year.

The following are examples of organizational costs.

- Temporary directors.
- Organizational meetings.
- State incorporation fees.
- Accounting services for setting up the corporation.

- Legal services for items such as drafting the charter, bylaws, terms of the original stock certificates, and minutes of organizational meetings.

**Nonqualifying costs.** The following costs are not organizational costs. They are capital expenses that you cannot amortize.

- Costs for issuing and selling stock or securities, such as commissions, professional fees, and printing costs.
- Costs associated with the transfer of assets to the corporation.

**How to amortize.** Deduct start-up and organizational costs in equal amounts over a period of 60 months or more. You can choose an amortizable period for start-up costs that is different from the period you choose for organizational costs, as long as both are not less than 60 months. The amortization period starts with the month you begin business operations. Once you choose an amortization period, you cannot change it.

To figure your deduction, divide your total start-up or organizational costs by the months in the amortization period. The result is the amount you can deduct for each month.

**How to make the choice.** To choose to amortize start-up or organizational costs, you must attach **Form 4562** and an accompanying statement to your return for the first tax year you are in business. If you have both start-up and organizational costs, attach a separate statement to your return for each type of cost.

Generally, you must file your return by the due date (including any extensions). However, if you timely filed your return for the year without making the choice, you can still make the choice by filing an amended return within 6 months of the due date of the original return (not including extensions). For more information, see the instructions for Part VI of Form 4562.

Once you make the choice to amortize start-up or organizational costs, you cannot change it.

**Start-up costs.** If you choose to amortize your start-up costs, complete Part VI of Form 4562 and prepare a separate statement that contains the following information.

- A description of the business to which the start-up costs relate.
- A description of each start-up cost incurred.
- The month your active business began (or was acquired).
- The number of months in your amortization period (not less than 60).

You can choose to amortize your start-up costs by filing the statement with a return for any tax year prior to the year your active business begins. If you file the statement early, the choice becomes effective in the month your active business begins.

You can file a revised statement to include any start-up costs not included in your original statement. However, you cannot include on the revised statement any cost you previously treated on your return as a cost other than a

start-up cost. You can file the revised statement with a return filed after the return on which you choose to begin amortizing your start-up costs.

**Organizational costs.** If you choose to amortize your organizational costs, complete Part VI of Form 4562 and prepare a separate statement that contains the following information.

- A description of each cost.
- The amount of each cost.
- The date each cost was incurred.
- The month your active business began (or was acquired).
- The number of months in your amortization period (not less than 60).

The election to amortize must be made by the due date of the return, including extensions.

## Related Persons

A corporation that uses an accrual method of accounting cannot deduct business expenses and interest owed to a related person who uses the cash method of accounting *until* the corporation makes the payment and the corresponding amount is includible in the related person's gross income. Determine the relationship, for this rule, as of the end of the tax year for which the expense or interest would otherwise be deductible. If a deduction is denied under this rule, the rule will continue to apply even if the corporation's relationship with the person ends before the expense or interest is includible in the gross income of that person. These rules also deny the deduction of losses on the sale or exchange of property between related persons.

**Related persons.** For purposes of this rule, the following persons are related to a corporation.

- 1) Another corporation that is a member of the same controlled group as defined in section 267(f) of the Internal Revenue Code.
- 2) An individual who owns, directly or indirectly, more than 50% of the value of the outstanding stock of the corporation.
- 3) A trust fiduciary when the trust or the grantor of the trust owns, directly or indirectly, more than 50% in value of the outstanding stock of the corporation.
- 4) An S corporation if the same persons own more than 50% in value of the outstanding stock of each corporation.
- 5) A partnership if the same persons own more than 50% in value of the outstanding stock of the corporation and more than 50% of the capital or profits interest in the partnership.
- 6) Any employee-owner if the corporation is a personal service corporation (defined later), regardless of the amount of stock owned by the employee-owner.

**Ownership of stock.** To determine whether an individual directly or indirectly owns any of the outstanding stock of a corporation, the following rules apply.

- 1) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust is treated as being owned proportionately by or for its shareholders, partners, or beneficiaries.
- 2) An individual is treated as owning the stock owned, directly or indirectly, by or for his or her family. Family includes only brothers and sisters (including half brothers and half sisters), a spouse, ancestors, and lineal descendants.
- 3) Any individual owning (other than by applying rule (2)) any stock in a corporation is treated as owning the stock owned directly or indirectly by that individual's partner.
- 4) To apply rule (1), (2), or (3), stock constructively owned by a person under rule (1) is treated as actually owned by that person. But stock constructively owned by an individual under rule (2) or (3) is not treated as actually owned by the individual for applying either rule (2) or (3) to make another person the constructive owner of that stock.

**Personal service corporation.** For this purpose, a corporation is a personal service corporation if it meets all of the following requirements.

