
Section 1377.—Definitions and Special Rules

26 CFR 1.1377: Pro rata share.

T.D. 8696

**DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1, 18, and 602**

Definitions under Subchapter S of the Internal Revenue Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations for S corporations and their shareholders relating to the definitions and the special rule provided in section 1377 of the Internal Revenue Code. The final regulations reflect changes to the law made by the Subchapter S Revision Act of 1982 and the Small Business Job Protection Act of 1996. These final regulations are necessary to provide guidance for taxpayers to comply with the law.

EFFECTIVE DATE: These regulations are effective January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Laura Howell, (202) 622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1462. Responses to this collection of information are required to verify the event giving rise to the making of an election under section 1377(a)(2) by an S corporation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from .2 hour to .5 hour, depending on individual circumstances, with an estimated average of .25 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On July 12, 1995, the IRS published in the **Federal Register** a notice of proposed rulemaking (PS-268-82, 1995-2 C.B. 491) containing proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1377 of the Internal Revenue Code (Code). These amendments were proposed to conform the regulations to the addition of section 1377 to the Code by section 2 of the Subchapter S Revision Act of 1982, Public Law 97-354 (1982-2 C.B. 702, 710). Written comments responding to this notice were received. No public hearing was held because no hearing was requested. On

August 20, 1996, the Small Business Job Protection Act of 1996, Public Law 104-188, 110 Stat. 1755, was enacted. Sections 1306 and 1307 of the Small Business Job Protection Act of 1996 amended section 1377 of the Code. After consideration of all comments received, and the changes to section 1377 by the Small Business Job Protection Act of 1996, the proposed amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Days on which stock has not been issued

Section 1366(a)(1) requires a shareholder of an S corporation to take into account the shareholder's pro rata share of the corporation's items of income, loss, deduction, and credit. Section 1377(a) provides that, except in the case of an election under section 1377(a)(2), each shareholder's pro rata share of any item for any taxable year shall be the sum of the amounts determined with respect to the shareholder by assigning an equal portion of such item to each day of the taxable year, and then by dividing that portion pro rata among the shares outstanding on such day. The proposed regulations provide that solely for purposes of determining a shareholder's pro rata share of an item, an S corporation's taxable year does not include any day on which the corporation has no shareholders.

One commentator suggested that a person who beneficially owns the corporation should be treated as a shareholder of an S corporation for any day on which the corporation has assets and conducts business, but has not issued any stock. The final regulations revise the rule concerning no shareholder days and provide that, solely for purposes of determining a shareholder's pro rata share of an item for a taxable year under section 1377(a), the beneficial owners of the corporation are treated as the shareholders of the corporation for any day on which the corporation has not issued any stock.

When a Post-Termination Transition Period Arises

The proposed regulations provide that a post-termination transition period (PTTP) arises following the termination under section 1362(d) of a corporation's S election. By example, the proposed regulations state that a PTTP arises when a C corporation acquires the assets

of an S corporation in a transaction to which section 381(a)(2) applies. Several commentators requested clarification concerning whether the example results in a termination under section 1362(d) of the corporation's election to be an S corporation or merely the cessation of the S corporation's taxable year. The final regulations clarify that, pursuant to the rule in section 1377(b)(1), a PTTP arises the day after the last day that an S corporation was in existence if a C corporation acquires the assets of an S corporation in a transaction to which section 381(a)(2) applies. Changes to section 1377 made by the Small Business Job Protection Act of 1996.

Agreement to Terminate Year

Section 1306 of the Small Business Job Protection Act of 1996 amended section 1377(a)(2) to provide that only the affected shareholders and the corporation must consent to an election to treat the corporation's taxable year as two taxable years in the event of a complete termination of a shareholder's interest in the corporation. In addition, the terminating election under section 1377(a)(2) applies only to the affected shareholders. H.R. Conf. Rep. No. 104-737, 104th Cong. 2d Sess. 222 (1986). The term *affected shareholders* is defined as the shareholder whose interest is terminated and all shareholders to whom the shareholder has transferred shares during the taxable year. If the shareholder has transferred shares to the corporation, *affected shareholders* include all persons who are shareholders during the taxable year. The final regulations reflect these changes made to section 1377(a)(2) by the Small Business Job Protection Act of 1996.

