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# Corporations

**Attention:** This publication will no longer be revised on an annual basis. To find changes that may affect current year returns, see *What's New* in your income tax return instructions; Publication 553; and *What's Hot In Tax Forms, Pubs, and Other Tax Products* at [www.irs.gov/formspubs](http://www.irs.gov/formspubs). To comment on this revision process, see *Comments and suggestions* on page 2.



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## Contents

<b>Introduction</b> .....	<b>2</b>
<b>Businesses Taxed as Corporations</b> .....	<b>2</b>
<b>Property Exchanged for Stock</b> .....	<b>3</b>
<b>Capital Contributions</b> .....	<b>5</b>
<b>Filing and Paying Income Taxes</b> .....	<b>5</b>
Income Tax Return .....	5
Estimated Tax .....	6
U.S. Real Property Interest .....	8
<b>Accounting Methods</b> .....	<b>8</b>
<b>Accounting Periods</b> .....	<b>9</b>
<b>Recordkeeping</b> .....	<b>9</b>
<b>Income, Deductions, and Special Provisions</b> .....	<b>9</b>
Costs of Going Into Business .....	9
Related Persons .....	9
Income From Qualifying Shipping Activities .....	10
Election to Expense Qualified Refinery Property .....	10
Deduction to Comply With EPA Sulfur Regulations .....	10
Energy-Efficient Commercial Building Property Deduction .....	10
Corporate Preference Items .....	11
Dividends-Received Deduction .....	11
Extraordinary Dividends .....	12
Below-Market Loans .....	12
Charitable Contributions .....	13
Capital Losses .....	14
Net Operating Losses .....	15
At-Risk Limits .....	16
Passive Activity Limits .....	17
<b>Figuring Tax</b> .....	<b>17</b>
Tax Rate Schedule .....	17
Alternative Minimum Tax (AMT) .....	17
Credits .....	18
Recapture Taxes .....	18
<b>Accumulated Earnings Tax</b> .....	<b>18</b>
<b>Distributions to Shareholders</b> .....	<b>18</b>
Money or Property Distributions .....	19
Distributions of Stock or Stock Rights .....	19
Constructive Distributions .....	19
Reporting Dividends and Other Distributions .....	20
<b>How To Get Tax Help</b> .....	<b>22</b>
<b>Other Useful Forms</b> .....	<b>24</b>
<b>Index</b> .....	<b>27</b>

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## 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.

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

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**Forms.** See page 24 for a list of forms that a corporation may need to file in addition to the forms discussed throughout this publication.

## 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

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## Businesses Taxed as Corporations

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 formed under a federal or state law that refers to it as a corporation, body corporate, or body politic.
- 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).
- Certain foreign businesses.
- Any other business that elects to be taxed as a corporation (for example, a limited liability company (LLC)) by filing Form 8832, Entity Classification Election. For more information, see the instructions for Form 8832.

**S corporations.** 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.

**Personal service corporations.** A corporation is a personal service corporation if it meets all of the following requirements.

1. Its principal activity during the "testing period" is performing personal services (defined later). Generally, the testing period for any tax year is the prior 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.
2. Its employee-owners substantially perform the services in (1). This requirement is met if more than 20% of the corporation's compensation cost for its activities of performing personal services during the test-

ing period is for personal services performed by employee-owners.

3. 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 include any activity performed in the fields of accounting, actuarial science, architecture, consulting, engineering, health (including veterinary services), law, and the performing arts.

**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.

**Other rules.** For other rules that apply to personal service corporations see *Accounting Periods*, later.

**Closely held corporations.** A corporation is closely held if all of the following apply.

1. It is not a personal service corporation.
2. 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 or for five or fewer individuals. "Individual" includes certain trusts and private foundations.

**Other rules.** For the at-risk rules that apply to closely held corporations, see *At-Risk Limitations*, later.

## Property Exchanged for Stock

If you transfer property (or money and property) to a corporation in exchange for stock in that corporation (other than nonqualified preferred stock, described later), and immediately afterward 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.
- You transfer the property 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 inter-

est 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.

**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 recognized 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 when it is compared to the value of stock and securities already owned or to be received for services by the transferor if the main purpose of the transfer is to qualify for the nonrecognition of gain or loss by other transferors.

Property transferred will not be considered to be of relatively small value if its fair market value is at least 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. If a disproportionate transfer takes place, it will be treated for tax purposes in accordance with its true nature. 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 of property for corporate stock, you also receive money or property other than stock, you may have to recognize gain. You must recognize gain 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 give up includes depreciable property, the recognized gain may have to be reported as ordinary income from depreciation. See chapter 3 of Publication 544. No loss is recognized.

**Nonqualified preferred stock.** Nonqualified preferred stock is treated as property other than stock. 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 or buy 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 generally is 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 your 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 (FMV) of \$16,000. The corporation also assumes a \$5,000 mortgage on the property for which you are personally liable. Gain is realized as follows.

FMV 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
Realized gain . . . . .	<u>\$11,000</u>

The liability assumed is not treated as money or other property. The recognized gain is limited to \$10,000, the 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 *Nondeductible Loss* under *Sales and Exchanges Between Related Persons* 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 or another party to the exchange assumed from you, unless payment of the liability gives rise to a deduction when paid.

Further decreases may be required when the corporation or another party to the exchange assumes from you a liability that gives rise to a deduction when paid after October 18, 1999, if the basis of the stock would otherwise be higher than its fair market value 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.

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.

**Election to reduce basis.** In a section 351 transaction, if the adjusted basis of the property transferred exceeds the property's fair market value, the transferor and transferee may make an irrevocable election to treat the basis of the stock received by the transferor as having a basis equal to the fair market value of the property transferred. The transferor and transferee must make this election by attaching a statement to their tax returns filed by the due date (including extensions) for the tax year in which the transaction occurred. For more information on making this election see section 362(e)(2)(C) of the Internal Revenue Code, and Notice 2005-70, 2005-41 I.R.B. 694.

## 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 corporation's basis of property contributed to capital by a shareholder is the same as the basis the shareholder had in the property, increased by any gain the shareholder recognized on the exchange. However, the increase for the gain recognized may be limited. For more information, see *Basis of property transferred*, earlier, and section 362 of the Internal Revenue Code.

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 during the 12-month period beginning on the day it received the contribution by the amount of the contribution. 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 following ratio:

$$\frac{\text{Basis of each piece of property}}{\text{Bases of all properties (within that category)}}$$

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.

## Filing and Paying 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.



*For certain corporations affected by Presidentially declared disasters relating to Hurricanes Katrina, Rita, and Wilma, the due dates for filing returns, paying taxes, and performing other time-sensitive acts may be extended. The IRS may also forgive the interest and penalties on any underpaid tax for the length of any extension. For more information, see Publication 4492, Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma; and Publication 553, Highlights of 2005 Tax Changes.*

## 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 tax year (including corporations in bankruptcy) must file an income tax return whether or not they have taxable income.