- 1) It is not an S corporation.
- 2) Its principal activity is performing personal services. Personal services are those performed in the fields of accounting, actuarial science, architecture, consulting, engineering, health (including veterinary services), law, and performing arts.
- 3) Its employee-owners substantially perform the services in (2).
- 4) Its employee-owners own more than 10% of the fair market value of its outstanding stock.

**Reallocation of income and deductions.** Where it is necessary to clearly show income or prevent tax evasion, the IRS can reallocate gross income, deductions, credits, or allowances between two or more organizations, trades, or businesses owned or controlled directly, or indirectly, by the same interests.

**Complete liquidations.** The disallowance of losses from the sale or exchange of property between related persons does not apply to liquidating distributions.

**More information.** For more information about the related person rules, see Publication 544.

## U.S. Real Property Interest

If a domestic corporation acquires a U.S. real property interest from a foreign person or firm, the corporation may have to withhold tax on the amount it pays for the property. The amount paid includes cash, the fair market value of other property, and any assumed liability. If a domestic corporation distributes a U.S. real property interest to a foreign person or firm, it may have to withhold tax on the fair market value of the

property. A corporation that fails to withhold may be liable for the tax, and any penalties and interest that apply. For more information, see *U.S. Real Property Interest* in Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

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## Figuring Taxable Income

You figure a corporation's taxable income by subtracting its allowable deductions from its income on page 1 of Form 1120 or 1120-A. This section discusses special rules that may apply to the following corporations.

- Corporations whose deductions for the year are more than its income.
- Closely held corporations.
- Personal service corporations.

## Net Operating Losses

A corporation generally figures and deducts a net operating loss (NOL) the same way an individual, estate, or trust does. The same carryback and carryforward periods apply, and the same sequence applies when the corporation carries two or more NOLs to the same year. For more information on these general rules, see Publication 536, *Net Operating Losses (NOLs) for Individuals, Estates, and Trusts*.

A corporation's NOL generally differs from individual, estate and trust NOLs in the following ways.

- 1) A corporation can take different deductions when figuring an NOL.
- 2) A corporation must make different modifications to its taxable income in the carryback or carryforward year when figuring how much of the NOL is used and how much is carried forward to the next year.

A corporation also uses different forms when claiming an NOL deduction.

The following discussions explain these differences.

### Figuring the NOL

A corporation figures an NOL in the same way it figures taxable income. It starts with its gross income and subtracts its deductions. If its deductions are more than its gross income, the corporation has an NOL.

However, the following rules for figuring the NOL apply.

- 1) A corporation cannot increase its current year NOL by carrybacks or carryovers from other years.
- 2) A corporation can take the deduction for dividends received, explained later, without regard to the aggregate limits (based on taxable income) that normally apply.
- 3) A corporation can figure the deduction for dividends paid on certain preferred stock

of public utilities without limiting it to its taxable income for the year.

**Dividends-received deduction.** The corporation's deduction for dividends received from domestic corporations is generally subject to an aggregate limit of 70% or 80% of taxable income. However, if a corporation sustains an NOL for a tax year, the limit based on taxable income does not apply. In determining if a corporation has an NOL, the corporation figures the dividends-received deduction without regard to the 70% or 80% of taxable income limit.

For more information on the dividends-received deduction, see *Dividends-Received Deduction* under *Income and Deductions*, earlier.

**Example.** A corporation had \$500,000 of gross income from business operations and \$625,000 of allowable business expenses. It also received \$150,000 in dividends from a domestic corporation for which it can take an 80% deduction, ordinarily limited to 80% of its taxable income before the deduction. It figures its NOL as follows:

Income from business . . . . .	\$500,000
Dividends . . . . .	150,000
Gross income . . . . .	\$650,000
Deductions (expenses) . . . . .	(625,000)
Taxable income before special deductions	\$25,000
Minus: Deduction for dividends received, 80% of \$150,000 . . . . .	(120,000)
<b>Net operating loss . . . . .</b>	<b>(\$95,000)</b>

Because the corporation had an NOL, the limit based on taxable income does not apply.

## Claiming the NOL Deduction

The form a corporation uses to deduct its NOL depends on whether it carries the NOL back or forward.

**For a carryback.** If a corporation carries back the NOL, it can use either **Form 1120X** or **Form 1139**. A corporation can get a refund faster by using Form 1139. It cannot file Form 1139 before filing the return for the corporation's NOL year, but it must file Form 1139 no later than one year after the year it sustains the NOL.

If the corporation does not file Form 1139, it must file Form 1120X within 3 years of the due date, plus extensions, for filing the return for the year in which it sustains the NOL.

**For a carryforward.** If a corporation carries forward its NOL, it enters the carryforward on Schedule K (Form 1120), line 12. It also enters the deduction for the carryover (but not to exceed the corporation's taxable income after special deductions) on line 29(a) of Form 1120 or line 25(a) of Form 1120-A.

**Carryback expected.** If a corporation expects to have an NOL in its current year, it can automatically extend the time for paying all or part of its income tax for the immediately preceding year. It does this by filing **Form 1138**. It must explain on the form why it expects the loss.

