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# A Journey Through Subchapter S / A Review of The Not So Obvious & The Many Traps That Exist For The Unwary: Part III - Code Section 1361(b)(1)(C)

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This third installment of my multi-part series on Subchapter S is focused on a single Code Section, namely IRC Section 1361(b)(1)(C) and the ineligibility of nonresident aliens as shareholders of Subchapter S corporations.

**Background**

As we all have come to understand, nonresident aliens are ineligible S corporation shareholders. If a nonresident alien were to become a shareholder of an S corporation, the result is straightforward - as of the date the nonresident alien became a shareholder, the corporation's S election is terminated. There are, however, some obscure aspects of this well-known rule that are worthy of discussion. One of the obscurities has to do with a 2018 change in the law resulting from the Tax Cuts and Jobs Act. Additionally, there have long existed hidden traps for unwary taxpayers and their advisers as well as some twists and turns in the road in this area of Subchapter S that are also worthy of discussion.

**Shareholder Eligibility**

In accordance with Code Section 1361(b), (c) and (d), all shareholders of an S corporation must be eligible shareholders. Several rules accompany this requirement.

Each shareholder must be an individual, a decedent's estate, a bankrupt's estate under Title 11 of the U.S. Code, a specified trust, a Code Sections 401(a) or 501(c)(3) organization, or a Code Section 501(a) organization. Foreign trusts and nonresident aliens may not, however, be shareholders of an S corporation.

In accordance with Code Section 1361(b), individuals are eligible shareholders. Again, nonresident aliens are ineligible shareholders. For this purpose, an alien resident of Puerto Rico is ineligible. ***See*** Rev. Rul. 73-478,

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1973-2 CB 310.

**PRACTICE ALERT:** Be careful where community property laws apply. In *Ward v. United States*, 661 F.2d 226 (Ct. Cl. 1981), a shareholder's spouse (a citizen and resident of Mexico) who had a community property interest in the stock of an S corporation, caused the corporation to lose its S election. Even the "family" election under the provisions added to Subchapter S by the American Jobs Creation Act ("AJCA") would not change this result.

**PRACTICE ALERT:** It is not clear whether "nonresident alien" applies only to individuals or whether it extends to alien estates. *See* Eustice & Kuntz, *Federal Income Taxation of S Corporations*, ¶ 3.03(2) (1985). Code Section 1361(c)(2)(A), however, expressly provides that foreign trusts as ineligible shareholders of an S corporation. **Caution is advised.**

Code Section 1361(d) provides that a Qualified Subchapter S Trust ("QSST") is also an eligible Subchapter S corporation shareholder. Pursuant to Code Section 1361(d)(1)(A), a QSST is treated as a trust meeting the requisites of IRC Section 1361(c)(2)(A)(i). A QSST is a trust with the following characteristics:

- The trust terms must require: (i) During the life of the current income beneficiary, there can only be one income beneficiary; (ii) Corpus distributions during the current income beneficiary's life can only be made to that beneficiary; (iii) The current income beneficiary's interest must terminate on the earlier of his or her death, or termination of the trust; and (iv) If the trust terminates during the current income beneficiary's life, all assets must be distributed to that beneficiary.
- All of the trust's income (as defined under Code Section 643(b)) must either be distributed or required to be distributed currently to an individual who is a citizen or a resident of the United States. Code Section 643 defines "income" as the amount of trust income for the year determined under the Trust Agreement and local law.
- In order for a trust that meets the requisites of Code Section 1361(e)(3) to qualify as a Subchapter S corporation shareholder, the current income beneficiary (or his legal representative) must file an election with the Internal Revenue Service. The election is retroactive for up to 75 days prior to the filing. It must be filed with the Service Center with which the corporation files its federal income tax returns. No particular type of form is required. A statement with the following information will suffice: Name, address, and taxpayer identification number of the current income beneficiary, the trust and the corporation; reference that the filing is an election under Code Section 1361(d)(2); the date on which the election is to be effective; and information sufficient to show that the QSST requirements have been met.
- The election, once made, can only be revoked with the Secretary's consent. Moreover, the election must be made separately with respect to each Subchapter S corporation in which the trust holds stock.
- Should a QSST fail to meet the requisites of Code Section 1361(d)(3)(A) (described above) after an election becomes effective, it immediately loses its qualified status. Should a QSST fail to meet the

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requisites of Code Section 1361(d)(3)(B) (described above), however, it will not lose its qualified status until the first day of the first taxable year beginning after the tax year for which it failed to meet said requirements.

