

## Public Law 89-389

## AN ACT

To amend subchapter S of chapter 1 of the Internal Revenue Code of 1954, and for other purposes.

April 14, 1966  
[H. R. 9883]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) (1) section 1375 of the Internal Revenue Code of 1954 (relating to special rules applicable to distributions of electing small business corporations) is amended by adding at the end thereof the following new subsection:

Taxes.  
Small business  
corporations, spe-  
cial options.  
72 Stat. 1654.

“(f) DISTRIBUTIONS WITHIN 2½-MONTH PERIOD AFTER CLOSE OF TAXABLE YEAR.—

“(1) DISTRIBUTIONS CONSIDERED AS DISTRIBUTIONS OF UNDIS-  
TRIBUTED TAXABLE INCOME.—Any distribution of money made by  
a corporation after the close of a taxable year with respect to  
which it was an electing small business corporation and on or  
before the 15th day of the third month following the close of such  
taxable year to a person who was a shareholder of such corpora-  
tion at the close of such taxable year shall be treated as a distribu-  
tion of the corporation's undistributed taxable income for such  
year, to the extent such distribution (when added to the sum of  
all prior distributions of money made to such person by such  
corporation following the close of such year) does not exceed such  
person's share of the corporation's undistributed taxable income  
for such year. Any distribution so treated shall, for purposes of  
this chapter, be considered a distribution which is not a dividend,  
and the earnings and profits of the corporation shall not be  
reduced by reason of such distribution.

“(2) SHARE OF UNDIS-  
TRIBUTED TAXABLE INCOME.—For purposes  
of paragraph (1), a person's share of a corporation's undistrib-  
uted taxable income for a taxable year is the amount required to be  
included in his gross income under section 1373(b) as a share-  
holder of such corporation for his taxable year in which or with  
which the taxable year of the corporation ends.

“(3) ELECTION UNDER SUBSECTION (e).—Paragraph (1) shall  
not apply to any distribution with respect to which an election  
under subsection (e) applies.”

(2) Subsection (e) of section 1375 of the Internal Revenue Code of  
1954 is repealed effective with respect to distributions made after the  
close of any taxable year of the corporation beginning after the date  
of the enactment of this Act.

Repeal.  
78 Stat. 112.

(b) Section 1375(d) (2) (B) (ii) of such Code is amended by striking  
out “under paragraph (1)” and inserting in lieu thereof “under sub-  
section (f) or paragraph (1) of this subsection”.

72 Stat. 1655.

(c) Except as provided by subsection (d), the amendments made by  
subsections (a) (1) and (b) shall apply only with respect to distribu-  
tions made after the date of the enactment of this Act.

(d) (1) The amendments made by subsections (a) (1) and (b) shall  
also apply with respect to distributions of money (other than distribu-  
tions with respect to which an election under section 1375(e) of the  
Internal Revenue Code of 1954 applies) made by a corporation on or  
before the date of the enactment of this Act and on or after the date  
of the first distribution of money during the taxable year designated  
by the corporation if—

(A) such corporation elects to have such amendments apply  
to all such distributions made by it, and

(B) except as otherwise provided by this subsection, all per-  
sons (or their personal representatives) who were shareholders

of such corporation at any time on or after the date of such first distribution and before the date on which the corporation files the election with the Secretary of the Treasury or his delegate consent to such election and to the application of this subsection.

Regulations.  
Publication in  
Federal Register.

(2) An election by a corporation under this subsection, and the consent thereto of the persons who are or were shareholders of such corporation, shall be made in such manner and within such time as the Secretary of the Treasury or his delegate prescribes by regulations, but the period for making such election shall not expire before one year after the date on which the regulations prescribed under this subsection are published in the Federal Register.

(3) In applying paragraphs (1) and (2), the consent of a person (or his personal representative) shall not be required if, under regulations prescribed under this subsection, it is shown to the satisfaction of the Secretary of the Treasury or his delegate that the liability of such person for Federal income tax for any taxable year cannot be affected by the election of the corporation of which he is or was a shareholder.

Ante, p. 111.