The payment of tax that may be postponed cannot exceed the expected overpayment from the carryback of the NOL.

**Period of extension.** The extension is in effect until the end of the month in which the return for the NOL year is due, (including extensions).

If the corporation files Form 1139 before this date, the extension will continue until the date the IRS notifies the corporation that its Form 1139 is disallowed in whole or in part.

## Figuring the NOL Carryover

If the NOL available for a carryback or carryforward year is greater than the taxable income for that year, the corporation must modify its taxable income to figure how much of the NOL it will use up in that year and how much it can carry over to the next tax year.

Its carryover is the excess of the available NOL over its modified taxable income for the carryback or carryforward year.

**Modified taxable income.** A corporation figures its modified taxable income the same way it figures its taxable income, with the following exceptions.

- It can deduct NOLs only from years **before** the NOL year whose carryover is being figured.
- The corporation must figure its deduction for charitable contributions without considering any NOL carrybacks.

The modified taxable income for any year cannot be less than zero.

Modified taxable income is used only to figure how much of an NOL the corporation uses up in the carryback or carryforward year and how much it carries to the next year. It is not used to fill out the corporation's tax return or figure its tax.

**Ownership change.** A loss corporation (one with cumulative losses) that has an ownership change is limited on the taxable income it can offset by NOL carryforwards arising before the date of the ownership change. This limit applies to any year ending after the change of ownership.

See sections 381, 382, 383, 384, and 269 of the Internal Revenue Code and the related regulations for more information about the limits on corporate NOL carryovers, definition of a loss corporation, and corporate ownership changes.

## At-Risk Limits

The at-risk rules limit your losses from most activities to your amount at risk in the activity. The at-risk limits apply to certain closely held corporations (other than S corporations).

The amount at risk generally equals:

- The money and the adjusted basis of property contributed by the taxpayer to the activity, and
- The money borrowed for the activity.

**Closely held corporation.** For the at-risk rules, a corporation is a closely held corporation if, at any time during the last half of the tax year, more than 50% in value of its outstanding stock is owned directly or indirectly by, or for, five or fewer individuals.

To figure if more than 50% in value of the stock is owned by five or fewer individuals, apply the following rules.

- 1) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust is considered owned proportionately by its shareholders, partners, or beneficiaries.
- 2) An individual is considered to own the stock owned, directly or indirectly, by or for his or her family. Family includes only brothers and sisters (including half brothers and half sisters), a spouse, ancestors, and lineal descendants.
- 3) If a person holds an option to buy stock, he or she is considered to be the owner of that stock.
- 4) When applying rule (1) or (2), stock considered owned by a person under rule (1) or (3) is treated as actually owned by that person. Stock considered owned by an individual under rule (2) is not treated as owned by the individual for again applying rule (2) to consider another the owner of that stock.
- 5) Stock that may be considered owned by an individual under either rule (2) or (3) is considered owned by the individual under rule (3).

**More information.** For more information on the at-risk limits, see Publication 925.

## Passive Activity Limits

The passive activity rules generally limit your losses from passive activities to your passive activity income. Generally, you are in a passive activity if you have a trade or business activity in which you do not materially participate during the tax year, or you have a rental activity.

The passive activity rules apply to personal service corporations and closely held C corporations.

**Personal service corporation.** For the passive activity rules, a corporation is a personal service corporation if it meets **all** of the following requirements.

- 1) It is not an S corporation.
- 2) Its principal activity during the "testing period" is performing *personal services*, defined later. The testing period for any tax year is the previous tax year. If the corporation has just been formed, the testing period begins on the first day of its tax year and ends on the earlier of:
  - a) The last day of its tax year, or
  - b) The last day of the calendar year in which its tax year begins.
- 3) Its employee-owners substantially perform the services in (2). This requirement is met if more than 20% of the corporation's compensation cost for its activities of performing personal services during the testing period is for personal services performed by employee-owners.
- 4) Its employee-owners own more than 10% of the fair market value of its outstanding stock on the last day of the testing period.

**Personal services.** Personal services are those performed in the fields of accounting, actuarial science, architecture, consulting, engineering, health (including veterinary services), law, and the performing arts by employee-owners.

**Employee-owners.** A person is an employee-owner of a personal service corporation if both of the following apply.

- 1) He or she is an employee of the corporation or performs personal services for, or on behalf of, the corporation (even if he or she is an independent contractor for other purposes) on any day of the testing period.
- 2) He or she owns any stock in the corporation at any time during the testing period.

**Closely held corporation.** For the passive activity rules, a corporation is closely held if **all** of the following apply.

- 1) It is not an S corporation.
- 2) It is not a personal service corporation (defined earlier).
- 3) At any time during the last half of the tax year, more than 50% of the value of its outstanding stock is, directly or indirectly, owned by five or fewer individuals. "Individual" includes certain trusts and private foundations.