Examples of trusts eligible to be QSSTs include: a QTIP marital deduction trust under Code Section 2056(b)(7); a marital deduction trust under Code Section 2056(b)(5), providing for all income for life with a power of appointment in the entire estate; a trust that will terminate when the beneficiary reaches a certain age; a trust that gives the beneficiary income for life; and a revocable inter-vivos trust after the death of the trustor.

**PRACTICE ALERT:** A trust otherwise meeting the QSST requirements will not be invalidated solely because a court requires income distributions to greater than one (1) person. A voluntary current income payment to greater than one (1) person (e.g., payment to ex-spouse as alimony) will invalidate a QSST. For this purpose, spouses, if both are U.S. citizens or residents and file joint returns, are considered to be one (1) current income beneficiary (as long as they are married and file joint returns).

Examples of trusts that are ineligible to be QSSTs include: a foreign trust; an irrevocable reversionary trust, Clifford Trusts and certain retirement plan trusts. Additionally, a trust with a nonresident alien as a beneficiary is ineligible for QSST status.

**Electing Small Business Trusts**

Code Section 1361(c)(2) was amended by the Small Business Job Protection Act of 1996 so that an additional type of trust, the Electing Small Business Trust ("ESBT"), would be eligible to become an S corporation shareholder. The ESBT was the first new entity to join the list of eligible S corporation shareholders in many years.

Originally, to qualify as an ESBT, all beneficiaries, current, contingent and remainder, had to be individuals or estates. Provided, however, charitable organizations described in Code Section 170(c)(2) through (5) were initially allowed to hold contingent remainder interests. After December 31, 1997, such charitable organizations were allowed to hold current interests.[1] Additionally, an organization described in Code Section 170(c)(1)[2] may now hold a contingent interest in an ESBT, but it may not be a potential current beneficiary of the trust.[3]

No interest in an ESBT may have been acquired by "purchase." For this purpose, purchase means any acquisition if the basis of the property is determined under Code Section 1012.[4] In other words, if a person acquires an interest in a trust, and any portion of the person's basis in the acquired interest in the trust is determined under Code Section 1012, such interest is considered to be acquired by purchase.[5]

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This includes a net gift of a beneficial interest in the trust where the person acquiring the interest pays the gift tax.[6]

**PRACTICE ALERT:** The ESBT itself is not prohibited from acquiring S corporation stock or other property by purchase.[7]

- An ESBT may not be a foreign trust.[8]
- It also cannot be a Qualified Subchapter S Trust ("QSST") with respect to which an election under Code Section 1361(d)(2) is in effect.[9]
- Likewise, an ESBT cannot be a trust that is tax-exempt under Subtitle A of the Code.[10]
- Lastly, an ESBT cannot be a charitable remainder annuity trust or a charitable remainder unitrust as defined in Code Section 664(d).[11]

An ESBT must affirmatively elect to be treated as an ESBT.[12]

**PRACTICE ALERT:** The election is made by the trustee and is effective for the taxable year of the trust in which the election is made and all subsequent years unless the election is revoked with the Commissioner's consent.[13]

The same due dates for filing QSST elections generally apply to ESBT elections.[14] This means that the ESBT election usually must be filed with the IRS within the two-month-and-15-day period beginning on the date of the trust's receipt of the S corporation stock.[15]
An ESBT election is made by filing a statement with the IRS Service Center where the S corporation files its income tax returns.[16] Interestingly, IRS Form 2553, which is used for filing an S election, a Qualified Subchapter S Trust election and a request for late election relief in certain circumstances, does not contain the necessary statement for an ESBT election. The Service has not issued a separate form of ESBT election.

