

tion, disposition, or other restructuring after such date, such distribution shall be treated as made on the date of such acquisition, disposition, or restructuring for purposes of applying subparagraphs (A) through (C) of this paragraph. The preceding sentence shall only apply with respect to the corporation that undertakes such acquisition, disposition, or other restructuring, and only if such application results in continued qualification under section 355(b)(2)(A) of such Code.

“(3) AMENDMENT RELATED TO SECTION 515 OF THE ACT.—The amendment made by subsection (c) [amending section 911 of this title] shall apply to taxable years beginning after December 31, 2006.”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title IV, § 410(b), Dec. 20, 2006, 120 Stat. 2963, provided that: “The amendments made by this section [amending this section] shall take effect as if included in section 202 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109-222].”

Pub. L. 109-222, title V, § 507(b), May 17, 2006, 120 Stat. 361, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [May 17, 2006].

“(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—

“(A) made pursuant to an agreement which was binding on such date of enactment 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 on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.”

#### 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

Amendment by section 1012(a), (b)(1) of Pub. L. 105-34 applicable, with transition rule, to distributions after Apr. 16, 1997, except that amendment by section 1012(a) applicable to such distributions only if pursuant to a plan (or series of related transactions) which involves an acquisition described in subsec. (e)(2)(A)(ii) of this section occurring after such date, see section 1012(d) of Pub. L. 105-34, as amended, set out as a note under section 351 of this title.

Amendment by section 1014(c), (e)(1), (2) of Pub. L. 105-34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105-34, set out as a note under section 351 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Section 11321(c) of Pub. L. 101-508 provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 361 of this title] shall apply to distributions after October 9, 1990.

“(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any distribution pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such distribution.

“(3) TRANSITIONAL RULES.—For purposes of subparagraphs (A) and (B) of section 355(d)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), an acquisition shall be treated as occurring on or before October 9, 1990, if—

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

“(B) such acquisition is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

“(C) such acquisition is pursuant to a transaction—

“(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

“(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

“(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.”

Amendment by section 11702(e)(2) of Pub. L. 101-508 effective 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 11702(j) of Pub. L. 101-508, set out as a note under section 59 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(d)(5)(C) 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(k)(1) 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

Amendment by Pub. L. 100-203 applicable to distributions or transfers after Dec. 15, 1987, with exceptions for certain distributee corporations and distributions covered by prior transition rule, see section 10223(d) of Pub. L. 100-203, set out as a note under section 304 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, and to exchanges which occur after Dec. 31, 1980, and which do not occur in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11, Bankruptcy, commenced on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases, proceedings or exchanges commencing after Sept. 30, 1979, see section 7(c), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

#### TERMINATION OF TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005 AND TAX RELIEF AND HEALTH CARE ACT OF 2006 AMENDMENTS

Pub. L. 110-172, § 4(b)(3), Dec. 29, 2007, 121 Stat. 2476, provided that: “The Internal Revenue Code of 1986 shall be applied and administered as if the amendments made by section 202 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109-222, amending this section] and by section 410 of division A of the Tax Relief and Health Care Act of 2006 [Pub. L. 109-432, amending this section] had never been enacted.”

## § 356. Receipt of additional consideration

### (a) Gain on exchanges

#### (1) Recognition of gain

If—

(A) section 354 or 355 would apply to an exchange but for the fact that

(B) the property received in the exchange consists not only of property permitted by section 354 or 355 to be received without the

recognition of gain but also of other property or money,

then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

**(2) Treatment as dividend**

If an exchange is described in paragraph (1) but has the effect of the distribution of a dividend (determined with the application of section 318(a)), then there shall be treated as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be treated as gain from the exchange of property.

**(b) Additional consideration received in certain distributions**

If—

(1) section 355 would apply to a distribution but for the fact that

(2) the property received in the distribution consists not only of property permitted by section 355 to be received without the recognition of gain, but also of other property or money,

then an amount equal to the sum of such money and the fair market value of such other property shall be treated as a distribution of property to which section 301 applies.

**(c) Loss**

If—

(1) section 354 would apply to an exchange or section 355 would apply to an exchange or distribution, but for the fact that

(2) the property received in the exchange or distribution consists not only of property permitted by section 354 or 355 to be received without the recognition of gain or loss, but also of other property or money,

then no loss from the exchange or distribution shall be recognized.

**(d) Securities as other property**

For purposes of this section—

**(1) In general**

Except as provided in paragraph (2), the term “other property” includes securities.

**(2) Exceptions**

**(A) Securities with respect to which non-recognition of gain would be permitted**

The term “other property” does not include securities to the extent that, under section 354 or 355, such securities would be permitted to be received without the recognition of gain.

**(B) Greater principal amount in section 354 exchange**

If—

(i) in an exchange described in section 354 (other than subsection (c) thereof), securities of a corporation a party to the reorganization are surrendered and securities of any corporation a party to the reorganization are received, and

(ii) the principal amount of such securities received exceeds the principal amount of such securities surrendered,

then, with respect to such securities received, the term “other property” means only the fair market value of such excess. For purposes of this subparagraph and subparagraph (C) if no securities are surrendered, the excess shall be the entire principal amount of the securities received.

**(C) Greater principal amount in section 355 transaction**

If, in an exchange or distribution described in section 355, the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities in the distributing corporation which are surrendered, then, with respect to such securities received, the term “other property” means only the fair market value of such excess.