(4) In applying this subsection, the reference in section 1375(f) of the Internal Revenue Code of 1954 (as added by subsection (a) (1)) to the 15th day of the third month following the close of the taxable year shall be treated as referring to the 15th day of the fourth month following the close of the taxable year.

(5) The statutory period for the assessment of any deficiency for any taxable year against the corporation filing the election or any person consenting thereto, to the extent such deficiency is attributable to an election under this subsection, shall not expire before the last day of the 2-year period beginning on the date on which the regulations prescribed under this subsection are published in the Federal Register; and such deficiency may be assessed at any time before the expiration of such 2-year period, notwithstanding any law or rule of law which would otherwise prevent such assessment.

(6) If—

(A) credit or refund of the amount of any overpayment for any taxable year attributable to an election under this subsection is not prevented, on the date of the enactment of this Act, by the operation of any law or rule of law, and

(B) credit or refund of the amount of such overpayment is prevented, by the operation of any law or rule of law (other than chapter 74 of the Internal Revenue Code of 1954, relating to closing agreements and compromises), at any time on or before the expiration of the 2-year period beginning on the date on which the regulations prescribed under this subsection are published in the Federal Register,

credit or refund of such overpayment may, nevertheless, be allowed or made, to the extent such overpayment is attributable to such election, if claim therefor is filed before the expiration of such 2-year period.

(7) If—

(A) (i) one or more consecutive distributions of money made by the corporation after the close of a taxable year and on or before the 15th day of the fourth month following the close of the taxable year were substantially the same in amount as the undistributed taxable income of such corporation for such year, or

(ii) it is established to the satisfaction of the Secretary of the Treasury or his delegate that one or more distributions of money made by the corporation during the period described in clause (i) were intended to be distributions of the undistributed taxable income of such corporation for the taxable year preceding such period, and

(B) credit or refund of the amount of any overpayment for the taxable year in which such distribution or distributions were received is prevented on the date of the enactment of this Act, by the operation of any law or rule of law (other than chapter 74 of the Internal Revenue Code of 1954, relating to closing agreements and compromises),

26 USC 7121-7123.

credit or refund of such overpayment may, nevertheless, be allowed or made, to the extent such overpayment is attributable to an election under this subsection, if claim therefor is filed before the expiration of the 2-year period beginning on the date on which the regulations prescribed under this subsection are published in the Federal Register.

(8) No interest on any deficiency attributable to an election under this subsection shall be assessed or collected for any period before the expiration of the 2-year period beginning on the date on which the regulations prescribed under this subsection are published in the Federal Register. No interest on any overpayment attributable to an election under this subsection shall be allowed or paid for any period before the expiration of such 2-year period.

SEC. 2. (a) Subchapter S of chapter 1 of the Internal Revenue Code of 1954 (relating to election by certain small business corporations as to taxable status) is amended by adding at the end thereof the following new section:

72 Stat. 1650.

**“SEC. 1378. TAX IMPOSED ON CERTAIN CAPITAL GAINS.**

“(a) **GENERAL RULE.**—If for a taxable year of an electing small business corporation—

“(1) the excess of the net long-term capital gain over the net short-term capital loss of such corporation exceeds \$25,000, and exceeds 50 percent of its taxable income for such year, and

“(2) the taxable income of such corporation for such year exceeds \$25,000,

there is hereby imposed a tax (computed under subsection (b)) on the income of such corporation.

“(b) **AMOUNT OF TAX.**—The tax imposed by subsection (a) shall be the lower of—

“(1) an amount equal to 25 percent of the amount by which the excess of the net long-term capital gain over the net short-term capital loss of the corporation for the taxable year exceeds \$25,000, or

“(2) an amount equal to the tax which would be imposed by section 11 on the taxable income (computed as provided in section 1373(d)) of the corporation for the taxable year if the corporation was not an electing small business corporation.

No credit shall be allowable under part IV of subchapter A of this chapter (other than under section 39) against the tax imposed by subsection (a).

