

§1001(b)(2), (e), July 18, 1984, 98 Stat. 558, 584, 669, 854, 1011, 1012; Pub. L. 99-514, title VI, §631(e)(6), title XVIII, §§1804(i)(1), 1899A(8), Oct. 22, 1986, 100 Stat. 2273, 2807, 2958; Pub. L. 100-647, title I, §1006(e)(18), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 104-188, title I, §1702(h)(7), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 106-170, title V, §532(c)(2)(D), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 107-147, title IV, §417(24)(B)(i), Mar. 9, 2002, 116 Stat. 57, related to collapsible corporations.

TERMINATION OF REPEAL

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

EFFECTIVE AND TERMINATION DATES OF REPEAL

Repeal 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 an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

Repeal terminated for taxable years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if section had never been repealed, see section 303 of Pub. L. 108-27, as amended, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

[§342. Repealed. Pub. L. 94-455, title XIX, §1901(a)(47), Oct. 4, 1976, 90 Stat. 1772]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 110, related to liquidation of certain foreign personal holding companies.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

SUBPART D—DEFINITION AND SPECIAL RULE

Sec.

346. Definition and special rule.

AMENDMENTS

1982—Pub. L. 97-248, title II, §222(e)(8)(A), Sept. 3, 1982, 96 Stat. 481, inserted “and Special Rule” in subpart heading, and substituted “Definition and special rule” for “Partial liquidation defined” in item 346.

§ 346. Definition and special rule

(a) Complete liquidation

For purposes of this subchapter, a distribution shall be treated as in complete liquidation of a corporation if the distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan.

(b) Transactions which might reach same result as partial liquidations

The Secretary shall prescribe such regulations as may be necessary to ensure that the purposes of subsections (a) and (b) of section 222 of the Tax Equity and Fiscal Responsibility Act of 1982 (which repeal the special tax treatment for partial liquidations) may not be circumvented through the use of section 355, 351, or any other provision of law or regulations (including the consolidated return regulations).

(Aug. 16, 1954, ch. 736, 68A Stat. 110; Pub. L. 97-248, title II, §222(d), Sept. 3, 1982, 96 Stat. 479; Pub. L. 99-514, title VI, §631(e)(7), Oct. 22, 1986, 100 Stat. 2273.)

REFERENCES IN TEXT

Subsections (a) and (b) of section 222 of the Tax Equity and Fiscal Responsibility Act of 1982, referred to in subsec. (b), are subsecs. (a) and (b) of Pub. L. 97-248, title II, §222, Sept. 3, 1982, 96 Stat. 478, which amended sections 331(a) and 336(a) of this title.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-514 struck out “337,” after “351,”.

1982—Subsec. (a). Pub. L. 97-248 substituted provision that a distribution shall be treated as in complete liquidation if the distribution is one of a series in redemption of all the stock pursuant to a plan for provision that a distribution was to be treated as in partial liquidation if the distribution was one of a series in redemption of all the stock pursuant to a plan, or the distribution was not essentially equivalent to a dividend, was in redemption of part of the stock pursuant to a plan, and occurred within the taxable year or the next taxable year of the plan being adopted, including but not limited to a distribution which met the requirements of former subsec. (b) of this section, and that for the purposes of sections 562(b) and 6043 of this title, a partial liquidation included a redemption of stock to which section 302 of this title applied.

Subsec. (b). Pub. L. 97-248 added subsec. (b) and struck out former subsec. (b) which provided that a distribution was to be treated as in partial liquidation of a corporation if the distribution was attributable to the cessation of a business which had been carried on for the previous 5-year period and had not been acquired by the corporation in a transaction involving recognition of gain or loss during that time, and if the distributing corporation was actively involved in a trade or business immediately after the distribution under the terms described above for the business being liquidated, and that compliance with the above requirements would be determined without regard to whether or not the distribution was pro rata with respect to all the shareholders of the corporation.

Subsec. (c). Pub. L. 97-248 struck out subsec. (c) which provided that the fact that, with respect to a shareholder, a distribution qualified under section 302(a) by reason of section 302(b) would not be taken into account in determining whether the distribution, with respect to such shareholder, was also a distribution in partial liquidation of the corporation.

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 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.

PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

Subpart

- A. Corporate organizations.
- B. Effects on shareholders and security holders.
- C. Effects on corporations.¹
- D. Special rule; definitions.

¹ So in original. Does not conform to subpart heading.

SUBPART A—CORPORATE ORGANIZATIONS

Sec.
351. Transfer to corporation controlled by transferor.

§ 351. Transfer to corporation controlled by transferor

(a) General rule

No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange such person or persons are in control (as defined in section 368(c)) of the corporation.

(b) Receipt of property

If subsection (a) would apply to an exchange but for the fact that there is received, in addition to the stock permitted to be received under subsection (a), other property or money, then—

(1) gain (if any) to such recipient shall be recognized, but not in excess of—

(A) the amount of money received, plus
(B) the fair market value of such other property received; and

(2) no loss to such recipient shall be recognized.

(c) Special rules where distribution to shareholders

(1) In general

In determining control for purposes of this section, the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account.

(2) Special rule for section 355

If the requirements of section 355 (or so much of section 356 as relates to section 355) are met with respect to a distribution described in paragraph (1), then, solely for purposes of determining the tax treatment of the transfers of property to the controlled corporation by the distributing corporation, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock, or the fact that the corporation whose stock was distributed issues additional stock, shall not be taken into account in determining control for purposes of this section.

(d) Services, certain indebtedness, and accrued interest not treated as property

For purposes of this section, stock issued for—

- (1) services,
- (2) indebtedness of the transferee corporation which is not evidenced by a security, or
- (3) interest on indebtedness of the transferee corporation which accrued on or after the beginning of the transferor's holding period for the debt,

shall not be considered as issued in return for property.

(e) Exceptions

This section shall not apply to—

(1) Transfer of property to an investment company

A transfer of property to an investment company. For purposes of the preceding sen-

tence, the determination of whether a company is an investment company shall be made—

(A) by taking into account all stock and securities held by the company, and

(B) by treating as stock and securities—

(i) money,

(ii) stocks and other equity interests in a corporation, evidences of indebtedness, options, forward or futures contracts, notional principal contracts and derivatives,

(iii) any foreign currency,

(iv) any interest in a real estate investment trust, a common trust fund, a regulated investment company, a publicly-traded partnership (as defined in section 7704(b)) or any other equity interest (other than in a corporation) which pursuant to its terms or any other arrangement is readily convertible into, or exchangeable for, any asset described in any preceding clause, this clause or clause (v) or (viii),

(v) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal, unless such metal is used or held in the active conduct of a trade or business after the contribution,

(vi) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of any assets described in any preceding clause or clause (viii),

(vii) to the extent provided in regulations prescribed by the Secretary, any interest in any entity not described in clause (vi), but only to the extent of the value of such interest that is attributable to assets listed in clauses (i) through (v) or clause (viii), or

(viii) any other asset specified in regulations prescribed by the Secretary.

The Secretary may prescribe regulations that, under appropriate circumstances, treat any asset described in clauses (i) through (v) as not so listed.

(2) Title 11 or similar case

A transfer of property of a debtor pursuant to a plan while the debtor is under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), to the extent that the stock received in the exchange is used to satisfy the indebtedness of such debtor.

(f) Treatment of controlled corporation

If—

(1) property is transferred to a corporation (hereinafter in this subsection referred to as the "controlled corporation") in an exchange with respect to which gain or loss is not recognized (in whole or in part) to the transferor under this section, and

(2) such exchange is not in pursuance of a plan of reorganization,

section 311 shall apply to any transfer in such exchange by the controlled corporation in the same manner as if such transfer were a distribution to which subpart A of part I applies.

(g) Nonqualified preferred stock not treated as stock**(1) In general**

In the case of a person who transfers property to a corporation and receives nonqualified preferred stock—

(A) subsection (a) shall not apply to such transferor, and

(B) if (and only if) the transferor receives stock other than nonqualified preferred stock—

(i) subsection (b) shall apply to such transferor; and

(ii) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).

(2) Nonqualified preferred stock

For purposes of paragraph (1)—

(A) In general

The term “nonqualified preferred stock” means preferred stock if—

(i) the holder of such stock has the right to require the issuer or a related person to redeem or purchase the stock,

(ii) the issuer or a related person is required to redeem or purchase such stock,

(iii) the issuer or a related person has the right to redeem or purchase the stock and, as of the issue date, it is more likely than not that such right will be exercised, or

(iv) the dividend rate on such stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices.

(B) Limitations

Clauses (i), (ii), and (iii) of subparagraph (A) shall apply only if the right or obligation referred to therein may be exercised within the 20-year period beginning on the issue date of such stock and such right or obligation is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase.

(C) Exceptions for certain rights or obligations**(i) In general**

A right or obligation shall not be treated as described in clause (i), (ii), or (iii) of subparagraph (A) if—

(I) it may be exercised only upon the death, disability, or mental incompetency of the holder, or

(II) in the case of a right or obligation to redeem or purchase stock transferred in connection with the performance of services for the issuer or a related person (and which represents reasonable compensation), it may be exercised only upon the holder's separation from service from the issuer or a related person.

(ii) Exception

Clause (i)(I) shall not apply if the stock relinquished in the exchange, or the stock acquired in the exchange is in—

(I) a corporation if any class of stock in such corporation or a related party is

readily tradable on an established securities market or otherwise, or

(II) any other corporation if such exchange is part of a transaction or series of transactions in which such corporation is to become a corporation described in subclause (I).