The ESBT election statement must include:

- The name, address, and taxpayer identification number of the ESBT, each of the potential income beneficiaries and the S corporation(s) in which the trust currently holds stock.[17]
- If the trustee of the ESBT has the power to make distributions from the trust to certain tax-exempt organizations (described in Code Section 1361(c)(6)), a statement that such power exists must be reflected in the election statement.[18]
- A clear statement to identify the document as an ESTB election.[19] A statement at the top of the document along the lines of the following will likely suffice:

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**ELECTING SMALL BUSINESS TRUST ELECTION MADE PURSUANT TO IRC SECTION 1361(e)(3)**

- The first date upon which the ESBT owned stock in each S corporation.[20]
- The date upon which the election is to be effective.[21]
- An express representation of the trustee(s) that the trust meets the definitional requirements under Code Section 1361(e)(1) and that all potential current beneficiaries of the ESBT meet the requirements to be a shareholder of an S corporation under Code Section 1361(b)(1).[22]

There are several interesting aspects of an ESBT election, including:

- If the ESBT has more than one trustee, the trustee or trustees with authority to legally bind the trust must sign the election statement.[23]
- If any one of the trustees of an ESBT that has more than one trustee can bind the trust, only one trustee must sign the election statement.[24]
- As a general rule, only one election is made for an ESBT, regardless of the number of S corporations whose stock is held by the trust.[25]
- If an ESBT holds stock in multiple S corporations and all of the S corporations do not file income returns with the same IRS Service Center, the initial ESBT election statement must be filed with all of the IRS Service Centers where the S corporations file income tax returns.[26] If, however, an ESBT that has already filed its election with the appropriate IRS Service Center(s) later acquires stock in an S corporation that files its income tax returns at a different IRS Service Center, a new ESBT election is not required.[27]
- A trust is not allowed to make a protective ESBT election in which its effectiveness is conditioned upon it failing to meet the eligible trust requirements of Code Section 1361(c)(2)(A)(i) through (iv).[28] Such an election is ineffective.[29]

If an ESBT election is late or not filed, relief may be available. The 1996 Act,[30] added Section 1362(b)(5) to the Code, which gives the Service has authority to treat late elections or elections that were never filed as timely if reasonable cause exists. The provision was given a retroactive effective date back to tax years beginning after 1982, which coincides with the effective date of the last major overhaul of Subchapter S via the Subchapter S Revision Act of 1982.

The Service has been very lenient deciding whether reasonable cause exists. Almost anything seems to work-even the dog ate the IRS Form 2553, or I simply forgot to file the IRS Form 2553 seems to work. Taxpayers falling on their swords works in this one instance. Under Revenue Procedure 2003-43,[31] relief was available for late S elections, ESBT elections, QSST elections and QSSS elections. The requirements for relief were simple and straight forward:

- Late or non-filing can be your only defect;

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- The request for forgiveness must be made within twenty-four (24) months of the original due date of the election;
- The request must state why reasonable cause exists; almost anything seems to constitute reasonable cause;
- The request must be filed within six (6) months of the due date without extensions of the corporation's first S year tax return; and
- No shareholder may have taken a filing position that is inconsistent with the election having been in place.

The request for relief must be filed with the IRS Service Center where the S corporation files its income tax returns. It is to be filed with a fully completed and executed Form 2553 that is marked at the top in bold letters:

**FILED PURSUANT TO REVENUE PROCEDURE 2003-43**.

If a taxpayer does not meet any of these requirements or the Service denies the request, the taxpayer can always file for a private letter ruling. The downside to the ruling process is obvious-the time and expense can be significant.