**Which form to file.** A corporation generally must file Form 1120 to report its income, gains, losses, deductions, credits, and to figure its income tax liability. 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.

**Electronic filing.** Corporations can generally file Form 1120 and certain related forms, schedules, and attachments electronically. Certain corporations must electronically file Form 1120. However, these corporations can request a waiver. For more information regarding electronic filing, visit [www.irs.gov/efile](http://www.irs.gov/efile).

**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, Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information and Other Returns, 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.

**How to pay your taxes.** A corporation must pay its tax due in full no later than the 15th day of the 3rd month after the end of its tax year. The two methods of depositing taxes are discussed below.

**Electronic Federal Tax Payment System (EFTPS).** The corporation must use EFTPS in the current tax year to make deposits of all tax liabilities (including social security, Medicare, withheld income, excise, and corporate income taxes) if:

- The corporation paid more than \$200,000 in federal depository taxes in the second preceding tax year; or
- The corporation was required to make electronic deposits in the prior tax year.

For example, if the corporation made more than \$200,000 in federal depository taxes in 2004, or the corporation was required to use EFTPS in 2005, it would be required to use EFTPS in 2006.

Once a corporation is required to use EFTPS it must continue to do so in all subsequent tax years. If the corporation is required to use EFTPS because of the \$200,000 threshold it must continue to use EFTPS in later years even if subsequent deposits are less than the \$200,000. If the corporation fails to use EFTPS, it may be subject to a 10% penalty.

If the corporation is not required to use EFTPS, it may voluntarily make deposits using EFTPS. However, if the corporation is voluntarily using EFTPS it will not be subject to the 10% penalty if it makes deposits using a paper coupon.

For more information on EFTPS and enrollment, visit [www.eftps.gov](http://www.eftps.gov) or call 1-800-555-4477. Also see Publication 966, *The Secure Way to Pay Your Federal Taxes*.

**Deposits with Form 8109.** If the corporation does not use EFTPS, it must deposit its income tax payments with an authorized financial institution using Form 8109, Federal Tax Deposit Coupon. For more information on deposits, see the instructions in the coupon booklet (Form 8109) and Publication 583, *Starting a Business and Keeping Records*.

## Penalties

**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. A corporation that has a reasonable cause to file late must attach a statement to its tax return explaining the reasonable cause.

**Late payment of tax.** A corporation that does not pay the tax when due may be penalized  $\frac{1}{2}$  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 volunteer 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*.

### Other penalties.

Other penalties can be imposed for negligence, substantial understatement of tax, reportable transaction understatements, and fraud. See sections 6662, 6662A, and 6663 of the Internal Revenue Code.

## 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, Estimated Tax for Corporations, as a worksheet 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 determine 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. 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, Underpayment of Estimated Tax by Corporations, to determine if a corporation is subject to the penalty for underpayment of estimated tax and to figure 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 figuring its first required installment based on the prior year’s tax.

**How to pay estimated tax.** If the corporation is required to use EFTPS to pay its taxes, it must also use EFTPS to make its estimated tax deposits. If the corporation does not use EFTPS it should make its estimated tax deposits with an authorized financial institution using Form 8109.

**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, Corporation Application for Quick Refund of Overpayment of Estimated Tax, 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. Do not file Form 4466 before the end of the corporation’s tax year. 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.

## 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 section 1445 of the Internal Revenue Code; Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities; Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interest; and Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.

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## Accounting Methods

An accounting method is a set of rules used to determine when and how income and expenses are reported. Taxable income should be determined using the method of accounting regularly used in keeping the corporation's books and records. In all cases, the method used must clearly show taxable income.

Generally, permissible methods include:

- Cash,
- Accrual, or
- Any other method authorized by the Internal Revenue Code.

**Accrual method.** Generally, a corporation (other than a qualified personal service corporation) must use the accrual method of accounting if its average annual gross receipts exceed \$5 million. A corporation engaged in farming operations also must use the accrual method.

If inventories are required, the accrual method generally must be used for sales and purchases of merchandise. However, qualifying taxpayers and eligible businesses of qualifying small business taxpayers are excepted from using the accrual method for eligible trades or businesses and may account for inventoriable items as materials and supplies that are not incidental.

Under the accrual method, an amount is includable in income when:

1. All the events have occurred that fix the right to receive the income, which is the earliest of the date:
  - a. The required performance takes place,
  - b. Payment is due, or
  - c. Payment is received and
2. The amount can be determined with reasonable accuracy.

Generally, an accrual basis taxpayer can deduct accrued expenses in the tax year when:

- All events that determine the liability have occurred,
- The amount of the liability can be figured with reasonable accuracy, and
- Economic performance takes place with respect to the expense.

There are exceptions to the economic performance rule for certain items, including recurring expenses. See section 461(h) of the Internal Revenue Code and the related regulations for the rules for determining when economic performance takes place.

**Nonaccrual experience method.** Accrual method corporations are not required to maintain accruals for certain amounts from the performance of services that, on the basis of their experience, will not be collected, if:

- The services are in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting; or
- The corporation's average annual gross receipts for the 3 prior tax years does not exceed \$5 million.

This provision does not apply if interest is required to be paid on the amount or if there is any penalty for failure to pay the amount timely.

**Percentage of completion method.** Long-term contracts (except for certain real property construction contracts) must generally be accounted for using the percentage of completion method described in section 460 of the Internal Revenue Code.

**Mark-to-market accounting method.** Generally, dealers in securities must use the mark-to-market accounting method described in section 475 of the Internal Revenue Code. Under this method any security held by a dealer as inventory must be included in inventory at its FMV. Any security not held as inventory at the close of the tax year is treated as sold at its FMV on the last business day of the tax year. Any gain or loss must be taken into account in determining gross income. The gain or loss taken into account is treated as ordinary gain or loss.

Dealers in commodities and traders in securities and commodities can elect to use the mark-to-market accounting method.

**Change in accounting method.** A corporation can change its method of accounting used to report taxable income (for income as a whole or for the treatment of any material item). The corporation must file Form 3115, Application for Change in Accounting Method. For more information, see Form 3115 and Publication 538.

**Section 481(a) adjustment.** The corporation may have to make an adjustment under section 481(a) of the Internal Revenue Code to prevent amounts of income or expense from being duplicated or omitted. The section 481(a) adjustment period is generally 1 year for a net negative adjustment and 4 years for a net positive adjustment.

However, a corporation can elect to use a 1-year adjustment period if the net section 481(a) adjustment for the change is less than \$25,000. The corporation must complete the appropriate lines of Form 3115 to make the election.

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## Accounting Periods

A corporation must figure its taxable income on the basis of a tax year. A tax year is the annual accounting period a corporation uses to keep its records and report its income and expenses. Generally, corporations can use either a calendar year or a fiscal year as its tax year. A corporation must adopt a tax year by the due date (not including extensions) of its first income tax return.