**More information.** For more information on the passive activity limits, see Publication 925.

## Figuring Tax

After you figure a corporation's taxable income, you figure its tax on Schedule J (Form 1120) or Part I (Form 1120-A). This section discusses the tax rate schedule, credits, recapture taxes, and the alternative minimum tax.

## Tax Rate Schedule

Most corporations figure their tax by using the following tax rate schedule. This section discusses an exception to that rule for qualified personal service corporations. Other exceptions are discussed in the instructions for Schedule J (Form 1120) or Part I (Form 1120-A).

**Tax Rate Schedule**

If taxable income (line 30, Form 1120, or line 26, Form 1120-A) is:			
Over —	But not over —	Tax is:	Of the amount over —
\$0	50,000	15%	-0-
\$50,000	75,000	\$ 7,500 + 25%	\$50,000
75,000	100,000	13,750 + 34%	75,000
100,000	335,000	22,250 + 39%	100,000
335,000	10,000,000	113,900 + 34%	335,000
10,000,000	15,000,000	3,400,000 + 35%	10,000,000
15,000,000	18,333,333	5,150,000 + 38%	15,000,000
18,333,333	—	35%	-0-

**Qualified personal service corporation.** A qualified personal service corporation is taxed at a flat rate of 35% on taxable income. A corpora-

tion is a qualified personal service corporation if it meets **both** of the following tests.

- 1) Substantially all the corporation's activities involve the performance of personal services (as defined earlier under *Personal services*), and,
- 2) At least 95% of the corporation's stock, by value, is owned, directly or indirectly, by any of the following.
  - a) Employees performing the personal services.
  - b) Retired employees who had performed the personal services.
  - c) An estate of the employee or retiree described above.
  - d) Any person who acquired the stock of the corporation as a result of the death of an employee or retiree (but only for the 2-year period beginning on the date of the employee's or retiree's death).

See section 1.448-1T(e) of the regulations for details.

## Credits

A corporation's tax liability is reduced if it takes any credits. The following list includes some credits available to corporations.

- Credit for federal tax on fuels used for certain nontaxable purposes (see Publication 378, *Fuel Tax Credits and Refunds*).
- Credit for prior year minimum tax (see **Form 8827**).
- Foreign tax credit (see **Form 1118**).
- General business credit (see *General business credit*, next).
- Nonconventional source fuel credit (see section 29 of the Internal Revenue Code).
- Qualified electric vehicle credit (see **Form 8834**).

**General business credit.** Your general business credit for the year consists of your carryforward of business credits from prior years plus your total current year business credits. Current year business credits include the following.

- Alcohol used as fuel credit (**Form 6478**).
- Contributions to selected community development corporations credit (**Form 8847**).
- Disabled access credit (**Form 8826**).
- Employer social security and Medicare taxes paid on certain employee tips credit (**Form 8846**).
- Empowerment zone employment credit (**Form 8844**).
- Enhanced oil recovery credit (**Form 8830**).
- Indian employment credit (**Form 8845**).
- Investment credit (**Form 3468**).
- Low-income housing credit (**Form 8586**).
- Orphan drug credit (**Form 8820**).

- Renewable electricity production credit (**Form 8835**).
- Research credit (**Form 6765**).
- Welfare-to-work credit (**Form 8861**).
- Work opportunity credit (**Form 5884**).

Your general business credit for the current year may be increased by the carryback or carryforward of business credits from other years.



*The welfare-to-work credit and the work opportunity credit were scheduled to expire on December 31, 2001. However, legislation enacted after this publication goes to print may extend that date. See Publication 553, Highlights of 2001 Tax Law Changes, for information.*

To claim a general business credit, you must first get the form or forms you need to claim your current year business credits. The above list identifies current year business credits. The form used to claim each credit is shown in parentheses. In addition to the credit form, you may also need to file Form 3800.

**Who must file Form 3800.** You must file Form 3800 if any of the following apply.

- You have more than one of the credits listed earlier (other than the empowerment zone employment credit).
- You have a carryback or carryforward of any of these credits (other than the empowerment zone employment credit).
- Any of these credits (other than the low-income housing credit or the empowerment zone employment credit) is from a passive activity. (For information about passive activity credits, see **Form 8582-CR**.)

The empowerment zone employment credit is subject to special rules. This credit is figured separately on Form 8844 and is not carried to Form 3800. For more information, see the instructions for Form 8844.

See the Form 3800 instructions for more information about the general business credit.

## Recapture Taxes

A corporation's tax liability is increased if it recaptures credits it has taken in prior years. The following list includes credits a corporation may need to recapture.

- Indian employment credit (see the instructions for **Form 8845**).
- Investment credit (see the instructions for **Form 4255**).
- Low-income housing credit (see the instructions for **Form 8611**).
- Qualified electric vehicle credit (see the instructions for **Form 8834**).

## Alternative Minimum Tax (AMT)

The tax laws give special treatment to some types of income and allow special deductions and credits for some types of expenses. These laws can enable corporations with substantial

economic income to significantly reduce their regular tax. The purpose of the corporate alternative minimum tax (AMT) is to ensure corporations pay a minimum amount of tax on their economic income. A corporation owes AMT if its tentative minimum tax is more than its regular tax.