(3) Definitions

For purposes of this subsection—

(A) Preferred stock

The term “preferred stock” means stock which is limited and preferred as to dividends and does not participate in corporate growth to any significant extent. Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation. If there is not a real and meaningful likelihood that dividends beyond any limitation or preference will actually be paid, the possibility of such payments will be disregarded in determining whether stock is limited and preferred as to dividends.

(B) Related person

A person shall be treated as related to another person if they bear a relationship to such other person described in section 267(b) or 707(b).

(4) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and sections 354(a)(2)(C), 355(a)(3)(D), and 356(e). The Secretary may also prescribe regulations, consistent with the treatment under this subsection and such sections, for the treatment of nonqualified preferred stock under other provisions of this title.

(h) Cross references

(1) For special rule where another party to the exchange assumes a liability, see section 357.

(2) For the basis of stock or property received in an exchange to which this section applies, see sections 358 and 362.

(3) For special rule in the case of an exchange described in this section but which results in a gift, see section 2501 and following.

(4) For special rule in the case of an exchange described in this section but which has the effect of the payment of compensation by the corporation or by a transferor, see section 61(a)(1).

(5) For coordination of this section with section 304, see section 304(b)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 111; Pub. L. 89-809, title II, §203(a), (b), Nov. 13, 1966, 80 Stat. 1577; Pub. L. 94-455, title XIX, §1901(a)(48)(A), (B), Oct. 4, 1976, 90 Stat. 1772; Pub. L. 96-589, §5(e), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97-248, title II, §226(a)(1)(B), Sept. 3, 1982, 96 Stat. 491; Pub. L. 100-647, title I, §1018(d)(5)(G), Nov. 10, 1988, 102 Stat. 3580; Pub. L. 101-239, title VII, §7203(a), (b), Dec. 19, 1989, 103 Stat. 2333; Pub. L. 101-508, title XI, §11704(a)(3), Nov. 5, 1990, 104 Stat. 1388-518; Pub. L. 105-34, title X, §§1002(a), 1012(c)(1), 1014(a), Aug. 5, 1997, 111 Stat. 909, 916, 919; Pub. L. 105-206, title VI, §6010(c)(3)(A), (e)(1), July 22, 1998, 112 Stat. 813, 814; Pub. L. 105-277,

div. J, title IV, § 4003(f)(1), Oct. 21, 1998, 112 Stat. 2681-910; Pub. L. 106-36, title III, § 3001(d)(1), June 25, 1999, 113 Stat. 183; Pub. L. 107-147, title IV, § 417(9), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108-357, title VIII, § 899(a), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109-135, title IV, § 403(kk), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (g)(3)(A). Pub. L. 109-135 inserted at end “If there is not a real and meaningful likelihood that dividends beyond any limitation or preference will actually be paid, the possibility of such payments will be disregarded in determining whether stock is limited and preferred as to dividends.”

2004—Subsec. (g)(3)(A). Pub. L. 108-357 inserted at end “Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.”

2002—Subsec. (h)(1). Pub. L. 107-147 inserted comma after “liability”.

1999—Subsec. (h)(1). Pub. L. 106-36 struck out “, or acquires property subject to a liability,” after “liability”.

1998—Subsec. (c). Pub. L. 105-206, § 6010(c)(3)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “In determining control for purposes of this section—

“(1) the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account, and

“(2) if the requirements of section 355 are met with respect to such distribution, the shareholders shall be treated as in control of such corporation immediately after the exchange if the shareholders own (immediately after the distribution) stock possessing—

“(A) more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

“(B) more than 50 percent of the total value of shares of all classes of stock of such corporation.”

Subsec. (c)(2). Pub. L. 105-277 inserted “, or the fact that the corporation whose stock was distributed issues additional stock,” after “dispose of part or all of the distributed stock”.

Subsec. (g)(1)(A) to (C). Pub. L. 105-206, § 6010(e)(1), inserted “and” at end of subpar. (A), added subpar. (B), and struck out former subpars. (B) and (C) which read as follows:

“(B) subsection (b) shall apply to such transferor, and
“(C) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).”

1997—Subsec. (c). Pub. L. 105-34, § 1012(c)(1), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “In determining control, for purposes of this section, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account.”

Subsec. (e)(1). Pub. L. 105-34, § 1002(a), inserted last two sentences.

Subsecs. (g), (h). Pub. L. 105-34, § 1014(a), added subsec. (g) and redesignated former subsec. (g) as (h).

1990—Subsec. (e)(2). Pub. L. 101-508 substituted “is used” for “are used”.

1989—Subsec. (a). Pub. L. 101-239, § 7203(a), struck out “or securities” after “stock”.

Subsecs. (b), (d), (e)(2). Pub. L. 101-239, § 7203(b)(1), struck out “or securities” after “stock”.

Subsec. (g)(2). Pub. L. 101-239, § 7203(b)(2), substituted “stock or property” for “stock, securities, or property”.

1988—Subsecs. (f), (g). Pub. L. 100-647 added subsec. (f) and redesignated former subsec. (f) as (g).

1982—Subsec. (f)(5). Pub. L. 97-248 added par. (5).

1980—Subsec. (a). Pub. L. 96-589, § 5(e)(2), struck out provision that stock or securities issued for services shall not be considered as issued in return for property for purposes of this section.

Subsec. (d). Pub. L. 96-589, § 5(e)(1), added subsec. (d). Former subsec. (d) redesignated (e)(1).

Subsec. (e). Pub. L. 96-589, § 5(e)(2), redesignated former subsec. (d) as par. (1) and added par. (2). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 96-589, § 5(e)(1), redesignated former subsec. (e) as (f).

1976—Subsec. (a). Pub. L. 94-455, § 1901(a)(48)(A), struck out “(including, in the case of transfers made on or before June 30, 1967, an investment company)” after “property is transferred to a corporation”.

Subsec. (d). Pub. L. 94-455, § 1901(a)(48)(B), among other changes, substituted “Exception” for “Application of June 30, 1967, date” in heading and in text provision that this section does not apply to a transfer of property to an investment company for provisions relating to treatment of a transfer of property to an investment company as made on or before June 30, 1967.

1966—Subsec. (a). Pub. L. 89-809, § 203(a), inserted “(including, in the case of transfers made on or before June 30, 1967, an investment company)” after “if property is transferred to a corporation”.

Subsecs. (d), (e). Pub. L. 89-809, § 203(b), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, § 899(b), Oct. 22, 2004, 118 Stat. 1649, provided that: “The amendment made by this section [amending this section] shall apply to transactions after May 14, 2003.”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-36, title III, § 3001(e), June 25, 1999, 113 Stat. 184, provided that: “The amendments made by this section [amending this section and sections 357, 358, 362, 368, 584, and 1031 of this title] shall apply to transfers after October 18, 1998.”

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 4003(l) of Pub. L. 105-277, set out as a note under section 86 of this title.

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 1002(b) of Pub. L. 105-34 provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to transfers after June 8, 1997, in taxable years ending after such date.

“(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such transfer if such contract provides for the transfer of a fixed amount of property.”

Section 1012(d) of Pub. L. 105-34, as amended by Pub. L. 105-206, title VI, § 6010(c)(1), July 22, 1998, 112 Stat. 813, provided that:

“(1) SECTION 355 RULES.—The amendments made by subsections (a) and (b) [amending sections 355 and 358 of this title] shall apply to distributions after April 16,

1997; except that the amendment made by subsection (a) [amending section 355 of this title] shall apply to such distributions only if pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 occurring after such date.

“(2) DIVISIVE TRANSACTIONS.—The amendments made by subsection (c) [amending this section and section 368 of this title] shall apply to transfers after the date of the enactment of this Act [Aug. 5, 1997].

“(3) TRANSITION RULE.—The amendments made by this section [amending this section and sections 355, 358, and 368 of this title] shall not apply to any distribution pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 (or, in the case of the amendments made by subsection (c), any transfer) occurring after April 16, 1997, if such acquisition or transfer is—

“(A) made pursuant to an 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 on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the acquisition or transfer.

This paragraph shall not apply to any agreement, ruling request, or public announcement or filing unless it identifies the acquirer of the distributing corporation or any controlled corporation, or the transferee, whichever is applicable.”

Section 1014(f) of Pub. L. 105-34 provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 354 to 356 and 1036 of this title] shall apply to transactions after June 8, 1997.

“(2) TRANSITION RULE.—The amendments made by this section shall not apply to any transaction after June 8, 1997, if such transaction 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 on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the transaction.”

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7203(c) of Pub. L. 101-239 provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to transfers after October 2, 1989, in taxable years ending after such date.

“(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before such transfer.

“(3) CORPORATE TRANSFERS.—In the case of property transferred (directly or indirectly through a partnership or otherwise) by a C corporation, paragraphs (1) and (2) shall be applied by substituting ‘July 11, 1989’ for ‘October 2, 1989’. The preceding sentence shall not apply where the corporation meets the requirements of section 1504(a)(2) of the Internal Revenue Code of 1986 with respect to the transferee corporation (and where the transfer is not part of a plan pursuant to which the transferor subsequently fails to meet such requirements).”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1018(d)(5)(G) of Pub. L. 100-647 provided that the amendment made by that section is effective with respect to transfers on or after June 21, 1988.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to transfers occurring after Aug. 31, 1982, except for certain trans-

fers 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.