26 USC 31-40.

79 Stat. 167.

“(c) **EXCEPTIONS.**—

“(1) **IN GENERAL.**—Subsection (a) shall not apply to an electing small business corporation for any taxable year if the election under section 1372(a) which is in effect with respect to such corporation for such taxable year has been in effect for the 3 immediately preceding taxable years.

“(2) **NEW CORPORATIONS.**—Subsection (a) shall not apply to an electing small business corporation if—

Nonapplicability provisions.

“(A) it has been in existence for less than 4 taxable years, and

“(B) an election under section 1372(a) has been in effect with respect to such corporation for each of its taxable years.

“(3) PROPERTY WITH SUBSTITUTED BASIS.—If—

“(A) but for paragraph (1) or (2), subsection (a) would apply for the taxable year,

“(B) any long-term capital gain is attributable to property acquired by the electing small business corporation during the period beginning 3 years before the first day of the taxable year and ending on the last day of the taxable year, and

“(C) the basis of such property is determined in whole or in part by reference to the basis of any property in the hands of another corporation which was not an electing small business corporation throughout all of the period described in subparagraph (B) before the transfer by such other corporation and during which such other corporation was in existence,

then subsection (a) shall apply for the taxable year, but the amount of the tax determined under subsection (b) shall not exceed 25 percent of the excess of the net long-term capital gain over the net short-term capital loss attributable to property acquired as provided in subparagraph (B) and having a basis described in subparagraph (C).”

72 Stat. 1650.

(b)(1) The table of sections for subchapter S of chapter 1 of such Code is amended by adding at the end thereof the following new item:

“Sec. 1378. Tax imposed on certain capital gains.”

Ante, p. 113.

(2) Section 1372(b)(1) of such Code (relating to effect of election by small business corporation) is amended by inserting “(other than the tax imposed by section 1378)” after “this chapter”.

(3) Section 1373(c) of such Code (relating to definition of undistributed taxable income) is amended by inserting “the sum of (1) the tax imposed by section 1378(a) and (2)” after “minus”.

(4) Section 1375(a) of such Code (relating to treatment of capital gains in the hands of shareholders) is amended by adding at the end thereof the following new paragraph:

“(3) REDUCTION FOR TAX IMPOSED BY SECTION 1378.—For purposes of paragraphs (1) and (2), the excess of an electing small business corporation’s net long-term capital gain over its net short-term capital loss for a taxable year shall be reduced by an amount equal to the amount of the tax imposed by section 1378(a) on the income of such corporation for such year.”

76 Stat. 963;  
78 Stat. 32.

(5) Section 46(a)(3) of such Code (relating to liability for tax for purposes of the credit for investment in certain depreciable property) is amended by striking out “or by section 541 (relating to personal holding company tax)” and inserting in lieu thereof “, section 541 (relating to personal holding company tax), or section 1378 (relating to tax on certain capital gains of subchapter S corporations)”.

68A Stat. 182;  
78 Stat. 79.

Applicability.

(c) The amendments made by this section shall apply with respect to taxable years of electing small business corporations beginning after the date of the enactment of this Act, but such amendments shall not apply with respect to sales or exchanges occurring before February 24, 1966.

SEC. 3. (a) Section 1372(e)(5) of the Internal Revenue Code of 1954 (relating to termination of election by small business corporations) is amended to read as follows:

“(5) PASSIVE INVESTMENT INCOME.—

“(A) Except as provided in subparagraph (B), an election under subsection (a) made by a small business corporation shall terminate if, for any taxable year of the corporation for which the election is in effect, such corporation has gross



receipts more than 20 percent of which is passive investment income. Such termination shall be effective for the taxable year of the corporation in which it has gross receipts of such amount, and for all succeeding taxable years of the corporation.

“(B) Subparagraph (A) shall not apply with respect to a taxable year in which a small business corporation has gross receipts more than 20 percent of which is passive investment income, if—

Nonapplicability provisions.

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

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

“(C) For purposes of this paragraph, the term ‘passive investment income’ means gross receipts derived from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities (gross receipts from such sales or exchanges being taken into account for purposes of this paragraph only to the extent of gains therefrom).”

“Passive investment income.