If a taxpayer meets the requirements of Revenue Procedure 2003-43, but has not yet filed the first S corporation return, Revenue Procedure 2007-62[32] made obtaining relief even easier-the taxpayer was permitted to simply file the Form 2553 and include a statement requesting forgiveness along with the IRS Form 1120S.

Revenue Procedure 2013-30[33] further expanded and clarified the relief available to taxpayers that experience late S corporation election problems. Specifically, Revenue Procedure 2013-30 did two major things for taxpayers:

- It retained the same requirements of Revenue Procedure 2003-43, but it removed the timing requirements and grants relief for elections that are up to three years and seventy-five (75) days late; and
- If a taxpayer is beyond that time period when the problem is discovered, Revenue Procedure 2013-30 still provides a possible fix for the defect. Unfortunately, it requires the filing of a private letter ruling request.

Revenue Procedure 2013-30 contains user-friendly flowcharts that walk tax practitioners through every possible scenario and provides step-by-step instructions on how to obtain late or non-filing relief. The flowcharts should be used by tax practitioners as a desk reference.

Each potential current beneficiary of the trust is treated as a shareholder of the S corporation.[34] Provided, however, if there is no potential current beneficiary during any period, the trust itself is treated as a shareholder of the corporation during that period.[35]

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"Potential current beneficiary" means any person who is entitled to, or at the discretion of the trustee may receive, a distribution of the income or principal of the trust.[36] No person is treated as a potential current beneficiary solely because that person holds a future interest in the trust.[37] Also, a person who is entitled to receive a distribution only after a specified time or upon the occurrence of a specified event (e.g., the death of the holder of a power of appointment) is not a potential current beneficiary until specified time or occurrence arises.[38]

As discussed above, in accordance with Code Section 1361(e)(3), each potential current beneficiary of an ESBT is treated as a shareholder of the S corporation. Consequently, since nonresident aliens are ineligible shareholders of an S corporation,[39] prior to the TCJA (discussed below), they could not be potential current beneficiaries of an ESBT.

**PRACTICE ALERT:** Each potential current beneficiary is counted for purposes of complying with the 100-shareholder limitation contained in Code Section 1361(b)(1)(A).

As mentioned earlier, an ESBT election generally may only be revoked with the consent of the Commissioner of the IRS. The application for consent unfortunately must be submitted to the Service in the form of a letter ruling request.[40] Along with the formality of the request comes the cost of a tax practitioner to prepare it and the IRS filing fee.

There is an exception to the general ESBT revocation rule. A request to revoke an ESBT election is deemed automatically granted by the Commissioner if the trust makes a qualifying election to convert to a QSST.[41] Specific requirements, however, must be met:

- The trust must meet the QSST eligibility requirements contained in Code Section 1361(d). This means that: (i) the trust instrument must provide that there can only be one income beneficiary during the life of the current income beneficiary, any corpus distributed during the life of the current income beneficiary may only be distributed to such beneficiary, the income interest of the current income beneficiary must terminate on the earlier of such beneficiary's death or the termination of the trust, and if the trust terminates during the life of the current income beneficiary, all assets must be distributed to such beneficiary; and (ii) all income is distributed or required to be distributed currently to one individual who is a citizen or resident of the United States.[42]
- The trustee(s) and the current income beneficiary of the trust execute a QSST election and the election is filed with the IRS Service Center where the S corporation files its income tax returns.[43]
- The QSST election must state at the top of the document: **ATTENTION ENTITY CONTROL - CONVERSION OF AN ESBT TO A QSST PURSUANT TO SECTION 1.1361-1(m).**[44]
- The QSST election must include all information otherwise required for a QSST election under Treasury Regulation Section 1361-1(j)(6).[45]

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- The trust had not converted from a QSST to an ESBT within the 36-month period immediately preceding the effective date of the new QSST election.[46]
- The effective date of the QSST election cannot be effective more than fifteen (15) days and two (2) months prior to the date on which the election is filed, and it cannot be more than twelve (12) months after the date on which the election is filed.[47] Like an S election, if a QSST election specifies an effective date that is more than fifteen days and two months prior to the date on which the election is filed, it will be deemed effective on the day that is fifteen (15) days and two (2) months prior to the date on which it is filed, and if a QSST election specifies an effective date that is more than twelve (12) months after the date on which the election is filed, it will be deemed effective on the day that is twelve (12) months after the date on which it is filed.[48]

If the aforementioned requirements are met, the ESBT election is revoked upon the effective date of the QSST election. In all other cases, revocation of an ESBT election requires the consent of the Commissioner.