**Personal service corporation.** A personal service corporation must use a calendar year as its tax year unless:

- It elects to use a 52–53 week tax year that ends with reference to the calendar year;
- It can establish a business purpose for a different tax year and obtains approval of the IRS. See Form 1128, Application To Adopt, Change, or Retain a Tax Year, and Publication 538; or
- It elects under section 444 of the Internal Revenue Code to have a tax year other than a calendar year. Use Form 8716, Election to Have a Tax Year Other Than a Required Tax Year, to make the election.

If a personal service corporation makes a section 444 election, its deduction for certain amounts paid to employee-owners may be limited. See Schedule H (Form 1120), Section 280H Limitations for a Personal Service Corporation (PSC), to figure the maximum deduction.

**Change of tax year.** Generally, a corporation must get the consent of the IRS before changing its tax year by filing Form 1128. However, under certain conditions, a corporation can change its tax year without getting the consent. For more information see Form 1128 and Publication 538.

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## Recordkeeping

A corporation should keep its records for as long as they may be needed for the administration of any provision of the Internal Revenue Code. Usually records that support items of income, deductions, or credits on the return must be kept for 3 years from the date the return is due or filed, whichever is later. Keep records that verify the corporation's basis in property for as long as they are needed to figure the basis of the original or replacement property.

The corporation should keep copies of all filed returns. They help in preparing future and amended returns.

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## Income, Deductions, and Special Provisions

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

### Costs of Going Into Business

When you go into business, treat all costs you incur to get your business started 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.

However, a corporation can elect to deduct a limited amount of start-up or organizational costs. Any cost not deducted can be amortized.

Start-up costs are costs for creating an active trade or business or investigating the creation or acquisition of an active trade or business. Organizational costs are the direct costs of creating the corporation.

For more information on deducting or amortizing start-up and organizational costs, see the Instructions for Forms 1120 and 1120-A and chapters 8 and 9 of Publication 535.

### 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, 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 corpora-

tion 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 earlier), 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 the individual's 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.

**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.

## Income From Qualifying Shipping Activities

A corporation may make an election to be taxed on its notional shipping income at the highest corporate tax rate. If a corporation makes this election it may exclude income from qualifying shipping activities from gross income. Also if the election is made, the corporation generally may not claim any loss, deduction, or credit with respect to qualifying shipping activities. A corporation making this election may also elect to defer gain on the disposition of a qualifying vessel.

A corporation uses Form 8902, Alternative Tax on Qualifying Shipping Activities, to make the election and figure

the alternative tax. For more information regarding the election, see Form 8902.

## Election to Expense Qualified Refinery Property

A corporation can make an irrevocable election on its tax return filed by the due date (including extensions) to deduct 50% of the cost of qualified refinery property (defined in section 179C(c) of the Internal Revenue Code), placed into service after August 8, 2005, and before January 1, 2012. The deduction is allowed the year the property is placed in service.

A subchapter T cooperative can make an irrevocable election on its return by the due date (including extensions) to allocate this deduction to its owners based on their ownership interest.

For more information see section 179C of the Internal Revenue Code.

## Deduction to Comply With EPA Sulfur Regulations

A small business refiner can make an irrevocable election on its tax return filed by the due date (including extensions) to deduct up to 75% of qualified costs paid or incurred to comply with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency (EPA).

A subchapter T cooperative can make an irrevocable election on its return filed by the due date (including extensions) to allocate the deduction to its owners based on their ownership interest.

For more information, see sections 45H and 179B of the Internal Revenue Code.

## Energy-Efficient Commercial Building Property Deduction

A corporation can claim a deduction for costs associated with energy-efficient commercial building property, placed in service after December 31, 2005, and before January 1, 2008. In order to qualify for the deduction:

- The costs must be associated with depreciable or amortizable property in a Standard 90.1-2001 domestic building;
- The property must be either a part of the interior lighting system, the heating, cooling, ventilation and hot water system, or the building envelope (defined in section 179D(c)(1)(C) of the Internal Revenue Code); and
- The property must be installed as part of a plan to reduce the total annual energy and power costs of the building by 50%.

The deduction is limited to \$1.80 per square foot of the building less the total amount of deductions taken for this property in prior tax years. The corporation must reduce

the basis of any property by any deduction taken. The deduction is subject to recapture if the corporation fails to fully implement an energy savings plan.

For more information see section 179D of the Internal Revenue Code.

## 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 limits, 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.

**Dividends from a controlled foreign corporation.** A corporation can make a one-time election to deduct 85% of the dividends received from a controlled foreign corporation. The corporation may make the election for either its last tax year that begins before October 22, 2004, or its first tax year that begins during the one-year period beginning on October 22, 2004. The corporation makes the election by completing and attaching Form 8895, One-Time Dividends Received Deduction for Certain Cash Dividends from Controlled Foreign Corporations, to its return by the due date (including extensions). This deduction only applies to dividends included in gross income. For more information on making this election and figuring the deduction, see Form 8895.

**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 91-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 181-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 360 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).

For exceptions, see Schedule C on Form 1120 and the Instructions for Forms 1120 and 1120-A.

**Figuring the limit.** In figuring the limit, determine taxable income without the following items.

1. The net operating loss deduction.
2. The domestic production activities deduction.
3. The deduction for dividends received.
4. Any adjustment due to the nontaxable part of an extraordinary dividend (see *Extraordinary Dividends*, below).
5. 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 (\$100,000 – \$25,000) before the deduction for dividends received. If it claims the full dividends-received deduction of \$80,000 (\$100,000 × 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 \$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 × 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 × 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 divi-

dends 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.

## Below-Market Loans

If a corporation receives a below-market loan and uses the proceeds for its trade or business, it may be able to deduct the forgone interest.

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 in an amount equal to the forgone interest.

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

**Foregone interest.** For any period, forgone interest is equal to:

1. The interest that would be payable for that period if interest accrued on the loan at the applicable federal rate and was payable annually on December 31, minus
2. Any interest actually payable on the loan for the period.

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

## 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, and Publication 78, Cumulative List of Organizations.

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

**Cash method corporation.** A corporation using the cash method of accounting deducts contributions in the tax year paid.

**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 by the 15th day of the 3rd month after the close of that tax year. Make the choice by reporting the contribution on the corporation's return for the tax year. A declaration stating that the board of directors adopted the resolution during the tax year must accompany the return. The declaration must include the date the resolution was adopted.

**Limitations on deduction.** 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.

1. The deduction for charitable contributions.
2. The dividends-received deduction (for example line 29b of the 2006 Form 1120).
3. The deduction allowed under section 249 of the Internal Revenue Code.
4. The domestic production activities deduction.
5. Any net operating loss carryback to the tax year.
6. Any capital loss carryback to the tax year.

