

amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

SUBPART C—DEFINITIONS; CONSTRUCTIVE OWNERSHIP OF STOCK

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§ 316. Dividend defined

(a) General rule

For purposes of this subtitle, the term “dividend” means any distribution of property made by a corporation to its shareholders—

(1) out of its earnings and profits accumulated after February 28, 1913, or

(2) out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

Except as otherwise provided in this subtitle, every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits. To the extent that any distribution is, under any provision of this subchapter, treated as a distribution of property to which section 301 applies, such distribution shall be treated as a distribution of property for purposes of this subsection.

(b) Special rules

(1) Certain insurance company dividends

The definition in subsection (a) shall not apply to the term “dividend” as used in subchapter L in any case where the reference is to dividends of insurance companies paid to policyholders as such.

(2) Distributions by personal holding companies

(A) In the case of a corporation which—

(i) under the law applicable to the taxable year in which the distribution is made, is a personal holding company (as defined in section 542), or

(ii) for the taxable year in respect of which the distribution is made under section 563(b) (relating to dividends paid after the close of the taxable year), or section 547 (relating to deficiency dividends), or the corresponding provisions of prior law, is a personal holding company under the law applicable to such taxable year,

the term “dividend” also means any distribution of property (whether or not a dividend as defined in subsection (a)) made by the corporation to its shareholders, to the extent of its undistributed personal holding company income (determined under section 545 without regard to distributions under this paragraph) for such year.

(B) For purposes of subparagraph (A), the term “distribution of property” includes a

distribution in complete liquidation occurring within 24 months after the adoption of a plan of liquidation, but—

(i) only to the extent of the amounts distributed to distributees other than corporate shareholders, and

(ii) only to the extent that the corporation designates such amounts as a dividend distribution and duly notifies such distributees of such designation, under regulations prescribed by the Secretary, but

(iii) not in excess of the sum of such distributees’ allocable share of the undistributed personal holding company income for such year, computed without regard to this subparagraph or section 562(b).

(3) Deficiency dividend distributions by a regulated investment company or real estate investment trust

The term “dividend” also means any distribution of property (whether or not a dividend as defined in subsection (a)) which constitutes a “deficiency dividend” as defined in section 860(f).

(Aug. 16, 1954, ch. 736, 68A Stat. 98; Mar. 13, 1956, ch. 83, §5(1), 70 Stat. 49; Pub. L. 88-272, title II, §225(f)(1), Feb. 26, 1964, 78 Stat. 87; Pub. L. 94-455, title XVI, §1601(d), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1746, 1834; Pub. L. 95-600, title III, §362(d)(1), Nov. 6, 1978, 92 Stat. 2851.)

AMENDMENTS

1978—Subsec. (b)(3). Pub. L. 95-600 inserted “regulated investment company or” after “distributions by a” in heading and substituted in text “section 860(f)” for “section 859(d)”.

1976—Subsec. (b)(2)(B)(ii). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (b)(3). Pub. L. 94-455, §1601(d), added par. (3). 1964—Subsec. (b)(2). Pub. L. 88-272 inserted definition of “distribution of property”.

1956—Subsec. (b)(1). Act Mar. 13, 1956, substituted “subchapter L” for “sections 803(e), 821(a)(2), and 832(c)(11)”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date note under section 860 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(d) of Pub. L. 94-455, see section 1608(a) of Pub. L. 94-455, set out as a note under section 857 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 225(l) of Pub. L. 88-272 provided that:

“(1) The amendments made by this section [enacting section 1022, redesignating former section 1022 as 1023, amending this section and sections 331, 333, 381, 541, 542, 543, 544, 545, 551, 553, 554, 562, 856, 1016, 1361, 6501, and the analysis preceding section 1011, and enacting provisions set out as a note under section 333 of this title] (other than by subsections (c)(1), (f), (g), and (j) [enacting section 1022, redesignating former section 1022 as 1023, amending this section and sections 331, 333, 542, 551, 562, 1016, and the analysis preceding section 1011 of this title]) shall apply to taxable years beginning after December 31, 1963.

“(2) The amendment made by subsection (c)(1) [amending section 542 of this title] shall apply to taxable years beginning after October 16, 1962.

“(3) The amendments made by subsections (f) and (g) [amending this section and sections 331, 333, 551, and 562 of this title] shall apply to distributions made in any taxable year of the distributing corporation beginning after December 31, 1963.

“(4) The amendments made by subsection (j) [enacting section 1022, redesignating former section 1022 as 1023, and amending section 1016 and the analysis preceding section 1011 of this title] shall apply in respect of decedents dying after December 31, 1963.

“(5) Subsection (h) [set out as a note under section 333 of this title] shall apply to taxable years beginning after December 31, 1963.”

EFFECTIVE DATE OF 1956 AMENDMENT

Section 6 of act Mar. 13, 1956, provided that: “The amendments made by this Act [amending this section and sections 501, 594, 801 to 805, 811 to 813, 816 to 818, 821, 822, 832, 841, 842, 843, 891, 1201, 1504, and 4371 of this title] shall apply only to taxable years beginning after December 31, 1954.”

§ 317. Other definitions

(a) Property

For purposes of this part, the term “property” means money, securities, and any other property; except that such term does not include stock in the corporation making the distribution (or rights to acquire such stock).

(b) Redemption of stock

For purposes of this part, stock shall be treated as redeemed by a corporation if the corporation acquires its stock from a shareholder in exchange for property, whether or not the stock so acquired is cancelled, retired, or held as treasury stock.

(Aug. 16, 1954, ch. 736, 68A Stat. 99.)

§ 318. Constructive ownership of stock

(a) General rule

For purposes of those provisions of this subchapter to which the rules contained in this section are expressly made applicable—

(1) Members of family

(A) In general

An individual shall be considered as owning the stock owned, directly or indirectly, by or for—

(i) his spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), and

(ii) his children, grandchildren, and parents.

(B) Effect of adoption

For purposes of subparagraph (A)(ii), a legally adopted child of an individual shall be treated as a child of such individual by blood.

(2) Attribution from partnerships, estates, trusts, and corporations

(A) From partnerships and estates

Stock owned, directly or indirectly, by or for a partnership or estate shall be considered as owned proportionately by its partners or beneficiaries.

(B) From trusts

(i) Stock owned, directly or indirectly, by or for a trust (other than an employees’

trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust.

(ii) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(C) From corporations

If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned, directly or indirectly, by or for such corporation, in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(3) Attribution to partnerships, estates, trusts, and corporations

(A) To partnerships and estates

Stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate shall be considered as owned by the partnership or estate.

(B) To trusts

(i) Stock owned, directly or indirectly, by or for a beneficiary of a trust (other than an employees’ trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by the trust, unless such beneficiary’s interest in the trust is a remote contingent interest. For purposes of this clause, a contingent interest of a beneficiary in a trust shall be considered remote if, under the maximum exercise of discretion by the trustee in favor of such beneficiary, the value of such interest, computed actuarially, is 5 percent or less of the value of the trust property.

(ii) Stock owned, directly or indirectly, by or for a person who is considered the owner of any portion of a trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners), shall be considered as owned by the trust.

(C) To corporations

If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such corporation shall be considered as owning the stock owned, directly or indirectly, by or for such person.

(4) Options

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.