Expansion of Post-Termination Transition Period

Section 1307(a) of the Small Business Job Protection Act of 1996 expands the definition of PTTP under section 1377(b)(1) to include the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer that follows the termination of the S corporation's election and that adjusts a subchapter S item of income, loss, or deduction of the S corporation during the S period. In addition, the definition of *determination* is expanded to include any determination under section 1313(a). The effect of this change is to expand the definition of *determination* to include a final disposition by the Secre-

tary of a claim for refund and certain agreements between the Secretary and any person relating to the tax liability of the person. The final regulations reflect these changes made to section 1377(b) by section 1307 of the Small Business Job Protection Act of 1996.

Coordination With Other Provisions and Other Clarifying Changes

In response to comments, the final regulations add cross-references and make certain clarifying revisions. The proposed regulations coordinate the application of the terminating election under section 1377(a)(2) with the election that may be made under § 1.1368-1(g)(2) when there is a qualifying disposition by: (i) removing the section 1377 reference in § 1.1368-1(g)(1) because all of the rules for a section 1377(a)(2) terminating election are now entirely stated in these final regulations; and (ii) amending § 1.1368-1(g)(2) to provide that a qualifying disposition election cannot be made if a transfer results in a termination of the shareholder's entire interest as a shareholder.

The proposed regulations provide that a section 1377(a)(2) terminating election must contain the written consent of each shareholder. The final regulations revise the shareholder consent rules by removing the written consent requirement for each shareholder. The final regulations merely require an S corporation to include a statement by the corporation that each affected shareholder and the corporation consent to the election.

In response to comments, the final regulations clarify that a shareholder's entire interest in an S corporation is not terminated if the shareholder retains ownership of any stock, including an interest treated as stock under § 1.1361-1(l), that would result in the shareholder continuing to be considered a shareholder of the corporation for purposes of section 1362(a)(2). In addition, the final regulations clarify that a shareholder whose entire interest in an S corporation is terminated in an event for which a terminating election was made is not required to consent to an election under section 1377(a)(2) for a subsequent termination of another shareholder within the taxable year unless the shareholder is an affected shareholder with respect to the subsequent termination.

Effective Date

These regulations apply to taxable years of an S corporation beginning after December 31, 1996.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Laura Howell, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 18, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.1377-1 also issued under 26 U.S.C. 1377(a)(2) and (c). * * *

Par. 2. Section 1.1368-0 is amended by:

- 1. Revising the entry for paragraphs (g) and (g)(1) of § 1.1368-1.
- 2. Adding an entry for paragraph (g)(2)(iv) of § 1.1368-1.

The revisions and addition read as follows:

§ 1.1368-0 Table of contents.

* * * * *

§ 1.1368-1 Distributions by S corporations.

* * * * *

(g) Special rule.

(1) Election to terminate year under § 1.1368-1(g)(2).

(2) * * *

(iv) Coordination with election under section 1377(a)(2).

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Par. 3. Section 1.1368-1 is amended by:

- 1. Revising the heading for paragraph (g).
- 2. Revising paragraph (g)(1).
- 3. Adding paragraph (g)(2)(iv).

The revisions and addition read as follows:

§ 1.1368-1 Distributions by S corporations.

* * * * *

(g) *Special rule*—(1) *Election to terminate year under § 1.1368-1(g)(2)*. If an election is made under paragraph (g)(2) of this section to terminate the year when there is a qualifying disposition, this section applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which there is a qualifying disposition of stock.

(2) * * *

(iv) *Coordination with election under section 1377(a)(2)*. If the event resulting in a qualifying disposition also results in a termination of a shareholder's entire interest as described in § 1.1377-1(b)(4), the election under this paragraph (g)(2) cannot be made. Rather, the election under section 1377(a)(2) and § 1.1377-1(b) may be made. See § 1.1377-1(b) (concerning the election under section 1377(a)(2)). Par. 4. Sections 1.1377-0, 1.1377-1, 1.1377-2, and 1.1377-3 are added under the undesignated center heading "Small Business Corporations and Their Shareholders" to read as follows:

§ 1.1377-0 Table of contents.

