

apply to expenditures after December 31, 1984, in taxable years ending after such date.”

Amendment by section 712 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 31(d) of Pub. L. 97-448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Pub. L. 97-248, title II, §204(d), Sept. 3, 1982, 96 Stat. 427, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and amending sections 57 and 263 of this title] shall apply to taxable years beginning after December 31, 1982.

“(2) 1250 GAIN.—Section 291(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to sales or other disposition after December 31, 1982, in taxable years ending after such date.

“(3) POLLUTION CONTROL FACILITIES.—Section 291(a)(5) [now 291(a)(4)] of such Code shall apply to property placed in service after December 31, 1982, in taxable years ending after such date.

“(4) DRILLING AND MINING COSTS.—Section 291(b) of such Code shall apply to expenditures after December 31, 1982, in taxable years ending after such date.

“(5) REDUCTION IN PERCENTAGE DEPLETION FOR COAL AND IRON ORE.—Section 291(a)(2) of such Code shall apply to taxable years beginning after December 31, 1983.

“(6) MINIMUM TAX.—The amendment made by subsection (b) [amending section 57 of this title] shall apply to taxable years ending after December 31, 1982, with respect to items of tax preference described in section 57(b) of such Code to which section 291 of such Code applies; except that in the case of an item described in section 291(a)(2) of such Code, such amendment shall apply to taxable years beginning after December 31, 1983.”

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan 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.

Subchapter C—Corporate Distributions and Adjustments

Part
I. Distributions by corporations.

Part
II. Corporate liquidations.
III. Corporate organizations and reorganizations.
[IV. Repealed.]
V. Carryovers.
VI. Treatment of certain corporate interests as stock or indebtedness.
[VII. Repealed.]

AMENDMENTS

1990—Pub. L. 101-508, title XI, §11801(b)(5), Nov. 5, 1990, 104 Stat. 1388-522, struck out item for part IV “Insolvency reorganizations”.

1988—Pub. L. 100-647, title I, §1006(e)(8)(C), Nov. 10, 1988, 102 Stat. 3401, struck out item for part VII “Miscellaneous corporate provisions”.

1984—Pub. L. 98-369, div. A, title I, §75(d), July 18, 1984, 98 Stat. 595, added item for part VII.

1976—Pub. L. 94-455, title XIX, §1901(b)(15), Oct. 4, 1976, 90 Stat. 1796, struck out item for part VII “Effective date of subchapter C.”

1969—Pub. L. 91-172, title IV, §415(b), Dec. 30, 1969, 83 Stat. 614, redesignated item for part VI as VII and added part VI.

PART I—DISTRIBUTIONS BY CORPORATIONS

Subpart
A. Effects on recipients.
B. Effects on corporation.
C. Definitions; constructive ownership of stock.

SUBPART A—EFFECTS ON RECIPIENTS

Sec.
301. Distributions of property.
302. Distributions in redemption of stock.
303. Distributions in redemption of stock to pay death taxes.
304. Redemption through use of related corporations.
305. Distributions of stock and stock rights.
306. Dispositions of certain stock.
307. Basis of stock and stock rights acquired in distributions.

§ 301. Distributions of property

(a) In general

Except as otherwise provided in this chapter, a distribution of property (as defined in section 317(a)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in subsection (c).

(b) Amount distributed

(1) General rule

For purposes of this section, the amount of any distribution shall be the amount of money received, plus the fair market value of the other property received.

(2) Reduction for liabilities

The amount of any distribution determined under paragraph (1) shall be reduced (but not below zero) by—

(A) the amount of any liability of the corporation assumed by the shareholder in connection with the distribution, and

(B) the amount of any liability to which the property received by the shareholder is subject immediately before, and immediately after, the distribution.

(3) Determination of fair market value

For purposes of this section, fair market value shall be determined as of the date of the distribution.

(c) Amount taxable

In the case of a distribution to which subsection (a) applies—

(1) Amount constituting dividend

That portion of the distribution which is a dividend (as defined in section 316) shall be included in gross income.

(2) Amount applied against basis

That portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock.

(3) Amount in excess of basis**(A) In general**

Except as provided in subparagraph (B), that portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, shall be treated as gain from the sale or exchange of property.

(B) Distributions out of increase in value accrued before March 1, 1913

That portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock and to the extent that it is out of increase in value accrued before March 1, 1913, shall be exempt from tax.

(d) Basis

The basis of property received in a distribution to which subsection (a) applies shall be the fair market value of such property.

(e) Special rule for certain distributions received by 20 percent corporate shareholder**(1) In general**

Except to the extent otherwise provided in regulations, solely for purposes of determining the taxable income of any 20 percent corporate shareholder (and its adjusted basis in the stock of the distributing corporation), section 312 shall be applied with respect to the distributing corporation as if it did not contain subsections (k) and (n) thereof.

(2) 20 percent corporate shareholder

For purposes of this subsection, the term “20 percent corporate shareholder” means, with respect to any distribution, any corporation which owns (directly or through the application of section 318)—

(A) stock in the corporation making the distribution possessing at least 20 percent of the total combined voting power of all classes of stock entitled to vote, or

(B) at least 20 percent of the total value of all stock of the distributing corporation (except nonvoting stock which is limited and preferred as to dividends),

but only if, but for this subsection, the distributee corporation would be entitled to a deduction under section 243, 244, or 245 with respect to such distribution.

(3) Application of section 312(n)(7) not affected

The reference in paragraph (1) to subsection (n) of section 312 shall be treated as not including a reference to paragraph (7) of such subsection.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(f) Special rules

(1) For distributions in redemption of stock, see section 302.

(2) For distributions in complete liquidation, see part II (sec. 331 and following).

(3) For distributions in corporate organizations and reorganizations, see part III (sec. 351 and following).

(4) For taxation of dividends received by individuals at capital gain rates, see section 1(h)(11).

(Aug. 16, 1954, ch. 736, 68A Stat. 84; Pub. L. 87-403, §2(a), Feb. 2, 1962, 76 Stat. 5; Pub. L. 87-834, §§5(a), (b), 13(f)(2), Oct. 16, 1962, 76 Stat. 977, 1035; Pub. L. 88-272, title II, §231(b)(2), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88-484, §1(b)(1), Aug. 22, 1964, 78 Stat. 597; Pub. L. 89-570, §1(b)(2), Sept. 12, 1966, 80 Stat. 762; Pub. L. 89-809, title I, §104(f), Nov. 13, 1966, 80 Stat. 1559; Pub. L. 91-172, title II, §211(b)(1), (2), title IX, §905(b)(2), Dec. 30, 1969, 83 Stat. 570, 714; Pub. L. 92-178, title III, §312(a), Dec. 10, 1971, 85 Stat. 526; Pub. L. 94-455, title II, §205(c)(1)(B), (C), title XIX, §§1901(a)(41), (b)(32)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1771, 1800, 1834; Pub. L. 95-628, §3(a), (b), Nov. 10, 1978, 92 Stat. 3627; Pub. L. 98-369, div. A, title I, §§54(b), 61(d), title VII, §712(i)(1), July 18, 1984, 98 Stat. 569, 582, 948; Pub. L. 99-514, title VI, §612(b)(1), title XVIII, §1804(f)(2)(B), Oct. 22, 1986, 100 Stat. 2250, 2805; Pub. L. 100-203, title X, §10222(b)(1), Dec. 22, 1987, 101 Stat. 1330-411; Pub. L. 100-647, title I, §1006(e)(10)-(12), title II, §2004(j)(3)(B), Nov. 10, 1988, 102 Stat. 3401, 3402, 3605; Pub. L. 108-27, title III, §302(e)(2), May 28, 2003, 117 Stat. 763.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108-27, see Effective and Termination Dates of 2003 Amendment note below.

AMENDMENTS

2003—Subsec. (f)(4). Pub. L. 108-27, §§302(e)(2), 303, temporarily added par. (4). See Effective and Termination Dates of 2003 Amendment note below.

1988—Subsec. (b)(1). Pub. L. 100-647, §1006(e)(10), amended par. (1) generally. Prior to amendment, par. (1) contained subpars. (A) to (D) which provided what the amount of any distribution would be for noncorporate distributees, corporate distributees, certain corporate distributees of foreign corporations, and foreign corporate distributees.

Subsec. (d). Pub. L. 100-647, §1006(e)(11), amended subsec. (d) generally. Prior to amendment, subsec. (d) contained pars. (1) to (4) which provided what the basis of property received would be for noncorporate distributees, corporate distributees, foreign corporate distributees, and certain corporate distributees of foreign corporations.

Subsec. (e). Pub. L. 100-647, §2004(j)(3)(B), added par. (3) and redesignated former par. (3) as (4).

Pub. L. 100-647, §1006(e)(12), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to special rule for holding period of appreciated property distributed to corporation.

Subsecs. (f), (g). Pub. L. 100-647, §1006(e)(12), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

1987—Subsec. (f)(1). Pub. L. 100-203 substituted “subsections (k) and (n)” for “subsection (n)”.

1986—Subsec. (f)(3). Pub. L. 99-514, §1804(f)(2)(B), substituted “this subsection” for “this section”.

Subsec. (g)(4). Pub. L. 99-514, §612(b)(1), struck out par. (4) which provided: "For partial exclusion from gross income of dividends received by individuals, see section 116."

1984—Subsec. (e). Pub. L. 98-369, §54(b), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 98-369, §712(i)(1), substituted "complete liquidation" for "partial or complete liquidation" in subsec. (e)(2), which became subsec. (g)(2).

Subsec. (f). Pub. L. 98-369, §61(d), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 98-369, §54(b), redesignated former subsec. (e) as (f).

Subsec. (g). Pub. L. 98-369, §§54(b), 61(d), redesignated former subsec. (e) successively as subsec. (f) and as subsec. (g).

Subsec. (g)(2). Pub. L. 98-369, §712(i)(1), substituted "complete liquidation" for "partial or complete liquidation" in subsec. (e)(2), which became subsec. (g)(2).

1978—Subsec. (b)(1)(B)(ii). Pub. L. 95-628, §3(a), substituted "amount of gain recognized to the distributing corporation on the distribution" for "amount of gain to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)".

Subsec. (d)(2)(B). Pub. L. 95-628, §3(b), substituted "amount of gain recognized to the distributing corporation on the distribution" for "amount of gain to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)".

1976—Subsec. (b)(1)(B)(ii). Pub. L. 94-455, §205(c)(1)(B), substituted "1252(a), or 1254(a)" for "or 1252(a)".

Subsec. (b)(1)(C). Pub. L. 94-455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(2)(B). Pub. L. 94-455, §205(c)(1)(C), substituted "1252(a), or 1254(a)" for "or 1252(a)".

Subsec. (e). Pub. L. 94-455, §1901(a)(41), (b)(32)(A), redesignated subsec. (g) as (e). Former subsec. (e), which related to exceptions for certain distributions by personal service corporations, was struck out.

Subsec. (f). Pub. L. 94-455, §1901(b)(32)(A), struck out subsec. (f) which related to special rules for distribution of antitrust stock to corporations.

Subsec. (g). Pub. L. 94-455, §1901(b)(32)(A), redesignated subsec. (g) as (e).

1971—Subsec. (b)(1)(B). Pub. L. 92-178, §312(a)(1), substituted "corporation, unless subparagraph (D) applies" for "corporation" where first appearing.

Subsec. (b)(1)(D). Pub. L. 92-178, §312(a)(2), added subparagraph (D).

Subsec. (d)(2). Pub. L. 92-178, §312(a)(3), substituted "corporation, unless paragraph (3) applies" for "corporation" where first appearing.

Subsec. (d)(3), (4). Pub. L. 92-178, §312(a)(4), added par. (3) and redesignated former par. (3) as (4).

1969—Subsec. (b)(1)(B)(ii). Pub. L. 91-172, §§211(b)(1), 905(b)(2), substituted "1250(a), 1251(c), or 1252(a)" for "or 1250(a)" and inserted reference to section 311(a).

Subsec. (d)(2)(B). Pub. L. 91-172, §§211(b)(2), 905(b)(2), substituted "1250(a), 1251(c), or 1252(a)", for "or 1250(a)" and inserted reference to section 311(a).

1966—Subsec. (b)(1)(B)(ii). Pub. L. 89-570 included reference to section 617(d)(1).

Subsec. (b)(1)(C). Pub. L. 89-809 substituted "gross income which is effectively connected with the conduct of a trade or business within the United States" for "gross income from sources within the United States" in cl. (i), "gross income which is not effectively connected with the conduct of a trade or business within the United States" for "gross income from sources without the United States" in cl. (ii), and inserted text following cl. (ii) setting out the treatment to be accorded gross income for any period before the first taxable year beginning after December 31, 1966.

Subsec. (d)(2)(B). Pub. L. 89-570 included reference to section 617(d)(1).

1964—Subsec. (b). Pub. L. 88-484 included amount of gain recognized under section 341(f).

Pub. L. 88-272 inserted reference to section 1250(a).

Subsec. (d). Pub. L. 88-484 included amount of gain recognized under section 341(f).

Pub. L. 88-272 inserted reference to section 1250(a).

1962—Subsec. (b)(1)(B). Pub. L. 87-834, §13(f)(2), substituted "subsection (b) or (c) of section 311 or under section 1245(a)" for "subsection (b) or (c) of section 311".

Subsec. (b)(1)(C). Pub. L. 87-834, §5(a), added subparagraph (C).

Subsec. (d)(2). Pub. L. 87-834, §13(f)(2), substituted "subsection (b) or (c) of section 311 or under section 1245(a)" for "subsection (b) or (c) of section 311".

Subsec. (d)(3). Pub. L. 87-834, §5(b), added par. (3).

Subsecs. (f), (g). Pub. L. 87-403 added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108-27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108-27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108-27 inapplicable to taxable years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108-27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(e)(10)–(12) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 2004(j)(3)(B) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10222(b)(2) of Pub. L. 100-203, as amended by Pub. L. 100-647, title II, §2004(j)(4), Nov. 10, 1988, 102 Stat. 3605, provided that:

"(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to distributions after December 15, 1987. For purposes of applying such amendment to any such distribution—

"(i) for purposes of determining earnings and profits, such amendment shall be deemed to be in effect for all periods whether before, on, or after December 15, 1987, but

"(ii) such amendment shall not affect the determination of whether any distribution on or before December 15, 1987, is a dividend and the amount of any reduction in accumulated earnings and profits on account of any such distribution.

"(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply for purposes of determining gain or loss on any disposition of stock after December 15, 1987, and before January 1, 1989, if such disposition is pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before December 15, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Section 612(c) of Pub. L. 99-514 provided that: "The amendments made by this section [amending this section and sections 584, 642, 643, 702, 854, and 857 of this title, repealing section 116 of this title, and enacting provisions set out as a note under section 584 of this title] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1804(f)(2)(B) of Pub. L. 99-514 effective, except as otherwise provided, as if included in

the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 54(b) of Pub. L. 98-369 applicable to distributions after July 18, 1984, in taxable years ending after July 18, 1984, see section 54(d)(2) of Pub. L. 98-369, set out as a note under section 311 of this title.

Section 61(e)(4) of Pub. L. 98-369 provided that: "The amendment made by subsection (d) [amending this section] shall apply to distributions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

Amendment by section 712(i)(1) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 3(d) of Pub. L. 95-628 provided that: "The amendments made by this section [amending this section and section 312 of this title] shall apply to distributions made after the date of the enactment of this Act [Nov. 10, 1978]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(1)(B), (C) of Pub. L. 94-455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94-455, set out as an Effective Date note under section 1254 of this title.

Amendment by section 1901(a)(41), (b)(32)(A) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 312(b) of Pub. L. 92-178 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to distributions made after November 8, 1971."

EFFECTIVE DATE OF 1969 AMENDMENT

Section 211(c) of Pub. L. 91-172 provided that: "The amendments made by this section [enacting section 1251 of this title and amending this section and sections 312, 341, 453, and 751 of this title] shall apply to taxable years beginning after December 31, 1969."

Amendment by section 905(b)(2) of Pub. L. 91-172 effective with respect to distributions made after Nov. 30, 1969, see section 905(c) of Pub. L. 91-172, set out as a note under section 311 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

Amendment by Pub. L. 89-570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89-570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Pub. L. 88-484, § 2, Aug. 22, 1964, 78 Stat. 597, provided that: "The amendments made by the first section of this Act [amending this section and sections 312, 341, and 453 of this title] shall apply with respect to transactions after the date of the enactment of this Act [Aug. 22, 1964] in taxable years ending after such date."

Amendment by Pub. L. 88-272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88-272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 5(d) of Pub. L. 87-834 provided that: "The amendments made by this section [amending this sec-

tion and section 245 of this title] shall apply to distributions made after December 31, 1962."

Amendment by section 13(f)(2) of Pub. L. 87-834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87-834, set out as an Effective Date note under section 1245 of this title.

Section 2(b) of Pub. L. 87-403 provided that: "The amendments made by this section [amending this section] shall apply only with respect to distributions made after the date of the enactment of this Act [Feb. 2, 1962]."

STUDY OF CORPORATE PROVISIONS

Section 634 of Pub. L. 99-514 directed Secretary of the Treasury or his delegate to conduct a study of proposals to reform the provisions of subchapter C of chapter 1 of the Internal Revenue Code of 1986, and not later than Jan. 1, 1988 (due date extended to Jan. 1, 1992, by Pub. L. 101-508, title XI, § 11831(b), Nov. 5, 1990, 104 Stat. 1388-559), to submit to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate a report on the study conducted (together with such recommendations he deemed advisable).