**Carryover of excess contributions.** You can carry over, within certain limits, to each of the subsequent 5 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 2005 and it does not use all the excess on its return for 2006, it can carry the rest over to 2007, 2008, 2009, and 2010. 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.

**Substantiation requirements.** Generally, no deduction is allowed for any contribution of \$250 or more unless the corporation gets a written acknowledgement from the donee organization. The acknowledgement should show the amount of cash contributed, a description of the prop-

erty contributed, and either gives a description and a good faith estimate of the value of any goods or services provided in return for the contribution or states that no goods or services were provided in return for the contribution. The acknowledgement should be received by the due date (including extensions) of the return, or, if earlier, the date the return was filed. Keep the acknowledgement with other corporate records. Do not attach the acknowledgement to the return.

**Contributions of property other than cash.** If a corporation (other than a closely-held or a personal service corporation) claims a deduction of more than \$500 for contributions of property other than cash, a schedule describing the property and the method used to determine its fair market value must be attached to the corporation's return. In addition the corporation should keep a record of:

- The approximate date and manner of acquisition of the donated property and
- The cost or other basis of the donated property held by the donor for less than 12 months prior to contribution.

Closely held and personal service corporations must complete and attach Form 8283, Noncash Charitable Contributions, to their returns if they claim a deduction of more than \$500 for non-cash contributions. For all other corporations, if the deduction claimed for donated property exceeds \$5,000, complete Form 8283 and attach it to the corporation's return.

A corporation must obtain a qualified appraisal for all deductions of property claimed in excess of \$5,000. A qualified appraisal is not required for the donation of cash, publicly traded securities, inventory, and any qualified vehicles sold by a donee organization without any significant intervening use or material improvement. The appraisal should be maintained with other corporate records and only attached to the corporation's return when the deduction claimed exceeds \$500,000; \$20,000 for donated art work.

See Form 8283 for more information.

**Qualified conservation contributions.** If a corporation makes a qualified conservation contribution, the corporation must provide information regarding the legal interest being donated, the fair market value of the underlying property before and after the donation, and a description of the conservation purpose for which the property will be used. For more information, see section 170(h) of the Internal Revenue Code.

**Contributions of used vehicles.** A corporation is allowed a deduction for the contribution of used motor vehicles, boats, and airplanes. The deduction is limited to the gross proceeds from the sale of the vehicle, if it is sold without any intervening use or material improvement by the donee organization. An acknowledgement from the donee organization for deductions claimed in excess of \$500 must be attached to the corporation's return. The acknowledgement must include the vehicle identification number or similar number, gross proceeds from the sale of the vehicle, and a statement that the deductible amount

cannot exceed the gross proceeds from the sale. For more information, see Publication 526.

**Reduction for contributions of certain property.** For a charitable contribution of property, the corporation must reduce the contribution by the sum of:

- The ordinary income and short-term capital gain that would have resulted if the property were sold at its FMV and
- For certain contributions, the long-term capital gain that would have resulted if the property were sold at its FMV.

The reduction for the long-term capital gain applies to:

- Contributions of tangible personal property for use by an exempt organization for a purpose or function unrelated to the basis for its exemption;
- Contributions of any property to or for the use of certain private foundations except for stock for which market quotations are readily available; and
- Contributions of any patent, certain copyrights, trademark, trade name, trade secret, know-how, software (that is a section 197 intangible), or similar property, or applications or registrations of such property.

**Larger deduction.** A corporation (other than an S corporation) may be able to claim a deduction equal to the lesser of (a) the basis of the donated inventory or property plus one-half of the inventory or property's appreciation (gain if the donated inventory or property was sold at fair market value on the date of the donation), or (b) two times basis of the donated inventory or property. This deduction may be allowed for certain contributions of:

- Inventory and other property made to a donee organization and used solely for the care of the ill, the needy, and infants.
- Scientific property constructed by the corporation (other than an S corporation, personal holding company, or personal service corporation) and donated no later than 2 years after substantial completion of the construction. The property must be donated to a qualified organization and its original use must be by the donee for research, experimentation, or research training within the United States in the area of physical or biological science.
- Computer technology and equipment acquired or constructed and donated no later than 3 years after either acquisition or substantial completion of construction to an educational organization for educational purposes within the United States.

**Contributions to the Hurricane Katrina, Rita, or Wilma relief effort.** Special provisions apply for charitable contributions made for the Hurricane Katrina, Rita, or Wilma relief effort. See Publication 4492, Information for Taxpay-

ers Affected by Hurricanes Katrina, Rita, and Wilma, and Publication 526.

**Contributions to organizations conducting lobbying activities.** Contributions made to an organization that conducts lobbying activities are not deductible if:

- The lobbying activities relate to matters of direct financial interest to the donor's trade or business and
- The principal purpose of the contribution was to avoid federal income tax by obtaining a deduction for activities that would have been nondeductible under the lobbying expense rules if conducted directly by the donor.

**More information.** For more information on charitable contributions, including substantiation and recordkeeping requirements, see section 170 of the Internal Revenue Code, the related regulations, and Publication 526.

## 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 any net capital gains that occur in those years.

A capital loss is carried to other years in the following order.

1. 3 years prior to the loss year.
2. 2 years prior to the loss year.
3. 1 year prior to the loss year.
4. Any loss remaining is carried forward for 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.** 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. In year 1, 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 year 1 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 the tax you originally owed, use either Form 1139, Corporate Application for Tentative Refund, or Form 1120X, Amended U.S. Corporation Income Tax Return, to apply for a refund.

**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 capital loss year, but it must file Form 1139 no later than 1 year after the year it sustains the capital loss.

**Form 1120X.** If the corporation does not file Form 1139, it must file Form 1120X to apply for a refund. The corporation must file the Form 1120X within 3 years of the due date, including extensions, for filing the return for the year in which it sustains the capital loss.

## 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 2-year carryback and up to 20-year 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 over to the next year.
3. A corporation 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 cannot use the domestic production activities deduction to create or increase its current year NOL, including any carryback or carryover.
3. A corporation can take the deduction for dividends received, explained later, without regard to the aggregate limits (based on taxable income) that normally apply.
4. 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 has 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.

See *Dividends-Received Deduction* under *Income, Deductions, and Special Provisions*, earlier, for an example.

## Claiming the NOL Deduction

Generally, a corporation must carry an NOL back 2 years prior to the year the NOL is generated, if the NOL is not used in the prior 2 years the remaining NOL can be carried forward for up to 20 years after the tax year in which the NOL was generated.

A corporation can make an election to waive the 2 year carryback period and use only the 20 year carryforward period. To make the election attach a statement to the original return filed by the due date (including extensions) for the NOL year.

**NOL carryback.** The following rules apply.

- 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 1 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.
- A personal service corporation may not carryback an NOL to or from any tax year in which a section 444

election to have a tax year other than a required tax year applies.