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 1976 AMENDMENT

Section 1901(a)(48)(C) of Pub. L. 94-455 provided that: “The amendments made by this paragraph [amending this section] shall take effect with respect to transfers of property occurring after the date of the enactment of this Act [Oct. 4, 1976].”

EFFECTIVE DATE OF 1966 AMENDMENT

Section 203(c) of Pub. L. 89-809 provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to transfers of property to investment companies whether made before, on, or after the date of the enactment of this Act [Nov. 13, 1966].”

SUBPART B—EFFECTS ON SHAREHOLDERS AND SECURITY HOLDERS

Sec. 354.	Exchanges of stock and securities in certain reorganizations.
355.	Distribution of stock and securities of a controlled corporation.
356.	Receipt of additional consideration.
357.	Assumption of liability.
358.	Basis to distributees.

§ 354. Exchanges of stock and securities in certain reorganizations

(a) General rule

(1) In general

No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(2) Limitation

(A) Excess principal amount

Paragraph (1) shall not apply if—

(i) the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or

(ii) any such securities are received and no such securities are surrendered.

(B) Property attributable to accrued interest

Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock (including nonqualified preferred stock, as defined in section 351(g)(2)), securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.

(C) Nonqualified preferred stock

(i) In general

Nonqualified preferred stock (as defined in section 351(g)(2)) received in exchange

for stock other than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.

(ii) Recapitalizations of family-owned corporations

(I) In general

Clause (i) shall not apply in the case of a recapitalization under section 368(a)(1)(E) of a family-owned corporation.

(II) Family-owned corporation

For purposes of this clause, except as provided in regulations, the term “family-owned corporation” means any corporation which is described in clause (i) of section 447(d)(2)(C) throughout the 8-year period beginning on the date which is 5 years before the date of the recapitalization. For purposes of the preceding sentence, stock shall not be treated as owned by a family member during any period described in section 355(d)(6)(B).

(III) Extension of statute of limitations

The statutory period for the assessment of any deficiency attributable to a corporation failing to be a family-owned corporation shall not expire before the expiration of 3 years after the date the Secretary is notified by the corporation (in such manner as the Secretary may prescribe) of such failure, and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(3) Cross references

(A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including nonqualified preferred stock and an excess principal amount of securities received over securities surrendered, but not including property to which paragraph (2)(B) applies), see section 356.

(B) For treatment of accrued interest in the case of an exchange described in paragraph (2)(B), see section 61.

(b) Exception

(1) In general

Subsection (a) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of subparagraph (D) or (G) of section 368(a)(1), unless—

(A) the corporation to which the assets are transferred acquires substantially all of the assets of the transferor of such assets; and

(B) the stock, securities, and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization.

(2) Cross reference

For special rules for certain exchanges in pursuance of plans of reorganization within the meaning of subparagraph (D) or (G) of section 368(a)(1), see section 355.

(c) Certain railroad reorganizations

Notwithstanding any other provision of this subchapter, subsection (a)(1) (and so much of

section 356 as relates to this section) shall apply with respect to a plan of reorganization (whether or not a reorganization within the meaning of section 368(a)) for a railroad confirmed under section 1173 of title 11 of the United States Code, as being in the public interest.

(Aug. 16, 1954, ch. 736, 68A Stat. 112; Pub. L. 94-253, §1(c), Mar. 31, 1976, 90 Stat. 296; Pub. L. 95-473, §2(a)(2)(F), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 96-589, §§4(e)(1), (h)(1), 6(i)(2), Dec. 24, 1980, 94 Stat. 3403, 3404, 3410; Pub. L. 101-508, title XI, §11801(c)(8)(D), Nov. 5, 1990, 104 Stat. 1388-524; Pub. L. 104-88, title III, §304(c), Dec. 29, 1995, 109 Stat. 944; Pub. L. 105-34, title X, §1014(b), (e)(1), (2), Aug. 5, 1997, 111 Stat. 920, 921; Pub. L. 105-206, title VI, §6010(e)(2), July 22, 1998, 112 Stat. 814.)

AMENDMENTS

1998—Subsec. (a)(2)(C)(ii)(III). Pub. L. 105-206 added subcl. (III).

1997—Subsec. (a)(2)(B). Pub. L. 105-34, §1014(e)(1), inserted “(including nonqualified preferred stock, as defined in section 351(g)(2))” after “stock”.

Subsec. (a)(2)(C). Pub. L. 105-34, §1014(b), added subpar. (C).

Subsec. (a)(3)(A). Pub. L. 105-34, §1014(e)(2), inserted “nonqualified preferred stock and” after “subsection (including”.

1995—Subsec. (c). Pub. L. 104-88 struck out “or approved by the Interstate Commerce Commission under subchapter IV of chapter 113 of title 49,” after “Code.”.

1990—Subsec. (d). Pub. L. 101-508 struck out subsec. (d) “Exchanges under the final system plan for ConRail” which read as follows: “No gain or loss shall be recognized if stock or securities in a corporation are, in pursuance of an exchange to which paragraph (1) or (2) of section 374(c) applies, exchanged solely for stock of the Consolidated Rail Corporation, securities of such Corporation, certificates of value of the United States Railway Association, or any combination thereof.”

1980—Subsec. (a)(2). Pub. L. 96-589, §4(e)(1), redesignated existing pars. (A) and (B) as par. (A)(i), (ii), and added par. (B).

Subsec. (a)(3). Pub. L. 96-589, §4(e)(1), designated existing provisions as subpar. (A), inserted provisions excluding property to which paragraph (2)(B) applies, and added subpar. (B).

Subsec. (b). Pub. L. 96-589, §4(h)(1), substituted “subparagraph (D) or (G) of section 368(a)(1)” for “section 368(a)(1)(D)”, wherever appearing.

Subsec. (c). Pub. L. 96-589, §6(i)(2), substituted “confirmed under section 1173 of title 11 of the United States Code, or approved by the Interstate Commerce Commission” for “approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act, or”.

1978—Subsec. (c). Pub. L. 95-473 substituted “subchapter IV of chapter 113 of title 49” for “section 20b of the Interstate Commerce Act”.

1976—Subsec. (d). Pub. L. 94-253 added subsec. (d).

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 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 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 4(e)(1) of 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.

Amendment by section 4(h)(1) of Pub. L. 96-589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

Amendment by section 6(i)(2) of Pub. L. 96-589 effective Oct. 1, 1979, but not applicable to any proceeding under Title 11 commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2 of Pub. L. 94-253 provided that: "The amendments made by section 1 [amending this section and sections 356, 358, and 374 of this title] shall apply to taxable years ending after March 31, 1976."

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.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS

United States Railway Association abolished effective Apr. 1, 1987, all powers, duties, rights, and obligations of Association relating to Consolidated Rail Corporation under Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) transferred to Secretary of Transportation on Jan. 1, 1987, and any securities of Corporation held by Association transferred to Secretary of Transportation on Oct. 21, 1986, see section 1341 of Title 45, Railroads.

§ 355. Distribution of stock and securities of a controlled corporation**(a) Effect on distributees****(1) General rule**

If—

(A) a corporation (referred to in this section as the "distributing corporation")—

(i) distributes to a shareholder, with respect to its stock, or

(ii) distributes to a security holder, in exchange for its securities,

solely stock or securities of a corporation (referred to in this section as "controlled corporation") which it controls immediately before the distribution,

(B) the transaction was not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or

more of such corporations are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such distribution) shall not be construed to mean that the transaction was used principally as such a device),

(C) the requirements of subsection (b) (relating to active businesses) are satisfied, and (D) as part of the distribution, the distributing corporation distributes—

(i) all of the stock and securities in the controlled corporation held by it immediately before the distribution, or

(ii) an amount of stock in the controlled corporation constituting control within the meaning of section 368(c), and it is established to the satisfaction of the Secretary that the retention by the distributing corporation of stock (or stock and securities) in the controlled corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax,

then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder or security holder on the receipt of such stock or securities.

(2) Non pro rata distributions, etc.

Paragraph (1) shall be applied without regard to the following:

(A) whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation,

(B) whether or not the shareholder surrenders stock in the distributing corporation, and

(C) whether or not the distribution is in pursuance of a plan of reorganization (within the meaning of section 368(a)(1)(D)).

(3) Limitations**(A) Excess principal amount**

Paragraph (1) shall not apply if—

(i) the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or

(ii) securities in the controlled corporation are received and no securities are surrendered in connection with such distribution.

(B) Stock acquired in taxable transactions within 5 years treated as boot

For purposes of this section (other than paragraph (1)(D) of this subsection) and so much of section 356 as relates to this section, stock of a controlled corporation acquired by the distributing corporation by reason of any transaction—

(i) which occurs within 5 years of the distribution of such stock, and

(ii) in which gain or loss was recognized in whole or in part,

shall not be treated as stock of such controlled corporation, but as other property.

(C) Property attributable to accrued interest

Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall

apply to the extent that any stock (including nonqualified preferred stock, as defined in section 351(g)(2)), securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.

(D) Nonqualified preferred stock

Nonqualified preferred stock (as defined in section 351(g)(2)) received in a distribution with respect to stock other than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.

(4) Cross references

(A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including nonqualified preferred stock and an excess principal amount of securities received over securities surrendered, but not including property to which paragraph (3)(C) applies), see section 356.