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan 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.

§ 302. Distributions in redemption of stock

(a) General rule

If a corporation redeems its stock (within the meaning of section 317(b)), and if paragraph (1), (2), (3), or (4) of subsection (b) applies, such redemption shall be treated as a distribution in part or full payment in exchange for the stock.

(b) Redemptions treated as exchanges

(1) Redemptions not equivalent to dividends

Subsection (a) shall apply if the redemption is not essentially equivalent to a dividend.

(2) Substantially disproportionate redemption of stock

(A) In general

Subsection (a) shall apply if the distribution is substantially disproportionate with respect to the shareholder.

(B) Limitation

This paragraph shall not apply unless immediately after the redemption the shareholder owns less than 50 percent of the total combined voting power of all classes of stock entitled to vote.

(C) Definitions

For purposes of this paragraph, the distribution is substantially disproportionate if—

(i) the ratio which the voting stock of the corporation owned by the shareholder immediately after the redemption bears to all of the voting stock of the corporation at such time,

is less than 80 percent of—

(ii) the ratio which the voting stock of the corporation owned by the shareholder

immediately before the redemption bears to all of the voting stock of the corporation at such time.

For purposes of this paragraph, no distribution shall be treated as substantially disproportionate unless the shareholder's ownership of the common stock of the corporation (whether voting or nonvoting) after and before redemption also meets the 80 percent requirement of the preceding sentence. For purposes of the preceding sentence, if there is more than one class of common stock, the determinations shall be made by reference to fair market value.

(D) Series of redemptions

This paragraph shall not apply to any redemption made pursuant to a plan the purpose or effect of which is a series of redemptions resulting in a distribution which (in the aggregate) is not substantially disproportionate with respect to the shareholder.

(3) Termination of shareholder's interest

Subsection (a) shall apply if the redemption is in complete redemption of all of the stock of the corporation owned by the shareholder.

(4) Redemption from noncorporate shareholder in partial liquidation

Subsection (a) shall apply to a distribution if such distribution is—

(A) in redemption of stock held by a shareholder who is not a corporation, and

(B) in partial liquidation of the distributing corporation.

(5) Application of paragraphs

In determining whether a redemption meets the requirements of paragraph (1), the fact that such redemption fails to meet the requirements of paragraph (2), (3), or (4) shall not be taken into account. If a redemption meets the requirements of paragraph (3) and also the requirements of paragraph (1), (2), or (4), then so much of subsection (c)(2) as would (but for this sentence) apply in respect of the acquisition of an interest in the corporation within the 10-year period beginning on the date of the distribution shall not apply.

(c) Constructive ownership of stock

(1) In general

Except as provided in paragraph (2) of this subsection, section 318(a) shall apply in determining the ownership of stock for purposes of this section.

(2) For determining termination of interest

(A) In the case of a distribution described in subsection (b)(3), section 318(a)(1) shall not apply if—

(i) immediately after the distribution the distributee has no interest in the corporation (including an interest as officer, director, or employee), other than an interest as a creditor,

(ii) the distributee does not acquire any such interest (other than stock acquired by bequest or inheritance) within 10 years from the date of such distribution, and

(iii) the distributee, at such time and in such manner as the Secretary by regulations prescribes, files an agreement to notify the Secretary of any acquisition described in clause (ii) and to retain such records as may be necessary for the application of this paragraph.

If the distributee acquires such an interest in the corporation (other than by bequest or inheritance) within 10 years from the date of the distribution, then the periods of limitation provided in sections 6501 and 6502 on the making of an assessment and the collection by levy or a proceeding in court shall, with respect to any deficiency (including interest and additions to the tax) resulting from such acquisition, include one year immediately following the date on which the distributee (in accordance with regulations prescribed by the Secretary) notifies the Secretary of such acquisition; and such assessment and collection may be made notwithstanding any provision of law or rule of law which otherwise would prevent such assessment and collection.

(B) Subparagraph (A) of this paragraph shall not apply if—

(i) any portion of the stock redeemed was acquired, directly or indirectly, within the 10-year period ending on the date of the distribution by the distributee from a person the ownership of whose stock would (at the time of distribution) be attributable to the distributee under section 318(a), or

(ii) any person owns (at the time of the distribution) stock the ownership of which is attributable to the distributee under section 318(a) and such person acquired any stock in the corporation, directly or indirectly, from the distributee within the 10-year period ending on the date of the distribution, unless such stock so acquired from the distributee is redeemed in the same transaction.

The preceding sentence shall not apply if the acquisition (or, in the case of clause (ii), the disposition) by the distributee did not have as one of its principal purposes the avoidance of Federal income tax.

(C) Special rule for waivers by entities

(i) In general

Subparagraph (A) shall not apply to a distribution to any entity unless—

(I) such entity and each related person meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A), and

(II) each related person agrees to be jointly and severally liable for any deficiency (including interest and additions to tax) resulting from an acquisition described in clause (ii) of subparagraph (A).

In any case to which the preceding sentence applies, the second sentence of subparagraph (A) and subparagraph (B)(ii) shall be applied by substituting "distributee or any related person" for "distributee" each place it appears.

(ii) Definitions

For purposes of this subparagraph—

(I) the term “entity” means a partnership, estate, trust, or corporation; and

(II) the term “related person” means any person to whom ownership of stock in the corporation is (at the time of the distribution) attributable under section 318(a)(1) if such stock is further attributable to the entity under section 318(a)(3).

(d) Redemptions treated as distributions of property

Except as otherwise provided in this subchapter, if a corporation redeems its stock (within the meaning of section 317(b)), and if subsection (a) of this section does not apply, such redemption shall be treated as a distribution of property to which section 301 applies.

(e) Partial liquidation defined

(1) In general

For purposes of subsection (b)(4), a distribution shall be treated as in partial liquidation of a corporation if—

(A) the distribution is not essentially equivalent to a dividend (determined at the corporate level rather than at the shareholder level), and

(B) the distribution is pursuant to a plan and occurs within the taxable year in which the plan is adopted or within the succeeding taxable year.

(2) Termination of business

The distributions which meet the requirements of paragraph (1)(A) shall include (but shall not be limited to) a distribution which meets the requirements of subparagraphs (A) and (B) of this paragraph:

(A) The distribution is attributable to the distributing corporation's ceasing to conduct, or consists of the assets of, a qualified trade or business.

(B) Immediately after the distribution, the distributing corporation is actively engaged in the conduct of a qualified trade or business.

(3) Qualified trade or business

For purposes of paragraph (2), the term “qualified trade or business” means any trade or business which—

(A) was actively conducted throughout the 5-year period ending on the date of the redemption, and

(B) was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(4) Redemption may be pro rata

Whether or not a redemption meets the requirements of subparagraphs (A) and (B) of paragraph (2) shall be determined without regard to whether or not the redemption is pro rata with respect to all of the shareholders of the corporation.

(5) Treatment of certain pass-thru entities

For purposes of determining under subsection (b)(4) whether any stock is held by a shareholder who is not a corporation, any stock held by a partnership, estate, or trust

shall be treated as if it were actually held proportionately by its partners or beneficiaries.

(f) Cross references

For special rules relating to redemption—

(1) Death Taxes.—Of stock to pay death taxes, see section 303.

(2) Section 306 Stock.—Of section 306 stock, see section 306.

(3) Liquidations.—Of stock in complete liquidation, see section 331.

(Aug. 16, 1954, ch. 736, 68A Stat. 85; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-589, § 5(b), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 97-248, title II, §§ 222(c), 228(a), Sept. 3, 1982, 96 Stat. 478, 493; Pub. L. 98-369, div. A, title VII, § 712(i)(1), July 18, 1984, 98 Stat. 948.)

AMENDMENTS

1984—Subsec. (f)(3). Pub. L. 98-369 substituted “complete liquidation” for “partial or complete liquidation”.

1982—Subsec. (a). Pub. L. 97-248, § 222(c)(3), substituted “paragraph (1), (2), (3), or (4)” for “paragraph (1), (2), or (3)”.

Subsec. (b)(4), (5). Pub. L. 97-248, § 222(c)(1), (4), added par. (4), redesignated former par. (4) as (5) and substituted “paragraph (2), (3), or (4)” for “paragraph (2) or (3)” after “to meet the requirements of”, and “paragraph (1), (2), or (4)” for “paragraph (1) or (2)” after “and also the requirements of”.

Subsec. (c)(2)(C). Pub. L. 97-248, § 228(a), added subpar. (C).

Subsecs. (e), (f). Pub. L. 97-248, § 222(c)(2), added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (a). Pub. L. 96-589, § 5(b)(2)(A), struck out reference to par. (4) of subsec. (b).

Subsec. (b)(4), (5). Pub. L. 96-589, § 5(b)(1), (2)(B), redesignated par. (5) as (4) and struck out reference to par. (4) in two places. Former par. (4) was struck out.

1976—Subsec. (c)(2). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; PARTIAL LIQUIDATIONS

Section 228(b) of Pub. L. 97-248 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to distributions after August 31, 1982, in taxable years ending after such date.”

Section 222(f) of Pub. L. 97-248, as amended by Pub. L. 97-448, title III, § 306(a)(6)(A), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 306, 312, 331, 334, 336, 341, 346, 543, and 562 of this title and repealing section 338 of this title] shall apply to distributions after August 31, 1982.

“(2) EXCEPTIONS.—

“(A) RULING REQUESTS.—The amendments made by this section shall not apply to distributions made by any corporation if—

“(i)(I) on July 22, 1982, there was a ruling request by such corporation pending with the Internal Revenue Service as to whether such distributions would qualify as a partial liquidation, or

“(II) within the period beginning on July 12, 1981, and ending on July 22, 1982, the Internal Revenue Service granted a ruling to such corporation that the distributions would qualify as a partial liquidation, and

“(ii) such distributions are pursuant to a plan of partial liquidation adopted before October 1, 1982 (or, if later, 90 days after the date on which the Internal Revenue Service granted a ruling pursuant to the request described in clause (i)(I)).

“(B) PLANS ADOPTED BEFORE JULY 23, 1982.—The amendments made by this section shall not apply to distributions made pursuant to a plan of partial liquidation adopted before July 23, 1982.

“(C) CONTROL ACQUIRED AFTER 1981 AND BEFORE JULY 23, 1982.—The amendments made by this section shall not apply to distributions made pursuant to a plan of partial liquidation adopted before October 1, 1982, where control of the corporation making the distributions was acquired after December 31, 1981, and before July 23, 1982.

“(D) TENDER OFFER OR BINDING CONTRACT OUTSTANDING ON JULY 22, 1982.—

“(i) IN GENERAL.—The amendments made by this section shall not apply to distributions made by a corporation if—

“(I) such distributions are pursuant to a plan of liquidation adopted before October 1, 1982, and

“(II) control of such corporation was acquired after July 22, 1982, pursuant to a tender offer or binding contract outstanding on such date.

“(ii) EXTENSION OF TIME FOR ADOPTING PLAN WHERE ACQUISITION SUBJECT TO FEDERAL REGULATORY APPROVAL.—If the acquisition described in clause (i)(II) is subject to approval by a Federal regulatory agency, clause (i) shall be applied by substituting for ‘October 1, 1982’ the date which is 90 days after the date on which approval by the Federal regulatory agency of such acquisition becomes final.

“(iii) SPECIAL RULE WHERE OFFER SUBJECT TO APPROVAL BY FOREIGN REGULATORY BODY.—In any case where an offer to acquire stock in a corporation was subject to intervention by a foreign regulatory body and a public announcement of such an offer resulted in the intervention by such foreign regulatory body before July 23, 1982—

“(I) such public announcement shall be treated as a tender offer, and

“(II) clause (i) shall be applied by substituting for ‘October 1, 1982’ the date which is 90 days after the date on which such regulatory body approves a public offer to acquire stock in such corporation.

“(iv) SPECIAL RULE WHERE ONE-THIRD OF SHARES ACQUIRED DURING MARCH AND APRIL 1982.—If—

“(I) one-third or more of the shares of a corporation were acquired by another corporation during March and April 1982, and

“(II) during March or April 1982, the acquiring corporation filed with the Federal Trade Commission notification of its intent to acquire control of the acquired corporation,

subclause (II) of clause (i) shall not apply with respect to distributions made by the acquired corporation.

“(E) INSURANCE COMPANIES.—The amendments made by this section shall not apply to distributions made by an insurance company pursuant to a plan of partial liquidation adopted before October 1, 1982, where control was acquired by the distributee or its parent after December 31, 1980, and before July 23, 1982, and the conduct of the insurance business by the distributee is conditioned on approval by a State regulatory authority.

For purposes of this paragraph, the term ‘control’ has the meaning given to such term by section 368(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], except that in applying such section both direct and indirect ownership of stock shall be taken into account.

“(3) APPROVAL OF PLAN BY BOARD OF DIRECTORS.—For purposes of—

“(A) paragraph (2), and

“(B) applying section 346(a)(2) of the Internal Revenue Code of 1986 (as in effect on the day before the

date of the enactment of this Act) [Sept. 3, 1982] to distributions to which (but for paragraph (2)) the amendments made by this section would apply, a plan of liquidation shall be treated as adopted when approved by the corporation’s board of directors.

“(4) COORDINATION WITH AMENDMENTS MADE BY SECTION 224.—For purposes of section 338(e)(2)(C) of the Internal Revenue Code of 1986 (as added by section 224), any property acquired in a distribution to which the amendments made by this section do not apply by reason of paragraph (2) shall be treated as acquired before September 1, 1982.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to stock which is issued after Dec. 31, 1980, except as otherwise provided, see section 7(d)(2), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

SAVINGS PROVISIONS

Applicability of subsec. (b)(1) to the determination of gross investment income under sections 4940 and 4948(a) of this title, see section 101(l)(8) of Pub. L. 91-172, set out as a note under section 4940 of this title.

§ 303. Distributions in redemption of stock to pay death taxes

(a) In general

A distribution of property to a shareholder by a corporation in redemption of part or all of the stock of such corporation which (for Federal estate tax purposes) is included in determining the gross estate of a decedent, to the extent that the amount of such distribution does not exceed the sum of—

(1) the estate, inheritance, legacy, and succession taxes (including any interest collected as a part of such taxes) imposed because of such decedent’s death, and

(2) the amount of funeral and administration expenses allowable as deductions to the estate under section 2053 (or under section 2106 in the case of the estate of a decedent nonresident, not a citizen of the United States),

shall be treated as a distribution in full payment in exchange for the stock so redeemed.

(b) Limitations on application of subsection (a)

(1) Period for distribution

Subsection (a) shall apply only to amounts distributed after the death of the decedent and—

(A) within the period of limitations provided in section 6501(a) for the assessment of the Federal estate tax (determined without the application of any provision other than section 6501(a)), or within 90 days after the expiration of such period,

(B) if a petition for redetermination of a deficiency in such estate tax has been filed with the Tax Court within the time prescribed in section 6213, at any time before the expiration of 60 days after the decision of the Tax Court becomes final, or

(C) if an election has been made under section 6166 and if the time prescribed by this subparagraph expires at a later date than the time prescribed by subparagraph (B) of this paragraph, within the time determined under section 6166 for the payment of the installments.

(2) Relationship of stock to decedent's estate**(A) In general**

Subsection (a) shall apply to a distribution by a corporation only if the value (for Federal estate tax purposes) of all of the stock of such corporation which is included in determining the value of the decedent's gross estate exceeds 35 percent of the excess of—

- (i) the value of the gross estate of such decedent, over
- (ii) the sum of the amounts allowable as a deduction under section 2053 or 2054.

(B) Special rule for stock of two or more corporations

For purposes of subparagraph (A), stock of 2 or more corporations, with respect to each of which there is included in determining the value of the decedent's gross estate 20 percent or more in value of the outstanding stock, shall be treated as the stock of a single corporation. For purposes of the 20-percent requirement of the preceding sentence, stock which, at the decedent's death, represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property or as joint tenants, tenants by the entirety, or tenants in common shall be treated as having been included in determining the value of the decedent's gross estate.

(3) Relationship of shareholder to estate tax

Subsection (a) shall apply to a distribution by a corporation only to the extent that the interest of the shareholder is reduced directly (or through a binding obligation to contribute) by any payment of an amount described in paragraph (1) or (2) of subsection (a).

(4) Additional requirements for distributions made more than 4 years after decedent's death

In the case of amounts distributed more than 4 years after the date of the decedent's death, subsection (a) shall apply to a distribution by a corporation only to the extent of the lesser of—

- (A) the aggregate of the amounts referred to in paragraph (1) or (2) of subsection (a) which remained unpaid immediately before the distribution, or
- (B) the aggregate of the amounts referred to in paragraph (1) or (2) of subsection (a) which are paid during the 1-year period beginning on the date of such distribution.

(c) Stock with substituted basis

If—

- (1) a shareholder owns stock of a corporation (referred to in this subsection as "new stock") the basis of which is determined by reference to the basis of stock of a corporation (referred to in this subsection as "old stock"),
- (2) the old stock was included (for Federal estate tax purposes) in determining the gross estate of a decedent, and
- (3) subsection (a) would apply to a distribution of property to such shareholder in redemption of the old stock,

then, subject to the limitation specified in subsection (b), subsection (a) shall apply in respect of a distribution in redemption of the new stock.