**(e) Nonqualified preferred stock treated as other property**

For purposes of this section—

**(1) In general**

Except as provided in paragraph (2), the term “other property” includes nonqualified preferred stock (as defined in section 351(g)(2)).

**(2) Exception**

The term “other property” does not include nonqualified preferred stock (as so defined) to the extent that, under section 354 or 355, such preferred stock would be permitted to be received without the recognition of gain.

**(f) Exchanges for section 306 stock**

Notwithstanding any other provision of this section, to the extent that any of the other property (or money) is received in exchange for section 306 stock, an amount equal to the fair market value of such other property (or the amount of such money) shall be treated as a distribution of property to which section 301 applies.

**(g) Transactions involving gift or compensation**

For special rules for a transaction described in section 354, 355, or this section, but which—

(1) results in a gift, see section 2501 and following,

or  
(2) has the effect of the payment of compensation, see section 61(a)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 115; Pub. L. 94-253, §1(c), Mar. 31, 1976, 90 Stat. 296; Pub. L. 97-248, title II, §227(b), Sept. 3, 1982, 96 Stat. 492; Pub. L. 101-508, title XI, §11801(c)(8)(E), Nov. 5, 1990, 104 Stat. 1388-524; Pub. L. 105-34, title X, §1014(d), Aug. 5, 1997, 111 Stat. 921.)

AMENDMENTS

1997—Subsecs. (e) to (g). Pub. L. 105-34 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1990—Subsec. (d)(2)(B)(i). Pub. L. 101-508 struck out “or (d)” after “subsection (c)”.

1982—Subsec. (a)(2). Pub. L. 97-248 inserted “(determined with the application of section 318(a))” after “distribution of a dividend”.

1976—Subsec. (d)(2)(B)(i). Pub. L. 94-253 substituted “subsection (c) or (d) thereof” for “subsection (c) thereof”.

## EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105-34, set out as a note under section 351 of this title.

## EFFECTIVE DATE OF 1982 AMENDMENT

Section 227(c)(2) of Pub. L. 97-248 provided that: "The amendment made by subsection (b) [amending this section] shall apply to distributions after August 31, 1982, in taxable years ending after such date."

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-253 applicable to taxable years ending after Mar. 31, 1976, see section 2 of Pub. L. 94-253, set out as a note under section 354 of this title.

## 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.

**§ 357. Assumption of liability****(a) General rule**

Except as provided in subsections (b) and (c), if—

(1) the taxpayer receives property which would be permitted to be received under section 351 or 361 without the recognition of gain if it were the sole consideration, and

(2) as part of the consideration, another party to the exchange assumes a liability of the taxpayer,

then such assumption shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of section 351 or 361, as the case may be.

**(b) Tax avoidance purpose****(1) In general**

If, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption was made, it appears that the principal purpose of the taxpayer with respect to the assumption described in subsection (a)—

(A) was a purpose to avoid Federal income tax on the exchange, or

(B) if not such purpose, was not a bona fide business purpose,

then such assumption (in the total amount of the liability assumed pursuant to such exchange) shall, for purposes of section 351 or 361 (as the case may be), be considered as money received by the taxpayer on the exchange.

**(2) Burden of proof**

In any suit or proceeding where the burden is on the taxpayer to prove such assumption is not to be treated as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

**(c) Liabilities in excess of basis****(1) In general**

In the case of an exchange—

(A) to which section 351 applies, or

(B) to which section 361 applies by reason of a plan of reorganization within the meaning of section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355,

if the sum of the amount of the liabilities assumed exceeds the total of the adjusted basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of a capital asset or of property which is not a capital asset, as the case may be.

**(2) Exceptions**

Paragraph (1) shall not apply to any exchange—

(A) to which subsection (b)(1) of this section applies, or

(B) which is pursuant to a plan of reorganization within the meaning of section 368(a)(1)(G) where no former shareholder of the transferor corporation receives any consideration for his stock.

**(3) Certain liabilities excluded****(A) In general**

If a taxpayer transfers, in an exchange to which section 351 applies, a liability the payment of which either—

(i) would give rise to a deduction, or

(ii) would be described in section 736(a),

then, for purposes of paragraph (1), the amount of such liability shall be excluded in determining the amount of liabilities assumed.

**(B) Exception**

Subparagraph (A) shall not apply to any liability to the extent that the incurrence of the liability resulted in the creation of, or an increase in, the basis of any property.

**(d) Determination of amount of liability assumed****(1) In general**

For purposes of this section, section 358(d), section 358(h), section 361(b)(3), section 362(d), section 368(a)(1)(C), and section 368(a)(2)(B), except as provided in regulations—

(A) a recourse liability (or portion thereof) shall be treated as having been assumed if, as determined on the basis of all facts and circumstances, the transferee has agreed to, and is expected to, satisfy such liability (or portion), whether or not the transferor has been relieved of such liability; and

(B) except to the extent provided in paragraph (2), a nonrecourse liability shall be treated as having been assumed by the transferee of any asset subject to such liability.

**(2) Exception for nonrecourse liability**

The amount of the nonrecourse liability treated as described in paragraph (1)(B) shall be reduced by the lesser of—

(A) the amount of such liability which an owner of other assets not transferred to the transferee and also subject to such liability