(B) For treatment of accrued interest in the case of an exchange described in paragraph (3)(C), see section 61.

(b) Requirements as to active business

(1) In general

Subsection (a) shall apply only if either—

(A) the distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations), is engaged immediately after the distribution in the active conduct of a trade or business, or

(B) immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.

(2) Definition

For purposes of paragraph (1), a corporation shall be treated as engaged in the active conduct of a trade or business if and only if—

(A) it is engaged in the active conduct of a trade or business,

(B) such trade or business has been actively conducted throughout the 5-year period ending on the date of the distribution,

(C) such trade or business was not acquired within the period described in subparagraph (B) in a transaction in which gain or loss was recognized in whole or in part, and

(D) control of a corporation which (at the time of acquisition of control) was conducting such trade or business—

(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B) and was not acquired by the distributing corporation directly (or through 1 or more corporations) within such period, or

(ii) was so acquired by any such corporation within such period, but, in each case in which such control was so acquired, it was so acquired, only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by rea-

son of such transactions combined with acquisitions before the beginning of such period.

For purposes of subparagraph (D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation.

(3) Special rules for determining active conduct in the case of affiliated groups

(A) In general

For purposes of determining whether a corporation meets the requirements of paragraph (2)(A), all members of such corporation's separate affiliated group shall be treated as one corporation.

(B) Separate affiliated group

For purposes of this paragraph, the term "separate affiliated group" means, with respect to any corporation, the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

(C) Treatment of trade or business conducted by acquired member

If a corporation became a member of a separate affiliated group as a result of one or more transactions in which gain or loss was recognized in whole or in part, any trade or business conducted by such corporation (at the time that such corporation became such a member) shall be treated for purposes of paragraph (2) as acquired in a transaction in which gain or loss was recognized in whole or in part.

(D) Regulations

The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which provide for the proper application of subparagraphs (B), (C), and (D) of paragraph (2), and modify the application of subsection (a)(3)(B), in connection with the application of this paragraph.

(c) Taxability of corporation on distribution

(1) In general

Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

(2) Distribution of appreciated property

(A) In general

If—

(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

(ii) 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.

(B) Qualified property

For purposes of subparagraph (A), the term “qualified property” means any stock or securities in the controlled corporation.

(C) Treatment of liabilities

If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

(3) Coordination with sections 311 and 336(a)

Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1).

(d) Recognition of gain on certain distributions of stock or securities in controlled corporation**(1) In general**

In the case of a disqualified distribution, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

(2) Disqualified distribution

For purposes of this subsection, the term “disqualified distribution” means any distribution to which this section (or so much of section 356 as relates to this section) applies if, immediately after the distribution—

(A) any person holds disqualified stock in the distributing corporation which constitutes a 50-percent or greater interest in such corporation, or

(B) any person holds disqualified stock in the controlled corporation (or, if stock of more than 1 controlled corporation is distributed, in any controlled corporation) which constitutes a 50-percent or greater interest in such corporation.

(3) Disqualified stock

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

(A) any stock in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, and

(B) any stock in any controlled corporation—

(i) acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, or

(ii) received in the distribution to the extent attributable to distributions on—

(I) stock described in subparagraph (A), or

(II) any securities in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution.

(4) 50-percent or greater interest

For purposes of this subsection, the term “50-percent or greater interest” means stock possessing at least 50 percent of the total com-

bined 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.

(5) Purchase

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term “purchase” means any acquisition but only if—

(i) the basis of the property acquired in the hands of the acquirer is not determined (I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or (II) under section 1014(a), and

(ii) the property is not acquired in an exchange to which section 351, 354, 355, or 356 applies.

(B) Certain section 351 exchanges treated as purchases

The term “purchase” includes any acquisition of property in an exchange to which section 351 applies to the extent such property is acquired in exchange for—

(i) any cash or cash item,

(ii) any marketable stock or security, or

(iii) any debt of the transferor.

(C) Carryover basis transactions

If—

(i) any person acquires property from another person who acquired such property by purchase (as determined under this paragraph with regard to this subparagraph), and

(ii) the adjusted basis of such property in the hands of such acquirer is determined in whole or in part by reference to the adjusted basis of such property in the hands of such other person,

such acquirer shall be treated as having acquired such property by purchase on the date it was so acquired by such other person.

(6) Special rule where substantial diminution of risk**(A) In general**

If this paragraph applies to any stock or securities for any period, the running of any 5-year period set forth in subparagraph (A) or (B) of paragraph (3) (whichever applies) shall be suspended during such period.

(B) Property to which suspension applies

This paragraph applies to any stock or securities for any period during which the holder’s risk of loss with respect to such stock or securities, or with respect to any portion of the activities of the corporation, is (directly or indirectly) substantially diminished by—

(i) an option,

(ii) a short sale,

(iii) any special class of stock, or

(iv) any other device or transaction.

(7) Aggregation rules**(A) In general**

For purposes of this subsection, a person and all persons related to such person (with-

in the meaning of section 267(b) or 707(b)(1)) shall be treated as one person.

(B) Persons acting pursuant to plans or arrangements

If two or more persons act pursuant to a plan or arrangement with respect to acquisitions of stock or securities in the distributing corporation or controlled corporation, such persons shall be treated as one person for purposes of this subsection.

(8) Attribution from entities

(A) In general

Paragraph (2) of section 318(a) shall apply in determining whether a person holds stock or securities in any corporation (determined by substituting “10 percent” for “50 percent” in subparagraph (C) of such paragraph (2) and by treating any reference to stock as including a reference to securities).

(B) Deemed purchase rule

If—

(i) any person acquires by purchase an interest in any entity, and

(ii) such person is treated under subparagraph (A) as holding any stock or securities by reason of holding such interest,

such stock or securities shall be treated as acquired by purchase by such person on the later of the date of the purchase of the interest in such entity or the date such stock or securities are acquired by purchase by such entity.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

(A) regulations to prevent the avoidance of the purposes of this subsection through the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

(B) regulations modifying the definition of the term “purchase”.

(e) Recognition of gain on certain distributions of stock or securities in connection with acquisitions

(1) General rule

If there is a distribution to which this subsection applies, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

(2) Distributions to which subsection applies

(A) In general

This subsection shall apply to any distribution—

(i) to which this section (or so much of section 356 as relates to this section) applies, and

(ii) which is part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation.

(B) Plan presumed to exist in certain cases

If 1 or more persons acquire directly or indirectly stock representing a 50-percent or

greater interest in the distributing corporation or any controlled corporation during the 4-year period beginning on the date which is 2 years before the date of the distribution, such acquisition shall be treated as pursuant to a plan described in subparagraph (A)(ii) unless it is established that the distribution and the acquisition are not pursuant to a plan or series of related transactions.

(C) Certain plans disregarded

A plan (or series of related transactions) shall not be treated as described in subparagraph (A)(ii) if, immediately after the completion of such plan or transactions, the distributing corporation and all controlled corporations are members of a single affiliated group (as defined in section 1504 without regard to subsection (b) thereof).

(D) Coordination with subsection (d)

This subsection shall not apply to any distribution to which subsection (d) applies.

(3) Special rules relating to acquisitions

(A) Certain acquisitions not taken into account

Except as provided in regulations, the following acquisitions shall not be taken into account in applying paragraph (2)(A)(ii):

(i) The acquisition of stock in any controlled corporation by the distributing corporation.

(ii) The acquisition by a person of stock in any controlled corporation by reason of holding stock or securities in the distributing corporation.

(iii) The acquisition by a person of stock in any successor corporation of the distributing corporation or any controlled corporation by reason of holding stock or securities in such distributing or controlled corporation.

(iv) The acquisition of stock in the distributing corporation or any controlled corporation to the extent that the percentage of stock owned directly or indirectly in such corporation by each person owning stock in such corporation immediately before the acquisition does not decrease.

This subparagraph shall not apply to any acquisition if the stock held before the acquisition was acquired pursuant to a plan (or series of related transactions) described in paragraph (2)(A)(ii).

(B) Asset acquisitions

Except as provided in regulations, for purposes of this subsection, if the assets of the distributing corporation or any controlled corporation are acquired by a successor corporation in a transaction described in subparagraph (A), (C), or (D) of section 368(a)(1) or any other transaction specified in regulations by the Secretary, the shareholders (immediately before the acquisition) of the corporation acquiring such assets shall be treated as acquiring stock in the corporation from which the assets were acquired.

(4) Definition and special rules

For purposes of this subsection—

(A) 50-percent or greater interest

The term “50-percent or greater interest” has the meaning given such term by subsection (d)(4).

(B) Distributions in title 11 or similar case

Paragraph (1) shall not apply to any distribution made in a title 11 or similar case (as defined in section 368(a)(3)).

(C) Aggregation and attribution rules**(i) Aggregation**

The rules of paragraph (7)(A) of subsection (d) shall apply.

(ii) Attribution

Section 318(a)(2) shall apply in determining whether a person holds stock or securities in any corporation. Except as provided in regulations, section 318(a)(2)(C) shall be applied without regard to the phrase “50 percent or more in value” for purposes of the preceding sentence.

(D) Successors and predecessors

For purposes of this subsection, any reference to a controlled corporation or a distributing corporation shall include a reference to any predecessor or successor of such corporation.