(d) Special rules for generation-skipping transfers

Where stock in a corporation is the subject of a generation-skipping transfer (within the meaning of section 2611(a)) occurring at the same time as and as a result of the death of an individual—

- (1) the stock shall be deemed to be included in the gross estate of such individual;
- (2) taxes of the kind referred to in subsection (a)(1) which are imposed because of the generation-skipping transfer shall be treated as imposed because of such individual's death (and for this purpose the tax imposed by section 2601 shall be treated as an estate tax);
- (3) the period of distribution shall be measured from the date of the generation-skipping transfer; and
- (4) the relationship of stock to the decedent's estate shall be measured with reference solely to the amount of the generation-skipping transfer.

(Aug. 16, 1954, ch. 736, 68A Stat. 88; Pub. L. 94-455, title XX, § 2004(e), 2006(b)(4), Oct. 4, 1976, 90 Stat. 1871, 1889; Pub. L. 97-34, title IV, § 422(b), (e)(1), Aug. 13, 1981, 95 Stat. 314, 316; Pub. L. 99-514, title XIV, § 1432(b), Oct. 22, 1986, 100 Stat. 2730.)

AMENDMENTS

1986—Subsec. (d). Pub. L. 99-514 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Under regulations prescribed by the Secretary, where stock in a corporation is subject to tax under section 2601 as a result of a generation-skipping transfer (within the meaning of section 2611(a)), which occurs at or after the death of the deemed transferor (within the meaning of section 2612)—

- "(1) the stock shall be deemed to be included in the gross estate of the deemed transferor;
- "(2) taxes of the kind referred to in subsection (a)(1) which are imposed because of the generation-skipping transfer shall be treated as imposed because of the deemed transferor's death (and for this purpose the tax imposed by section 2601 shall be treated as an estate tax);
- "(3) the period of distribution shall be measured from the date of the generation-skipping transfer; and
- "(4) the relationship of stock to the decedent's estate shall be measured with reference solely to the amount of the generation-skipping transfer."

1981—Subsec. (b)(1)(C). Pub. L. 97-34, § 422(e)(1), struck out "or 6166A" after "section 6166" in two places.

Subsec. (b)(2)(A). Pub. L. 97-34, § 422(b)(1), substituted "35" for "50" before percent.

Subsec. (b)(2)(B). Pub. L. 97-34, § 422(b)(2), in heading, substituted "stock in 2" for "stock of two", in first sentence, struck out "the 50 percent requirement" before "of subparagraph (A)" and substituted "2" for "two" and "20 percent or more in value" for "more than 75 percent in value", and, in last sentence, substituted "For purposes of the 20-percent requirement" for "For the purpose of the 75 percent requirement" and, in determining value of decedent's gross estate, treated the estate as including stock which at decedent's death represented surviving spouse's interest in property held by the decedent and surviving spouse either as joint tenants, tenants by the entirety, or tenants in common.

1976—Subsec. (b)(1)(C). Pub. L. 94-455, § 2004(e)(1), added subpar. (C).

Subsec. (b)(2)(A). Pub. L. 94-455, § 2004(e)(2)(A), substituted provisions limiting the applicability of subsec. (a) to corporate distributions in which the value of the corporate stock included in decedent's gross estate ex-

ceeds 50 percent of the gross estate over deductions allowed under sections 2053 and 2054 for provisions limiting the applicability of subsec. (a) to corporate distributions in which the value of the corporate stock included in decedent's gross estate is either more than 35 percent of the gross estate or 50 percent of the taxable estate.

Subsec. (b)(2)(B). Pub. L. 94-455, §2004(e)(2)(B), substituted "the 50 percent requirement" for "the 35 percent and 50 percent requirements".

Subsec. (b)(3), (4). Pub. L. 94-455, §2004(e)(3), added pars. (3) and (4).

Subsec. (c). Pub. L. 94-455, §2004(e)(4), substituted "limitation specified in subsection (b)" for "limitation specified in subsection (b)(1)".

Subsec. (d). Pub. L. 94-455, §2006(b)(4), added subsec. (d).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f) of Pub. L. 97-34, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2004(e)(1)-(4) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94-455, set out as an Effective Date note under section 6166 of this title.

For effective date of amendment by section 2006(b)(4) of Pub. L. 94-455, see section 2006(c) of Pub. L. 94-455, set out as an Effective Date note under section 2601 of this title.

§ 304. Redemption through use of related corporations

(a) Treatment of certain stock purchases

(1) Acquisition by related corporation (other than subsidiary)

For purposes of sections 302 and 303, if—

(A) one or more persons are in control of each of two corporations, and

(B) in return for property, one of the corporations acquires stock in the other corporation from the person (or persons) so in control,

then (unless paragraph (2) applies) such property shall be treated as a distribution in redemption of the stock of the corporation acquiring such stock. To the extent that such distribution is treated as a distribution to which section 301 applies, the transferor and the acquiring corporation shall be treated in the same manner as if the transferor had transferred the stock so acquired to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and then the acquiring corporation had redeemed the stock it was treated as issuing in such transaction.

(2) Acquisition by subsidiary

For purposes of sections 302 and 303, if—

(A) in return for property, one corporation acquires from a shareholder of another corporation stock in such other corporation, and

(B) the issuing corporation controls the acquiring corporation,

then such property shall be treated as a distribution in redemption of the stock of the issuing corporation.

(b) Special rules for application of subsection (a)

(1) Rules for determinations under section 302(b)

In the case of any acquisition of stock to which subsection (a) of this section applies, determinations as to whether the acquisition is, by reason of section 302(b), to be treated as a distribution in part or full payment in exchange for the stock shall be made by reference to the stock of the issuing corporation. In applying section 318(a) (relating to constructive ownership of stock) with respect to section 302(b) for purposes of this paragraph, sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein.

(2) Amount constituting dividend

In the case of any acquisition of stock to which subsection (a) applies, the determination of the amount which is a dividend (and the source thereof) shall be made as if the property were distributed—

(A) by the acquiring corporation to the extent of its earnings and profits, and

(B) then by the issuing corporation to the extent of its earnings and profits.

(3) Coordination with section 351

(A) Property treated as received in redemption

Except as otherwise provided in this paragraph, subsection (a) (and not section 351 and not so much of sections 357 and 358 as relates to section 351) shall apply to any property received in a distribution described in subsection (a).

(B) Certain assumptions of liability, etc.

(i) In general

In the case of an acquisition described in section 351, subsection (a) shall not apply to any liability—

(I) assumed by the acquiring corporation, or

(II) to which the stock is subject,

if such liability was incurred by the transferor to acquire the stock. For purposes of the preceding sentence, the term "stock" means stock referred to in paragraph (1)(B) or (2)(A) of subsection (a).

(ii) Extension of obligations, etc.

For purposes of clause (i), an extension, renewal, or refinancing of a liability which meets the requirements of clause (i) shall be treated as meeting such requirements.

(iii) Clause (i) does not apply to stock acquired from related person except where complete termination

Clause (i) shall apply only to stock acquired by the transferor from a person—

(I) none of whose stock is attributable to the transferor under section 318(a) (other than paragraph (4) thereof), or

(II) who satisfies rules similar to the rules of section 302(c)(2) with respect to both the acquiring and the issuing corporations (determined as if such person were a distributee of each such corporation).

(C) Distributions incident to formation of bank holding companies

If—

(i) pursuant to a plan, control of a bank is acquired and within 2 years after the date on which such control is acquired, stock constituting control of such bank is transferred to a BHC in connection with its formation,

(ii) incident to the formation of the BHC there is a distribution of property described in subsection (a), and

(iii) the shareholders of the BHC who receive distributions of such property do not have control of such BHC,

then, subsection (a) shall not apply to any securities received by a qualified minority shareholder incident to the formation of such BHC. For purposes of this subparagraph, any assumption of (or acquisition of stock subject to) a liability under subparagraph (B) shall not be treated as a distribution of property.

(D) Definitions and special rule

For purposes of subparagraph (C) and this subparagraph—

(i) Qualified minority shareholder

The term “qualified minority shareholder” means any shareholder who owns less than 10 percent (in value) of the stock of the BHC. For purposes of the preceding sentence, the rules of paragraph (3) of subsection (c) shall apply.

(ii) BHC

The term “BHC” means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956).

(iii) Special rule in case of BHC’s formed before 1985

In the case of a BHC which is formed before 1985, clause (i) of subparagraph (C) shall not apply.

(4) Treatment of certain intragroup transactions

(A) In general

In the case of any transfer described in subsection (a) of stock from 1 member of an affiliated group to another member of such group, proper adjustments shall be made to—

(i) the adjusted basis of any intragroup stock, and

(ii) the earnings and profits of any member of such group,

to the extent necessary to carry out the purposes of this section.

(B) Definitions

For purposes of this paragraph—

(i) Affiliated group

The term “affiliated group” has the meaning given such term by section 1504(a).

(ii) Intragroup stock

The term “intragroup stock” means any stock which—

(I) is in a corporation which is a member of an affiliated group, and

(II) is held by another member of such group.

(5) Acquisitions by foreign corporations

(A) In general

In the case of any acquisition to which subsection (a) applies in which the acquiring corporation is a foreign corporation, the only earnings and profits taken into account under paragraph (2)(A) shall be those earnings and profits—

(i) which are attributable (under regulations prescribed by the Secretary) to stock of the acquiring corporation owned (within the meaning of section 958(a)) by a corporation or individual which is—

(I) a United States shareholder (within the meaning of section 951(b)) of the acquiring corporation, and

(II) the transferor or a person who bears a relationship to the transferor described in section 267(b) or 707(b), and

(ii) which were accumulated during the period or periods such stock was owned by such person while the acquiring corporation was a controlled foreign corporation.

(B) Regulations

The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of this paragraph.

(6) Avoidance of multiple inclusions, etc.

In the case of any acquisition to which subsection (a) applies in which the acquiring corporation or the issuing corporation is a foreign corporation, the Secretary shall prescribe such regulations as are appropriate in order to eliminate a multiple inclusion of any item in income by reason of this subpart and to provide appropriate basis adjustments (including modifications to the application of sections 959 and 961).

(c) Control

(1) In general

For purposes of this section, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock. If a person (or persons) is in control (within the meaning of the preceding sentence) of a corporation which in turn owns at least 50 percent of the total combined voting power of all stock entitled to vote of another corporation, or owns at least 50 percent of the total value of the shares of all classes of stock of another corporation, then such person (or persons) shall be treated as in control of such other corporation.

(2) Stock acquired in the transaction

For purposes of subsection (a)(1)—

(A) General rule

Where 1 or more persons in control of the issuing corporation transfer stock of such corporation in exchange for stock of the acquiring corporation, the stock of the acquiring corporation received shall be taken into account in determining whether such person or persons are in control of the acquiring corporation.

(B) Definition of control group

Where 2 or more persons in control of the issuing corporation transfer stock of such corporation to the acquiring corporation and, after the transfer, the transferors are in control of the acquiring corporation, the person or persons in control of each corporation shall include each of the persons who so transfer stock.

(3) Constructive ownership**(A) In general**

Section 318(a) (relating to constructive ownership of stock) shall apply for purposes of determining control under this section.

(B) Modification of 50-percent limitations in section 318

For purposes of subparagraph (A)—

(i) paragraph (2)(C) of section 318(a) shall be applied by substituting “5 percent” for “50 percent”, and

(ii) paragraph (3)(C) of section 318(a) shall be applied—

(I) by substituting “5 percent” for “50 percent”, and

(II) in any case where such paragraph would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owned in such corporation bears to the value of all stock in such corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 89; Pub. L. 88-554, §4(b)(1), Aug. 31, 1964, 78 Stat. 763; Pub. L. 97-248, title II, §226(a)(1)(A), (2), (3), Sept. 3, 1982, 96 Stat. 490, 491; Pub. L. 98-369, div. A, title VII, §712(l)(1)–(5)(A), July 18, 1984, 98 Stat. 953, 954; Pub. L. 99-514, title XVIII, §1875(b), Oct. 22, 1986, 100 Stat. 2894; Pub. L. 100-203, title X, §10223(c), Dec. 22, 1987, 101 Stat. 1330-411; Pub. L. 100-647, title II, §2004(k)(2), Nov. 10, 1988, 102 Stat. 3605; Pub. L. 105-34, title X, §1013(a), (c), Aug. 5, 1997, 111 Stat. 918; Pub. L. 105-206, title VI, §6010(d), July 22, 1998, 112 Stat. 814.)

REFERENCES IN TEXT

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (b)(3)(D)(ii), is classified to section 1841(a) of Title 12, Banks and Banking.

AMENDMENTS

1998—Subsec. (b)(5)(B), (C), Pub. L. 105-206, §6010(d)(1), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: “For purposes of subparagraph (A), the rules of section

1248(d) shall apply except to the extent otherwise provided by the Secretary.”

Subsec. (b)(6), Pub. L. 105-206, §6010(d)(2), added par. (6).

1997—Subsec. (a)(1), Pub. L. 105-34, §1013(a), amended last sentence generally. Prior to amendment, last sentence read as follows: “To the extent that such distribution is treated as a distribution to which section 301 applies, the stock so acquired shall be treated as having been transferred by the person from whom acquired, and as having been received by the corporation acquiring it, as a contribution to the capital of such corporation.”

Subsec. (b)(5), Pub. L. 105-34, §1013(c), added par. (5).

1988—Subsec. (b)(4)(A), Pub. L. 100-647 substituted “stock from 1 member” for “stock of 1 member”.

1987—Subsec. (b)(4), Pub. L. 100-203 added par. (4).

1986—Subsec. (a)(1), Pub. L. 99-514 substituted “To the extent that such distribution is treated as a distribution to which section 301 applies” for “In any such case” in last sentence.

1984—Subsec. (b)(2), Pub. L. 98-369, §712(l)(1), consolidated former subpars. “(A) Where subsection (a)(1) applies” and “(B) Where subsection (a)(2) applies” in one paragraph, inserted provision respecting source of dividend, and incorporated in cls. (A) and (B) former subpar. (A) and (B) provisions which had required determination of amount which is a dividend to be made by reference to earnings and profits of the acquiring corporation and as if the property were distributed by the acquiring corporation to the issuing corporation and immediately thereafter distributed by the issuing corporation.

Subsec. (b)(3)(A), Pub. L. 98-369, §712(l)(2), substituted “section 351 and not so much of sections 357 and 358 as relates to section 351” for “part III”.

Subsec. (b)(3)(B)(i), Pub. L. 98-369, §712(l)(3)(A)(i), substituted “In the case of an acquisition described in section 351, subsection (a)” for “Subsection (a)”.

Subsec. (b)(3)(B)(iii), Pub. L. 98-369, §712(l)(3)(B), added cl. (iii).

Subsec. (b)(3)(C), Pub. L. 98-369, §712(l)(4), inserted following cl. (iii) “For purposes of this subparagraph, any assumption of (or acquisition of stock subject to) a liability under subparagraph (B) shall not be treated as a distribution of property.”

Subsec. (c)(3), Pub. L. 98-369, §712(l)(5)(A), designated existing first sentence as subpar. “(A) In general” and substituted subpar. (B) for former second sentence which read “For purposes of the preceding sentence, sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein.”

1982—Subsec. (b)(2)(A), Pub. L. 97-248, §226(a)(3), substituted “as if the property were distributed by the issuing corporation to the acquiring corporation and immediately thereafter distributed by the acquiring corporation” for “solely by reference to the earnings and profits of the acquiring corporation” after “dividend shall be made”.

Subsec. (b)(3), Pub. L. 97-248, §226(a)(1)(A), added par. (3).

Subsec. (c)(2), (3), Pub. L. 97-248, §226(a)(2), added par. (2), redesignated former par. (2) as (3) and substituted “this section” for “paragraph (1)” after “determining control under”.

1964—Subsecs. (b)(1), (c)(2), Pub. L. 88-554 inserted reference to section 318(a)(3)(C) of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1013(d) of Pub. L. 105-34 provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 1059 of this

title] shall apply to distributions and acquisitions after June 8, 1997.

“(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution or acquisition after June 8, 1997, if such distribution or acquisition is—

“(A) made pursuant to a written agreement which was binding on such date and at all times thereafter,

“(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

“(C) described in a public announcement or filing with the Securities and Exchange Commission on or before such date.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10223(d) of Pub. L. 100-203, as amended by Pub. L. 100-647, title II, §2004(k)(3), (4), Nov. 10, 1988, 102 Stat. 3605, 3606, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 337 and 355 of this title] shall apply to distributions or transfers after December 15, 1987.

“(2) EXCEPTIONS.—

“(A) DISTRIBUTIONS.—The amendments made by this section shall not apply to any distribution after December 15, 1987, and before January 1, 1993, if—

“(i) 80 percent or more of the stock of the distributing corporation was acquired by the distributee before December 15, 1987, or

“(ii) 80 percent or more of the stock of the distributing corporation was acquired by the distributee before January 1, 1989, pursuant to a binding written contract or tender offer in effect on December 15, 1987.

For purposes of the preceding sentence, stock described in section 1504(a)(4) of the Internal Revenue Code of 1986 shall not be taken into account.