*The tentative minimum tax of a small corporation is zero. This means that a small corporation will not owe AMT.*

**Small corporation exemption.** A corporation is treated as a small corporation exempt from the AMT for its tax year beginning in 2001 if that year is the corporation's first tax year in existence **or**:

- 1) It was treated as a small corporation exempt from the AMT for all prior tax years beginning after 1997, **and**
- 2) Its average annual gross receipts for the 3-tax-year period (or portion thereof) ending before its tax year beginning in 2001 did not exceed \$7.5 million (\$5 million if the corporation had only 1 prior tax year).

For more information, see the instructions for Form 4626.

**Form 4626.** Use Form 4626 to figure the tentative minimum tax of a corporation that is not a small corporation for AMT purposes.

## Accumulated Earnings Tax

A corporation can accumulate its earnings for a possible expansion or other bona fide business reasons. However, if a corporation allows earnings to accumulate beyond the reasonable needs of the business, it may be subject to an accumulated earnings tax of 39.6%. If the accumulated earnings tax applies, interest applies to the tax from the date the corporate return was originally due, without extensions.

To determine if the corporation is subject to this tax, first treat an accumulation of \$250,000 or less generally as within the reasonable needs of most businesses. Treat an accumulation of \$150,000 or less as within the reasonable needs of a business whose principal function is performing services in the fields of accounting, actuarial science, architecture, consulting, engineering, health (including veterinary services), law, and the performing arts.

In determining if the corporation has accumulated earnings and profits beyond its reasonable needs, value the listed and readily marketable securities owned by the corporation and purchased with its earnings and profits at net liquidation value, not at cost.

Reasonable needs of the business include the following.

- Specific, definite, and feasible plans for use of the earnings accumulation in the business.
- The amount necessary to redeem the corporation's stock included in a deceased shareholder's gross estate, if the amount does not exceed the reasonably anticipated total estate and inheritance taxes

and funeral and administration expenses incurred by the shareholder's estate.

The absence of a bona fide business reason for a corporation's accumulated earnings may be indicated by many different circumstances, such as a lack of regular distributions to its shareholders or withdrawals by the shareholders classified as personal loans. However, actual moves to expand the business generally qualify as a bona fide use of the accumulations.

The fact that a corporation has an unreasonable accumulation of earnings is sufficient to establish liability for the accumulated earnings tax unless the corporation can show the earnings were not accumulated to allow its individual shareholders to avoid income tax.

## Distributions to Shareholders

This section discusses corporate distributions of money, stock, or other property to a shareholder with respect to the shareholder's ownership of stock. However, this section does not discuss the special rules that apply to the following distributions.

- Distributions in redemption of stock. See section 302 of the Internal Revenue Code.
- Distributions in complete liquidation of the corporation. See section 331 of the Internal Revenue Code.
- Distributions in corporate organizations and reorganizations. See section 351–354 of the Internal Revenue Code.
- Certain distributions to 20% corporate shareholders. See section 301(e) of the Internal Revenue Code.

## Money or Property Distributions

Most distributions are in money, but they may also be in stock or other property. For this purpose, "property" generally does not include stock in the corporation or rights to acquire this stock. However, see *Distributions of Stock or Stock Rights*, later.

A corporation generally does not recognize a gain or loss on the distributions covered by the rules in this section. However, see *Gain from property distributions*, later.

**Amount distributed.** The amount of a distribution is generally the amount of any money paid to the shareholder plus the fair market value (FMV) of any property transferred to the shareholder. However, this amount is reduced (but not below zero) by the following liabilities.

- Any liability of the corporation the shareholder assumes in connection with the distribution.
- Any liability to which the property is subject immediately before, and immediately after, the distribution.

The FMV of any property distributed to a shareholder becomes the shareholder's basis in that property.

**Gain from property distributions.** A corporation will recognize a gain on the distribution of property to a shareholder if the FMV of the property is more than its adjusted basis. This is generally the same treatment the corporation would receive if the property were sold. However, for this purpose, the FMV of the property is the greater of the following amounts.

- The actual FMV.
- The amount of any liabilities the shareholder assumed in connection with the distribution of the property.

If the property was depreciable or amortizable, the corporation may have to treat all or part of the gain as ordinary income from depreciation recapture. For more information on depreciation recapture and the sale of business property, see Publication 544.

## Distributions of Stock or Stock Rights

Distributions by a corporation of its own stock are commonly known as stock dividends. Stock rights (also known as "stock options") are distributions by a corporation of rights to acquire its stock. Distributions of stock dividends and stock rights are generally tax-free to shareholders. However, stock and stock rights are treated as property under the rules discussed earlier under *Money or Property Distributions* if any of the following apply to their distribution.