The following table of contents is provided to facilitate the use of §§ 1.1377-1 through 1.1377-3:

§ 1.1377-1 Pro rata share.

- (a) Computation of pro rata shares.
 - (1) In general.
 - (2) Special rules.
 - (i) Days on which stock has not been issued.
 - (ii) Determining shareholder for day of stock disposition.
 - (b) Election to terminate year.
 - (1) In general.
 - (2) Affected shareholders.
 - (3) Effect of the terminating election.
 - (i) In general.
 - (ii) Due date of S corporation return.

(iii) Taxable year of inclusion by shareholder.

(iv) S Corporation that is a partner in a partnership.

(4) Determination of whether an S shareholder's entire interest has terminated.

(5) Time and manner of making a terminating election.

(i) In general.

(ii) Affected shareholders required to consent.

(iii) More than one terminating election.

(c) Examples.

§ 1.1377-2 Post-termination transition period.

(a) In general.

(b) Special rules for post-termination transition period.

(c) Determination defined.

(d) Date a determination becomes effective.

(1) Determination under section 1313(a).

(2) Written agreement.

(3) Implied agreement.

§ 1.1377-3 Effective date.

§ 1.1377-1 Pro rata share.

(a) Computation of pro rata shares—

(1) *In general.* For purposes of subchapter S of chapter 1 of the Internal Revenue Code and this section, each shareholder's pro rata share of any S corporation item described in section 1366(a) for any taxable year is the sum of the amounts determined with respect to the shareholder by assigning an equal portion of the item to each day of the S corporation's taxable year, and then dividing that portion pro rata among the shares outstanding on that day. See paragraph (b) of this section for rules pertaining to the computation of each shareholder's pro rata share when an election is made under section 1377(a)(2) to treat the taxable year of an S corporation as if it consisted of two taxable years in the case of a termination of a shareholder's entire interest in the corporation.

(2) *Special rules—(i) Days on which stock has not been issued.* Solely for purposes of determining a shareholder's pro rata share of an item for a taxable year under section 1377(a) and this section, the beneficial owners of the corporation are treated as the shareholders of the corporation for any day on which the corporation has not issued any stock.

(ii) *Determining shareholder for day of stock disposition.* A shareholder who disposes of stock in an S corporation is treated as the shareholder for the day of the disposition. A shareholder who dies is treated as the shareholder for the day of the shareholder's death.

(b) *Election to terminate year—(1) In general.* If a shareholder's entire interest in an S corporation is terminated during the S corporation's taxable year and the corporation and all affected shareholders agree, the S corporation may elect under section 1377(a)(2) and this paragraph (b) (terminating election) to apply paragraph (a) of this section to the affected shareholders as if the corporation's taxable year consisted of two separate taxable years, the first of which ends at the close of the day on which the shareholder's entire interest in the S corporation is terminated. If the event resulting in the termination of the shareholder's entire interest also constitutes a qualifying disposition as described in § 1.1368-1(g)(2)(i), the election under § 1.1368-1(g)(2) cannot be made. An S corporation may not make a terminating election if the cessation of a shareholder's interest occurs in a transaction that results in a termination under section 1362(d)(2) of the corporation's election to be an S corporation. (See section 1362(e)(3) for an election to have items assigned to each short taxable year under normal tax accounting rules in the case of a termination of a corporation's election to be an S corporation.) A terminating election is irrevocable and is effective only for the terminating event for which it is made.

(2) *Affected shareholders.* For purposes of the terminating election under section 1377(a)(2) and paragraph (b) of this section, the term *affected shareholders* means the shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term *affected shareholders* includes all persons who are shareholders during the taxable year.

(3) *Effect of the terminating election—(i) In general.* An S corporation that makes a terminating election for a taxable year must treat the taxable year as separate taxable years for all affected shareholders for purposes of allocating items of income (including tax-exempt income), loss, deduction, and credit; making adjustments to the accumulated adjustments account, earnings and profits, and basis; and determining the tax

effect of a distribution. An S corporation that makes a terminating election must assign items of income (including tax-exempt income), loss, deduction, and credit to each deemed separate taxable year using its normal method of accounting as determined under section 446(a).