- Certain electric utility companies may elect a 5 year carryback period for NOLs arising in tax years 2003, 2004, and 2005. The NOL carryback amount is limited to 20% of the total capital expenditures for electric transmission property and pollution control facilities. The election may be made during any tax year ending after December 31, 2005, and before January 1, 2009.
- A corporation can elect to treat a casualty loss arising in tax years ending after August 27, 2005, from the loss of public utility property used predominantly in a rate-regulated trade or business as a specified liability loss treated as a separate NOL subject to a 10 year carryback period. The loss must be the result of Hurricane Katrina. For more information see the Instructions for Form 1139.

**NOL carryforward.** If a corporation carries forward its NOL, it enters the carryover on Schedule K, Form 1120, line 12. It also enters the deduction for the carryover (but not more than 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 allowed or 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 through 384, and 269 of the Internal Revenue Code and the related regulations for more information about the limits on corporate NOL carryovers 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 and At-Risk Rules*.

## 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 corporations other than S corporations.

Corporations subject to the passive activity limitations must complete Form 8810, *Corporate Passive Activity Loss and Credit Limitations*. For more information on the passive activity limits, see the Instructions for Form 8810 and Publication 925.

## Figuring Tax

After you figure a corporation's taxable income, you figure its tax. This section discusses the tax rates, credits, recapture taxes, and alternative minimum tax.



*If the corporation elects to deduct the one-time dividends received deduction under section 965 of the Internal Revenue Code, see the Instructions for Form 8895 before figuring its tax.*

## Tax Rate Schedule

Most corporations figure their tax by using the following tax rate schedule. An exception to that rule applies to 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:		Of the amount	
Over—	But not over—	Tax is:	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 corporation 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*).
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).

## 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 enable some corporations with substantial economic income to significantly reduce their regular tax. The corporate alternative minimum tax (AMT) ensures that these corporations pay at least a minimum amount of tax on their economic income. A corporation (other than a small corporation exempt from the AMT) 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 current tax year if that year is the corporation's first tax year in existence (regardless of its gross receipts for the year) 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 during which the corporation was in existence) ending before its current tax year did not exceed \$7.5 million (\$5 million if the corporation had only 1 prior tax year).

**Form 4626.** Use Form 4626, *Alternative Minimum Tax – Corporations*, to figure the tentative minimum tax of a corporation that is not a small corporation for AMT purposes. For more information, see the Instructions for Form 4626.

## Credits

A corporation's tax liability is reduced by allowable credits. The following list includes some credits available to corporations.

- Credit for federal tax on fuels used for certain non-taxable 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.

A corporation's general business credit consists of its carryforward of business credits from prior years plus the total current year business credits. For a list of allowable business credits, see Form 3800.

- Nonconventional source fuel credit (see Form 8907).  
For tax years ending after December 31, 2005, the nonconventional source fuel credit is a general business credit included on Form 3800.
- Possessions corporation tax credit (see Form 5735).  
The Small Business Job Protection Act of 1996 repealed the possessions credit. However, existing credit claimants may qualify for a credit under the transitional rules for tax years ending before January 1, 2006. For guidance regarding continuation of business after December 31, 2005, see Notice 2005-21 in Internal Revenue Bulletin 2005-11.
- Qualified electric vehicle credit (see Form 8834).
- Qualified zone academy bond credit (see Form 8860).
- Clean renewable bond credit (see Form 8912).
- Gulf bond credit (see Form 8912).

## 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.

- Employer-provided childcare facilities and services credit (see the instructions for Form 8882).
- 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).
- New markets credit (see the instructions for Form 8874).
- Qualified electric vehicle credit (see the instructions for Form 8834).

## 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 15%. 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. See the applicable sections of the Internal Revenue Code.

- Distributions in redemption of stock — section 302.

- Distributions in complete liquidation of the corporation — sections 331 through 346.
- Distributions in corporate organizations — section 351. Also see *Property Exchanged for Stock*, earlier.
- Distributions in corporate reorganizations — section 351 through 368.
- Certain distributions to 20% corporate shareholders — section 301(e).

## 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, Deductions, and Special Provisions, 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 share-

holders 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, *Corporate Report of Nondividend Distributions*, 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 January 31 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 ( $\$4,000 \times 4 = \$16,000$ ). 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.
3. 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 January 31 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.

1. If the current year earnings and profits balance is negative, prorate the negative balance to the date of each distribution made during the year.
2. 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.
3. Treat each distribution as a distribution of these adjusted accumulated earnings and profits.
4. 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 \$10,000 current year 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.

1. 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.
2. 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 figuring 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 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 independently 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 toll free at 1-877-777-4778.
- Call, write, or fax the Taxpayer Advocate office in your area.
- Call 1-800-829-4059 if you are a TTY/TDD user.
- Visit the website at [www.irs.gov/advocate](http://www.irs.gov/advocate).

For more information, see Publication 1546, How To Get Help With Unresolved Tax Problems (now available in Chinese, Korean, Russian, and Vietnamese in addition to English and Spanish).

**Free tax services.** To find out what services are available, get Publication 910, IRS 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.



**Internet.** You can access the IRS website 24 hours a day, 7 days a week, at [www.irs.gov](http://www.irs.gov) to:

- **E-file.** Find out about commercial tax preparation and e-file services available for free to eligible taxpayers.
- Check the status of your refund. Click on *Where's My Refund*. Be sure to wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically). Have your tax return available because you will need to know your social security number, your filing status, and the exact whole dollar amount of your refund.
- Download forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Figure your withholding allowances using our Form W-4 calculator.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.



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

- **Ordering forms, instructions, and publications.** Call 1-800-829-3676 to order current-year forms, instructions, and publications and prior-year forms and instructions. You should receive your order within 10 days.
- **Asking tax questions.** Call the IRS with your tax questions at 1-800-829-1040.
- **Solving problems.** You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to [www.irs.gov/local-contacts](http://www.irs.gov/local-contacts) or look in the phone book under *United States Government, Internal Revenue Service*.

- **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.
- **Refund information.** If you would like to check the status of your refund, call 1-800-829-4477 and press 1 for automated refund information or call 1-800-829-1954. Be sure to wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically) and have your tax return available because you will need to know your social security number, your filing status, and the exact whole dollar amount of your refund.

**Evaluating the quality of our telephone services.** To ensure that IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to sometimes listen in on or record telephone calls. Another is to ask some callers to complete a short survey at the end of the call.



**Walk-in.** Many products and services are available on a walk-in basis.

- **Products.** 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 government offices, credit unions, and office supply stores have a 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.
- **Services.** You can walk in to your local Taxpayer Assistance Center every business day for face-to-face tax help. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you're more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary, but if you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. To find the number, go to [www.irs.gov/localcontacts](http://www.irs.gov/localcontacts) or look in the phone

book under *United States Government, Internal Revenue Service*.



**Mail.** You can send your order for forms, instructions, and publications to the address below and receive a response within 10 business days after your request is received.

