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LIST OF SUBSTANTIVE CHANGES AND ADDITIONS

PPC's Tax Planning Guide—S Corporations

Thirty-fifth Edition (March 2021)

Highlights of this Edition

The following are some of the important new features of the 2021 Edition of *PPC's Tax Planning Guide—S Corporations*:

- **COVID-19 Legislation.** The past year included additional legislation in response to the COVID-19 pandemic. The new legislation extended many of the provisions of the CARES Act and other earlier relief laws. This *Guide* has been updated to provide information on the latest COVID-19 legislation, as well as final IRS regulations that affect S corporations. For example, coverage has been added on:
 - The treatment of forgiven Paycheck Protection Program (PPP) loan proceeds.
 - Expansion of eligible expenses under the PPP.
 - The return and extension of the Section 461(l) excess business loss provisions.
 - The effect of final Section 163(j) regulations on electing real property trades or businesses.
 - The extension of several credits for employers.
 - Closing a business due to the COVID-19 pandemic.
- **Inflation-adjusted Amounts.** Each year, many amounts are adjusted for inflation. The text and examples, as well as the interactive practice aids, have been updated to include the 2020 and 2021 amounts.

In addition to these featured items, your *Guide* includes the following update items detailed below.

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
CHAPTER 1 Eligibility	1. Added a Note regarding a regulation that allows certain pre-1982 casualty insurance corporations and oil and gas companies to elect S corporation status.	Paragraph 102.1
	2. Added a Practice Tip regarding the responsibility of executors of decedents' estates to inform an S corporation of the estate's name and tax identification number if the corporation's stock is part of the estate.	Paragraph 104.18
	3. Added a Practice Tip regarding a recent Private Letter Ruling granting relief from inadvertent termination when S corporation shares were sold to an LLC. Upon learning of the misstep, the LLC distributed the shares to its eligible individual owners.	Paragraph 105.1
	4. Added a discussion regarding taking care to avoid creating a second class of stock when restructuring debt.	Paragraph 111.8

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
CHAPTER 2 Election	<ol style="list-style-type: none"> 1. Added a Caution regarding the return of the excess business loss limitation under IRC Sec. 461(l) for tax years beginning after 2020 and ending before 2027. 2. Added a Note discussing the ability of a beneficial owner of S corporation stock to designate an agent through a power of attorney to execute consent to elect S corporation status when the beneficial owner may not be able to do so. 3. Modified the Note discussing an S corporation's ability to use minimum tax credits carried over from its time as a C corporation to reflect changes brought about by the CARES Act of 2020. 	<p>Paragraph 201.7</p> <p>Paragraph 205.18</p> <p>Paragraph 209.8</p>
CHAPTER 3 Termination	<ol style="list-style-type: none"> 1. Added discussion of rescinding a terminating transaction, with cites to revenue ruling addressing procedural aspects and letter rulings where the IRS approved the rescission. 2. Addressed whether transfer of stock to spouse or former spouse would trigger the mandatory use of the specific accounting method of allocating pass-through items. 3. Discussed the allocation of income and losses when a qualified Subchapter S subsidiary (QSub) parent terminates its S status. 4. Addressed various accounting method considerations following a mid-year termination of S corporation status. 5. Cited a 2020 letter ruling where the IRS allowed a new S corporation election before the expiration of the five-year waiting period. 	<p>Paragraph 301.17</p> <p>Paragraph 304.12</p> <p>Paragraph 304.18</p> <p>Paragraph 304.19</p> <p>Paragraph 307.4</p>
CHAPTER 4 Taxation of S Corporations	<ol style="list-style-type: none"> 1. Added a discussion of an S corporation's ability to use minimum tax credits carried over from its time as a C corporation to reduce the Section 1374 built-in gains tax. 2. Added a list of items to consider when structuring a lease-option agreement to avoid the appearance that the lease agreement is a disguised installment sale designed to escape the built-in gains tax. 	<p>Paragraph 410.8</p> <p>Paragraph 411.11</p>
CHAPTER 5 Pass-through to Shareholders	<ol style="list-style-type: none"> 1. Added a discussion of the <i>Deckard</i> case as it applies to beneficial ownership of S corporation stock. 2. Added an Observation regarding the IRS's new QBI Loss Tracking Worksheet that was included with the most recent Form 8995 instructions. 3. Added a Planning Tip regarding investing in REITs rather than directly in real estate as a possible method to maximize the QBI deduction. 4. Expanded coverage of COVID-19-related legislation to include changes brought on by the Consolidated Appropriations Act (CAA) and the American Rescue Plan Act of 2021 (ARPA). 	<p>Paragraph 504.3</p> <p>Paragraph 505.12</p> <p>Paragraph 505.24</p> <p>Throughout Section 509</p>