(E) Statute of limitations

If there is a distribution to which paragraph (1) applies—

(i) the statutory period for the assessment of any deficiency attributable to any part of the gain recognized under this subsection by reason of such distribution shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) that such distribution occurred, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

(A) providing for the application of this subsection where there is more than 1 controlled corporation,

(B) treating 2 or more distributions as 1 distribution where necessary to prevent the avoidance of such purposes, and

(C) providing for the application of rules similar to the rules of subsection (d)(6) where appropriate for purposes of paragraph (2)(B).

(f) Section not to apply to certain intragroup distributions

Except as provided in regulations, this section (or so much of section 356 as relates to this section) shall not apply to the distribution of stock from 1 member of an affiliated group (as defined in section 1504(a)) to another member of such group if such distribution is part of a plan (or se-

ries of related transactions) described in subsection (e)(2)(A)(ii) (determined after the application of subsection (e)).

(g) Section not to apply to distributions involving disqualified investment corporations**(1) In general**

This section (and so much of section 356 as relates to this section) shall not apply to any distribution which is part of a transaction if—

(A) either the distributing corporation or controlled corporation is, immediately after the transaction, a disqualified investment corporation, and

(B) any person holds, immediately after the transaction, a 50-percent or greater interest in any disqualified investment corporation, but only if such person did not hold such an interest in such corporation immediately before the transaction.

(2) Disqualified investment corporation

For purposes of this subsection—

(A) In general

The term “disqualified investment corporation” means any distributing or controlled corporation if the fair market value of the investment assets of the corporation is—

(i) in the case of distributions after the end of the 1-year period beginning on the date of the enactment of this subsection, $\frac{2}{3}$ or more of the fair market value of all assets of the corporation, and

(ii) in the case of distributions during such 1-year period, $\frac{3}{4}$ or more of the fair market value of all assets of the corporation.

(B) Investment assets**(i) In general**

Except as otherwise provided in this subparagraph, the term “investment assets” means—

(I) cash,

(II) any stock or securities in a corporation,

(III) any interest in a partnership,

(IV) any debt instrument or other evidence of indebtedness,

(V) any option, forward or futures contract, notional principal contract, or derivative,

(VI) foreign currency, or

(VII) any similar asset.

(ii) Exception for assets used in active conduct of certain financial trades or businesses

Such term shall not include any asset which is held for use in the active and regular conduct of—

(I) a lending or finance business (within the meaning of section 954(h)(4)),

(II) a banking business through a bank (as defined in section 581), a domestic building and loan association (within the meaning of section 7701(a)(19)), or any similar institution specified by the Secretary, or

(III) an insurance business if the conduct of the business is licensed, author-

ized, or regulated by an applicable insurance regulatory body.

This clause shall only apply with respect to any business if substantially all of the income of the business is derived from persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the person conducting the business.

(iii) Exception for securities marked to market

Such term shall not include any security (as defined in section 475(c)(2)) which is held by a dealer in securities and to which section 475(a) applies.

(iv) Stock or securities in a 20-percent controlled entity

(I) In general

Such term shall not include any stock and securities in, or any asset described in subclause (IV) or (V) of clause (i) issued by, a corporation which is a 20-percent controlled entity with respect to the distributing or controlled corporation.

(II) Look-thru rule

The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any 20-percent controlled entity.

(III) 20-percent controlled entity

For purposes of this clause, the term “20-percent controlled entity” means, with respect to any distributing or controlled corporation, any corporation with respect to which the distributing or controlled corporation owns directly or indirectly stock meeting the requirements of section 1504(a)(2), except that such section shall be applied by substituting “20 percent” for “80 percent” and without regard to stock described in section 1504(a)(4).

(v) Interests in certain partnerships

(I) In general

Such term shall not include any interest in a partnership, or any debt instrument or other evidence of indebtedness, issued by the partnership, if 1 or more of the trades or businesses of the partnership are (or, without regard to the 5-year requirement under subsection (b)(2)(B), would be) taken into account by the distributing or controlled corporation, as the case may be, in determining whether the requirements of subsection (b) are met with respect to the distribution.

(II) Look-thru rule

The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any partnership described in subclause (I).

(3) 50-percent or greater interest

For purposes of this subsection—

(A) In general

The term “50-percent or greater interest” has the meaning given such term by subsection (d)(4).

(B) Attribution rules

The rules of section 318 shall apply for purposes of determining ownership of stock for purposes of this paragraph.

(4) Transaction

For purposes of this subsection, the term “transaction” includes a series of transactions.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out, or prevent the avoidance of, the purposes of this subsection, including regulations—

(A) to carry out, or prevent the avoidance of, the purposes of this subsection in cases involving—

(i) the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

(ii) the treatment of assets unrelated to the trade or business of a corporation as investment assets if, prior to the distribution, investment assets were used to acquire such unrelated assets,

(B) which in appropriate cases exclude from the application of this subsection a distribution which does not have the character of a redemption which would be treated as a sale or exchange under section 302, and

(C) which modify the application of the attribution rules applied for purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 113; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-589, §4(e)(2), Dec. 24, 1980, 94 Stat. 3403; Pub. L. 100-203, title X, §10223(b), Dec. 22, 1987, 101 Stat. 1330-411; Pub. L. 100-647, title I, §1018(d)(5)(C), title II, §2004(k)(1), Nov. 10, 1988, 102 Stat. 3580, 3605; Pub. L. 101-508, title XI, §§11321(a), 11702(e)(2), Nov. 5, 1990, 104 Stat. 1388-460, 1388-515; Pub. L. 104-188, title I, §1704(t)(31), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 105-34, title X, §§1012(a), (b)(1), 1014(c), (e)(1), (2), Aug. 5, 1997, 111 Stat. 914, 916, 921; Pub. L. 105-206, title VI, §6010(c)(2), July 22, 1998, 112 Stat. 813; Pub. L. 109-222, title II, §202, title V, §507(a), May 17, 2006, 120 Stat. 348, 358; Pub. L. 109-432, div. A, title IV, §410(a), Dec. 20, 2006, 120 Stat. 2963; Pub. L. 110-172, §4(b)(1), (2), Dec. 29, 2007, 121 Stat. 2476.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (g)(2)(A)(i), is the date of enactment of Pub. L. 109-222, which was approved May 17, 2006.

AMENDMENTS

2007—Subsec. (b)(2)(A). Pub. L. 110-172, §4(b)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “it is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged.”

Subsec. (b)(3). Pub. L. 110-172, §4(b)(2), amended par. (3) generally. Prior to amendment, par. (3) provided for

special rule relating to active business requirement applicable in the case of any distribution made after May 17, 2006.

2006—Subsec. (b)(3). Pub. L. 109-222, § 202, added par. (3).

Subsec. (b)(3)(A), (D). Pub. L. 109-432 struck out “and on or before December 31, 2010” after “this paragraph” in subpar. (A) and after “such date” in subpar. (D).

Subsec. (g). Pub. L. 109-222, § 507(a), added subsec. (g).

1998—Subsec. (e)(3)(A). Pub. L. 105-206, § 6010(c)(2)(A), substituted “shall not be taken into account in applying” for “shall not be treated as described in” in introductory provisions.

Subsec. (e)(3)(A)(iv). Pub. L. 105-206, § 6010(c)(2)(B), added cl. (iv) and struck out former cl. (iv) which read as follows: “The acquisition of stock in a corporation if shareholders owning directly or indirectly stock possessing—

“(I) more than 50 percent of the total combined voting power of all classes of stock entitled to vote, and
“(II) more than 50 percent of the total value of shares of all classes of stock,

in the distributing corporation or any controlled corporation before such acquisition own directly or indirectly stock possessing such vote and value in such distributing or controlled corporation after such acquisition.”

1997—Subsec. (a)(3)(C). Pub. L. 105-34, § 1014(e)(1), inserted “(including nonqualified preferred stock, as defined in section 351(g)(2))” after “stock”.

Subsec. (a)(3)(D). Pub. L. 105-34, § 1014(c), added subpar. (D).

Subsec. (a)(4)(A). Pub. L. 105-34, § 1014(e)(2), inserted “nonqualified preferred stock and” after “subsection (including)”.

Subsec. (e). Pub. L. 105-34, § 1012(a), added subsec. (e).

Subsec. (f). Pub. L. 105-34, § 1012(b)(1), added subsec. (f).

1996—Subsec. (d)(7)(A). Pub. L. 104-188 inserted “section” before “267(b)”.

1990—Subsec. (c). Pub. L. 101-508, § 11321(a), added subsec. (c) and struck out former subsec. (c) which read as follows:

“(1) IN GENERAL.—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

“(2) DISTRIBUTION OF APPRECIATED PROPERTY.—

“(A) IN GENERAL.—If—

“(i) in a distribution referred to in paragraph (1), the corporation distributes property other than stock or securities in the controlled corporation, and

“(ii) 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.

“(B) TREATMENT OF LIABILITIES.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

“(3) COORDINATION WITH SECTIONS 311 AND 336(a).—Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1).”

Pub. L. 101-508, § 11702(e)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Section 311 shall apply to any distribution—

“(1) to which this section (or so much of section 356 as relates to this section) applies, and

“(2) which is not in pursuance of a plan of reorganization,

in the same manner as if such distribution were a distribution to which subpart A of part I applies; except

that subsection (b) of section 311 shall not apply to any distribution of stock or securities in the controlled corporation.”

Subsec. (d). Pub. L. 101-508, § 11321(a), added subsec. (d).