National Distribution Center  
P.O. Box 8903  
Bloomington, IL 61702-8903



**CD-ROM for tax products.** You can order IRS Publication 1796, IRS Tax Products on CD-ROM, and obtain:

- A CD that is released twice so you have the latest products. The first release ships in late December and the final release ships in late February.
- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions (FAQs).
- Tax Topics from the IRS telephone response system.
- Fill-in, print and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.

Buy the CD-ROM from National Technical Information Service (NTIS) on the Internet at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) for \$25 (no handling fee) or call 1-877-233-6767 toll free to buy the CD-ROM for \$25 (plus a \$5 handling fee).



**CD-ROM for small businesses.** IRS Publication 3207, The Small Business Resource Guide CD-ROM, has a new look and enhanced navigation features. The CD includes:

- Helpful information, such as how to prepare a business plan, find financing for your business, and much more.
- All the business tax forms, instructions, and publications needed to successfully manage a business.
- Tax law changes for the current year.
- IRS Tax Map to help you find forms, instructions, and publications by searching on a keyword topic.
- Web links to various government agencies, business associations, and IRS organizations.
- "Rate the Product" survey — your opportunity to suggest changes for future editions.

An updated version of this CD is available each year in early April. You can get a free copy by calling 1-800-829-3676 or by visiting the website at [www.irs.gov/smallbiz](http://www.irs.gov/smallbiz).

## Other Useful Forms for Corporations

<b>Other Useful Forms</b>	
<b>Form</b>	<b>Use this form to—</b>
<b>W-2 and W-3</b> —Wage and Tax Statement; and Transmittal of Wage and Tax Statements	Report wages, tips, and other compensation, and withheld income, social security, and Medicare taxes for employees.
<b>W-2G</b> —Certain Gambling Winnings	Report gambling winnings from horse racing, dog racing, jai alai, lotteries, keno, bingo, slot machines, sweepstakes, wagering pools, etc.
<b>926</b> —Return by a U.S. Transferor of Property to a Foreign Corporation	Report certain transfers to foreign corporations under section 6038B.
<b>940 or 940-EZ</b> —Employer's Annual Federal Unemployment (FUTA) Tax Return	Report and pay FUTA tax if the corporation either: <ol style="list-style-type: none"> <li>1. Paid wages of \$1,500 or more in any calendar quarter during the calendar year (or the preceding calendar year), or</li> <li>2. Had one or more employees working for the corporation for at least some part of a day in any 20 different weeks during the calendar year (or the preceding calendar year).</li> </ol>
<b>952</b> —Consent To Extend the Time To Assess Tax Under Section 332(b)	Extend the period of assessment of all income taxes of the receiving corporation on the complete liquidation of a subsidiary under section 332.
<b>966</b> —Corporate Dissolution or Liquidation	Report the adoption of a resolution or plan to dissolve the corporation or liquidate any of its stock.
<b>1042 and 1042-S</b> —Annual Withholding Tax Return for U.S. Source Income of Foreign Persons; and Foreign Person's U.S. Source Income Subject to Withholding	Report withheld tax on payments or distributions made to nonresident alien individuals, foreign partnerships, or foreign corporations to the extent these payments or distributions constitute gross income from sources within the United States that is not effectively connected with a U.S. trade or business. See Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.
<b>1042-T</b> —Annual Summary and Transmittal of Forms 1042-S	Transmit paper Forms 1042-S to the IRS.
<b>1096</b> —Annual Summary and Transmittal of U.S. Information Returns	Transmit paper Forms 1099, 1098, 5498, and W-2G to the IRS.
<p><b>1099-A, B, C, CAP, DIV, INT, LTC, MISC, OID, PATR, R, S and, SA</b></p> <p><b>Important:</b> <i>Every corporation must file Forms 1099-MISC if, in the course of its trade or business, it makes payments of rents, commissions, or other fixed or determinable income (see section 6041) totaling \$600 or more to any one person during the calendar year.</i></p> <p>Also use these returns to report amounts received as a nominee for another person. For more details, see the General Instructions for Forms 1099, 1098, 5498, and W-2G.</p>	<p>Report the following:</p> <ul style="list-style-type: none"> <li>• Acquisitions or abandonments of secured property;</li> <li>• Proceeds from broker and barter exchange transactions;</li> <li>• Cancellation of debts;</li> <li>• Changes in corporate control and capital structure;</li> <li>• Dividends and distributions;</li> <li>• Interest payments;</li> <li>• Payments of long-term care and accelerated death benefits;</li> <li>• Miscellaneous income payments to certain fishing boat crew members, to providers of health and medical services, of rent or royalties, of nonemployee compensation, etc.;</li> <li>• Original issue discount;</li> <li>• Taxable distributions received from cooperatives;</li> <li>• Distributions from pensions, annuities, retirement or profit-sharing plans, IRAs, insurance contracts, etc.;</li> <li>• Proceeds from real estate transactions; and</li> <li>• Distributions from an HSA, Archer MSA, or Medicare Advantage MSA.</li> </ul>
<b>1122</b> —Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return	For the first year a subsidiary corporation is being included in a consolidated return, attach this form to the parent's consolidated return. Attach a separate Form 1122 for each subsidiary being included in the consolidated return.
<b>1138</b> —Extension of Time for Payment of Taxes by a Corporation Expecting a Net Loss Carryback	For a corporation expecting a net operating loss for the current year use Form 1138 to request an extension of time for payment of tax for the immediately preceding tax year.
<b>3520</b> —Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts	Report a distribution received from a foreign trust; or, if the corporation was the grantor of, transferor of, or transferor to, a foreign trust that existed during the tax year. See Question 5 of Schedule N (Form 1120).