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
	5. Updated discussion of Employee Retention Credits for recently passed CAA and ARPA legislation.	Throughout Section 509
	6. Updated the discussion on the Paycheck Protection Program (PPP) to include changes brought on by the CAA and ARPA.	Throughout Section 509
	7. Added a discussion on COBRA subsidies available through the ARPA.	Paragraph 509.37
	8. Added a discussion on increased exclusions for employer-provided dependent care assistance available as the result of ARPA.	Paragraph 509.39
	9. Added a discussion on increased EIDL available as the result of ARPA.	Paragraph 509.40
	10. Added a discussion on restaurant revitalization grants available as the result of ARPA.	Paragraph 509.41
	11. Added an appendix summarizing highlights of the CAA.	Appendix 5E
CHAPTER 6 Basis and Losses	1. Added a discussion and example regarding increase to stock basis when PPP loans are forgiven.	Paragraph 603.9
	2. Added a brief discussion regarding an S corporation shareholder's inability to increase debt basis for PPP loans.	Paragraph 604.5
CHAPTER 7 Distributions	1. Added a note regarding tracking basis. While it is the shareholder's responsibility, the IRS seems to be shifting this to the entity.	Paragraph 703.5
	2. Added a discussion regarding the effect on AAA when PPP loans have been forgiven.	Paragraph 705.3
	3. Added a discussion regarding the effect on OAA when PPP loans have been forgiven.	Paragraph 707.5
	4. Updated discussion of post-termination transition period distribution rules for eligible terminated S corporations to reflect final regulations issued in October 2020.	Paragraph 721.11
CHAPTER 8 Passive Activity Losses	1. Added a brief discussion on the interplay between the Section 163(j) limit on business interest expense and the Section 469 passive activity loss rules.	Paragraph 801.16
CHAPTER 9 Tax Years, Accounting Methods, and Strategies for Saving Taxes	1. Added a discussion regarding the ability to make an annual election to use prior year activity to determine if an S corporation is a syndicate for purposes of the small business exemption under IRC Sec. 448(c). Added a sample election statement.	Paragraph 907.24 and Appendix 9F
	2. Updated discussions about Applicable Financial Statement (AFS) conformity to reflect final Section 451 regulations.	Section 908
	3. Updated discussions about limitations on business interest expense deductibility to reflect final Section 163(j) regulations.	Section 918

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
	4. Added a discussion and example regarding interplay between IRC Secs. 163(j) and 382 for S corporations that undergo an ownership change and have disallowed business interest expense carried over from a prior year.	Paragraph 918.11 and Example 9-47
	5. Expanded discussion of electing real property trade or business and electing farming business to reflect final Section 163(j) regulations. Added examples to highlight exceptions to commonly controlled business's inability to elect out of IRC Sec. 163(j).	Paragraph 918.28 and Examples 9-48 and 9-49
	6. Updated discussion of electing real property trade or business's requirement to use ADS to depreciate property.	Paragraph 918.32
	7. Added a Law Change alert regarding the temporary suspension of the 50% limit on the deductibility of restaurant meals for 2021 and 2022.	Paragraph 922.11
CHAPTER 10 Fringe Benefits and Retirement Plans	1. Added a new section on providing Section 139 qualified disaster relief payments to employees, including 2% S corporation shareholders.	Paragraph 1002.49
	2. Added a discussion on the temporary relief provisions for Section 125 cafeteria plans during the COVID-19 pandemic.	Paragraph 1003.42
	3. Updated the discussion on qualified transportation fringe benefits to account for final regulations issued in December 2020.	Paragraph 1003.61
	4. Added a Law Change alert regarding the temporary increase to the excludable amount of employer-provided dependent care assistance.	Paragraph 1002.10
CHAPTER 11 Reorganizations and Recapitalizations	1. Added a new Transaction Cost Analysis Checklist to help determine the tax treatment of transaction costs incurred related to a corporate reorganization.	Appendix 11H
CHAPTER 12 Qualified Subchapter S Subsidiaries	1. Discussed the inability of former QSubs to use the six-year period given to eligible terminated S corporations to recognize Section 481 adjustments.	Paragraph 1208.7
CHAPTER 13 Dispositions of Stock and S Corporation Property	1. Addressed the tax treatment of payments that are contingent on the future performance of the S corporation, which differs depending on sales price and term of payment.	Paragraph 1301.29
	2. Introduced the Section 336(e) election, which provides a basis step-up and the ability to continue a flow-through structure, and is similar to a Section 338(h)(10) election.	Paragraph 1303.31
	3. Illustrated the type of stock transfers that can qualify for the election to use the specific accounting method for allocating pass-through items under the complete termination and qualifying disposition provisions.	Paragraph 1306.3
	4. Added a list of tax rules, other than the capital gain rules, that potentially can be triggered (and thus should be considered) upon the disposition of S corporation stock.	Paragraph 1307.5

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
	5. Discussed and illustrated the requirement to use specific accounting for allocating pass-through items upon a 50% or greater ownership change in an S termination year.	Paragraph 1307.33
	6. Provided planning considerations for meeting the Section 1244 "gross receipts test" in the year the loss is sustained to be able to claim an ordinary loss deduction.	Paragraph 1311.24
CHAPTER 14 Redemption of Stock	1. Clarified computation of gain when multiple assets are distributed, including the treatment of gains and losses recognized in the same transaction.	Paragraph 1401.3
	2. Expanded discussion of the taxation of depreciated property that is distributed to a redeemed shareholder, including the effect on S corporation's AAA and the shareholder's stock basis.	Paragraph 1401.5
	3. Added coverage of whether/when redemption-related expenses can be deducted, including circumstances when IRC Sec. 162(k) may not bar the corporation's deduction.	Paragraph 1401.18
	4. Noted when the specific accounting method of allocation must be used (no election is needed) in a year when the corporation's S election terminates.	Paragraph 1403.15
	5. Added a sample waiver of the family stock ownership attribution rules, which allows an otherwise nonqualifying shareholder to qualify for sale or exchange treatment as a complete termination of the shareholder's interest.	Appendix 14F
CHAPTER 15 Liquidation	1. Added closing the business due to the COVID-19 pandemic to the list of reasons why a business would want to completely liquidate. Also included a new sample letter to send to clients informing them of the steps needed to close the business.	Paragraph 1501.10 and Appendix 15D
	2. Added a new discussion addressing the Paycheck Protection Program and Economic Injury Disaster Loans and their possible treatment when liquidating a business.	Paragraph 1510.18
CHAPTER 16 Estate Planning for S Shareholders	1. Added a brief discussion on the transfer taxes that are due in some states in addition to the federal taxes.	Paragraph 1601.41