(ii) *Due date of S corporation return.* A terminating election does not affect the due date of the S corporation's return required to be filed under section 6037(a) for a taxable year (determined without regard to a terminating election).

(iii) *Taxable year of inclusion by shareholder.* A terminating election does not affect the taxable year in which an affected shareholder must take into account the affected shareholder's pro rata share of the S corporation's items of income, loss, deduction, and credit.

(iv) *S corporation that is a partner in a partnership.* A terminating election by an S corporation that is a partner in a partnership is treated as a sale or exchange of the corporation's entire interest in the partnership for purposes of section 706(c) (relating to closing the partnership taxable year), if the taxable year of the partnership ends after the shareholder's interest is terminated and within the taxable year of the S corporation (determined without regard to any terminating election) for which the terminating election is made.

(4) *Determination of whether an S shareholder's entire interest has terminated.* For purposes of the terminating election under section 1377(a)(2) and paragraph (b) of this section, a shareholder's entire interest in an S corporation is terminated on the occurrence of any event through which a shareholder's entire stock ownership in the S corporation ceases, including a sale, exchange, or other disposition of all of the stock held by the shareholder; a gift under section 102(a) of all the shareholder's stock; a spousal transfer under section 1041(a) of all the shareholder's stock; a redemption, as defined in section 317(b), of all the shareholder's stock, regardless of the tax treatment of the redemption under section 302; and the death of the shareholder. A shareholder's entire interest in an S corporation is not terminated if the shareholder retains ownership of any stock (including an interest treated as stock under § 1.1361-1(l)) that would result in the shareholder continuing to be considered a shareholder of the corporation for purposes of section 1362(a)(2). Thus, in determining

whether a shareholder's entire interest in an S corporation has been terminated, any interest held by the shareholder as a creditor, employee, director, or in any other non-shareholder capacity is disregarded.

(5) *Time and manner of making a terminating election*—(i) *In general.* An S corporation makes a terminating election by attaching a statement to its timely filed original or amended return required to be filed under section 6037(a) (that is, a Form 1120S) for the taxable year during which a shareholder's entire interest is terminated. A single election statement may be filed by the S corporation for all terminating elections for the taxable year. The election statement must include—

(A) A declaration by the S corporation that it is electing under section 1377(a)(2) and this paragraph (b) to treat the taxable year as if it consisted of two separate taxable years;

(B) Information setting forth when and how the shareholder's entire interest was terminated (for example, a sale or gift);

(C) The signature on behalf of the S corporation of an authorized officer of the corporation under penalties of perjury; and

(D) A statement by the corporation that the corporation and each affected shareholder consent to the S corporation making the terminating election.

(ii) *Affected shareholders required to consent.* For purposes of paragraph (b)(5)(i)(D) of this section, a shareholder of the S corporation for the taxable year is a shareholder as described in section 1362(a)(2). For example, the person who under § 1.1362-6(b)(2) must consent to a corporation's S election in certain special cases is the person who must consent to the terminating election. In addition, an executor or administrator of the estate of a deceased affected shareholder may consent to the terminating election on behalf of the deceased affected shareholder.

(iii) *More than one terminating election.* A shareholder whose entire interest in an S corporation is terminated in an event for which a terminating election was made is not required to consent to a terminating election made with respect to a subsequent termination within the same taxable year unless the shareholder is an affected shareholder with respect to the subsequent termination.

(c) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Shareholder's pro rata share in the case of a partial disposition of stock. (i) On January 6, 1997, X incorporates as a calendar year corporation, issues 100 shares of common stock to each of A and B, and files an election to be an S corporation for its 1997 taxable year. On July 24, 1997, B sells 50 shares of X stock to C. Thus, in 1997, A owned 50 percent of the outstanding shares of X on each day of X's 1997 taxable year, B owned 50 percent on each day from January 6, 1997, to July 24, 1997 (200 days), and 25 percent from July 25, 1997, to December 31, 1997 (160 days), and C owned 25 percent from July 25, 1997, to December 31, 1997 (160 days).