<b>Other Useful Forms</b>	
<b>Form</b>	<b>Use this form to—</b>
<b>3520-A</b> —Annual Information Return of Foreign Trust With a U.S. Owner	Report information about the foreign trust, its U.S. beneficiaries, and any U.S. person who is treated as an owner of any portion of the foreign trust.
<b>4562</b> —Depreciation and Amortization	Use Form 4562 to claim a deduction for depreciation or amortization, to make the section 179 election to expense certain property, and to provide information on the business/investment use of cars and other listed property.
<b>5471</b> —Information Return of U.S. Persons With Respect to Certain Foreign Corporations	A corporation may have to file Form 5471 if it: <ul style="list-style-type: none"> <li>• Controls a foreign corporation; or</li> <li>• Acquires, disposes of, or owns 10% or more in value or vote of the outstanding stock of a foreign corporation; or</li> <li>• Owns stock in a corporation that is a controlled foreign corporation for an uninterrupted period of 30 days or more during any tax year of the foreign corporation, and it owned that stock on the last day of that year. See Question 4 of Schedule N (Form 1120).</li> </ul>
<b>5498</b> —IRA Contribution Information	Report contributions (including rollover contributions) to any IRA, including a SEP, SIMPLE, or Roth IRA, and to report Roth IRA conversions, IRA recharacterizations, and the fair market value (FMV) of the account.
<b>5498-ESA</b> —Coverdell ESA Contribution Information	Report contributions (including rollover contributions) to and the FMV of a Coverdell education savings account (ESA).
<b>5498-SA</b> —HSA, Archer MSA, or Medicare Advantage MSA Information	Report contributions to an HSA or Archer MSA and the FMV of an HSA, Archer MSA, or Medicare Advantage MSA. For more information, see the general and specific instructions for Forms 1099, 1098, 5498, and W-2G.
<b>5713</b> —International Boycott Report	Report operations in, or related to, a “boycotting” country, company, or national of a country and to figure the loss of certain tax benefits.
<b>8023</b> —Elections Under Section 338 for Corporations Making Qualified Stock Purchases	Make elections under section 338 for a “target” corporation if the purchasing corporation has made a qualified stock purchase of the target corporation.
<b>8027</b> —Employer’s Annual Information Return of Tip Income and Allocated Tips	Report receipts from large food or beverage operations, tips reported by employees, and allocated tips.
<b>8264</b> —Application for Registration of a Tax Shelter	Until further guidance is issued, material advisors who provide material aid, assistance, or advice with respect to any reportable transaction after October 22, 2004, must use Form 8264 to disclose reportable transactions in accordance with interim guidance provided in Notice 2004-80, 2004-50 I.R.B. 963; Notice 2005-17, 2005-8 I.R.B. 606; and Notice 2005-22, 2005-12 I.R.B. 756.
<b>8271</b> —Investor Reporting of Tax Shelter Registration Number	Report the registration number for a tax shelter that is required to be registered. Attach Form 8271 to any tax return (including Forms 1139 and 1120X) on which a deduction, credit, loss, or other tax benefit attributable to a tax shelter is taken or any income attributable to a tax shelter is reported.
<b>8275</b> —Disclosure Statement	Disclose items or positions, except those contrary to a regulation, that are not otherwise adequately disclosed on a tax return. The disclosure is made to avoid the parts of the accuracy-related penalty imposed for disregard of rules or substantial understatement of tax. Also use Form 8275 for disclosures relating to preparer penalties for understatements due to unrealistic positions or disregard of rules.
<b>8275-R</b> —Regulation Disclosure Statement	Disclose any item on a tax return for which a position has been taken that is contrary to Treasury regulations.
<b>8281</b> —Information Return for Publicly Offered Original Issue Discount Instruments	Report the issuance of public offerings of debt instruments (obligations).
<b>8300</b> —Report of Cash Payments Over \$10,000 Received in a Trade or Business	Report the receipt of more than \$10,000 in cash or foreign currency in one transaction or a series of related transactions.
<b>8594</b> —Asset Acquisition Statement Under Section 1060	Report a sale of assets that make up a trade or business if goodwill or going concern value attaches, or could attach, to such assets and if the buyer’s basis is determined only by the amount paid for the assets. Both the seller and buyer must use this form.
<b>8806</b> —Information Return for Acquisition of Control or Substantial Change in Capital Structure	Report an acquisition of control or a substantial change in the capital structure of a domestic corporation.

<b>Other Useful Forms</b>	
<b>Form</b>	<b>Use this form to—</b>
<b>8817</b> — Allocation of Patronage and Nonpatronage Income and Deductions	Figure and report patronage and nonpatronage income and deductions (used by taxable cooperatives).
<b>8842</b> — Election To Use Different Annualization Periods for Corporate Estimated Tax	Elect one of the annualization periods in section 6655(e)(2) for figuring estimated tax payments under the annualized income installment method.
<b>8849</b> — Claim for Refund of Excise Taxes	Claim a refund of certain excise taxes.
<b>8858</b> — Information Return of U.S. Persons With Respect To Foreign Disregarded Entities	This form is required if the corporation directly or indirectly owns a foreign disregarded entity. See Question 1 of Schedule N (Form 1120).
<b>8865</b> — Return of U.S. Person With Respect To Certain Foreign Partnerships	<p>Report an interest in a foreign partnership. A domestic corporation may have to file Form 8865 if it:</p> <ol style="list-style-type: none"> <li>1. Controlled a foreign partnership (owned more than a 50% direct or indirect interest in the partnership).</li> <li>2. Owned at least a 10% direct or indirect interest in a foreign partnership while U.S. persons controlled that partnership.</li> <li>3. Had an acquisition, disposition, or change in proportional interest of a foreign partnership that: <ol style="list-style-type: none"> <li>a. Increased its direct interest to at least 10% or reduced its direct interest of at least 10% to less than 10% or</li> <li>b. Changed its direct interest by at least a 10% interest.</li> </ol> </li> <li>4. Contributed property to a foreign partnership in exchange for a partnership interest if: <ol style="list-style-type: none"> <li>a. Immediately after the contribution, the corporation directly or indirectly owned at least a 10% interest in the foreign partnership or</li> <li>b. The FMV of the property the corporation contributed to the foreign partnership in exchange for a partnership interest exceeds \$100,000 when added to other contributions of property made to the foreign partnership during the preceding 12-month period.</li> </ol> </li> </ol> <p>The domestic corporation may also have to file Form 8865 to report certain dispositions by a foreign partnership of property it previously contributed to that partnership if it was a partner at the time of the disposition. For more details, including penalties for failing to file Form 8865, see Form 8865 and its separate instructions.</p>
<b>8873</b> — Extraterritorial Income Exclusion	To figure the amount of extraterritorial income excluded from gross income for the tax year.
<b>8876</b> — Excise Tax on Structured Settlement Factoring Transactions	Report and pay the 40% excise tax imposed under section 5891.
<b>8883</b> — Asset Allocation Statement Under Section 338	Report information about transactions involving the deemed sale of corporate assets under section 338.
<b>8886</b> — Reportable Transaction Disclosure Statement	Disclose information for each reportable transaction in which the corporation participated. Attach Form 8886 to the corporation's income tax return for each tax year in which it participated in a reportable transaction. The corporation may have to pay a penalty if it is required to file Form 8886 and does not do so. Other penalties may also apply. For more details, see the Instructions for Form 8886.
<b>8903</b> — Domestic Production Activities Deduction	To calculate and report the domestic production activities deduction.

**Index**

To help us develop a more useful index, please let us know if you have ideas for index entries. See "Comments and Suggestions" in the "Introduction" for the ways you can reach us.