1988—Subsec. (b)(2)(D)(i), (ii). Pub. L. 100-647, § 2004(k)(1), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B), or

“(ii) was so acquired such distributee corporation within such period, but such control was so acquired only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.”

Subsec. (c). Pub. L. 100-647, § 1018(d)(5)(C), added subsec. (c).

1987—Subsec. (b)(2)(D). Pub. L. 100-203, § 10223(b)(3), inserted at end “For purposes of subparagraph (D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation.”

Subsec. (b)(2)(D)(i). Pub. L. 100-203, § 10223(b)(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “was not acquired directly (or through one or more corporations) by another corporation within the period described in subparagraph (B), or”.

Subsec. (b)(2)(D)(ii). Pub. L. 100-203, § 10223(b)(2), substituted “such distributee corporation” for “by another corporation”.

1980—Subsec. (a)(3). Pub. L. 96-589 designated existing provisions as subpars. (A) and (B) and added subpar. (C).

Subsec. (a)(4). Pub. L. 96-589, § 4(e)(2), designated existing provisions as subpar. (A), substituted “exchange if any property” for “distribution if any property”, inserted provisions excluding property to which paragraph (3)(C) applies, and added subpar. (B).

1976—Subsec. (a)(1)(D)(ii). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-172, § 4(d), Dec. 29, 2007, 121 Stat. 2478, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 911 and 954 of this title] shall take effect as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109-222] to which they relate.

“(2) MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsection (b) [amending this section] shall apply to distributions made after May 17, 2006.

“(B) TRANSITION RULE.—The amendments made by subsection (b) shall not apply to any distribution pursuant to a transaction which is—

“(i) made pursuant to an agreement which was binding on May 17, 2006, and at all times thereafter,

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

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

“(C) ELECTION OUT OF TRANSITION RULE.—Subparagraph (B) shall not apply if the distributing corporation elects not to have such subparagraph apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

“(D) SPECIAL RULE FOR CERTAIN PRE-ENACTMENT DISTRIBUTIONS.—For purposes of determining the continued qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 of distributions made on or before May 17, 2006, as a result of an acquisi-

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

has agreed with the transferee to, and is expected to, satisfy; or

(B) the fair market value of such other assets (determined without regard to section 7701(g)).

(3) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and section 362(d). The Secretary may also prescribe regulations which provide that the manner in which a liability is treated as assumed under this subsection is applied, where appropriate, elsewhere in this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 116; June 29, 1956, ch. 463, § 2, 70 Stat. 403; Pub. L. 95-600, title III, § 365(a), Nov. 6, 1978, 92 Stat. 2854; Pub. L. 96-222, title I, § 103(a)(12), Apr. 1, 1980, 94 Stat. 213; Pub. L. 96-589, § 4(h)(2), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 101-508, title XI, § 11801(c)(8)(F), Nov. 5, 1990, 104 Stat. 1388-524; Pub. L. 106-36, title III, § 3001(a)(1), (b)(1), (d)(2)-(5), June 25, 1999, 113 Stat. 181-184; Pub. L. 106-554, § 1(a)(7) [title III, § 309(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-638; Pub. L. 108-357, title VIII, § 898(b), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109-135, title IV, § 403(jj)(2), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (d)(1). Pub. L. 109-135 inserted “section 361(b)(3),” after “section 358(h).”

2004—Subsec. (c)(1)(B). Pub. L. 108-357 inserted “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” after “section 368(a)(1)(D).”

2000—Subsec. (d)(1). Pub. L. 106-554 inserted “section 358(h),” after “section 358(d),” in introductory provisions.

1999—Subsec. (a). Pub. L. 106-36, § 3001(d)(2), struck out “or acquisition” after “assumption” in concluding provisions.

Subsec. (a)(2). Pub. L. 106-36, § 3001(a)(1), struck out “, or acquires from the taxpayer property subject to a liability” before comma at end.

Subsec. (b). Pub. L. 106-36, § 3001(d)(2), (3), struck out “or acquisition” after “assumption” wherever appearing and struck out “or acquired” after “liability assumed” in concluding provisions of par. (1).

Subsec. (c)(1). Pub. L. 106-36, § 3001(d)(4), struck out “, plus the amount of the liabilities to which the property is subject,” after “liabilities assumed” in concluding provisions.

Subsec. (c)(3)(A). Pub. L. 106-36, § 3001(d)(5), struck out “or to which the property transferred is subject” after “liabilities assumed” in concluding provisions.

Subsec. (d). Pub. L. 106-36, § 3001(b)(1), added subsec. (d).

1990—Subsecs. (a), (b)(1). Pub. L. 101-508, § 11801(c)(8)(F)(i), substituted “351 or 361” for “351, 361, 371, or 374” wherever appearing.

Subsec. (c)(2). Pub. L. 101-508, § 11801(c)(8)(F)(ii), inserted “or” at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “to which section 371 or 374 applies, or”.

1980—Subsec. (c)(2)(C). Pub. L. 96-589 added subpar. (C).

Subsec. (c)(3)(A). Pub. L. 96-222 struck out requirement that only taxpayers who compute taxable income under the cash receipts and disbursements method of accounting are eligible to exclude certain liabilities in determining the amount of gain realized on a transfer to a controlled corporation and the requirement that the excluded liability must be an account payable.

1978—Subsec. (c)(3). Pub. L. 95-600 added par. (3).

1956—Subsec. (a). Act June 29, 1956, § 2(1), substituted “371, or 374” for “or 371” in two places.

Subsec. (b). Act June 29, 1956, § 2(1), substituted “371, or 374” for “or 371”.

Subsec. (c)(2)(B). Act June 29, 1956, § 2(2), substituted “371 or 374” for “371”.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, § 898(c), Oct. 22, 2004, 118 Stat. 1649, provided that: “The amendments made by this section [amending this section and section 361 of this title] shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 applicable to assumptions of liability after Oct. 18, 1999, see section 1(a)(7) [title III, § 309(d)] of Pub. L. 106-554, set out as a note under section 358 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106-36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 365(c) of Pub. L. 95-600 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 358 of this title] shall apply to transfers occurring on or after the date of the enactment of this Act [Nov. 6, 1978].”

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.

§ 358. Basis to distributees

(a) General rule

In the case of an exchange to which section 351, 354, 355, 356, or 361 applies—

(1) Nonrecognition property

The basis of the property permitted to be received under such section without the recognition of gain or loss shall be the same as that of the property exchanged—

(A) decreased by—

(i) the fair market value of any other property (except money) received by the taxpayer,

(ii) the amount of any money received by the taxpayer, and

(iii) the amount of loss to the taxpayer which was recognized on such exchange, and

(B) increased by—

(i) the amount which was treated as a dividend, and

(ii) the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

(2) Other property

The basis of any other property (except money) received by the taxpayer shall be its fair market value.

(b) Allocation of basis

(1) In general

Under regulations prescribed by the Secretary, the basis determined under subsection (a)(1) shall be allocated among the properties permitted to be received without the recognition of gain or loss.

(2) Special rule for section 355

In the case of an exchange to which section 355 (or so much of section 356 as relates to section 355) applies, then in making the allocation under paragraph (1) of this subsection, there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing corporation which are retained, and the allocation of basis shall be made among all such properties.

(c) Section 355 transactions which are not exchanges

For purposes of this section, a distribution to which section 355 (or so much of section 356 as relates to section 355) applies shall be treated as an exchange, and for such purposes the stock and securities of the distributing corporation which are retained shall be treated as surrendered, and received back, in the exchange.

(d) Assumption of liability

(1) In general

Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer, such assumption shall, for purposes of this section, be treated as money received by the taxpayer on the exchange.

(2) Exception

Paragraph (1) shall not apply to the amount of any liability excluded under section 357(c)(3).

(e) Exception

This section shall not apply to property acquired by a corporation by the exchange of its stock or securities (or the stock or securities of a corporation which is in control of the acquiring corporation) as consideration in whole or in part for the transfer of the property to it.

(f) Definition of nonrecognition property in case of section 361 exchange

For purposes of this section, the property permitted to be received under section 361 without the recognition of gain or loss shall be treated as consisting only of stock or securities in another corporation a party to the reorganization.

(g) Adjustments in intragroup transactions involving section 355

In the case of a distribution to which section 355 (or so much of section 356 as relates to section 355) applies and which involves the distribution of stock from 1 member of an affiliated group (as defined in section 1504(a) without regard to subsection (b) thereof) to another member of such group, the Secretary may, notwithstanding any other provision of this section, provide adjustments to the adjusted basis of any stock which—

(1) is in a corporation which is a member of such group, and

(2) is held by another member of such group,

to appropriately reflect the proper treatment of such distribution.

(h) Special rules for assumption of liabilities to which subsection (d) does not apply

(1) In general

If, after application of the other provisions of this section to an exchange or series of exchanges, the basis of property to which subsection (a)(1) applies exceeds the fair market value of such property, then such basis shall be reduced (but not below such fair market value) by the amount (determined as of the date of the exchange) of any liability—

(A) which is assumed by another person as part of the exchange, and

(B) with respect to which subsection (d)(1) does not apply to the assumption.

(2) Exceptions

Except as provided by the Secretary, paragraph (1) shall not apply to any liability if—

(A) the trade or business with which the liability is associated is transferred to the person assuming the liability as part of the exchange, or

(B) substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange.

