

§ 1.1381-1

26 CFR Ch. I (4-1-04 Edition)

than the amount computed under paragraph (b)(1) of this section, \$5,550 is the amount of tax imposed by section 1374.

Example 5. Corporation P, an S corporation, for its taxable year 1983 has an excess of net long-term capital gain over net short-term capital loss in the amount of \$65,000 and has taxable income of \$80,000. P's election under section 1362 has been in effect for its three immediately preceding taxable years, but P, nevertheless, is subject to the tax imposed by section 1374 for 1983 since it has an excess of net long-term capital gain over net short-term capital loss (in the amount of \$20,000) attributable to property with a substituted basis. The tax computed under paragraph (b)(1) of this section, \$11,200 (28 percent of \$40,000 (\$65,000 - \$25,000)), is less than the tax computed under paragraph (b)(2) of this section, \$17,750. However, under the limitation provided in paragraph (c) of this section which is applicable in this factual situation, the tax imposed by section 1374 for 1983 may not exceed \$5,600 (28 percent of \$20,000, the excess of net long-term capital gain over net short-term capital loss attributable to property with a substituted basis).

[T.D. 8104, 51 FR 34201, Sept. 26, 1986; 52 FR 9162, Mar. 23, 1987. Redesignated and amended by T.D. 8419, 57 FR 22653, May 29, 1992. Further redesignated by T.D. 8579, 59 FR 66462, Dec. 27, 1994]

COOPERATIVES AND THEIR PATRONS

Tax Treatment of Cooperatives

§ 1.1381-1 Organizations to which part applies.

(a) *In general.* Except as provided in paragraph (b) of this section, part I, subchapter T, chapter 1 of the Code, applies to any corporation operating on a cooperative basis and allocating amounts to patrons on the basis of the business done with or for such patrons.

(b) *Exceptions.* Part I of such subchapter T does not apply to:

(1) Any organization which is exempt from income taxes under chapter 1 of the Code (other than an exempt farmers' cooperative described in section 521);

(2) Any organization which is subject to the provisions of part II (section 591 and following), subchapter H, chapter 1 of the Code (relating to mutual savings banks, etc.);

(3) Any organization which is subject to the provisions of subchapter L (section 801 and following), chapter 1 of the

Code (relating to insurance companies); or

(4) Any organization which is engaged in generating, transmitting, or otherwise furnishing electric energy, or which provides telephone service, to persons in rural areas. The terms *rural areas* and *telephone service* shall have the meaning assigned to them in section 5 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 924).

[T.D. 6643, 28 FR 3153, Apr. 2, 1963]

§ 1.1381-2 Tax on certain farmers' cooperatives.

(a) *In general.* (1) For taxable years beginning after December 31, 1962, farmers', fruit growers', or like associations, organized and operated in compliance with the requirements of section 521 and § 1.521-1, shall be subject to the taxes imposed by section 11 or section 1201. Although such associations are subject to both normal tax and surtax, as in the case of corporations generally, certain special deductions are provided for them in section 1382(c) and § 1.1382-3. For the purpose of any law which refers to organizations exempt from income taxes such an association shall, however, be considered as an organization exempt under section 501. Thus, the provisions of section 243, providing a credit for dividends received from a domestic corporation subject to taxation, are not applicable to dividends received from a cooperative association organized and operated in compliance with the requirements of section 521 and § 1.521-1. The provisions of section 1501, relating to consolidated returns, are likewise not applicable.

(2) Rules governing the manner in which amounts paid as patronage dividends are allowable as deductions in computing the taxable income of such an association are set forth in section 1382(b) and § 1.1382-2. For the tax treatment, as to patrons, of amounts received during the taxable year as patronage dividends, see section 1385 and the regulations thereunder.

(b) *Cross references.* For tax treatment of exempt cooperative associations for taxable years beginning before January 1, 1963, or for taxable years beginning after December 31, 1962, with respect to payments attributable to patronage occurring during taxable years beginning