The TCJA expressly amended Code Section 1361(c)(2)(B)(v) by adding a new sentence: "This clause shall not apply for purposes of subsection (b)(1)(C)."[49]

**PRACTICE ALERT:** The result of this additional sentence is simple: Effective January 1, 2018, a nonresident alien may be a potential current beneficiary of an ESBT.

**PRACTICE ALERT:** Aside from being a potential current beneficiary of an ESBT, a nonresident alien still may not be a shareholder of an S corporation.[50] Additionally, a nonresident alien still may not be a beneficiary of a QSST.[51]

**QUERY:** Why does Congress care whether a nonresident alien is a shareholder of an S corporation or a QSST, but finds it otherwise acceptable for a nonresident alien to be a potential current beneficiary of an ESBT?

A nonresident alien is a person who is neither a citizen of the United States nor a resident alien.[52] A person qualifies as a "resident alien" if the person is "a lawful permanent resident of the United States," fulfills the "substantial presence test," or fulfills the "first-year election" requirements.[53]

The fear of allowing nonresident aliens to be shareholders of S corporations or beneficiaries of QSSTs is obvious - nonresident aliens generally do not have to file income tax returns in the United States, which could allow corporations to distribute money without United States taxation. The fear does not exist in the case of ESBTs, since the trust, not the beneficiary, pays the tax resulting from the S corporation in which it

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holds shares.

**PRACTICE ALERT:** S corporations that wish to allow a nonresident alien to benefit from ownership of the corporation could use an ESBT to accomplish the goal. As mentioned below, however, there is a tax cost that comes with using an ESBT as an S corporation ownership vehicle.

**PRACTICE ALERT:** If a nonresident alien is a potential current beneficiary of an ESBT, extreme caution is required. If the stock of the S corporation is ever distributed (directly or constructively) to the nonresident alien beneficiary, the corporation's S election will be terminated as of the date of the distribution.[54] While the rules surrounding the eligibility of ESBT beneficiaries may have been liberalized, a new potential peril is added to the equation. **Extreme caution must be exercised.**

An S corporation generally computes and reports to its shareholders, in addition to its non-separately computed income and loss, their pro-rata share of separately stated items of income (including tax exempt income), loss, deduction, loss and credit of the corporation.[55] The separately stated items include charitable contributions made by the S corporation. The ultimate tax treatment of charitable contributions made by the corporation, however, depends upon the tax status of each of the shareholders.

Prior to the TCJA, if a trust made a charitable contribution, the tax treatment of the charitable contribution and the corresponding deduction were handled one way, and if an individual made a charitable contribution, the tax treatment of the charitable contribution and the corresponding deduction were handled another way.

A trust is generally allowed a deduction for any amount of gross income, without limitation, which pursuant to the terms of a governing instrument is paid for a charitable purpose. No carryover of excess deductions is allowed. In contrast, the charitable contribution deduction applicable to individuals is limited to certain percentages of adjusted gross income[56] and excess deductions may generally be carried forward up to five years[57] and used in future years when adjusted gross income is sufficient to utilize the deductions.

The TCJA directly impacted ESBTs in another interesting manner. Prior to the enactment of the TCJA, the deduction for charitable contributions applicable to trusts, rather than the deduction applicable to individuals, applied to ESBTs.[58] So, an ESBT was allowed a charitable deduction for charity contributions (assuming the governing instrument so allowed the contribution) without a limitation pegged to adjusted gross income, but it did not have the ability to carryover unused charitable deductions due to insufficient income - the deductions were forever lost.