(3) Liability

For purposes of this subsection, the term “liability” shall include any fixed or contingent obligation to make payment, without regard to whether the obligation is otherwise taken into account for purposes of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 117; Pub. L. 85-866, title I, §21(a), Sept. 2, 1958, 72 Stat. 1620; Pub. L. 90-621, §2(a), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94-253, §1(b), Mar. 31, 1976, 90 Stat. 296; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title III, §365(b), Nov. 6, 1978, 92 Stat. 2855; Pub. L. 100-647, title I, §1018(d)(5)(B), Nov. 10, 1988, 102 Stat. 3580; Pub. L. 101-508, title XI, §11801(c)(8)(G), Nov. 5, 1990, 104 Stat. 1388-524; Pub. L. 105-34, title X, §1012(b)(2), Aug. 5, 1997, 111 Stat. 916; Pub. L.

106-36, title III, §3001(a)(2), (d)(6), June 25, 1999, 113 Stat. 182, 184; Pub. L. 106-554, §1(a)(7) [title III, §309(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-638; Pub. L. 107-147, title IV, §412(c), Mar. 9, 2002, 116 Stat. 53.)

AMENDMENTS

2002—Subsec. (h)(1)(A). Pub. L. 107-147 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “which is assumed in exchange for such property, and”.

2000—Subsec. (h). Pub. L. 106-554 added subsec. (h).

1999—Subsec. (d)(1). Pub. L. 106-36 struck out “or acquired from the taxpayer property subject to a liability” after “liability of the taxpayer” and “or acquisition (in the amount of the liability)” after “such assumption”.

1997—Subsec. (g). Pub. L. 105-34 added subsec. (g).

1990—Subsec. (a). Pub. L. 101-508, §11801(c)(8)(G)(i), substituted “or 361” for “361, 371(b), or 374”.

Subsec. (b)(3). Pub. L. 101-508, §11801(c)(8)(G)(ii), struck out par. (3) “Certain exchanges involving Con-Rail” which read as follows: “To the extent provided in regulations prescribed by the Secretary in the case of an exchange to which section 354(d) (or so much of section 356 as relates to section 354(d)) or section 374(c) applies, for purposes of allocating basis under paragraph (1), stock of the Consolidated Rail Corporation and the certificate of value of the United States Railway Association which relates to such stock shall, so long as they are held by the same person, be treated as one property.”

1988—Subsec. (f). Pub. L. 100-647 added subsec. (f).

1978—Subsec. (d). Pub. L. 95-600 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (a). Pub. L. 94-253, §1(b)(1), substituted “371(b), or 374” for “or 371(b)”.

Subsec. (b)(1), (3). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

Pub. L. 94-253, §1(b)(2), added par. (3).

1968—Subsec. (e). Pub. L. 90-621 substituted exchange of stock and securities for issuance of stock or securities as the transaction involved and inserted parenthetical provisions making reference to stock or securities of a corporation which is in control of the acquiring corporation.

1958—Subsec. (a)(1)(A)(iii). Pub. L. 85-866 added cl. (iii).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106-554], to which such amendment relates, see section 412(e) of Pub. L. 107-147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(7) [title III, §309(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-638, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 357 of this title] shall apply to assumptions of liability after October 18, 1999.

“(2) RULES.—The rules prescribed under subsection (c) [see Application of Comparable Rules to Partnerships and S Corporations note below] shall apply to assumptions of liability after October 18, 1999, or such later date as may be prescribed in such rules.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106-36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable, with certain exceptions, to distributions after Apr. 16, 1997, pursuant

to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of this title occurring after such date, see section 1012(d) of Pub. L. 105-34, set out as a note under section 351 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 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to transfers occurring on or after Nov. 6, 1978, see section 365(c) of Pub. L. 95-600, set out as a note under section 357 of this title.

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.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 2(c) of Pub. L. 90-621 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 362 of this title] shall apply only in respect of plans of reorganization adopted after the date of the enactment of this Act [Oct. 22, 1968].”

EFFECTIVE DATE OF 1958 AMENDMENT

Section 21(b) of Pub. L. 85-866, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by subsection (a) [amending this section] shall apply as provided in section 393 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as if the clause (iii) added by such amendment had been included in such Code at the time of its enactment [Aug. 16, 1954].”

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.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS

United States Railway Association abolished effective Apr. 1, 1987, all powers, duties, rights, and obligations of Association relating to Consolidated Rail Corporation under Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) transferred to Secretary of Transportation on Jan. 1, 1987, and any securities of Corporation held by Association transferred to Secretary of Transportation on Oct. 21, 1986, see section 1341 of Title 45, Railroads.

APPLICATION OF COMPARABLE RULES TO PARTNERSHIPS AND S CORPORATIONS

Pub. L. 106-554, §1(a)(7) [title III, §309(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-638, provided that: “The Secretary of the Treasury or his delegate—

“(1) shall prescribe rules which provide appropriate adjustments under subchapter K of chapter 1 of the Internal Revenue Code of 1986 to prevent the acceleration or duplication of losses through the assumption of (or transfer of assets subject to) liabilities described in section 358(h)(3) of such Code (as added by subsection (a)) in transactions involving partnerships, and

“(2) may prescribe rules which provide appropriate adjustments under subchapter S of chapter 1 of such

Code in transactions described in paragraph (1) involving S corporations rather than partnerships.”

SUBPART C—EFFECTS ON CORPORATION

Sec.	
361.	Nonrecognition of gain or loss to corporations; treatment of distributions.
362.	Basis to corporations.
[363.]	Repealed.]

AMENDMENTS

1988—Pub. L. 100-647, title I, §1018(d)(5)(F), Nov. 10, 1988, 102 Stat. 3580, substituted “corporations; treatment of distributions.” for “transferor corporation; other treatment of transferor corporation; etc.” in item 361.

1986—Pub. L. 99-514, title XVIII, §1804(g)(3), Oct. 22, 1986, 100 Stat. 2806, substituted “to transferor corporation; other treatment of transferor corporation; etc.” for “corporations” in item 361.

1976—Pub. L. 94-455, title XIX, §1901(b)(13), Oct. 4, 1976, 90 Stat. 1795, struck out item 363 “Effect on earnings and profits”.

§ 361. Nonrecognition of gain or loss to corporations; treatment of distributions

(a) General rule

No gain or loss shall be recognized to a corporation if such corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(b) Exchanges not solely in kind

(1) Gain

If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by subsection (a) to be received without the recognition of gain, but also of other property or money, then—

(A) Property distributed

If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(B) Property not distributed

If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized.

The amount of gain recognized under subparagraph (B) shall not exceed the sum of the money and the fair market value of the other property so received which is not so distributed.

(2) Loss

If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by subsection (a) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(3) Treatment of transfers to creditors

For purposes of paragraph (1), any transfer of the other property or money received in the

exchange by the corporation to its creditors in connection with the reorganization shall be treated as a distribution in pursuance of the plan of reorganization. The Secretary may prescribe such regulations as may be necessary to prevent avoidance of tax through abuse of the preceding sentence or subsection (c)(3). In the case of a reorganization described in 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, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred (reduced by the amount of the liabilities assumed (within the meaning of section 357(c))).

(c) Treatment of distributions

(1) In general

Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation a party to a reorganization on the distribution to its shareholders of property in pursuance of the plan of reorganization.

(2) Distributions of appreciated property

(A) In general

If—

- (i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and
- (ii) 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.

(B) Qualified property

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

- (i) any stock in (or right to acquire stock in) the distributing corporation or obligation of the distributing corporation, or
- (ii) any stock in (or right to acquire stock in) another corporation which is a party to the reorganization or obligation of another corporation which is such a party if such stock (or right) or obligation is received by the distributing corporation in the exchange.

(C) Treatment of liabilities

If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

(3) Treatment of certain transfers to creditors

For purposes of this subsection, any transfer of qualified property by the corporation to its creditors in connection with the reorganization shall be treated as a distribution to its shareholders pursuant to the plan of reorganization.

(4) Coordination with other provisions

Section 311 and subpart B of part II of this subchapter shall not apply to any distribution referred to in paragraph (1).

(5) Cross reference

For provision providing for recognition of gain in certain distributions, see section 355(d).

(Aug. 16, 1954, ch. 736, 68A Stat. 118; Pub. L. 99-514, title XVIII, §1804(g)(1), Oct. 22, 1986, 100 Stat. 2805; Pub. L. 100-647, title I, §1018(d)(5)(A), Nov. 10, 1988, 102 Stat. 3578; Pub. L. 101-508, title XI, §11321(b), Nov. 5, 1990, 104 Stat. 1388-463; Pub. L. 108-357, title VIII, §898(a), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109-135, title IV, §403(jj)(1), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (b)(3). Pub. L. 109-135 inserted before period at end “(reduced by the amount of the liabilities assumed (within the meaning of section 357(c)))”.

2004—Subsec. (b)(3). Pub. L. 108-357 inserted at end “In the case of a reorganization described in 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, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.”

1990—Subsec. (c)(5). Pub. L. 101-508 added par. (5).

1988—Pub. L. 100-647 substituted “corporations; treatment of distributions” for “transferor corporations; other treatment of transferor corporation; etc.” in section catchline and amended text generally, revising content and structure of section.