(ii) Because B's entire interest in X is not terminated when B sells 50 shares to C on July 24, 1997, X cannot make a terminating election under section 1377(a)(2) and paragraph (b) of this section for B's sale of 50 shares to C. Although B's sale of 50 shares to C is a qualifying disposition under § 1.1368-1(g)(2)(i), X does not make an election to terminate its taxable year under § 1.1368-1(g)(2). During its 1997 taxable year, X has nonseparately computed income of \$720,000.

(iii) For each day in X's 1997 taxable year, A's daily pro rata share of X's nonseparately computed income is \$1,000 ($\$720,000/360 \text{ days} \times 50\%$). Thus, A's pro rata share of X's nonseparately computed income for 1997 is \$360,000 ($\$1,000 \times 360 \text{ days}$). B's daily pro rata share of X's nonseparately computed income is \$1,000 ($\$720,000/360 \times 50\%$) for the first 200 days of X's 1997 taxable year, and \$500 ($\$720,000/360 \times 25\%$) for the following 160 days in 1997. Thus, B's pro rata share of X's nonseparately computed income for 1997 is \$280,000 ($(\$1,000 \times 200 \text{ days}) + (\$500 \times 160 \text{ days})$). C's daily pro rata share of X's nonseparately computed income is \$500 ($\$720,000/360 \times 25\%$) for 160 days in 1997. Thus, C's pro rata share of X's nonseparately computed income for 1997 is \$80,000 ($\$500 \times 160 \text{ days}$).

Example 2. Shareholder's pro rata share when an S corporation makes a terminating election under section 1377(a)(2). (i) On January 6, 1997, X incorporates as a calendar year corporation, issues 100 shares of common stock to each of A and B, and files an election to be an S corporation for its 1997 taxable year. On July 24, 1997, B sells B's entire 100 shares of X stock to C. With the consent of B and C, X makes an election under section 1377(a)(2) and paragraph (b) of this section for the termination of B's entire interest arising from B's sale of 100 shares to C. As a result of the election, the pro rata shares of B and C are determined as if X's taxable year consisted of two separate taxable years, the first of which ends on July 24, 1997, the date B's entire interest in X terminates. Because A is not an affected shareholder as defined by section 1377(a)(2)(B) and paragraph (b)(2) of this section, the treatment as separate taxable years does not apply to A.

(ii) During its 1997 taxable year, X has nonseparately computed income of \$720,000. Under X's normal method of accounting, \$200,000 of the \$720,000 of nonseparately computed income is allocable to the period of January 6, 1997, through July 24, 1997 (the first deemed taxable year), and the remaining \$520,000 is allocable to the period of July 25, 1997, through December 31, 1997 (the second deemed taxable year).

(iii) B's pro rata share of the \$200,000 of nonseparately computed income for the first deemed taxable year is determined by assigning the \$200,000 of nonseparately computed income to each day of the first deemed taxable year ($\$200,000/200 \text{ days} = \$1,000 \text{ per day}$). Because B held 50% of X's authorized and issued shares on

each day of the first deemed taxable year, B's daily pro rata share for each day of the first deemed taxable year is \$500 ($\$1,000 \text{ per day} \times 50\%$). Thus, B's pro rata share of the \$200,000 of nonseparately computed income for the first deemed taxable year is \$100,000 ($\$500 \text{ per day} \times 200 \text{ days}$). B must report this amount for B's taxable year with or within which X's full taxable year ends (December 31, 1997).

(iv) C's pro rata share of the \$520,000 of nonseparately computed income for the second deemed taxable year is determined by assigning the \$520,000 of nonseparately computed income to each day of the second deemed taxable year ($\$520,000/160 \text{ days} = \$3,250 \text{ per day}$). Because C held 50% of X's authorized and issued shares on each day of the second deemed taxable year, C's daily pro rata shares for each day of the second deemed taxable year is \$1,625 ($\$3,250 \text{ per day} \times 50\%$). Therefore, C's pro rata share of the \$520,000 of nonseparately computed income is \$260,000 ($\$1,625 \text{ per day} \times 160 \text{ days}$). C must report this amount for C's taxable year with or within which X's full taxable year ends (December 31, 1997).

