

# How Did the Tax Increase Prevention Act of 2014 ("the Extender's Bill") Impact Subchapter S?

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The Extender's Bill impacts Subchapter S in at least two respects. It amends IRC Section 1374(d)(7) and IRC Section 1367(a)(2). Both of these amendments are temporary. Unless extended, they only live until the end of this year. Yes, they only apply to tax years beginning in 2014.

## **I. IRC Section 1374(d)(7).**

In the last five (5) years, we have seen at least three temporary amendments to the built in gains tax recognition period.

- The first amendment is found in Section 1251 of the American Recovery and Reinvestment Tax Act of 2009. This provision shortened the ten (10) year recognition period for tax years 2009 and 2010 to seven (7) years.
- The second amendment is found in Section 2014 of the Small Business Jobs Act of 2010. This provision extended the built in gains tax relief to 2011 and further shortened the recognition period to five (5) years. For tax year 2012, it appeared we would be back to the old ten (10) year recognition period.
- With the passage of the Taxpayer Relief Act of 2012, however, a third amendment to Code Section 1374 was given life. As a result, the five (5) year recognition period was extended to the end of last year.

Unfortunately, it looked like we were back to the ten (10) year built in gains tax recognition period.

Lawmakers saved the day one more time, at least temporarily, when both the Senate and the House passed the 2014 Tax Increase Prevention Act on December 16, 2014. President Obama signed the bill into law on December 19, 2014. So, for your clients that dispose of built in gains assets this year, they are subject to a five (5) year built in gains tax recognition rule. For dispositions of built in gains tax property next year, unless Congress acts for a fifth time, we are subject to the old ten (10) year recognition period rule.

## **II. IRC Section 1367(a)(2).**

Section 1367(a)(2) was added to the Code in 2006. It was set to sunset at the end of 2011. Section 325 of the 2012 Taxpayer Relief Act, effective January 1, 2013, however, extended the life of Code Section 1367(a)(2) to the end of 2013. It appeared IRC Section 1367(a)(2) was no longer in existence for 2014. The 2014 Tax Increase Prevention Act gave this provision one more year of life.

So, at least for 2014, shareholders of a S Corporation get to reduce their stock basis by the adjusted basis of property contributed by the S Corporation to a charity, even though the full fair market value of the property passes through to the shareholder as a charitable contribution deduction on their IRS Form K-1.

If any of your S Corporation clients made charitable contributions this year, they may be able to take advantage of this law. Unless extended again, Section 1367(a)(2) will no longer be law on January 1, 2015.

Year end is almost here. For your S Corporation clients, it is worth looking to determine if either of these provisions, amended by the 2014 Tax Increase Prevention Act, apply. Time is running out!

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