(b) The amendment made by subsection (a) shall apply to taxable years of electing small business corporations ending after the date of the enactment of this Act. Such amendment shall also apply with respect to taxable years beginning after December 31, 1962, and ending on or before such date of enactment, if (at such time and in such manner as the Secretary of the Treasury or his delegate prescribes by regulations)—

Applicability provisions.

(1) the corporation elects to have such amendment so apply, and

(2) all persons (or their personal representatives) who were shareholders of such corporation at any time during any taxable year beginning after December 31, 1962, and ending on or before the date of the enactment of this Act consent to such election and to the application of the amendment made by subsection (a).

SEC. 4. (a) Section 1361 of the Internal Revenue Code of 1954 (relating to unincorporated business enterprises electing to be taxed as domestic corporations) is amended—

68A Stat. 350.

(1) by adding at the end of subsection (a) the following new sentence: “No election (other than an election referred to in subsection (f)) may be made under this subsection after the date of the enactment of this sentence.”;

(2) by striking out in subsection (c) “, except as provided in subsection (m).”;

(3) by striking out “subsection (f)” in subsection (e) and inserting in lieu thereof “subsections (f) and (n).”;

(4) by striking out subsection (m); and

(5) by adding at the end of such section the following new subsection:

“(n) REVOCATION AND TERMINATION OF ELECTIONS.—

“(1) REVOCATION.—An election under subsection (a) with respect to an unincorporated business enterprise may be revoked after the date of the enactment of this subsection by the proprietor of such enterprise or by all the partners owning an interest in such enterprise on the date on which the revocation is made. Such enterprise shall not be considered a domestic corporation for any period on or after the effective date of such revocation. A revocation under this paragraph shall be made in such manner as the Secretary or his delegate may prescribe by regulations.

“(2) **TERMINATION.**—If a revocation under paragraph (1) of an election under subsection (a) with respect to any unincorporated business enterprise is not effective on or before December 31, 1968, such election shall terminate on January 1, 1969, and such enterprise shall not be considered a domestic corporation for any period on or after January 1, 1969.”

Effective date.

(b) Effective on January 1, 1969—

(1) subchapter R of chapter 1 of such Code (relating to election of certain partnerships and proprietorships as to taxable status) is repealed;

68A Stat. 4.

(2) the table of subchapters for chapter 1 of such Code is amended by striking out the item relating to subchapter R; and

(3) section 1504(b) of such Code (relating to definition of includible corporation) is amended by striking out paragraph (7).

Applicability.

(c) The amendments made by subsections (a) (2) and (4) shall apply with respect to transactions occurring after the date of the enactment of this Act.

Approved April 14, 1966.

### Public Law 89-390

#### AN ACT

April 14, 1966  
[S. 2642]

To authorize the release of platinum from the national stockpile, and for other purposes.

Platinum.  
Disposal.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Administrator of General Services is hereby authorized to dispose of, by negotiation or otherwise, approximately three hundred sixteen thousand three hundred ounces of platinum from the national stockpile established pursuant to the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98-98h). Such disposition may be made without regard to the provisions of section 3 of the Strategic and Critical Materials Stock Piling Act: *Provided,* That the time and method of disposition shall be fixed with due regard to the protection of the United States against avoidable loss and the protection of producers, processors, and consumers against avoidable disruption of their usual markets.

60 Stat. 596.

**SEC. 2.** The platinum covered by this Act, materials in the inventory maintained under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061-2166), and materials in the national stockpile and the supplemental stockpile (7 U.S.C. 1704(b)) the disposition of which has been or may hereafter be authorized pursuant to law, shall be available, without reimbursement, for transfer at fair market value in payment of the purchase price and other expenses of acquisition (including transportation and other accessorial expenses) of palladium for the national stockpile. No acquisition of palladium shall be made pursuant to the authority of this section if, as a result of such acquisition, the aggregate quantity of palladium in the national stockpile and the supplemental stockpile would exceed the palladium stockpile objective established pursuant to the Strategic and Critical Materials Stock Piling Act.

64 Stat. 798.

73 Stat. 607.

Approved April 14, 1966.