- 1) Any shareholder has the choice to receive cash or other property instead of stock or stock rights.
- 2) The distribution gives cash or other property to some shareholders and an increase in the percentage interest in the corporation's assets or earnings and profits to other shareholders.
- 3) The distribution is in convertible preferred stock and has the same result as in (2).
- 4) The distribution gives preferred stock to some common stock shareholders and gives common stock to other common stock shareholders.
- 5) The distribution is on preferred stock. (An increase in the conversion ratio of convertible preferred stock made solely to take into account a stock dividend, stock split, or similar event that would otherwise result in reducing the conversion right is not a distribution on preferred stock.)

For this purpose, the term "stock" includes rights to acquire stock and the term "shareholder" includes a holder of rights or convertible securities.

**Constructive stock distributions.** You must treat certain transactions that increase a shareholder's proportionate interest in the earnings and profits or assets of a corporation as if they were distributions of stock or stock rights. These constructive distributions are treated as property if they have the same result as a distribution described in (2), (3), (4), or (5) of the above discussion. Constructive distributions are described later.

This treatment applies to a change in your stock's conversion ratio or redemption price, a

difference between your stock's redemption price and issue price, a redemption that is not treated as a sale or exchange of your stock, and any other transaction having a similar effect on a shareholder's interest in the corporation.

**Expenses of issuing a stock dividend.** You cannot deduct the expenses of issuing a stock dividend. These expenses include printing, postage, cost of advice sheets, fees paid to transfer agents, and fees for listing on stock exchanges. The corporation must capitalize these costs.

## Constructive Distributions

The following sections discuss transactions that may be treated as distributions.

**Below-market loans.** If a corporation gives a shareholder a loan on which no interest is charged or on which interest is charged at a rate below the applicable federal rate, the interest not charged may be treated as a distribution to the shareholder. For more information, see *Below-Market Loans* under *Income and Deductions*, earlier.

**Corporation cancels shareholder's debt.** If a corporation cancels a shareholder's debt without repayment by the shareholder, the amount canceled is treated as a distribution to the shareholder.

**Transfers of property to shareholders for less than FMV.** A sale or exchange of property by a corporation to a shareholder may be treated as a distribution to the shareholder. For a shareholder who is not a corporation, if the FMV of the property on the date of the sale or exchange exceeds the price paid by the shareholder, the excess may be treated as a distribution to the shareholder.

**Unreasonable rents.** If a corporation rents property from a shareholder and the rent is unreasonably more than the shareholder would charge to a stranger for use of the same property, the excessive part of the rent may be treated as a distribution to the shareholder. For more information, see chapter 4 in Publication 535.

**Unreasonable salaries.** If a corporation pays an employee who is also a shareholder a salary that is unreasonably high considering the services actually performed by the shareholder-employee, the excessive part of the salary may be treated as a distribution to the shareholder-employee. For more information, see chapter 2 in Publication 535.

## Reporting Dividends and Other Distributions

A corporate distribution to a shareholder is generally treated as a distribution of earnings and profits. Any part of a distribution from either current or accumulated earnings and profits is reported to the shareholder as a dividend. Any part of a distribution that is not from earnings and profits is applied against and reduces the adjusted basis of the stock in the hands of the shareholder. To the extent the balance is more than the adjusted basis of the stock, the shareholder has a gain (usually a capital gain) from the sale or exchange of property.

For information on shareholder reporting of corporate distributions, see Publication 550, *Investment Income and Expenses*.

**Form 1099-DIV.** File Form 1099-DIV with the IRS for each shareholder to whom you have paid dividends and other distributions on stock of \$10 or more during a calendar year. You must generally send Forms 1099-DIV to the IRS with **Form 1096** by February 28 (March 31 if filing electronically) of the year following the year of the distribution. For more information, see the general instructions for Forms 1099, 1098, 5498, and W-2G.

Generally, you must furnish Forms 1099-DIV to shareholders by January 31 of the year following the close of the calendar year during which the corporation made the distributions. However, you may furnish the Form 1099-DIV to shareholders after November 30 of the year of the distributions if the corporation has made its final distributions for the year. You may furnish the Form 1099-DIV to shareholders anytime after April 30 of the year of the distributions if you give the Form 1099-DIV with the final distributions for the calendar year.

**Backup withholding.** Dividends may be subject to backup withholding. For more information on backup withholding, see the general instructions for Forms 1099, 1098, 5498, and W-2G.

**Form 5452.** File Form 5452 if nondividend distributions were made to shareholders.

A calendar tax year corporation must file Form 5452 with its income tax return for the tax year in which the nondividend distributions were made. A fiscal tax year corporation must file Form 5452 with its income tax return due for the first fiscal year ending after the calendar year in which the nondividend distributions were made.

**Current year earnings and profits.** If a corporation's earnings and profits for the year (figured as of the close of the year without reduction for any distributions made during the year) are more than the total amount of distributions made during the year, all distributions made during the year are treated as distributions of current year earnings and profits. If the total amount of distributions is more than the earnings and profits for the year, see *Accumulated earnings and profits*, later.