“(B) SECTION 304 TRANSFERS.—The amendment made by subsection (c) [amending this section] shall not apply to any transfer after December 15, 1987, and on or before March 31, 1988, if such transfer is—

“(i) between corporations which are members of the same affiliated group on December 15, 1987, or

“(ii) between corporations which become members of the same affiliated group pursuant to a binding written contract or tender offer in effect on December 15, 1987.

“(C) DISTRIBUTIONS COVERED BY PRIOR TRANSITION RULE.—The amendments made by this section shall not apply to any distribution to which the amendments made by subtitle D of title VI of the Tax Reform Act of 1986 [sections 631 to 634 of Pub. L. 99-514, see Tables for classification] do not apply.

“(D) TREATMENT OF CERTAIN MEMBERS OF AFFILIATED GROUP.—

“(i) IN GENERAL.—For purposes of subparagraph (A), all corporations which were in existence on the designated date and were members of the same affiliated group which included the distributees on such date shall be treated as 1 distributee.

“(ii) LIMITATION TO STOCK HELD ON DESIGNATED DATE.—Clause (i) shall not exempt any distribution from the amendments made by this section if such distribution is with respect to stock not held by the distributee (determined without regard to clause (i)) on the designated date directly or indirectly through a corporation which goes out of existence in the transaction.

“(iii) DESIGNATED DATE.—For purposes of this subparagraph, the term ‘designated date’ means the later of—

“(I) December 15, 1987, or

“(II) the date on which the acquisition meeting the requirements of subparagraph (A) occurred.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 712(l)(7) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by paragraphs (1) and (3) [amending this section] shall apply to stock acquired after June 18, 1984, in taxable years ending after such date.

“(B) ELECTION BY TAXPAYER TO HAVE AMENDMENTS APPLY EARLIER.—Any taxpayer may elect, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have the amendments made by paragraphs (1) and (3) apply as if included in section 226 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 226 of Pub. L. 97-248, which amended this section and section 306 of this title and enacted Effective Date of 1982 Amendment note set out below].

“(C) SPECIAL RULE FOR CERTAIN TRANSFERS TO FORM BANK HOLDING COMPANY.—Except as provided in subparagraph (D), the amendments made by paragraphs (1) and (3) shall not apply to transfers pursuant to an application to form a BHC (as defined in section 304(b)(3)(D)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) filed with the Federal Reserve Board before June 18, 1984, if—

“(i) such BHC was formed not later than the 90th day after the date of the last required approval of any regulatory authority to form such BHC, and

“(ii) such BHC did not elect (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) not to have the provisions of this subparagraph apply.

“(D) AMENDMENTS TO APPLY TO CERTAIN LIABILITIES INCURRED BEFORE OCTOBER 20, 1983.—The amendment made by paragraph (3)(A) shall apply to the acquisition of any stock to the extent the liability assumed, or to which such stock is subject, was incurred by the transferor after October 20, 1983.”

Amendment by section 712(l)(2), (4), (5)(A) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 226(c) of Pub. L. 97-248 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 306 and 351 of this title] shall apply to transfers occurring after August 31, 1982, in taxable years ending after such date.

“(2) APPROVAL BY FEDERAL RESERVE BOARD.—The amendments made by this section shall not apply to transfers pursuant to an application to form a BHC filed with the Federal Reserve Board before August 16, 1982, if the BHC was formed not later than the later of—

“(A) the 90th day after the date of the last required approval of any regulatory authority to form such BHC, or

“(B) January 1, 1983.

For purposes of this paragraph, the term ‘BHC’ means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 [section 1841(a) of Title 12, Banks and Banking]).’

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-554 effective Aug. 31, 1964, except that for purposes of this section and section 302

of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisition or redemption occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88-554, set out as a note under section 318 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan 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.

§ 305. Distributions of stock and stock rights

(a) General rule

Except as otherwise provided in this section, gross income does not include the amount of any distribution of the stock of a corporation made by such corporation to its shareholders with respect to its stock.

(b) Exceptions

Subsection (a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which section 301 applies—

(1) Distributions in lieu of money

If the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either—

- (A) in its stock, or
- (B) in property.

(2) Disproportionate distributions

If the distribution (or a series of distributions of which such distribution is one) has the result of—

- (A) the receipt of property by some shareholders, and
- (B) an increase in the proportionate interests of other shareholders in the assets or earnings and profits of the corporation.

(3) Distributions of common and preferred stock

If the distribution (or a series of distributions of which such distribution is one) has the result of—

- (A) the receipt of preferred stock by some common shareholders, and
- (B) the receipt of common stock by other common shareholders.

(4) Distributions on preferred stock

If the distribution is with respect to preferred stock, other than an increase in the conversion ratio of convertible preferred stock made solely to take account of a stock dividend or stock split with respect to the stock into which such convertible stock is convertible.

(5) Distributions of convertible preferred stock

If the distribution is of convertible preferred stock, unless it is established to the satisfaction of the Secretary that such distribution will not have the result described in paragraph (2).

(c) Certain transactions treated as distributions

For purposes of this section and section 301, the Secretary shall prescribe regulations under which a change in conversion ratio, a change in redemption price, a difference between redemption price and issue price, a redemption which is treated as a distribution to which section 301 applies, or any transaction (including a recapitalization) having a similar effect on the interest of any shareholder shall be treated as a distribution with respect to any shareholder whose proportionate interest in the earnings and profits or assets of the corporation is increased by such change, difference, redemption, or similar transaction. Regulations prescribed under the preceding sentence shall provide that—

(1) where the issuer of stock is required to redeem the stock at a specified time or the holder of stock has the option to require the issuer to redeem the stock, a redemption premium resulting from such requirement or option shall be treated as reasonable only if the amount of such premium does not exceed the amount determined under the principles of section 1273(a)(3),

(2) a redemption premium shall not fail to be treated as a distribution (or series of distributions) merely because the stock is callable, and

(3) in any case in which a redemption premium is treated as a distribution (or series of distributions), such premium shall be taken into account under principles similar to the principles of section 1272(a).

(d) Definitions

(1) Rights to acquire stock

For purposes of this section, the term “stock” includes rights to acquire such stock.

(2) Shareholders

For purposes of subsections (b) and (c), the term “shareholder” includes a holder of rights or of convertible securities.

(e) Treatment of purchaser of stripped preferred stock

(1) In general

If any person purchases after April 30, 1993, any stripped preferred stock, then such person, while holding such stock, shall include in gross income amounts equal to the amounts which would have been so includible if such stripped preferred stock were a bond issued on the purchase date and having original issue discount equal to the excess, if any, of—

- (A) the redemption price for such stock, over
- (B) the price at which such person purchased such stock.

The preceding sentence shall also apply in the case of any person whose basis in such stock is determined by reference to the basis in the hands of such purchaser.

(2) Basis adjustments

Appropriate adjustments to basis shall be made for amounts includible in gross income under paragraph (1).

(3) Tax treatment of person stripping stock

If any person strips the rights to 1 or more dividends from any stock described in para-

graph (5)(B) and after April 30, 1993, disposes of such dividend rights, for purposes of paragraph (1), such person shall be treated as having purchased the stripped preferred stock on the date of such disposition for a purchase price equal to such person's adjusted basis in such stripped preferred stock.

(4) Amounts treated as ordinary income

Any amount included in gross income under paragraph (1) shall be treated as ordinary income.

(5) Stripped preferred stock

For purposes of this subsection—

(A) In general

The term “stripped preferred stock” means any stock described in subparagraph (B) if there has been a separation in ownership between such stock and any dividend on such stock which has not become payable.

(B) Description of stock

Stock is described in this subsection if such stock—

(i) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent, and

(ii) has a fixed redemption price.

(6) Purchase

For purposes of this subsection, the term “purchase” means—

(A) any acquisition of stock, where

(B) the basis of such stock is not determined in whole or in part by the reference to the adjusted basis of such stock in the hands of the person from whom acquired.

(7) Cross reference

For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).

(f) Cross references

For special rules—

(1) **Relating to the receipt of stock and stock rights in corporate organizations and reorganizations, see part III (sec. 351 and following).**

(2) **In the case of a distribution which results in a gift, see section 2501 and following.**

(3) **In the case of a distribution which has the effect of the payment of compensation, see section 61(a)(1).**

(Aug. 16, 1954, ch. 736, 68A Stat. 90; Pub. L. 91-172, title IV, §421(a), Dec. 30, 1969, 83 Stat. 614; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-34, title III, §321(a), (b), Aug. 13, 1981, 95 Stat. 287, 289; Pub. L. 97-448, title I, §103(f), Jan. 12, 1983, 96 Stat. 2378; Pub. L. 101-508, title XI, §§11322(a), 11801(a)(17), (c)(7), Nov. 5, 1990, 104 Stat. 1388-463, 1388-521, 1388-524; Pub. L. 103-66, title XIII, §13206(c)(1), Aug. 10, 1993, 107 Stat. 465; Pub. L. 108-357, title VIII, §831(b), Oct. 22, 2004, 118 Stat. 1587.)

AMENDMENTS

2004—Subsec. (e)(7). Pub. L. 108-357 added par. (7).

1993—Subsecs. (e), (f). Pub. L. 103-66 added subsec. (e) and redesignated former subsec. (e) as (f).

1990—Subsec. (c). Pub. L. 101-508, §11322(a), inserted sentence at end specifying the contents of regulations.

Subsec. (d)(1). Pub. L. 101-508, §11801(c)(7)(A), struck out “(other than subsection (e))” after “this section”.

Subsecs. (e), (f). Pub. L. 101-508, §11801(a)(17), (c)(7)(B), redesignated subsec. (f) as (e) and struck out former subsec. (e) relating to dividend reinvestment in stock of public utilities.

1983—Subsec. (e)(3)(A). Pub. L. 97-448, §103(f)(1), substituted “placed in service qualified long-life public utility property having a cost equal to at least 60 percent of the aggregate cost of all tangible property described in subparagraph (A) or (B) of section 1245(a)(3) placed in service by the corporation during such period” for “acquired public utility recovery property having a cost equal to at least 60 percent of the aggregate cost of all tangible property described in section 1245(a)(3) (other than subparagraphs (C) and (D) thereof) acquired by the corporation during such period”.

Subsec. (e)(3)(C)(ii). Pub. L. 97-448, §103(f)(2), substituted definition of “qualified long-life public utility property” for definition of “public utility recovery property” which had been defined as public utility property (within the meaning of section 167(l)(3)(A)) which was recovery property which was 10-year property or 15-year public utility property (within the meaning of section 168), except that any requirement that the property be placed in service after December 31, 1980, did not apply.

1981—Subsec. (d)(1). Pub. L. 97-34, §321(b), inserted “(other than subsection (e))” after “this section”.

Subsecs. (e), (f). Pub. L. 97-34, §321(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1976—Subsecs. (b)(5), (c). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1969—Subsec. (a). Pub. L. 91-172 substituted reference to this section for reference to subsec. (b), and omitted reference to rights to acquire its stock.

Subsec. (b). Pub. L. 91-172 omitted reference to rights to acquire its stock, in text preceding par. (1), redesignated former par. (2) as par. (1) and added pars. (2) to (5). Former par. (1), providing for the extent to which distribution of preference dividends were to be treated as distribution of property to which section 301 applied, was struck out.

Subsecs. (c) to (e). Pub. L. 91-172 added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §831(c), Oct. 22, 2004, 118 Stat. 1587, provided that: “The amendments made by this section [amending this section and section 1286 of this title] shall apply to purchases and dispositions after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Apr. 30, 1993, see section 13206(c)(3) of Pub. L. 103-66 set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11322(b) of Pub. L. 101-508 provided that:

“(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to stock issued after October 9, 1990.

“(2) **EXCEPTION.**—The amendment made by subsection (a) shall not apply to any stock issued after October 9, 1990, if—

“(A) such stock is issued pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance,

“(B) such stock is issued pursuant to a registration or offering statement filed on or before October 9, 1990, with a Federal or State agency regulating the offering or sale of securities and such stock is issued before the date 90 days after the date of such filing, or

“(C) such stock is issued pursuant to a plan filed on or before October 9, 1990, in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986).”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 321(c) of Pub. L. 97-34 provided that: "The amendments made by this section [amending this section] shall apply to distributions after December 31, 1981, in taxable years ending after such date."

EFFECTIVE DATE OF 1969 AMENDMENT

Section 421(b) of Pub. L. 91-172, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply with respect to distributions (or deemed distributions) made after January 10, 1969, in taxable years ending after such date.

"(2)(A) Section 305(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall not apply to a distribution (or deemed distribution) of stock made before January 1, 1991, with respect to stock (i) outstanding on January 10, 1969, (ii) issued pursuant to a contract binding on January 10, 1969, on the distributing corporation, (iii) which is additional stock of that class of stock which (as of January 10, 1969) had the largest fair market value of all classes of stock of the corporation (taking into account only stock outstanding on January 10, 1969, or issued pursuant to a contract binding on January 10, 1969), (iv) described in subparagraph (C)(iii), or (v) issued in a prior distribution described in clause (i), (ii), (iii), or (iv).

"(B) Subparagraph (A) shall apply only if—

"(i) the stock as to which there is a receipt of property was outstanding on January 10, 1969 (or was issued pursuant to a contract binding on January 10, 1969, on the distributing corporation), and

"(ii) if such stock and any stock described in subparagraph (A)(i) were also outstanding on January 10, 1968, a distribution of property was made on or before January 10, 1969, with respect to such stock, and a distribution of stock was made on or before January 10, 1969, with respect to such stock described in subparagraph (A)(i).

"(C) Subparagraph (A) shall cease to apply when at any time after October 9, 1969, the distributing corporation issues any of its stock (other than in a distribution of stock with respect to stock of the same class) which is not—

"(i) nonconvertible preferred stock.

"(ii) additional stock of that class of stock which meets the requirements of subparagraph (A)(iii), or

"(iii) preferred stock which is convertible into stock which meets the requirements of subparagraph (A)(iii) at a fixed conversion ratio which takes account of all stock dividends and stock splits with respect to the stock into which such convertible stock is convertible.

"(D) For purposes of this paragraph, the term 'stock' includes rights to acquire such stock.

"(3) In cases to which Treasury Decision 6990 (promulgated January 10, 1969) would not have applied, in applying paragraphs (1) and (2) April 22, 1969, shall be substituted for January 10, 1969.

"(4) Section 305(b)(4) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall not apply to any distribution (or deemed distribution) with respect to preferred stock (including any increase in the conversion ratio of convertible stock) made before January 1, 1991, pursuant to the terms relating to the issuance of such stock which were in effect on January 10, 1969.

"(5) With respect to distributions made or considered as made after January 10, 1969, in taxable years ending after such date, to the extent that the amendment made by subsection (a) [amending this section] does

not apply by reason of paragraph (2), (3), or (4) of this subsection, section 305 of the Internal Revenue Code of 1986 (as in effect before the amendment made by subsection (a)) shall continue to apply."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(17), (c)(7) of Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

§ 306. Dispositions of certain stock**(a) General rule**

If a shareholder sells or otherwise disposes of section 306 stock (as defined in subsection (c))—

(1) Dispositions other than redemptions

If such disposition is not a redemption (within the meaning of section 317(b))—

(A) The amount realized shall be treated as ordinary income. This subparagraph shall not apply to the extent that—

(i) the amount realized, exceeds

(ii) such stock's ratable share of the amount which would have been a dividend at the time of distribution if (in lieu of section 306 stock) the corporation had distributed money in an amount equal to the fair market value of the stock at the time of distribution.

(B) Any excess of the amount realized over the sum of—

(i) the amount treated under subparagraph (A) as ordinary income, plus

(ii) the adjusted basis of the stock,

shall be treated as gain from the sale of such stock.

(C) No loss shall be recognized.

(D) TREATMENT AS DIVIDEND.—For purposes of section 1(h)(11) and such other provisions as the Secretary may specify, any amount treated as ordinary income under this paragraph shall be treated as a dividend received from the corporation.

(2) Redemption

If the disposition is a redemption, the amount realized shall be treated as a distribution of property to which section 301 applies.

(b) Exceptions

Subsection (a) shall not apply—

(1) Termination of shareholder's interest, etc.**(A) Not in redemption**

If the disposition—

(i) is not a redemption;

(ii) is not, directly or indirectly, to a person the ownership of whose stock would (under section 318(a)) be attributable to the shareholder; and

(iii) terminates the entire stock interest of the shareholder in the corporation (and for purposes of this clause, section 318(a) shall apply).

(B) In redemption

If the disposition is a redemption and paragraph (3) or (4) of section 302(b) applies.

(2) Liquidations

If the section 306 stock is redeemed in a distribution in complete liquidation to which part II (sec. 331 and following) applies.

(3) Where gain or loss is not recognized

To the extent that, under any provision of this subtitle, gain or loss to the shareholder is not recognized with respect to the disposition of the section 306 stock.

(4) Transactions not in avoidance

If it is established to the satisfaction of the Secretary—

(A) that the distribution, and the disposition or redemption, or

(B) in the case of a prior or simultaneous disposition (or redemption) of the stock with respect to which the section 306 stock disposed of (or redeemed) was issued, that the disposition (or redemption) of the section 306 stock,

was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(c) Section 306 stock defined**(1) In general**

For purposes of this subchapter, the term “section 306 stock” means stock which meets the requirements of subparagraph (A), (B), or (C) of this paragraph.