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Section 13542 of the TCJA changed the landscape a bit.

**PRACTICE ALERT:** For tax years beginning after December 31, 2017, the deduction for charitable contributions applicable to individuals applies to ESBTs. In particular, the rules applicable to individuals apply to the portion of an ESBT holding S stock for the purpose of determining and applying the deduction for charitable contributions made by the S corporation. So, the adjusted gross income limitations applicable to individuals now apply to the portion of ESBTs holding S corporation stock. Likewise, the ability to carryover excess charitable deductions for a period of five years is also available to the portion of ESBTs holding S corporation stock.

Under pre-AJCA law, an ESBT could hold stock of an S corporation. For the portion of an ESBT consisting of S corporation stock, the normal pass-through rules did not apply. Rather, the trust was taxed at a flat rate of thirty-five percent (35%) on its taxable ordinary income as specifically computed and its capital gains were taxed at the preferential rates that applied to individuals.

**PRACTICE ALERT:** For purposes of determining the maximum number of S corporation shareholders, each person who may have been entitled to receive a distribution from the trust (commonly referred to as a potential current beneficiary) was treated as a shareholder. To avoid disqualification after an ineligible shareholder became a potential current beneficiary of an ESBT, it had sixty (60) days to dispose of the S corporation stock.

**PRACTICE ALERT:** The AJCA eliminated some (but not all) of the tax traps for the unwary created by these rules.[59]

Beginning in 2005, for purposes of determining who the potential current beneficiaries of an ESBT are, all unexercised powers of appointment are ignored and disregarded.

The AJCA increased the period in which the ESBT can dispose of S corporation stock after an ineligible shareholder becomes a potential current beneficiary from sixty (60) days to one (1) year.

**PRACTICE ALERT:** Still, even after the AJCA, tax advisers need to be alert to the ESBT rules - although unexercised powers of appointment are disregarded, they need to take count of and evaluate all of the potential current beneficiaries of an ESBT. Further, they need to keep in mind the extended timeframe in which to dispose of S corporation stock in the event an ineligible shareholder becomes a potential current beneficiary of the trust (i.e., one year). The ESBT rules remain strict.

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The tax attributable to shares of an S corporation held by an ESBT is determined in accordance with special rules.[60] These rules are not very taxpayer friendly.

The portion of the trust holding S corporation stock is treated as a separate taxable trust. The tax on the separate trust is determined under normal rules applicable to trusts, with the addition and/or exception of the following:

- The highest individual tax rate is applied.
- The exemption amount under Code § 55(d) is zero.
- Capital losses are only allowed to the extent of capital gains.
- The only items of income, loss, deduction or credit taken into account are those items required to be taken into account under Code § 1366, any gain or loss from the disposition of the S corporation stock and (to the extent prescribed in Regulations) state/local taxes and administrative expenses.
- If the trust terminates, the loss carryovers or excess deductions are applied to the entire trust.

**QUERY:** Given the tax attributes and operating rules, all of which are discussed above, why would the trustee(s) of a trust ever want to make an ESBT election?

The answer may be more obvious than one would suspect. The ESBT election may be a solution where a trustee is presented with a trust (e.g., a trust created on the death of the grantor or that springs into life on the death of the grantor) that owns S corporation stock and which does not meet the QSST requirements. In such instance, the trustee(s) may have no alternative without jeopardizing the S corporation election than making an ESBT election. The ESBT election, of course, comes with a tax cost (as illustrated above). That tax cost may, however, be much less than the cost of terminating the S corporation election.

**PRACTICE ALERT:** A QSST is usually preferable to an ESBT because the income flows through and is taxed directly to the beneficiary. An ESBT's taxable income is trapped within the trust for tax purposes, even if it is actually distributed out to the beneficiaries. The portion of an ESBT holding S corporation stock also gets taxed automatically at the highest individual income tax rate and is unable to take advantage of the graduated rate structure or the exemption allowed for trusts. This is a definite disadvantage for an ESBT that has very little or no other taxable income aside from the income from the part of the trust holding S corporation stock.