**Example.** You are the only shareholder of a corporation that uses the calendar year as its tax year. In January, you use the worksheet in the Form 5452 instructions to figure your corporation's current year earnings and profits for the previous year. During the year, the corporation made four \$1,000 distributions to you. At the end of the year (before subtracting distributions made during the year), the corporation had \$10,000 of current year earnings and profits.

Since the corporation's current year earnings and profits (\$10,000) were more than the amount of the distributions it made during the year (\$4,000), all of the distributions are treated as distributions of current year earnings and profits.

The corporation must issue a Form 1099-DIV to you by the end of January to report the \$4,000 distributed to you during the previous year as dividends. The corporation must use Form 1096 to report this information to the IRS

by February 28 (March 31 if filing electronically). The corporation does not deduct these dividends on its income tax return.

**Accumulated earnings and profits.** If a corporation's current year earnings and profits (figured as of the close of the year without reduction for any distributions made during the year) are less than the total distributions made during the year, part or all of each distribution is treated as a distribution of accumulated earnings and profits. Accumulated earnings and profits are earnings and profits the corporation accumulated before the current year.

If the total amount of distributions is less than current year earnings and profits, see *Current year earnings and profits*, earlier.

**Used with current year earnings and profits.** If the corporation has current year earnings and profits, figure the use of accumulated and current earnings and profits as follows.

- 1) Divide the current year earnings and profits by the total distributions made during the year.
- 2) Multiply each distribution by the percentage figured in (1) to get the amount treated as a distribution of current year earnings and profits.
- 3) Start with the first distribution and treat the part of each distribution greater than the allocated current year earnings and profits figured in (2) as a distribution of accumulated earnings and profits.
- 4) If accumulated earnings and profits are reduced to zero, the remaining part of each distribution is applied against and reduces the adjusted basis of the stock in the hands of the shareholders. To the extent that the balance is more than the adjusted basis of the stock, it is treated as a gain from the sale or exchange of property.

**Example.** You are the only shareholder of a corporation that uses the calendar year as its tax year. In January, you use the worksheet in the Form 5452 instructions to figure your corporation's current year earnings and profits for the previous year. At the beginning of the year, the corporation's accumulated earnings and profits balance was \$20,000. During the year, the corporation made four \$4,000 distributions to you. At the end of the year (before subtracting distributions made during the year), the corporation had \$10,000 of current year earnings and profits.

Since the corporation's current year earnings and profits (\$10,000) were less than the distributions it made during the year (\$16,000), part of each distribution is treated as a distribution of accumulated earnings and profits. Treat the distributions as follows.

- 1) Divide the current year earnings and profits (\$10,000) by the total amount of distributions made during the year (\$16,000). The result is .625.
- 2) Multiply each \$4,000 distribution by the .625 figured in (1) to get the amount (\$2,500) of each distribution treated as a distribution of current year earnings and profits.

- The remaining \$1,500 of each distribution is treated as a distribution from accumulated earnings and profits. The corporation distributed \$6,000 ( $\$1,500 \times 4$ ) of accumulated earnings and profits.

The remaining \$14,000 ( $\$20,000 - \$6,000$ ) of accumulated earnings and profits is available for use in the following year.

The corporation must issue a Form 1099-DIV to you by the end of January to report the \$16,000 distributed to you during the previous year as dividends. The corporation must use Form 1096 to report this information to the IRS by February 28 (March 31 if filing electronically). The corporation does not deduct these dividends on its income tax return.

**Used without current year earnings and profits.** If the corporation has no current year earnings and profits, figure the use of accumulated earnings and profits as follows.

- If the current year earnings and profits balance is negative, prorate the negative balance to the date of each distribution made during the year.
- Figure the available accumulated earnings and profits balance on the date of each distribution by subtracting the prorated amount of current year earnings and profits from the accumulated balance.
- Treat each distribution as a distribution of these adjusted accumulated earnings and profits.
- If adjusted accumulated earnings and profits are reduced to zero, the remaining distributions are applied against and reduce the adjusted basis of the stock in the hands of the shareholders. To the extent that the balance is more than the adjusted basis of the stock, it is treated as a gain from the sale or exchange of property.

**Example.** You are the only shareholder of a corporation that uses the calendar year as its tax year. In January, you use the worksheet in the Form 5452 instructions to figure your corporation's current year earnings and profits for the previous year. At the beginning of the year, the corporation's accumulated earnings and profits balance was \$20,000. During the year, the corporation made four \$4,000 distributions to you on March 31, June 30, September 30, and December 31. At the end of the year (before subtracting distributions made during the year), the corporation had a negative current year (\$10,000) earnings and profits balance.

Since the corporation had no current year earnings and profits, all of the distributions are treated as distributions of accumulated earnings and profits. Treat the distributions as follows.