(A) Distributed to seller

Stock (other than common stock issued with respect to common stock) which was distributed to the shareholder selling or otherwise disposing of such stock if, by reason of section 305(a), any part of such distribution was not includible in the gross income of the shareholder.

(B) Received in a corporate reorganization or separation

Stock which is not common stock and—

(i) which was received, by the shareholder selling or otherwise disposing of such stock, in pursuance of a plan of reorganization (within the meaning of section 368(a)), or in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applied, and

(ii) with respect to the receipt of which gain or loss to the shareholder was to any extent not recognized by reason of part III, but only to the extent that either the effect of the transaction was substantially the same as the receipt of a stock dividend, or the stock was received in exchange for section 306 stock.

For purposes of this section, a receipt of stock to which the foregoing provisions of this subparagraph apply shall be treated as a distribution of stock.

(C) Stock having transferred or substituted basis

Except as otherwise provided in subparagraph (B), stock the basis of which (in the hands of the shareholder selling or otherwise disposing of such stock) is determined by

reference to the basis (in the hands of such shareholder or any other person) of section 306 stock.

(2) Exception where no earnings and profits

For purposes of this section, the term “section 306 stock” does not include any stock no part of the distribution of which would have been a dividend at the time of the distribution if money had been distributed in lieu of the stock.

(3) Certain stock acquired in section 351 exchange

The term “section 306 stock” also includes any stock which is not common stock acquired in an exchange to which section 351 applied if receipt of money (in lieu of the stock) would have been treated as a dividend to any extent. Rules similar to the rules of section 304(b)(2) shall apply—

(A) for purposes of the preceding sentence, and

(B) for purposes of determining the application of this section to any subsequent disposition of stock which is section 306 stock by reason of an exchange described in the preceding sentence.

(4) Application of attribution rules for certain purposes

For purposes of paragraphs (1)(B)(ii) and (3), section 318(a) shall apply. For purposes of applying the preceding sentence to paragraph (3), the rules of section 304(c)(3)(B) shall apply.

(d) Stock rights

For purposes of this section—

(1) stock rights shall be treated as stock, and

(2) stock acquired through the exercise of stock rights shall be treated as stock distributed at the time of the distribution of the stock rights, to the extent of the fair market value of such rights at the time of the distribution.

(e) Convertible stock

For purposes of subsection (c)—

(1) if section 306 stock was issued with respect to common stock and later such section 306 stock is exchanged for common stock in the same corporation (whether or not such exchange is pursuant to a conversion privilege contained in the section 306 stock), then (except as provided in paragraph (2)) the common stock so received shall not be treated as section 306 stock; and

(2) common stock with respect to which there is a privilege of converting into stock other than common stock (or into property), whether or not the conversion privilege is contained in such stock, shall not be treated as common stock.

(f) Source of gain

The amount treated under subsection (a)(1)(A) as ordinary income shall, for purposes of part I of subchapter N (sec. 861 and following, relating to determination of sources of income), be treated as derived from the same source as would have been the source if money had been received from the corporation as a dividend at the time of the distribution of such stock. If under the

preceding sentence such amount is determined to be derived from sources within the United States, such amount shall be considered to be fixed or determinable annual or periodical gains, profits, and income within the meaning of section 871(a) or section 881(a), as the case may be.

(g) Change in terms and conditions of stock

If a substantial change is made in the terms and conditions of any stock, then, for purposes of this section—

(1) the fair market value of such stock shall be the fair market value at the time of the distribution or at the time of such change, whichever such value is higher;

(2) such stock's ratable share of the amount which would have been a dividend if money had been distributed in lieu of stock shall be determined as of the time of distribution or as of the time of such change, whichever such ratable share is higher; and

(3) subsection (c)(2) shall not apply unless the stock meets the requirements of such subsection both at the time of such distribution and at the time of such change.

(Aug. 16, 1954, ch. 736, 68A Stat. 90; Pub. L. 94-455, title XIX, §§ 1901(b)(3)(J), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 95-600, title VII, § 702(a)(1), (2), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 96-223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97-248, title II, §§ 222(e)(1)(A), (2), 226(b), 227(a), Sept. 3, 1982, 96 Stat. 480, 492; Pub. L. 98-369, div. A, title VII, § 712(i)(2), (l)(5)(B), (6), July 18, 1984, 98 Stat. 948, 954; Pub. L. 101-508, title XI, § 11801(a)(18), Nov. 5, 1990, 104 Stat. 1388-521; Pub. L. 108-27, title III, § 302(e)(3), May 28, 2003, 117 Stat. 763.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108-27, see Effective and Termination Dates of 2003 Amendment note below.

AMENDMENTS

2003—Subsec. (a)(1)(D). Pub. L. 108-27, §§ 302(e)(3), 303, temporarily added subpar. (D). See Effective and Termination Dates of 2003 Amendment note below.

1990—Subsec. (h). Pub. L. 101-508 struck out subsec. (h) which related to stock received in distributions and reorganizations to which 1939 Code applied.

1984—Subsec. (b)(1). Pub. L. 98-369, § 712(i)(2), substituted “interest, etc.” for “interest” in heading.

Subsec. (c)(3). Pub. L. 98-369, § 712(l)(6), incorporated existing second sentence in provision designated subpar. (A) and added subpar. (B).

Subsec. (c)(4). Pub. L. 98-369, § 712(l)(5)(B), substituted “the rules of section 304(c)(3)(B) shall apply” for “sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein”.

1982—Subsec. (b)(1)(B). Pub. L. 97-248, § 222(e)(2), substituted “paragraph (3) or (4) of section 302(b)” for “section 302(b)(3)”.

Subsec. (b)(2). Pub. L. 97-248, § 222(e)(1)(A), struck out “partial or” before “complete liquidation”.

Subsec. (c)(3). Pub. L. 97-248, § 226(b), added par. (3).

Subsec. (c)(4). Pub. L. 97-248, § 227(a), added par. (4).

1980—Subsecs. (a)(3), (b)(5). Pub. L. 96-223 repealed the amendments made by Pub. L. 95-600, § 702(a)(1), (2). See 1978 Amendment notes below.

1978—Subsec. (a)(3). Pub. L. 95-600, § 702(a)(1), added par. (3) which related to ordinary income from the sale or redemption of section 306 stock which was carryover basis property adjusted for 1976 value. See Repeals note below.

Subsec. (b)(5). Pub. L. 95-600, § 702(a)(2), added par. (5) which provided that subsec. (a) of this section shall not apply to the extent that section 303 applies to a distribution in redemption of section 306 stock. See Repeals note below.

1976—Subsec. (a)(1)(A), (B)(i). Pub. L. 94-455, § 1901(b)(3)(J), substituted “ordinary income” for “gain from the sale of property which is not a capital asset”.

Subsec. (b)(4). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (f). Pub. L. 94-455, § 1901(b)(3)(J), substituted “ordinary income” for “gain from the sale of property which is not a capital asset”.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108-27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108-27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108-27 inapplicable to taxable years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108-27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 222(e)(1)(A), (2) of Pub. L. 97-248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97-248, set out as a note under section 302 of this title.

Amendment by section 226(b) of Pub. L. 97-248 applicable to transfers occurring after Aug. 31, 1982, except for certain transfers pursuant to an application to form a BHC filed with the Federal Reserve Board before Aug. 16, 1982, see section 226(c) of Pub. L. 97-248, set out as a note under section 304 of this title.

Section 227(c)(1) of Pub. L. 97-248 provided that: “The amendment made by subsection (a) [amending this section] shall apply to stock received after August 31, 1982, in taxable years ending after such date.”

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96-223 (repealing section 702(a)(1), (2) of Pub. L. 95-600 and the amendments made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and, except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96-223, set out as a note under section 1023 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(a)(3) of Pub. L. 95-600 provided that the amendments made by section 702(a) of Pub. L. 95-600 would apply to the estates of decedents dying after Dec. 31, 1979, prior to repeal by Pub. L. 96-223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(J) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

REPEALS

Pub. L. 95-600, § 702(a)(1), (2), cited as a credit to this section, and the amendments made thereby, were re-

pealed by Pub. L. 96-223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 702(a)(1), (2). See Effective Date of 1980 Amendment and Revival of Prior Law note above.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

§ 307. Basis of stock and stock rights acquired in distributions

(a) General rule

If a shareholder in a corporation receives its stock or rights to acquire its stock (referred to in this subsection as “new stock”) in a distribution to which section 305(a) applies, then the basis of such new stock and of the stock with respect to which it is distributed (referred to in this section as “old stock”), respectively, shall, in the shareholder’s hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock. Such allocation shall be made under regulations prescribed by the Secretary.

(b) Exception for certain stock rights

(1) In general

If—

(A) a corporation distributes rights to acquire its stock to a shareholder in a distribution to which section 305(a) applies, and

(B) the fair market value of such rights at the time of the distribution is less than 15 percent of the fair market value of the old stock at such time,

then subsection (a) shall not apply and the basis of such rights shall be zero, unless the taxpayer elects under paragraph (2) of this subsection to determine the basis of the old stock and of the stock rights under the method of allocation provided in subsection (a).

(2) Election

The election referred to in paragraph (1) shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such rights were received. Such election shall be made in such manner as the Secretary may by regulations prescribe, and shall be irrevocable when made.

(c) Cross reference

For basis of stock and stock rights distributed before June 22, 1954, see section 1052.

(Aug. 16, 1954, ch. 736, 68A Stat. 93; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (b)(2). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

SUBPART B—EFFECTS ON CORPORATION

Sec.	
311.	Taxability of corporation on distribution.
312.	Effect on earnings and profits.

§ 311. Taxability of corporation on distribution

(a) General rule

Except as provided in subsection (b), no gain or loss shall be recognized to a corporation on the distribution (not in complete liquidation) with respect to its stock of—

- (1) its stock (or rights to acquire its stock),
- or
- (2) property.

(b) Distributions of appreciated property

(1) In general

If—

(A) a corporation distributes property (other than an obligation of such corporation) to a shareholder in a distribution to which subpart A applies, and

(B) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

(2) Treatment of liabilities

Rules similar to the rules of section 336(b) shall apply for purposes of this subsection.

(3) Special rule for certain distributions of partnership or trust interests

If the property distributed consists of an interest in a partnership or trust, the Secretary may by regulations provide that the amount of the gain recognized under paragraph (1) shall be computed without regard to any loss attributable to property contributed to the partnership or trust for the principal purpose of recognizing such loss on the distribution.

(Aug. 16, 1954, ch. 736, 68A Stat. 94; Pub. L. 91-172, title IX, §905(a), (b)(1), Dec. 30, 1969, 83 Stat. 713, 714; Pub. L. 94-452, §2(b), Oct. 2, 1976, 90 Stat. 1511; Pub. L. 94-455, title XIX, §1901(a)(42)(A), (B)(i), (C), Oct. 4, 1976, 90 Stat. 1771; Pub. L. 95-600, title VII, §703(j)(2)(A), (B), Nov. 6, 1978, 92 Stat. 2941; Pub. L. 96-471, §2(b)(1), Oct. 19, 1980, 94 Stat. 2253; Pub. L. 97-248, title II, §223(a), Sept. 3, 1982, 96 Stat. 483; Pub. L. 98-369, div. A, title I, §54(a), title VII, §712(j), July 18, 1984, 98 Stat. 568, 948; Pub. L. 99-514, title VI, §631(c), Oct. 22, 1986, 100 Stat. 2272; Pub. L. 100-647, title I, §§1006(e)(8)(B), (21)(B), 1018(d)(5)(E), Nov. 10, 1988, 102 Stat. 3401, 3403, 3580.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-647, §1018(d)(5)(E), substituted “distribution (not in complete liquidation) with respect to its stock” for “distribution, with respect to its stock.”

Subsec. (b)(2). Pub. L. 100-647, §1006(e)(21)(B), substituted “liabilities” for “liabilities in excess of basis” in heading.

Subsec. (b)(3). Pub. L. 100-647, §1006(e)(8)(B), added par. (3).

1986—Pub. L. 99-514 amended section generally, substituting provisions relating to distributions of appreciated property for provisions relating to LIFO inventory, liability in excess of basis, and appreciated property used to redeem stock.

1984—Subsec. (d). Pub. L. 98-369, §54(a)(3), substituted “Distributions of appreciated property” for “Appreciated property used to redeem stock” in heading.

Subsec. (d)(1). Pub. L. 98-369, §54(a)(1), substituted “This subsection shall be applied after the applications

of subsections (b) and (c)" for "Subsections (b) and (c) shall not apply to any distribution to which this subsection applies" in provisions following subpar. (B).

Subsec. (d)(1)(A). Pub. L. 98-369, §54(a)(1), struck out "of part or all of his stock in such corporation" before "and".

Subsec. (d)(2)(A). Pub. L. 98-369, §54(a)(2)(A), substituted provisions relating to a distribution which is made with respect to qualified stock if section 302(b)(4) applies to such distribution or such distribution is a qualified distribution for provisions which had related to a distribution to a corporate shareholder if the basis of the property distributed was determined under section 301(d)(2).

Subsec. (d)(2)(B) to (F). Pub. L. 98-369, §54(a)(2)(A), (B), redesignated subpars. (C) to (F) as (B) to (E), respectively, and struck out former subpar. (B) which related to distributions to which section 302(b)(4) applied and which were made with respect to qualified stock.

Subsec. (e)(1)(C). Pub. L. 98-369, §712(j), added subpar. (C).

Subsec. (e)(3). Pub. L. 98-369, §54(a)(2)(C), added par. (3).

1982—Subsec. (d)(2)(A). Pub. L. 97-248, §223(a)(1), substituted reference to a distribution to a corporate shareholder if the basis of the property distributed is determined under section 301(d)(2) for reference to a distribution in complete redemption of all of the stock of a shareholder who, at all times within the 12-month period ending on the date of such distribution owned at least 10 percent in value of the outstanding stock of the distributing corporation, but only if the redemption qualified under section 302(b)(3) (determined without the application of section 302(c)(2)(A)(ii)).

Subsec. (d)(2)(B). Pub. L. 97-248, §223(a)(1), substituted reference to a distribution to which section 302(b)(4) applies and which is made with respect to qualified stock for reference to a distribution of stock or an obligation of a corporation, which was engaged in at least one trade or business, which had not received property constituting a substantial part of its assets from the distributing corporation, in a transaction to which section 351 applied or as a contribution to capital, within the 5-year period ending on the date of the distribution, and at least 50 percent in value of the outstanding stock of which was owned by the distributing corporation at any time within the 9-year period ending one year before the date of the distribution.

Subsec. (d)(2)(C). Pub. L. 97-248, §223(a)(1), substituted reference to a distribution of stock or an obligation of a corporation if the requirements of subsec. (e)(2) of this section are met with respect to the distribution for reference to a distribution of stock or securities pursuant to the terms of a final judgment rendered by a court with respect to the distributing corporation in a court proceeding under the Sherman Act (15 U.S.C. 1-7) or the Clayton Act (15 U.S.C. 12-27), or both, to which the United States was a party, but only if the distribution of such stock or securities in redemption of the distributing corporation's stock was in furtherance of the purposes of the judgment.

Subsec. (d)(2)(G). Pub. L. 97-248, §223(a)(3), struck out subpar. (G) which provided that a distribution of stock to a distributee which is not an organization exempt from tax under section 501(a) of this title, if with respect to such distributee, subsec. (a)(1) or (b)(1) of section 1101 of this title applied to such distribution.

Subsec. (e). Pub. L. 97-248, §223(a)(2), added subsec. (e).

1980—Subsec. (a). Pub. L. 96-471 substituted "section 453B" for "Section 453(d)".

1978—Subsec. (d)(2)(G), (H). Pub. L. 95-600 redesignated subpar. (H) as (G).

1976—Subsec. (d)(1)(B). Pub. L. 94-455, §1901(a)(42)(A), substituted "then a gain shall be recognized" for "then again shall be recognized".

Subsec. (d)(2). Pub. L. 94-452 and Pub. L. 94-455 §1901(a)(42)(B)(i), (C), struck out subpar. (C) relating to certain distributions before Dec. 1, 1974, struck out "26 Stat. 209;" before "15 U.S.C. 1-7)" and "38 Stat. 730;" be-

fore "15 U.S.C. 12-27)" in subpar. (D), added subpar. (H), and redesignated subpars. (D) to (G), as so amended, as subpars. (C) to (F), respectively.

1969—Subsec. (a). Pub. L. 91-172, §905(b)(1), inserted reference to subsec. (d).

Subsec. (d). Pub. L. 91-172, §905(a), added subsec. (d).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99-514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 54(d) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, title XVIII, §1804(b)(3), Oct. 22, 1986, 100 Stat. 2095, 2799; Pub. L. 100-647, title I, §1018(d)(1)-(3), Nov. 10, 1988, 102 Stat. 3578, provided that:

"(1) SUBSECTION (a).—Except as otherwise provided in this subsection, the amendments made by subsection (a) [amending this section] shall apply to distributions declared on or after June 14, 1984, in taxable years ending after such date.