§ 1.1377-2 Post-termination transition period.

(a) *In general.* For purposes of subchapter S of chapter 1 of the Internal Revenue Code (Code) and this section, the term *post-termination transition period* means—

(1) The period beginning on the day after the last day of the corporation's last taxable year as an S corporation and ending on the later of—

(i) The day which is 1 year after such last day; or

(ii) The due date for filing the return for the last taxable year as an S corporation (including extensions);

(2) The 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation's election and which adjusts a subchapter S item of income, loss, or deduction of the corporation arising during the S period (as defined in section 1368(e)(2)); and

(3) The 120-day period beginning on the date of a determination that the corporation's election under section 1362(a) had terminated for a previous taxable year.

(b) *Special rules for post-termination transition period.* Pursuant to section 1377(b)(1) and paragraph (a)(1) of this section, a post-termination transition period arises the day after the last day that an S corporation was in existence if a C corporation acquires the assets of the S corporation in a transaction to which section 381(a)(2) applies. However, if an S corporation acquires the assets of another S corporation in a transaction to which section 381(a)(2) applies, a post-

termination transition period does not arise. (See § 1.1368-2(d)(2) for the treatment of the acquisition of the assets of an S corporation by another S corporation in a transaction to which section 381(a)(2) applies.) The special treatment under section 1371(e)(1) of distributions of money by a corporation with respect to its stock during the post-termination transition period is available only to those shareholders who were shareholders in the S corporation at the time of the termination.

(c) *Determination defined.* For purposes of section 1377(b)(1) and paragraph (a) of this section, the term *determination* means—

(1) A determination as defined in section 1313(a);

(2) A written agreement between the corporation and the Commissioner (including a statement acknowledging that the corporation's election to be an S corporation terminated under section 1362(d)) that the corporation failed to qualify as an S corporation;

(3) For a corporation subject to the audit and assessment provisions of subchapter C of chapter 63 of subtitle A of the Code, the expiration of the period specified in section 6226 for filing a petition for readjustment of a final S corporation administrative adjustment finding that the corporation failed to qualify as an S corporation, provided that no petition was timely filed before the expiration of the period; and

(4) For a corporation not subject to the audit and assessment provisions of subchapter C of chapter 63 of subtitle A of the Code, the expiration of the period for filing a petition under section 6213 for the shareholder's taxable year for which the Commissioner has made a finding that the corporation failed to qualify as an S corporation, provided that no petition was timely filed before the expiration of the period.

(d) *Date a determination becomes effective*—(1) *Determination under section 1313(a).* A determination under paragraph (c)(1) of this section becomes effective on the date prescribed in section 1313 and the regulations thereunder.

(2) *Written agreement.* A determination under paragraph (c)(2) of this section becomes effective when it is signed by the district director having jurisdiction over the corporation (or by another Service official to whom authority to sign the agreement is delegated) and by an officer of the corporation authorized to sign on its behalf. Neither the request for a written agreement nor the terms of

the written agreement suspend the running of any statute of limitations.

(3) *Implied agreement.* A determination under paragraph (c)(3) or (4) of this section becomes effective on the day after the date of expiration of the period specified under section 6226 or 6213, respectively.

§ 1.1377-3 *Effective date.*

Sections 1.1377-1 and 1.1377-2 apply to taxable years of an S corporation beginning after December 31, 1996.

PART 18—TEMPORARY INCOME TAX REGULATIONS UNDER THE SUBCHAPTER S REVISION ACT OF 1982

Par. 5. The authority citation for part 18 continues to read as follows:

Authority: 26 U.S.C. 7805.

Section 18.1377-1 [Removed]

Par. 6. Section 18.1377-1 is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 602.101, paragraph (c) is amended as follows:

1. Removing the following entry from the table:

§ 602.101 *OMB Control numbers.*

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
18.1377-1	1545-0130
* * * * *	* * * * *

2. Adding an entry in numerical order to the table to read as follows:

§ 602.101 *OMB Control numbers.*

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.1377-1	1545-1462
* * * * *	* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved November 1, 1996.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 20, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 23, 1996, 61 F.R. 67454)