- Prorate the negative current year earnings and profits balance to the date of each distribution made during the year. The negative \$10,000 can be spread evenly by prorating a negative \$2,500 to each distribution.
- The following table shows how to figure the available accumulated earnings and profits balance on the date of each distribution.

#### March 31 Distribution

Accumulated earnings and profits . . . . .	\$20,000
Prorated current year earnings and profits	(\$2,500)
Accumulated earnings and profits available	\$17,500
Amount of distribution treated as a dividend	(\$4,000)

#### June 30 Distribution

Accumulated earnings and profits . . . . .	\$13,500
Prorated current year earnings and profits	(\$2,500)
Accumulated earnings and profits available	\$11,000
Amount of distribution treated as a dividend	(\$4,000)

#### September 30 Distribution

Accumulated earnings and profits . . . . .	\$7,000
Prorated current year earnings and profits	(\$2,500)
Accumulated earnings and profits available	\$4,500
Amount of distribution treated as a dividend	(\$4,000)

#### December 31 Distribution

Accumulated earnings and profits . . . . .	\$500
Prorated current year earnings and profits	(\$2,500)
Accumulated earnings and profits available	(\$2,000)
Amount of distribution treated as a dividend	\$0
Nondividend amount (reduction of stock basis or gain from sale/exchange of property) . . . . .	\$4,000
Year-end accumulated earnings and profits	(\$2,000)

The corporation must issue a Form 1099-DIV to you by the end of January to report \$12,000 of the \$16,000 distributed to you during the previous year as dividends. The corporation must use Form 1096 to report this information to the IRS by February 28 (March 31 if filing electronically). The corporation does not deduct these dividends on its income tax return. However, the corporation must attach Form 5452 to this return to report the nondividend distribution.



For more information about earnings and profits, see the Worksheet for Figuring Current Year Earnings and Profits in the Form 5452 instructions.

## How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

**Contacting your Taxpayer Advocate.** If you have attempted to deal with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.

The Taxpayer Advocate represents your interests and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels. While Taxpayer Advocates cannot change the tax law or make a technical tax decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review.

To contact your Taxpayer Advocate:

- Call the Taxpayer Advocate at **1-877-777-4778**.
- Call the IRS at **1-800-829-1040**.
- Call, write, or fax the Taxpayer Advocate office in your area.
- Call **1-800-829-4059** if you are a TTY/TDD user.

For more information, see Publication 1546, *The Taxpayer Advocate Service of the IRS*.

**Free tax services.** To find out what services are available, get Publication 910, *Guide to Free Tax Services*. It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.



**Personal computer.** With your personal computer and modem, you can access the IRS on the Internet at [www.irs.gov](http://www.irs.gov). While visiting our web site, you can:

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- View Internal Revenue Bulletins published in the last few years.
- Search regulations and the Internal Revenue Code.
- Receive our electronic newsletters on hot tax issues and news.
- Get information on starting and operating a small business.

You can also reach us with your computer using File Transfer Protocol at [ftp.irs.gov](ftp://ftp.irs.gov).



**TaxFax Service.** Using the phone attached to your fax machine, you can receive forms and instructions by calling **703-368-9694**. Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.

For help with transmission problems, call the FedWorld Help Desk at **703-487-4608**.



**Phone.** Many services are available by phone.

- Ordering forms, instructions, and publications.** Call **1-800-829-3676** to order current and prior year forms, instructions, and publications.
- Asking tax questions.** Call the IRS with your tax questions at **1-800-829-1040**.
- TTY/TDD equipment.** If you have access to TTY/TDD equipment, call **1-800-829-4059** to ask tax questions or to order forms and publications.
- TeleTax topics.** Call **1-800-829-4477** to listen to pre-recorded messages covering various tax topics.

**Evaluating the quality of our telephone services.** To ensure that IRS representatives give accurate, courteous, and professional answers, we evaluate the quality of our telephone services in several ways.

- A second IRS representative sometimes monitors live telephone calls. That person

only evaluates the IRS assistor and does not keep a record of any taxpayer's name or tax identification number.

- We sometimes record telephone calls to evaluate IRS assistors objectively. We hold these recordings no longer than one week and use them only to measure the quality of assistance.
- We value our customers' opinions. Throughout this year, we will be surveying our customers for their opinions on our service.



**Walk-in.** You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county governments, credit unions, and office supply stores have an extensive collection of products available to print from a CD-ROM or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.



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- Current tax forms, instructions, and publications.

- Prior-year tax forms and instructions.
- Popular tax forms that may be filled in electronically, printed out for submission, and saved for recordkeeping.
- Internal Revenue Bulletins.

The CD-ROM can be purchased from National Technical Information Service (NTIS) by calling **1-877-233-6767** or on the Internet at **www.irs.gov**. The first release is available in mid-December and the final release is available in late January.

IRS Publication 3207, *Small Business Resource Guide*, is an interactive CD-ROM that contains information important to small businesses. It is available in mid-February. You can get one free copy by calling **1-800-829-3676** or visiting the IRS web site at **www.irs.gov**.