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending section 301 of this title] shall apply to distributions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(3) EXCEPTION FOR DISTRIBUTIONS BEFORE JANUARY 1, 1985, TO 80-PERCENT CORPORATE SHAREHOLDERS.—

"(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to any distribution before January 1, 1985, to an 80-percent corporate shareholder if the basis of the property distributed is determined under section 301(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(B) 80-PERCENT CORPORATE SHAREHOLDER.—The term '80-percent corporate shareholder' means, with respect to any distribution, any corporation which owns—

"(i) stock in the corporation making the distribution possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and

"(ii) at least 80 percent of the total number of shares of all other classes of stock of the distributing corporation (except nonvoting stock which is limited and preferred as to dividends).

"(C) SPECIAL RULE FOR AFFILIATED GROUP FILING CONSOLIDATED RETURN.—For purposes of this paragraph and paragraph (4), all members of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986) which file a consolidated return for the taxable year which includes the date of the distribution shall be treated as 1 corporation.

"(D) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS BEFORE JANUARY 1, 1988.—

"(i) IN GENERAL.—In the case of a transaction to which this subparagraph applies, subparagraph (A) shall be applied by substituting '1988' for '1985' and the amendments made by subtitle D of title VI of the Tax Reform Act of 1986 [sections 631 to 634 of Pub. L. 99-514, enacting sections 336 and 337 of this title, amending this section and sections 26, 312, 332, 334, 338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248,

1255, 1276, 1363, 1366, 1374, and 1375 of this title, repealing sections 333, 336, and 337 of this title, and enacting provisions set out as a note under section 301 of this title) shall not apply.

“(ii) TRANSACTION TO WHICH SUBPARAGRAPH [sic] APPLIES.—This subparagraph applies [applies] to a transaction in which a Delaware corporation which was incorporated on May 31, 1927, and which was acquired by the transferee on December 10, 1968, transfers to the transferee stock in a corporation—

“(I) with respect to which such Delaware corporation is a 100-percent corporate shareholder, and

“(II) which is a Tennessee corporation which was incorporated on March 2, 1978, [sic] and which is a successor to an Indiana corporation which was incorporated on June 28, 1946, and acquired by the transferee on December 9 [10], 1968.

“(4) EXCEPTION FOR CERTAIN DISTRIBUTIONS WHERE TENDER OFFER COMMENCED ON MAY 23, 1984.—

“(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to any distribution made before September 1, 1986, if—

“(i) such distribution consists of qualified stock held (directly or indirectly) on June 15, 1984, by the distributing corporation,

“(ii) control of the distributing corporation (as defined in section 368(c) of the Internal Revenue Code of 1986) is acquired other than in a tax-free transaction after January 1, 1984, but before January 1, 1985,

“(iii) a tender offer for the shares of the distributing corporation was commenced on May 23, 1984, and was amended on May 24, 1984, and

“(iv) the distributing corporation and the distributee corporation are members of the same affiliated group (as defined in section 1504 of such Code) which filed a consolidated return for the taxable year which includes the date of the distribution.

If the common parent of any affiliated group filing a consolidated return meets the requirements of clauses (ii) and (iii), each other member of such group shall be treated as meeting such requirements.

“(B) QUALIFIED STOCK.—For purposes of subparagraph (A), the term ‘qualified stock’ means any stock in a corporation which on June 15, 1984, was a member of the same affiliated group as the distributing corporation and which filed a consolidated return with the distributing corporation for the taxable year which included June 15, 1984.

“(5) EXCEPTION FOR CERTAIN DISTRIBUTIONS.—

“(A) IN GENERAL.—The amendments made by this section [amending this section and sections 301 and 1223 of this title] shall not apply to distributions before February 1, 1986, if—

“(i) the distribution consists of property held on March 7, 1984 (or property acquired thereafter in the ordinary course of a trade or business) by—

“(I) the controlled corporation, or

“(II) any subsidiary controlled corporation,

“(ii) a group of 1 or more shareholders (acting in concert)—

“(I) acquired, during the 1-year period ending on February 1, 1984, at least 10 percent of the outstanding stock of the controlled corporation,

“(II) held at least 10 percent of the outstanding stock of the common parent on February 1, 1984, and

“(III) submitted a proposal for distributions of interests in a royalty trust from the common parent or the controlled corporation, and

“(iii) the common parent acquired control of the controlled corporation during the 1-year period ending on February 1, 1984.

“(B) DEFINITIONS.—For purposes of this paragraph—

“(i) The term ‘common parent’ has the meaning given such term by section 1504(a) of the Internal Revenue Code of 1986.

“(ii) The term ‘controlled corporation’ means a corporation with respect to which 50 percent or

more of the outstanding stock of its common parent is tendered for pursuant to a tender offer outstanding on March 7, 1984.

“(iii) The term ‘subsidiary controlled corporation’ means any corporation with respect to which the controlled corporation has control (within the meaning of section 368(c) of such Code) on March 7, 1984.

“(6) EXCEPTION FOR CERTAIN DISTRIBUTION OF PARTNERSHIP INTERESTS.—The amendments made by this section shall not apply to any distribution before February 1, 1986, of an interest in a partnership the interests of which were being traded on a national securities exchange on March 7, 1984, if—

“(A) such interest was owned by the distributing corporation (or any member of an affiliated group within the meaning of section 1504(a) of such Code of which the distributing corporation was a member) on March 7, 1984,

“(B) the distributing corporation (or any such affiliated member) owned more than 80 percent of the interests in such partnership on March 7, 1984, and

“(C) more than 10 percent of the interests in such partnership was offered for sale to the public during the 1-year period ending on March 7, 1984.”

Amendment by section 712(j) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS; EXCEPTIONS

Section 223(b) of Pub. L. 97-248, as amended by Pub. L. 97-448, title III, §306(a)(7), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to distributions after August 31, 1982.

“(2) DISTRIBUTIONS PURSUANT TO RULING REQUESTS BEFORE JULY 23, 1982.—In the case of a ruling request under section 311(d)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the amendments made by this section) made before July 23, 1982, the amendments made by this section [amending this section] shall not apply to distributions made—

“(A) pursuant to a ruling granted pursuant to such request, and

“(B) either before October 21, 1982, or within 90 days after the date of such ruling.

“(3) DISTRIBUTIONS PURSUANT TO FINAL JUDGMENTS OF COURT.—In the case of a final judgment described in section 311(d)(2)(C) of such Code (as in effect before the amendments made by this section) rendered before July 23, 1982, the amendments made by this section [amending this section] shall not apply to distributions made before January 1, 1986, pursuant to such judgment.

“(4) CERTAIN DISTRIBUTIONS WITH RESPECT TO STOCK ACQUIRED BEFORE MAY 1982.—The amendments made by this section [amending this section] shall not apply to distributions—

“(A) which meet the requirements of section 311(d)(2)(A) of such Code (as in effect on the day before the date of the enactment of this Act [Sept. 3, 1982]),

“(B) which are made on or before August 31, 1983, and

“(C) which are made with respect to stock acquired after 1980 and before May 1982.

“(5) DISTRIBUTIONS OF TIMBERLAND WITH RESPECT TO STOCK OF FOREST PRODUCTS COMPANY.—If—

“(A) a forest products company distributes timberland to a shareholder in redemption of the common and preferred stock in such corporation held by such shareholder,

“(B) section 311(d)(2)(A) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section) would have applied to such distributions, and

“(C) such distributions are made pursuant to 1 of 2 options contained in a contract between such company and such shareholder which is binding on August 31, 1982, and at all times thereafter, then such distributions of timberland having an aggregate fair market value on August 31, 1982, not in excess of \$10,000,000 shall be treated as distributions to which section 311(d)(2)(A) of such Code (as in effect before the date of the enactment of this Act [Sept. 3, 1982] applies.”

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96-471, see section 6(a)(1) of Pub. L. 96-471, set out as an Effective Date note under section 453 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 703(j)(2)(C) of Pub. L. 95-600 provided that: “The amendments made by this paragraph [amending this section] shall take effect as if included in section 2(b) of the Bank Holding Company Tax Act of 1976 [amending this section].”

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by section 1901(a)(42)(A), (C) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Section 1901(a)(42)(B)(i) of Pub. L. 94-455 provided that: “The amendments made by clause (i) [amending this section] shall apply only with respect to distributions after November 30, 1974.”

Section 2(d)(4) of Pub. L. 94-452 provided that: “The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1977, with respect to distributions after December 31, 1975, in taxable years ending after December 31, 1975.”

EFFECTIVE DATE OF 1969 AMENDMENT

Section 905(c) of Pub. L. 91-172, as amended by Pub. L. 91-675, Jan. 12, 1971, 84 Stat. 2059, provided that:

“(1) Except as provided in paragraphs (2), (3), (4), and (5), the amendments made by subsections (a) and (b) [amending this section and sections 301 and 312 of this title] shall apply with respect to distributions after November 30, 1969.

“(2) The amendments made by subsections (a) and (b) shall not apply to a distribution before April 1, 1970, pursuant to the terms of—

“(A) a written contract which was binding on the distributing corporation on November 30, 1969, and at all times thereafter before the distribution,

“(B) an offer made by the distributing corporation before December 1, 1969,

“(C) an offer made in accordance with a request for a ruling filed by the distributing corporation with the Internal Revenue Service before December 1, 1969, or

“(D) an offer made in accordance with a registration statement filed with the Securities and Exchange Commission before December 1, 1969.

For purposes of subparagraphs (B), (C), and (D), an offer shall be treated as an offer only if it was in writing and not revocable by its express terms.

“(3) The amendments made by subsections (a) and (b) shall not apply to a distribution by a corporation of specific property in redemption of stock outstanding on November 30, 1969, if—

“(A) every holder of such stock on such date had the right to demand redemption of his stock in such specific property, and

“(B) the corporation had such specific property on hand on such date in a quantity sufficient to redeem all of such stock.

For purposes of the preceding sentence, stock shall be considered to have been outstanding on November 30, 1969, if it could have been acquired on such date through the exercise of an existing right of conversion contained in other stock held on such date.

“(4) The amendments made by subsections (a) and (b) shall not apply to a distribution by a corporation of

property (held on December 1, 1969, by the distributing corporation or a corporation which was a wholly owned subsidiary of the distributing corporation on such date) in redemption of stock outstanding on November 30, 1969, which is redeemed and canceled before July 31, 1971, if—

“(A) such redemption is pursuant to a resolution adopted before November 1, 1969, by the Board of Directors authorizing the redemption of a specific amount of stock constituting more than 10 percent of the outstanding stock of the corporation at the time of the adoption of such resolution; and

“(B) more than 40 percent of the stock authorized to be redeemed pursuant to such resolution was redeemed before December 30, 1969, and more than one-half of the stock so redeemed was redeemed with property other than money.

“(5) The amendments made by subsections (a) and (b) shall not apply to a distribution of stock, by a corporation organized prior to December 1, 1969, for the principal purpose of providing an equity participation plan for employees of the corporation whose stock is being distributed (hereinafter referred to as the ‘employer corporation’) if—

“(A) the stock being distributed was owned by the distributing corporation on November 30, 1969,

“(B) the stock being redeemed was acquired before January 1, 1973, pursuant to such equity participation plan by the shareholder presenting such stock for redemption (or by a predecessor of such shareholder),

“(C) the employment of the shareholder presenting the stock for redemption (or the predecessor of such shareholder) by the employer corporation commenced before January 1, 1971,

“(D) at least 90 percent in value of the assets of the distributing corporation on November 30, 1969, consisted of common stock of the employer corporation, and

“(E) at least 50 percent of the outstanding voting stock of the employer corporation is owned by the distributing corporation at any time within the nine-year period ending one year before the date of such distribution.”

§ 312. Effect on earnings and profits

(a) General rule

Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of—

(1) the amount of money,

(2) the principal amount of the obligations of such corporation (or, in the case of obligations having original issue discount, the aggregate issue price of such obligations), and

(3) the adjusted basis of the other property, so distributed.

(b) Distributions of appreciated property

On the distribution by a corporation, with respect to its stock, of any property (other than an obligation of such corporation) the fair market value of which exceeds the adjusted basis thereof—

(1) the earnings and profits of the corporation shall be increased by the amount of such excess, and

(2) subsection (a)(3) shall be applied by substituting “fair market value” for “adjusted basis”.

For purposes of this subsection and subsection (a), the adjusted basis of any property is its adjusted basis as determined for purposes of computing earnings and profits.

(c) Adjustments for liabilities

In making the adjustments to the earnings and profits of a corporation under subsection (a) or (b), proper adjustment shall be made for—

- (1) the amount of any liability to which the property distributed is subject, and
- (2) the amount of any liability of the corporation assumed by a shareholder in connection with the distribution.

(d) Certain distributions of stock and securities**(1) In general**

The distribution to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities in another corporation, or of property, in a distribution to which this title applies, shall not be considered a distribution of the earnings and profits of any corporation—

- (A) if no gain to such distributee from the receipt of such stock or securities, or property, was recognized under this title, or
- (B) if the distribution was not subject to tax in the hands of such distributee by reason of section 305(a).

(2) Prior distributions

In the case of a distribution of stock or securities, or property, to which section 115(h) of the Internal Revenue Code of 1939 (or the corresponding provision of prior law) applied, the effect on earnings and profits of such distribution shall be determined under such section 115(h), or the corresponding provision of prior law, as the case may be.

(3) Stock or securities

For purposes of this subsection, the term “stock or securities” includes rights to acquire stock or securities.

[(e) Repealed. Pub. L. 98-369, div. A, title I, § 61(a)(2)(B), July 18, 1984, 98 Stat. 581]**(f) Effect on earnings and profits of gain or loss and of receipt of tax-free distributions****(1) Effect on earnings and profits of gain or loss**

The gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation—

- (A) for the purpose of the computation of the earnings and profits of the corporation, shall (except as provided in subparagraph (B)) be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of March 1, 1913; but
- (B) for purposes of the computation of the earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing taxable

income under the law applicable to the year in which such sale or disposition was made. Where, in determining the adjusted basis used in computing such realized gain or loss, the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings and profits, then the latter adjustment shall be used in determining the increase or decrease above provided. For purposes of this subsection, a loss with respect to which a deduction is disallowed under section 1091 (relating to wash sales of stock or securities), or the corresponding provision of prior law, shall not be deemed to be recognized.

(2) Effect on earnings and profits of receipt of tax-free distributions

Where a corporation receives (after February 28, 1913) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

- (A) no such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made; and
- (B) no such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would, but for section 307(b), be so allocated).

(g) Earnings and profits—increase in value accrued before March 1, 1913

(1) If any increase or decrease in the earnings and profits for any period beginning after February 28, 1913, with respect to any matter would be different had the adjusted basis of the property involved been determined without regard to its March 1, 1913, value, then, except as provided in paragraph (2), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(2) If the application of subsection (f) to a sale or other disposition after February 28, 1913, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding subsection (f) and in lieu of the rule provided in paragraph (1) of this subsection, the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss exceeds the adjusted basis computed without regard to the value of the property on March 1, 1913, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(h) Allocation in certain corporate separations and reorganizations**(1) Section 355**

In the case of a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under regulations prescribed by the Secretary.

(2) Section 368(a)(1)(C) or (D)

In the case of a reorganization described in subparagraph (C) or (D) of section 368(a)(1), proper allocation with respect to the earnings and profits of the acquired corporation shall, under regulations prescribed by the Secretary, be made between the acquiring corporation and the acquired corporation (or any corporation which had control of the acquired corporation before the reorganization).

(i) Distribution of proceeds of loan insured by the United States

If a corporation distributes property with respect to its stock and if, at the time of distribution—

(1) there is outstanding a loan to such corporation which was made, guaranteed, or insured by the United States (or by any agency or instrumentality thereof), and

(2) the amount of such loan so outstanding exceeds the adjusted basis of the property constituting security for such loan,

then the earnings and profits of the corporation shall be increased by the amount of such excess, and (immediately after the distribution) shall be decreased by the amount of such excess. For purposes of paragraph (2), the adjusted basis of the property at the time of distribution shall be determined without regard to any adjustment under section 1016(a)(2) (relating to adjustment for depreciation, etc.). For purposes of this subsection, a commitment to make, guarantee, or insure a loan shall be treated as the making, guaranteeing, or insuring of a loan.

[j) Repealed. Pub. L. 108-357, title IV, § 413(c)(4), Oct. 22, 2004, 118 Stat. 1507]

(k) Effect of depreciation on earnings and profits**(1) General rule**

For purposes of computing the earnings and profits of a corporation for any taxable year beginning after June 30, 1972, the allowance for depreciation (and amortization, if any) shall be deemed to be the amount which would be allowable for such year if the straight line method of depreciation had been used for each taxable year beginning after June 30, 1972.

(2) Exception

If for any taxable year a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a) and which is the unit-of-production method or other method not expressed in a term of years, then the adjustment to earnings and profits for depreciation for such year shall be determined

under the method so used (in lieu of the straight line method).

(3) Exception for tangible property**(A) In general**

Except as provided in subparagraph (B), in the case of tangible property to which section 168 applies, the adjustment to earnings and profits for depreciation for any taxable year shall be determined under the alternative depreciation system (within the meaning of section 168(g)(2)).

(B) Treatment of amounts deductible under section 179, 179A, 179B, 179C, 179D, or 179E

For purposes of computing the earnings and profits of a corporation, any amount deductible under section 179, 179A, 179B, 179C, 179D, or 179E shall be allowed as a deduction ratably over the period of 5 taxable years (beginning with the taxable year for which such amount is deductible under section 179, 179A, 179B, 179C, 179D, or 179E, as the case may be).