**Conclusion**

Subchapter S, due to numerous legislative changes, as well as cases, rulings and regulations, has become complex. The rules relating to shareholder eligibility and ESBTs contain some twists and turns that many

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tax practitioners may not be expecting unless they keep a careful eye on the road. I hope this blog post puts some light on this aspect of Subchapter S.

I will provide guidance on some of the other not-so-obvious aspects of Subchapter S in upcoming blog posts. Stay tuned!

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[1] *See* Code § 1361(e) and §§ 1314 and 1302(c) of the 1996 Act.

[2] Code § 170(c)(1) organizations include states, possessions of the United States, or any political subdivision of the foregoing, the United States or the District of Columbia.

[3] Code § 1361(e)(1)(A)(i).

[4] Code § 1361 (e)(1)(C) and § 1302(c) of the 1996 Act.

[5] T. Reg. § 1.1361-1(m)(1)(iii).

[6] *Id.*

[7] *Id.*

[8] Code § 1361(c)(2)(A)(v).

[9] Code § 1361(e)(1)(B)(i).

[10] Code § 1361(e)(1)(B)(ii).

[11] Code § 1361(e)(1)(B)(iii).

[12] Code § 1361(e)(3).

[13] *Id.*

[14] T. Reg. § 1.1361-1(m)(2)(iii).

[15] T. Reg. §§ 1.1361-1(m)(2)(iii) and 1.1361-1(j)(6)(iii).

[16] T. Reg. § 1.1361-1(m)(2)(i).

[17] T. Reg. § 1.1361-1(m)(2)(ii)(A).

[18] *Id.*

[19] T. Reg. § 1.1361-1(m)(2)(ii)(B).

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[20] T. Reg. § 1.1361-1(m)(2)(ii)(C).

[21] T. Reg. § 1.1361-1(m)(2)(ii)(D).

[22] T. Reg. § 1.1361-1(m)(2)(v).

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] T. Reg. § 1.1361-1(m)(2)(ii)(E)(1).

[29] *Id.*

[30] § 1305(b) of P.L. 104-188.

[31] Rev. Proc. 2003-43, 2003-1 C.B. 998.

[32] Rev. Proc. 2007-62, 2007-2 CB 786.

[33] Rev. Proc. 2013-30, 2013-36 I.R.B. 1.

[34] Code § 1361(e)(2).

[35] *Id.*

[36] *Id.*

[37] T. Reg. § 1.1361-1(m)(4)(i).

[38] T. Reg. § 1.1361-1(m)(4)(v).

[39] Code § 1361(b)(1)(C).

[40] T. Reg. § 1.1361-1(m)(6).

[41] T. Reg. § 1.1361-1(m)(7).

[42] Code § 1361(d)(3).

[43] T. Reg. § 1.1361-1(m)(7)(ii).

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[44] *Id.*

[45] *Id.*

[46] T. Reg. § 1.1361-1(m)(7)(iii).

[47] T. Reg. § 1.1361-1(m)(7)(iv).

[48] *Id.*

[49] § 13541 of the TCJA. Public Law 115-97.

[50] Code § 1361(b)(1)(C).

[51] Code § 1361(d)(3)(B).

[52] Code § 7701(b)(1)(B).

[53] Code § 7701(b)(1)(A).

[54] Code §§ 1361(b)(1)(C) and 1362(d)(2).

[55] Code § 1366(a).

[56] Code § 170(d)(1)(A).

[57] *Id.* Qualified conversation contributions may be carried forward up to fifteen years. Code § 170(b)(1)(E)(ii).

[58] Code § 641(c) as cross referenced by Code § 1361(e)(4).

[59] § 234 of the AJCA. Public Law 108-357.

[60] Code § 641(d) and § 1302(d) of the 1996 Act.

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