<b>8907</b> .....	18	Reporting .....	20	<b>Gulf bond credit</b> .....	18
<hr/>					
<b>A</b>		Stock or stock rights .....	19	<b>H</b>	
<b>Accounting methods</b> .....	8	To shareholders .....	18	<b>Help</b> (See Tax help)	
Accrual method .....	8	<hr/>			
Mark-to-market accounting method .....	8	<b>Dividends-received deduction</b> .....	11, 15	<b>I</b>	
Nonaccrual experience method .....	8	<hr/>			
Percentage of completion method .....	8	<b>E</b>		<b>Income tax returns</b> .....	
<b>Accounting periods</b> .....	9	<b>EFTPS, Electronic Federal Tax Payment System</b> .....	6	<hr/>	
<b>Accumulated earnings tax</b> .....	18	<b>Electronic filing</b> .....	5	<b>L</b>	
<b>Alternative minimum tax (AMT)</b> .....	17	<b>Energy-efficient commercial building property deduction</b> .....	10	<b>Loans, below-market</b> .....	
<b>Assistance</b> (See Tax help)		<b>Estimated tax</b> .....	6	<hr/>	
<b>At-risk limits</b> .....	16	<b>Extraordinary dividends</b> .....	12	<b>M</b>	
<hr/>					
<b>B</b>		<hr/>			
<b>Backup withholding</b> .....	20	<b>F</b>		<b>Minimum tax credit</b> .....	
<b>Below-market loans</b> .....	12	<b>Federal tax on fuels, credit</b> .....	18	<b>More information</b> (See Tax help)	
<hr/>					
<b>C</b>		<b>Figuring:</b>		<hr/>	
<b>Capital contributions</b> .....	5	NOL carryovers .....	16	<b>N</b>	
<b>Capital losses</b> .....	14	NOLs .....	15	<b>Net operating losses</b> .....	
<b>Charitable contributions</b> .....	13	Tax .....	17	<b>Nonconventional source fuel credit</b> .....	
<b>Clean renewable bond credit</b> .....	18	<b>Foreign tax credit</b> .....	18	<b>Nontaxable exchange of property for stock</b> .....	
<b>Closely held corporation:</b>		<b>Form:</b>		<hr/>	
At-risk limits .....	16	1096 .....	20	<b>O</b>	
<b>Closely held corporations:</b>		1099-DIV .....	20	<b>Other useful forms</b> .....	
<b>Comments</b> .....	2	1118 .....	18	<hr/>	
<b>Corporate preference items</b> .....	11	1120 .....	5	<b>P</b>	
<b>Corporations, businesses taxed as</b> .....	2	1120-A .....	5	<b>Paid-in capital</b> .....	
<b>Credits:</b>		1120-W .....	7	<b>Passive activity limits</b> .....	
Clean renewable bond .....	18	1120X .....	15	<b>Paying estimated tax</b> .....	
Federal tax on fuels .....	18	1138 .....	16	<b>Penalties:</b>	
Foreign tax .....	18	1139 .....	15	Estimated tax .....	
Gulf bond .....	18	2220 .....	7	Late filing of return .....	
Nonconventional source fuel credit .....	18	4255 .....	18	Late payment of tax .....	
Possessions corporation tax .....	18	4626 .....	17	Trust fund recovery .....	
Prior year minimum tax .....	18	5452 .....	20	<b>Personal service corporation:</b>	
Qualified electric vehicle .....	18	5735 .....	18	Figuring tax .....	
Qualified zone academy bond .....	18	7004 .....	6	<b>Personal service corporations:</b>	
<hr/>					
<b>D</b>		8109 .....	6	<b>Possessions corporation tax credit</b> .....	
<b>Distributions:</b>		8611 .....	18	<b>Preference items</b> .....	
Money or property .....	19	8827 .....	18	<b>Publications</b> (See Tax help)	
Other .....	19	8832 .....	2	<hr/>	
<hr/>					
<b>E</b>		8834 .....	18	<b>Q</b>	
<b>Going into business</b> .....	9	8845 .....	18	<b>Qualified electric vehicle credit</b> .....	
<hr/>					
<b>G</b>		8860 .....	18	<b>Qualified refinery property, election to expense</b> .....	
<b>Going into business</b> .....	9	8874 .....	18	<b>Qualified zone academy bond credit</b> .....	
<hr/>					
<b>H</b>		8882 .....	18	<b>Qualifying shipping activities, income from</b> .....	
<b>Help</b> (See Tax help)		8912 .....	18	<hr/>	
<hr/>					
<b>I</b>		<b>Forms:</b>		<hr/>	
<b>Income tax returns</b> .....	5	8912 .....	18	<hr/>	
<hr/>					
<b>L</b>		<b>Free tax services</b> .....	22	<hr/>	
<b>Loans, below-market</b> .....	12	<hr/>			
<hr/>					
<b>M</b>		<hr/>			
<b>Minimum tax credit</b> .....	18	<hr/>			
<b>More information</b> (See Tax help)		<hr/>			
<hr/>					
<b>N</b>		<hr/>			
<b>Net operating losses</b> .....	15	<hr/>			
<b>Nonconventional source fuel credit</b> .....	18	<hr/>			
<b>Nontaxable exchange of property for stock</b> .....	3	<hr/>			
<hr/>					
<b>O</b>		<hr/>			
<b>Other useful forms</b> .....	24, 25, 26	<hr/>			
<hr/>					
<b>P</b>		<hr/>			
<b>Paid-in capital</b> .....	5	<hr/>			
<b>Passive activity limits</b> .....	17	<hr/>			
<b>Paying estimated tax</b> .....	7	<hr/>			
<b>Penalties:</b>		<hr/>			
Estimated tax .....	7	<hr/>			
Late filing of return .....	6	<hr/>			
Late payment of tax .....	6	<hr/>			
Trust fund recovery .....	6	<hr/>			
<b>Personal service corporation:</b>		<hr/>			
Figuring tax .....	17	<hr/>			
<b>Personal service corporations:</b>		<hr/>			
<b>Possessions corporation tax credit</b> .....	18	<hr/>			
<b>Preference items</b> .....	11	<hr/>			
<b>Publications</b> (See Tax help)		<hr/>			
<hr/>					
<b>Q</b>		<hr/>			
<b>Qualified electric vehicle credit</b> .....	18	<hr/>			
<b>Qualified refinery property, election to expense</b> .....	10	<hr/>			
<b>Qualified zone academy bond credit</b> .....	18	<hr/>			
<b>Qualifying shipping activities, income from</b> .....	10	<hr/>			

---

---

<b>R</b>			
<b>Recapture taxes:</b>			
Employer-provided childcare facilities and services .....	18	<b>Recordkeeping</b> .....	9
Indian employment credit .....	18	<b>Related persons</b> .....	9
Investment credit .....	18	<b>Retained earnings</b> .....	18
Low-income housing credit .....	18		
New markets credit .....	18	<b>S</b>	
Qualified electric vehicle credit .....	18	<b>Suggestions</b> .....	2
		<b>T</b>	
		<b>Tax help</b> .....	22
		<b>Tax rate schedule</b> .....	17
		<b>Tax, figuring</b> .....	17
		<b>Taxpayer Advocate</b> .....	22
		<b>TTY/TDD information</b> .....	22

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