(4) Certain foreign corporations

The provisions of paragraph (1) shall not apply in computing the earnings and profits of a foreign corporation for any taxable year for which less than 20 percent of the gross income from all sources of such corporation is derived from sources within the United States.

(5) Basis adjustment not taken into account

In computing the earnings and profits of a corporation for any taxable year, the allowance for depreciation (and amortization, if any) shall be computed without regard to any basis adjustment under section 50(c).

(l) Discharge of indebtedness income**(1) Does not increase earnings and profits if applied to reduce basis**

The earnings and profits of a corporation shall not include income from the discharge of indebtedness to the extent of the amount applied to reduce basis under section 1017.

(2) Reduction of deficit in earnings and profits in certain cases

If—

(A) the interest of any shareholder of a corporation is terminated or extinguished in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), and

(B) there is a deficit in the earnings and profits of the corporation,

then such deficit shall be reduced by an amount equal to the paid-in capital which is allocable to the interest of the shareholder which is so terminated or extinguished.

(m) No adjustment for interest paid on certain registration-required obligations not in registered form

The earnings and profits of any corporation shall not be decreased by any interest with respect to which a deduction is not or would not be allowable by reason of section 163(f), unless at the time of issuance the issuer is a foreign corporation that is not a controlled foreign cor-

poration (within the meaning of section 957) and the issuance did not have as a purpose the avoidance of section 163(f) of this subsection¹

(n) Adjustments to earnings and profits to more accurately reflect economic gain and loss

For purposes of computing the earnings and profits of a corporation, the following adjustments shall be made:

(1) Construction period carrying charges

(A) In general

In the case of any amount paid or incurred for construction period carrying charges—

- (i) no deduction shall be allowed with respect to such amount, and
- (ii) the basis of the property with respect to which such charges are allocable shall be increased by such amount.

(B) Construction period carrying charges defined

For purposes of this paragraph, the term “construction period carrying charges” means all—

- (i) interest paid or accrued on indebtedness incurred or continued to acquire, construct, or carry property,
- (ii) property taxes, and
- (iii) similar carrying charges,

to the extent such interest, taxes, or charges are attributable to the construction period for such property and would be allowable as a deduction in determining taxable income under this chapter for the taxable year in which paid or incurred.

(C) Construction period

The term “construction period” has the meaning given the term production period under section 263A(f)(4)(B).

(2) Intangible drilling costs and mineral exploration and development costs

(A) Intangible drilling costs

Any amount allowable as a deduction under section 263(c) in determining taxable income (other than costs incurred in connection with a nonproductive well)—

- (i) shall be capitalized, and
- (ii) shall be allowed as a deduction ratably over the 60-month period beginning with the month in which such amount was paid or incurred.

(B) Mineral exploration and development costs

Any amount allowable as a deduction under section 616(a) or 617 in determining taxable income—

- (i) shall be capitalized, and
- (ii) shall be allowed as a deduction ratably over the 120-month period beginning with the later of—

(I) the month in which production from the deposit begins, or

(II) the month in which such amount was paid or incurred.

(3) Certain amortization provisions not to apply

Sections 173 and 248 shall not apply.

(4) LIFO inventory adjustments

(A) In general

Earnings and profits shall be increased or decreased by the amount of any increase or decrease in the LIFO recapture amount as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the 1st taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary.

(B) LIFO recapture amount

For purposes of this paragraph, the term “LIFO recapture amount” means the amount (if any) by which—

- (i) the inventory amount of the inventory assets under the first-in, first-out method authorized by section 471, exceeds
- (ii) the inventory amount of such assets under the LIFO method.

(C) Definitions

For purposes of this paragraph—

(i) LIFO method

The term “LIFO method” means the method authorized by section 472 (relating to last-in, first-out inventories).

(ii) Inventory assets

The term “inventory assets” means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(iii) Inventory amount

The inventory amount of assets under the first-in, first-out method authorized by section 471 shall be determined—

- (I) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or
- (II) if subclause (I) does not apply, by using cost or market, whichever is lower.

(5) Installment sales

In the case of any installment sale, earnings and profits shall be computed as if the corporation did not use the installment method.

(6) Completed contract method of accounting

In the case of a taxpayer who uses the completed contract method of accounting, earnings and profits shall be computed as if such taxpayer used the percentage of completion method of accounting.

(7) Redemptions

If a corporation distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of such corporation accumulated after February 28, 1913, attributable to the stock so redeemed.

(8) Special rule for certain foreign corporations

In the case of a foreign corporation described in subsection (k)(4)—

¹ Subsec. (m) was enacted without a period at the end.

(A) paragraphs (4) and (6) shall apply only in the case of taxable years beginning after December 31, 1985, and

(B) paragraph (5) shall apply only in the case of taxable years beginning after December 31, 1987.

(o) Definition of original issue discount and issue price for purposes of subsection (a)(2)

For purposes of subsection (a)(2), the terms “original issue discount” and “issue price” have the same respective meanings as when used in subpart A of part V of subchapter P of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 95; Pub. L. 87-403, §3(a), Feb. 2, 1962, 76 Stat. 6; Pub. L. 87-834, §§13(f)(3), 14(b)(1), Oct. 16, 1962, 76 Stat. 1035, 1040; Pub. L. 88-272, title II, §231(b)(3), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88-484, §1(b)(1), Aug. 22, 1964, 78 Stat. 597; Pub. L. 89-570, §1(b)(3), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91-172, title II, §211(b)(3), title IV, §442(a), title IX, §905(b)(2), Dec. 30, 1969, 83 Stat. 570, 628, 714; Pub. L. 94-455, title II, §205(c)(1)(D), title XIX, §§1901(a)(43), (b)(32)(B)(i), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1771, 1800, 1834; Pub. L. 95-628, §3(c), Nov. 10, 1978, 92 Stat. 3627; Pub. L. 96-589, §5(f), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97-34, title II, §206(a), (b), Aug. 13, 1981, 95 Stat. 224; Pub. L. 97-248, title II, §§205(a)(3), 222(e)(3), title III, §310(b)(3), Sept. 3, 1982, 96 Stat. 429, 480, 597; Pub. L. 97-448, title III, §306(a)(6)(B), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 98-369, div. A, title I, §§61(a)-(c)(1), 63(b), 111(e)(5), July 18, 1984, 98 Stat. 579-581, 583, 633; Pub. L. 99-121, title I, §103(b)(1)(C), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99-514, title II, §§201(b), (d)(6), 241(b)(1), title VI, §631(e)(1), title VIII, §803(b)(3), title XVIII, §§1804(f)(1)(A)-(E), 1809(a)(2)(C)(ii), Oct. 22, 1986, 100 Stat. 2137, 2141, 2181, 2273, 2355, 2804, 2805, 2819; Pub. L. 100-647, title I, §§1002(a)(3), 1018(d)(4), (u)(4), Nov. 10, 1988, 102 Stat. 3353, 3578, 3590; Pub. L. 101-239, title VII, §§7611(f)(5)(A), 7811(m)(2), Dec. 19, 1989, 103 Stat. 2373, 2412; Pub. L. 101-508, title XI, §§11812(b)(5), 11813(b)(14), Nov. 5, 1990, 104 Stat. 1388-535, 1388-555; Pub. L. 105-34, title XVI, §1604(a)(2), Aug. 5, 1997, 111 Stat. 1097; Pub. L. 108-357, title III, §338(b)(3), title IV, §413(c)(4), (5), Oct. 22, 2004, 118 Stat. 1481, 1507; Pub. L. 109-58, title XIII, §§1323(b)(3), 1331(b)(5), Aug. 8, 2005, 119 Stat. 1015, 1024; Pub. L. 109-432, div. A, title IV, §404(b)(2), Dec. 20, 2006, 120 Stat. 2956.)

REFERENCES IN TEXT

Section 115(h) of the Internal Revenue Code of 1939, referred to in subsec. (d)(2), was classified to section 115(h) of former Title 26, Internal Revenue Code. Section 115(h) was repealed by section 7851(a)(1) of this title. For table of comparisons of the 1939 Code to the 1986 Code [formerly I.R.C. 1954], see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, then applicable.

AMENDMENTS

2006—Subsec. (k)(3)(B). Pub. L. 109-432 substituted “179D, or 179E” for “or 179D” in heading and two places in text.

2005—Subsec. (k)(3)(B). Pub. L. 109-58, §1331(b)(5), substituted “179, 179A, 179B, 179C, or 179D” for “179, 179A, 179B, or 179C” in heading and two places in text.

Pub. L. 109-58, §1323(b)(3), substituted “179, 179A, 179B, or 179C” for “179 179A, or 179B” in heading and two places in text.

2004—Subsec. (j). Pub. L. 108-357, §413(c)(4), struck out subsec. (j) which related to earnings and profits of foreign investment companies.

Subsec. (k)(3)(B). Pub. L. 108-357, §338(b)(3), substituted “179A, or 179B” for “or 179A” in heading and two places in text.

Subsec. (m). Pub. L. 108-357, §413(c)(5), struck out “, a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)” before “and the issuance”.

1997—Subsec. (k)(3)(B). Pub. L. 105-34, in heading substituted “179 or 179A” for “179” and in text substituted “section 179 or 179A shall” for “section 179 shall” and “section 179 or 179A, as the case may be)” for “section 179)”.

1990—Subsec. (k)(2). Pub. L. 101-508, §11812(b)(5), substituted heading for one which read: “Exceptions” and amended text generally. Prior to amendment, text read as follows: “If for any taxable year beginning after June 30, 1972, a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a), and which is not—

“(A) a declining balance method,

“(B) the sum of the years-digit method, or

“(C) any other method allowable solely by reason of the application of subsection (b)(4) or (j)(1)(C) of section 167,

then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of under the straight line method).”

Subsec. (k)(5). Pub. L. 101-508, §11813(b)(14), substituted “section 50(c)” for “section 48(q)”.

1989—Subsec. (b). Pub. L. 101-239, §7811(m)(2), made clarifying amendment to directory language of Pub. L. 100-647, §1018(d)(4), see 1988 Amendment note below.

Subsec. (n)(2)(A)(ii). Pub. L. 101-239, §7611(f)(5)(A), substituted “in which such amount was paid or incurred” for “in which the production from the well begins”.

1988—Subsec. (b). Pub. L. 100-647, §1018(d)(4), as amended by Pub. L. 101-239, §7811(m)(2), substituted “of any property (other than an obligation of such corporation)” for “of any property” in introductory provisions. Subsec. (k)(4). Pub. L. 100-647, §1002(a)(3), substituted “paragraph (1)” for “paragraphs (1) and (3)”.

Subsec. (n)(1)(B). Pub. L. 100-647, §1018(u)(4), made technical amendment to directory language of Pub. L. 99-514, §803(b)(3)(A). See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99-514, §1804(f)(1)(A), amended subsec. (b) generally, substituting provisions relating to distributions of appreciated property for provisions relating to distribution of certain inventory assets.

Subsec. (c). Pub. L. 99-514, §1804(f)(1)(B), (C), struck out “, etc.” after “liabilities” in heading and struck out par. (3) which read as follows: “any gain recognized to the corporation on the distribution.”

Subsec. (k)(3). Pub. L. 99-514, §201(b), amended par. (3) generally, substituting provisions relating to tangible property to which section 168 applies and amounts deductible under section 179 for provisions relating to recovery property within the meaning of section 168, amounts deductible under section 179, and flexibility if a different recovery percentage is elected under section 168 based on a longer recovery period.

Subsec. (k)(3)(A). Pub. L. 99-514, §1809(a)(2)(C)(ii), in subpar. (A), struck out “and rules similar to the rules under the next to the last sentence of section 168(b)(2)(A) and section 168(b)(2)(B) shall apply” after “low-income housing)”.

Subsec. (k)(4). Pub. L. 99-514, §201(d)(6), struck out last sentence “In determining the earnings and profits of such corporation in the case of recovery property (within the meaning of section 168), the rules of section 168(f)(2) shall apply.”

Subsec. (n)(1)(B). Pub. L. 99-514, § 803(b)(3)(A), as amended by Pub. L. 100-647, § 1018(u)(4), struck out “(determined without regard to section 189)” after “incurred”.

Subsec. (n)(1)(C). Pub. L. 99-514, § 803(b)(3)(B), added subpar. (C) and struck out former subpar. (C) which read as follows: “The term ‘construction period’ has the meaning given such term by section 189(e)(2) (determined without regard to any real property limitation).”

Subsec. (n)(3). Pub. L. 99-514, § 241(b)(1), struck out “, 177,” after “sections 173”.

Subsec. (n)(4). Pub. L. 99-514, § 631(e)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “Earnings and profits shall be increased or decreased by the amount of any increase or decrease in the LIFO recapture amount (determined under section 336(b)(3)) as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the first taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary.”

Pub. L. 99-514, § 1804(f)(1)(D), redesignated par. (5) as (4). Former par. (4), relating to certain untaxed appreciation of distributed property, was struck out.

Subsec. (n)(5) to (7). Pub. L. 99-514, § 1804(f)(1)(D), redesignated pars. (6) to (8) as (5) to (7), respectively. Former par. (5) redesignated (4).

Subsec. (n)(8), (9). Pub. L. 99-514, § 1804(f)(1)(D), (E), redesignated par. (9) as (8) and substituted provisions of subpars. (A) and (B) for “paragraphs (5), (6), and (7) shall apply only in the case of taxable years beginning after December 31, 1985.” Former par. (8) redesignated (7).

1985—Subsec. (k)(3)(A). Pub. L. 99-121 substituted “19-year real property” for “18-year real property” wherever appearing.

1984—Subsec. (a)(2). Pub. L. 98-369, § 61(c)(1)(A), inserted “(or, in the case of obligations having original issue discount, the aggregate issue price of such obligations)”.

Subsec. (e). Pub. L. 98-369, § 61(a)(2)(B), struck out subsec. (e) which provided: “In the case of amounts distributed in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to capital account shall not be treated as a distribution of earnings and profits.”

Subsec. (h). Pub. L. 98-369, § 63(b), amended subsec. (h) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (j)(3). Pub. L. 98-369, § 61(a)(2)(A), struck out par. (3) which provided: “If a foreign investment company (as defined in section 1246) distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of the company accumulated after February 28, 1913, attributable to the stock so redeemed.”

Subsec. (k)(3)(A). Pub. L. 98-369, § 111(e)(5), substituted “18-year real property and low-income housing” for “15-year real property” in three places.

Pub. L. 98-369, § 61(b), substituted “40 years” for “35 years” in table item relating to 15-year real property. Directory language that table be amended by substituting “40 years” for “35 years” in item relating to 15-year real property and 20-year real property, was executed by making the substitution in item relating to 15-year real property. The table contained no item relating to 20-year real property.

Subsec. (n). Pub. L. 98-369, § 61(a)(1), added subsec. (n).
Subsec. (o). Pub. L. 98-369, § 61(c)(1)(B), added subsec. (o).

1983—Subsec. (j)(3). Pub. L. 97-448 substituted “Redemptions” for “Partial liquidations and redemptions” in heading, and in text struck out “in partial liquidation or” after “distributes amounts”.

1982—Subsec. (e). Pub. L. 97-248, § 222(e)(3), struck out “partial liquidations and” in heading, and in text

struck out “in partial liquidation (whether before, on, or after June 22, 1954) or” after “amounts distributed”.

Subsec. (k)(5). Pub. L. 97-248, § 205(a)(3), added par. (5).
Subsec. (m). Pub. L. 97-248, § 310(b)(3), added subsec. (m).

1981—Subsec. (k)(3), (4). Pub. L. 97-34 added par. (3), redesignated former par. (3) as (4) substituted “The provisions of paragraphs (1) and (3)” for “The provisions of paragraph (1)”, and inserted provision that the rules of section 168(f)(2) shall apply in determining the earnings and profits of the corporation in the case of recovery property (within the meaning of section 168).

1980—Subsec. (l). Pub. L. 96-589 added subsec. (l).

1978—Subsec. (c)(3). Pub. L. 95-628 substituted “gain recognized to the corporation on the distribution” for “gain to the corporation recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)”.

1976—Subsec. (c)(3). Pub. L. 94-455, § 205(c)(1)(D), substituted “1252(a), or 1254(a)” for “or 1252(a)”.

Subsec. (d)(1). Pub. L. 94-455, § 1901(a)(43)(A), substituted “this title” for “this Code” wherever appearing.

Subsec. (h). Pub. L. 94-455, §§ 1901(a)(43)(B), 1906(b)(13)(A), redesignated subsec. (i) as (h) and struck out “or his delegate” after “Secretary”. Former subsec. (h), which related to earnings and profits of personal service corporations, was struck out.

Subsec. (i). Pub. L. 94-455, § 1901(a)(43)(B), (C), redesignated subsec. (j) as (i), and, among other changes, substituted “paragraph (2)” for “subparagraph (B) of the preceding sentence” and “of this subsection” for “of this paragraph”, and struck out provisions relating to the effective date of this subsec. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 94-455, §§ 1901(a)(43)(D), (b)(32)(B)(i), 1906(b)(13)(A), redesignated subsec. (l) as (j), struck out “or his delegate” after “Secretary” in par. (1) and in par. (3) provision relating to the effective date of such paragraph. Former subsec. (j) redesignated (i).

Subsec. (k). Pub. L. 94-455, §§ 1901(b)(32)(B)(i), 1906(b)(13)(A), redesignated subsec. (m) as (k) and struck out “or his delegate” after “Secretary” in par. (2). Former subsec. (k), relating to special adjustment on disposition of antitrust stock received as a dividend, was struck out.

Subsec. (l). Pub. L. 94-455, § 1901(b)(32)(B)(i), redesignated subsec. (l) as (j).

Subsec. (m). Pub. L. 94-455, § 1901(b)(32)(B)(i), redesignated subsec. (m) as (k).

1969—Subsec. (c)(3). Pub. L. 91-172, §§ 211(b)(3), 905(b)(2), substituted “1250(a), 1251(c), or 1252(a)”, for “or 1250(a)” and inserted reference to section 311(d).

Subsec. (m). Pub. L. 91-172, § 442(a), added subsec. (m).
1966—Subsec. (c)(3). Pub. L. 89-570 inserted reference to section 617(d)(1).

1964—Subsec. (c)(3). Pub. L. 88-484 authorized adjustment for amount of gain recognized under section 341(f).

Pub. L. 88-272 inserted reference to section 1250(a).

1962—Subsec. (c)(3). Pub. L. 87-834, § 13(f)(3), included any gain recognized under section 1245(a).

Subsec. (k). Pub. L. 87-403 added subsec. (k).

Subsec. (l). Pub. L. 87-834, § 14(b)(1), added subsec. (l).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable to costs paid or incurred after Dec. 20, 2006, see section 404(c) of Pub. L. 109-432, set out as an Effective Date note under section 179E of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1323(b)(3) of Pub. L. 109-58 applicable to properties placed in service after Aug. 8, 2005, see section 1323(c) of Pub. L. 109-58, set out as an Effective Date note under section 179C of this title.

Amendment by section 1331(b)(5) of Pub. L. 109-58 applicable to property placed in service after Dec. 31, 2005,

see section 1331(d) of Pub. L. 109-58, set out as an Effective Date note under section 179D of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 338(b)(3) of Pub. L. 108-357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108-357, set out as an Effective Date note under section 179B of this title.

Amendment by section 413(c)(4), (5) of Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the amendments made by section 1913 of the Energy Policy Act of 1992, Pub. L. 102-486, see section 1604(a)(4) of Pub. L. 105-34, set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(5) of Pub. L. 101-508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99-514, see section 11812(c) of Pub. L. 101-508, set out as a note under section 42 of this title.

Amendment by section 11813(b)(14) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7611(f)(5)(A) of Pub. L. 101-239 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1989, see section 7611(g)(2) of Pub. L. 101-239, set out as a note under section 56 of this title.

Amendment by section 7811(m)(2) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(3) of Pub. L. 99-514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99-514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101-239, set out as an Effective Date note under section 263A of this title.

Amendment by section 201(b), (d)(6) of Pub. L. 99-514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99-514, set out as a note under section 168 of this title.

Amendment by section 201(b), (d)(6) of Pub. L. 99-514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99-514, set out as a note under section 46 of this title.

Amendment by section 241(b)(1) of Pub. L. 99-514 applicable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 241(c) of Pub. L. 99-514, set out as an Effective Date of Repeal note under former section 177 of this title.

Amendment by section 631(e)(1) of Pub. L. 99-514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99-514, set out as an Effective Date note under section 336 of this title.

Amendment by section 803(b)(3) of Pub. L. 99-514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99-514, set out as an Effective Date note under section 263A of this title.

Amendment by sections 1804(f)(1)(A)-(E) and 1809(a)(2)(C)(ii) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Section 1804(f)(3) of Pub. L. 99-514 provided that: "Paragraph (7) of section 312(n) of the Internal Revenue Code of 1954 [now 1986] (as redesignated by paragraph (1)(D) of this subsection), and the amendments made by section 61(a)(2) of the Tax Reform Act of 1984 [amending this section], shall apply to distributions in taxable years beginning after September 30, 1984."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, see section 105(b) of Pub. L. 99-121, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 61(e)(1)-(3) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) ADJUSTMENTS TO EARNINGS AND PROFITS.—

"(A) PARAGRAPHS (1), (2), AND (3) OF SECTION 312(n).—The provisions of paragraphs (1), (2), and (3) of section 312(n) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to amounts paid or incurred in taxable years beginning after September 30, 1984.

"(B) PARAGRAPH (4) OF SECTION 312(n).—The provisions of paragraph (4) of section 312(n) of such Code (as so added) shall apply to distributions after September 30, 1984; except that such provisions shall not apply to any distribution to which the amendments made by section 54(a) of this Act [amending section 311 of this title] do not apply.

"(C) LIFO INVENTORY.—The provisions of paragraph (5) of section 312(n) of such Code (as so added) shall apply to taxable years beginning after September 30, 1984.

"(D) INSTALLMENT SALES.—The provisions of paragraph (6) of section 312(n) of such Code (as so added) shall apply to sales after September 30, 1984, in taxable years ending after such date.

“(E) COMPLETED CONTRACT METHOD.—The provisions of paragraph (7) of section 312(n) of such Code (as so added) shall apply to contracts entered into after September 30, 1984, in taxable years ending after such date.

“(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to property placed in service in taxable years beginning after September 30, 1984.

“(3) SUBSECTION (c).—The amendments made by subsection (c) [amending this section and section 1275 of this title] shall apply with respect to distributions declared after March 15, 1984, in taxable years ending after such date.”

Amendment by section 61(a)(2) of Pub. L. 98-369 applicable to distributions in taxable years beginning after Sept. 30, 1984, see section 1804(f)(3) of Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note above.

Section 1804(f)(1)(F) of Pub. L. 99-514 provided that: “Any reference in subsection (e) of section 61 of the Tax Reform Act of 1984 [set out above] to a paragraph of section 312(n) of the Internal Revenue Code of 1954 [now 1986] shall be treated as a reference to such paragraph as in effect before its redesignation by subparagraph (D) [see 1986 Amendment note above].”

Section 63(c) of Pub. L. 98-369 provided that: “The amendment made by this section [amending this section and section 368 of this title] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984].”

Amendment by section 111(e)(5) of Pub. L. 98-369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98-369, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 311(d) of Pub. L. 97-448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 205(a)(3) of Pub. L. 97-248 applicable to periods after Dec. 31, 1982, under rules similar to the rules of section 48(m) of this title, with certain qualifications, see section 205(c)(1) of Pub. L. 97-248, set out as an Effective Date note under section 196 of this title.

Amendment by section 222(e)(3) of Pub. L. 97-248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97-248, set out as a note under section 302 of this title.

Amendment by section 310(b)(3) of Pub. L. 97-248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97-248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in proceedings in bankruptcy cases or similar judicial proceedings or in proceedings under Title 11, Bankruptcy, commencing on or before Dec. 31, 1980, except as otherwise provided, see section 7 of Pub. L. 96-589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-628 applicable to distributions made after Nov. 10, 1978, see section 3(d) of Pub.

L. 95-628, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(1)(D) of Pub. L. 94-455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94-455, set out as a note under section 1254 of this title.

Amendment by section 1901(a)(43) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Amendment by section 1901(b)(32) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 211(b)(3) of Pub. L. 91-172 applicable to taxable years beginning after December 31, 1969, see section 211(c) of Pub. L. 91-172, set out as a note under section 301 of this title.

Amendment by section 905(b)(2) Pub. L. 91-172 effective with respect to distributions made after Nov. 30, 1969, see section 905(c) of Pub. L. 91-172, set out as a note under section 311 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89-570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88-484 applicable with respect to transactions after Aug. 22, 1964 in taxable years ending after such date, see section 2 of Pub. L. 88-484, set out as a note under section 301 of this title.

Amendment by Pub. L. 88-272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88-272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by section 13(f)(3) of Pub. L. 87-834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87-834, set out as an Effective Date note under section 1245 of this title.

Pub. L. 87-834, §14(c), Oct. 16, 1962, 76 Stat. 1041, provided that: “The amendments made by this section [enacting sections 1246 and 1247 of this title and amending this section and sections 751 and 1223 of this title] shall apply with respect to taxable years beginning after December 31, 1962.”

Section 3(g) of Pub. L. 87-403 provided that: “The amendments made by this section [amending this section and sections 535, 543, 545, 556 and 561 of this title] shall apply only with respect to distributions made after the date of the enactment of this Act [Feb. 2, 1962].”

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan

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

Sec.	
316.	Dividend defined.
317.	Other definitions.
318.	Constructive ownership of stock.

§ 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.

(5) Operating rules**(A) In general**

Except as provided in subparagraphs (B) and (C), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), or (4), shall, for purposes of applying paragraphs (1), (2), (3), and (4), be considered as actually owned by such person.

(B) Members of family

Stock constructively owned by an individual by reason of the application of paragraph (1) shall not be considered as owned by him for purposes of again applying paragraph (1) in order to make another the constructive owner of such stock.

(C) Partnerships, estates, trusts, and corporations

Stock constructively owned by a partnership, estate, trust, or corporation by reason of the application of paragraph (3) shall not be considered as owned by it for purposes of applying paragraph (2) in order to make another the constructive owner of such stock.

(D) Option rule in lieu of family rule

For purposes of this paragraph, if stock may be considered as owned by an individual under paragraph (1) or (4), it shall be considered as owned by him under paragraph (4).

(E) S corporation treated as partnership

For purposes of this subsection—

(i) an S corporation shall be treated as a partnership, and

(ii) any shareholder of the S corporation shall be treated as a partner of such partnership.

The preceding sentence shall not apply for purposes of determining whether stock in the S corporation is constructively owned by any person.

(b) Cross references

For provisions to which the rules contained in subsection (a) apply, see—

- (1) **section 302 (relating to redemption of stock);**
- (2) **section 304 (relating to redemption by related corporations);**
- (3) **section 306(b)(1)(A) (relating to disposition of section 306 stock);**
- (4) **section 338(h)(3) (defining purchase);**
- (5) **section 382(l)(3) (relating to special limitations on net operating loss carryovers);**
- (6) **section 856(d) (relating to definition of rents from real property in the case of real estate investment trusts);**
- (7) **section 958(b) (relating to constructive ownership rules with respect to controlled foreign corporations); and**
- (8) **section 6038(e)(2) (relating to information with respect to certain foreign corporations).**

(Aug. 16, 1954, ch. 736, 68A Stat. 99; Pub. L. 86-779, §10(h), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 87-834, §20(d)(1), Oct. 16, 1962, 76 Stat. 1063; Pub. L. 88-554, §4(a), (b)(2), Aug. 31, 1964, 78 Stat. 762, 763; Pub. L. 97-248, title II, §224(c)(3), Sept. 3, 1982, 96 Stat. 489; Pub. L. 98-369, div. A, title VII, §§712(k)(5)(E), 721(j), July 18, 1984, 98 Stat. 950, 969; Pub. L. 99-514, title VI, §621(c)(1), Oct. 22, 1986, 100 Stat. 2266; Pub. L. 105-34, title XI, §1142(e)(3), Aug. 5, 1997, 111 Stat. 983; Pub. L.

109-135, title IV, §412(u), Dec. 21, 2005, 119 Stat. 2638.)

AMENDMENTS

2005—Subsec. (b)(8). Pub. L. 109-135 substituted “section 6038(e)(2)” for “section 6038(d)(2)”.

1997—Subsec. (b)(8). Pub. L. 105-34 substituted “6038(d)(2)” for “6038(d)(1)”.

1986—Subsec. (b)(5). Pub. L. 99-514 substituted “382(l)(3)” for “382(a)(3)”.

1984—Subsec. (a)(5)(E). Pub. L. 98-369, §721(j), added subpar. (E).

Subsec. (b)(4). Pub. L. 98-369, §712(k)(5)(E), substituted “section 338(h)(3) (defining purchase)” for “section 338(h)(3)(B) (relating to purchase of stock from subsidiaries, etc.)”.

1982—Subsec. (b)(4). Pub. L. 97-248 substituted “section 338(h)(3)(B) (relating to purchase of stock from subsidiaries, etc.)” for “section 334(b)(3)(C) (relating to basis of property received in certain liquidations of subsidiaries)”.

1964—Subsec. (a). Pub. L. 88-554, §4(a), struck out sidewise attribution by providing that when stock is attributed to a partnership, estate, trust, or corporation from a partner, shareholder, or beneficiary, this stock is not to be attributed again to another partner, beneficiary, or shareholder.

Subsec. (b)(7), (8). Pub. L. 88-554, §4(b)(2), added par. (7) and redesignated former par. (7) as (8).

1962—Subsec. (b)(7). Pub. L. 87-834 added par. (7).

1960—Subsec. (b)(6). Pub. L. 86-779 added par. (6).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1142(f) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and sections 901 and 6038 of this title] shall apply to annual accounting periods beginning after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to any ownership change after Dec. 31, 1986, except as otherwise provided, see section 621(f) of Pub. L. 99-514, as amended, set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 712(k)(5)(E) of Pub. L. 98-369 not applicable to any qualified stock purchase where the acquisition date is before Sept. 1, 1982, see section 712(k)(9)(A) of Pub. L. 98-369, set out as a note under section 338 of this title.

Amendment by section 712(k)(5)(E) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 721(j) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97-248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 4(c) of Pub. L. 88-554, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section and sections 304, 382, 856, 958, and 6038 of this title] shall take effect on the date of the enactment of

this Act, [Aug. 31, 1964], except that, for purposes of sections 302 and 304 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], such amendments shall not apply with respect to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before the date of the enactment of this Act.”

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86-779, set out as an Effective Date note under section 856 of this title.

PART II—CORPORATE LIQUIDATIONS

Subpart

- A. Effects on recipients.
- B. Effects on corporation.
- [C. Repealed.]
- D. Definition and special rule.

AMENDMENT OF ANALYSIS

For termination of amendment by Pub. L. 108-27, see section 303 of Pub. L. 108-27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

AMENDMENTS

2003—Pub. L. 108-27, title III, §§ 302(e)(4)(B)(iii), 303, May 28, 2003, 117 Stat. 764, temporarily struck out item for subpart C “Collapsible corporations”.

1982—Pub. L. 97-248, title II, § 222(e)(8)(B), Sept. 3, 1982, 96 Stat. 481, inserted “and special rule” in item for subpart D.

1976—Pub. L. 94-455, title XIX, § 1901(b)(12)(B), Oct. 4, 1976, 90 Stat. 1795, struck out in table of subparts for part II of subchapter C of chapter 1 in subpart (C) “; foreign personal holding companies” after “corporations”.

SUBPART A—EFFECTS ON RECIPIENTS

Sec.

- 331. Gain or loss to shareholder in corporate liquidations.¹
- 332. Complete liquidations of subsidiaries.
- [333. Repealed.]
- 334. Basis of property received in liquidations.

AMENDMENTS

1986—Pub. L. 99-514, title VI, § 631(e)(16), Oct. 22, 1986, 100 Stat. 2275, struck out item 333 “Election as to recognition of gain in certain liquidations”.

§ 331. Gain or loss to shareholders in corporate liquidations

(a) Distributions in complete liquidation treated as exchanges

Amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

(b) Nonapplication of section 301

Section 301 (relating to effects on shareholder of distributions of property) shall not apply to any distribution of property (other than a distribution referred to in paragraph (2)(B) of section 316(b)) in complete liquidation.

(c) Cross reference

For general rule for determination of the amount of gain or loss recognized, see section 1001.

¹ So in original. Does not conform to section catchline.

(Aug. 16, 1954, ch. 736, 68A Stat. 101; Pub. L. 88-272, title II, § 225(f)(2), Feb. 26, 1964, 78 Stat. 88; Pub. L. 94-455, title XIX, § 1901(b)(28)(A), Oct. 4, 1976, 90 Stat. 1799; Pub. L. 97-248, title II, § 222(a), (e)(1)(B), Sept. 3, 1982, 96 Stat. 478, 480.)

AMENDMENTS

1982—Subsec. (a). Pub. L. 97-248, § 222(a), substituted provisions that amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock for provisions that, in complete liquidations, amounts distributed shall be treated as in full payment in exchange for the stock, while amounts distributed in partial liquidation shall be treated as in part or full payment in exchange for the stock.

Subsec. (b). Pub. L. 97-248, § 222(e)(1)(B), struck out “partial or” before “complete liquidation”.

1976—Subsec. (c). Pub. L. 94-455 substituted “reference” for “references” in heading and struck out cross reference relating to general rule for determination of the amount of gain or loss to the distributee and substituted “section 1001” for “section 1002”.

1964—Subsec. (b). Pub. L. 88-272 inserted “(other than a distribution referred to in paragraph (2)(B) of section 316(b))”.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97-248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to distribution made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88-272, set out as a note under section 316 of this title.

LIQUIDATIONS BEFORE JANUARY 1, 1966

Section 225(h) of Pub. L. 88-272 provided that in the case of corporations referred to in former subsec. (g)(3) of this section the amendments made by section 225 of Pub. L. 88-272 do not apply if there is a complete liquidation of such corporation and if the distribution of all the property under such liquidation occurs before Jan. 1, 1966, except for certain liquidations to which section 332 of this title applies.

§ 332. Complete liquidations of subsidiaries

(a) General rule

No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(b) Liquidations to which section applies

For purposes of this section, a distribution shall be considered to be in complete liquidation only if—

(1) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) meeting the requirements of section 1504(a)(2); and either

(2) the distribution is by such other corporation in complete cancellation or redemption of