1986—Pub. L. 99-514 amended section generally. Prior to amendment, section related to whether gain or loss was recognized if corporation which was party to reorganization exchanged property, pursuant to plan of reorganization, for stock or securities in another corporation which was party to the reorganization or for other property or money.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after Oct. 22, 2004, see section 898(c) of Pub. L. 108-357, set out as a note under section 357 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to distributions after Oct. 9, 1990, but not applicable to any distribution pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such distribution, see section 11321(c) of Pub. L. 101-508, set out as a note under section 355 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

Section 1804(g)(4) of Pub. L. 99-514 provided that: “The amendments made by this subsection [amending

this section and section 368 of this title] shall apply to plans of reorganizations adopted after the date of the enactment of this Act [Oct. 22, 1986].”

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.

§ 362. Basis to corporations**(a) Property acquired by issuance of stock or as paid-in surplus**

If property was acquired on or after June 22, 1954, by a corporation—

(1) in connection with a transaction to which section 351 (relating to transfer of property to corporation controlled by transferor) applies, or

(2) as paid-in surplus or as a contribution to capital,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer.

(b) Transfers to corporations

If property was acquired by a corporation in connection with a reorganization to which this part applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) as the consideration in whole or in part for the transfer.

(c) Special rule for certain contributions to capital**(1) Property other than money**

Notwithstanding subsection (a)(2), if property other than money—

(A) is acquired by a corporation, on or after June 22, 1954, as a contribution to capital, and

(B) is not contributed by a shareholder as such,

then the basis of such property shall be zero.

(2) Money

Notwithstanding subsection (a)(2), if money—

(A) is received by a corporation, on or after June 22, 1954, as a contribution to capital, and

(B) is not contributed by a shareholder as such,

then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of

such contribution over the amount of the reduction under the preceding sentence shall be applied to the reduction (as of the last day of the period specified in the preceding sentence) of the basis of any other property held by the taxpayer. The particular properties to which the reductions required by this paragraph shall be allocated shall be determined under regulations prescribed by the Secretary.

(d) Limitation on basis increase attributable to assumption of liability

(1) In general

In no event shall the basis of any property be increased under subsection (a) or (b) above the fair market value of such property (determined without regard to section 7701(g)) by reason of any gain recognized to the transferor as a result of the assumption of a liability.

(2) Treatment of gain not subject to tax

Except as provided in regulations, if—

(A) gain is recognized to the transferor as a result of an assumption of a nonrecourse liability by a transferee which is also secured by assets not transferred to such transferee; and

(B) no person is subject to tax under this title on such gain,

then, for purposes of determining basis under subsections (a) and (b), the amount of gain recognized by the transferor as a result of the assumption of the liability shall be determined as if the liability assumed by the transferee equaled such transferee's ratable portion of such liability determined on the basis of the relative fair market values (determined without regard to section 7701(g)) of all of the assets subject to such liability.

(e) Limitations on built-in losses

(1) Limitation on importation of built-in losses

(A) In general

If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

(B) Property described

For purposes of subparagraph (A), property is described in this subparagraph if—

(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

(C) Importation of net built-in loss

For purposes of subparagraph (A), there is an importation of a net built-in loss in a

transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

(2) Limitation on transfer of built-in losses in section 351 transactions

(A) In general

If—

(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

(B) Allocation of basis reduction

The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

(C) Election to apply limitation to transferor's stock basis

(i) In general

If the transferor and transferee of a transaction described in subparagraph (A) both elect the application of this subparagraph—

(I) subparagraph (A) shall not apply, and

(II) the transferor's basis in the stock received for property to which subparagraph (A) does not apply by reason of the election shall not exceed its fair market value immediately after the transfer.

(ii) Election

Any election under clause (i) shall be made at such time and in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.

(Aug. 16, 1954, ch. 736, 68A Stat. 118; Pub. L. 90-621, §2(b), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94-455, title XIX, §1906(b)(13)(A), title XXI, §2120(b), Oct. 4, 1976, 90 Stat. 1834, 1913; Pub. L. 99-514, title VIII, §824(b), Oct. 22, 1986, 100 Stat. 2374; Pub. L. 106-36, title III, §3001(b)(2), June 25, 1999, 113 Stat. 182; Pub. L. 108-357, title VIII, §836(a), Oct. 22, 2004, 118 Stat. 1594; Pub. L. 109-135, title IV, §403(dd)(2), Dec. 21, 2005, 119 Stat. 2631.)

AMENDMENTS

2005—Subsec. (e)(2)(C)(ii). Pub. L. 109-135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "An election under clause (i) shall be included with the return of tax for the taxable year in which the transaction occurred, shall be in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable."

2004—Subsec. (e). Pub. L. 108-357 added subsec. (e).
 1999—Subsec. (d). Pub. L. 106-36 added subsec. (d).
 1986—Subsec. (c)(3). Pub. L. 99-514 struck out par. (3) relating to exceptions for contributions in aid of construction.

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

Subsec. (c)(3). Pub. L. 94-455, § 2120(b), added par. (3).
 1968—Subsec. (b). Pub. L. 90-621 substituted the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) for the issuance of stock or securities of the transferee as the transaction rendering the subsection applicable.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nm) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, § 836(c)(1), Oct. 22, 2004, 118 Stat. 1596, provided that: “The amendment made by subsection (a) [amending this section] shall apply to transactions after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106-36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to amounts received after Dec. 31, 1986, in taxable years ending after such date, with certain exceptions and qualifications, see section 824(c) of Pub. L. 99-514, set out as a note under section 118 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2120(b) of Pub. L. 94-455 applicable to contributions made after Jan. 31, 1976, see section 2120(c) of Pub. L. 94-455, set out as a note under section 118 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-621 applicable only in respect of plans of reorganization adopted after Oct. 22, 1968, see section 2(c) of Pub. L. 90-621, set out as a note under section 358 of this title.

[§ 363. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(49), Oct. 4, 1976, 90 Stat. 1773]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 119, related to cross reference for rules relating to effect on earnings and profits of transactions to which this part applies.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

SUBPART D—SPECIAL RULE; DEFINITIONS

Sec.	
367.	Foreign corporations.
368.	Definitions relating to corporate reorganizations.

§ 367. Foreign corporations

(a) Transfers of property from the United States **(1) General rule**

If, in connection with any exchange described in section 332, 351, 354, 356, or 361, a

United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation.

(2) Exception for certain stock or securities

Except to the extent provided in regulations, paragraph (1) shall not apply to the transfer of stock or securities of a foreign corporation which is a party to the exchange or a party to the reorganization.

(3) Exception for transfers of certain property used in the active conduct of a trade or business

(A) In general

Except as provided in regulations prescribed by the Secretary, paragraph (1) shall not apply to any property transferred to a foreign corporation for use by such foreign corporation in the active conduct of a trade or business outside of the United States.

(B) Paragraph not to apply to certain property

Except as provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to any—

- (i) property described in paragraph (1) or (3) of section 1221(a) (relating to inventory and copyrights, etc.),
- (ii) installment obligations, accounts receivable, or similar property,
- (iii) foreign currency or other property denominated in foreign currency,
- (iv) intangible property (within the meaning of section 936(h)(3)(B)), or
- (v) property with respect to which the transferor is a lessor at the time of the transfer, except that this clause shall not apply if the transferee was the lessee.

(C) Transfer of foreign branch with previously deducted losses

Except as provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to gain realized on the transfer of the assets of a foreign branch of a United States person to a foreign corporation in an exchange described in paragraph (1) to the extent that—

- (i) the sum of losses—
 - (I) which were incurred by the foreign branch before the transfer, and
 - (II) with respect to which a deduction was allowed to the taxpayer, exceeds
- (ii) the sum of—
 - (I) any taxable income of such branch for a taxable year after the taxable year in which the loss was incurred and through the close of the taxable year of the transfer, and
 - (II) the amount which is recognized under section 904(f)(3) on account of the transfer.

Any gain recognized by reason of the preceding sentence shall be treated for purposes of this chapter as income from sources outside the United States having the same character as such losses had.

(4) Special rule for transfer of partnership interests

Except as provided in regulations prescribed by the Secretary, a transfer by a United States person of an interest in a partnership to a foreign corporation in an exchange described in paragraph (1) shall, for purposes of this subsection, be treated as a transfer to such corporation of such person's pro rata share of the assets of the partnership.

(5) Paragraphs (2) and (3) not to apply to certain section 361 transactions

Paragraphs (2) and (3) shall not apply in the case of an exchange described in subsection (a) or (b) of section 361. Subject to such basis adjustments and such other conditions as shall be provided in regulations, the preceding sentence shall not apply if the transferor corporation is controlled (within the meaning of section 368(c)) by 5 or fewer domestic corporations. For purposes of the preceding sentence, all members of the same affiliated group (within the meaning of section 1504) shall be treated as 1 corporation.

(6) Secretary may exempt certain transactions from application of this subsection

Paragraph (1) shall not apply to the transfer of any property which the Secretary, in order to carry out the purposes of this subsection, designates by regulation.

(b) Other transfers**(1) Effect of section to be determined under regulations**

In the case of any exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in subsection (a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes.

(2) Regulations relating to sale or exchange of stock in foreign corporations

The regulations prescribed pursuant to paragraph (1) shall include (but shall not be limited to) regulations dealing with the sale or exchange of stock or securities in a foreign corporation by a United States person, including regulations providing—

(A) the circumstances under which—

(i) gain shall be recognized currently, or amounts included in gross income currently as a dividend, or both, or

(ii) gain or other amounts may be deferred for inclusion in the gross income of a shareholder (or his successor in interest) at a later date, and

(B) the extent to which adjustments shall be made to earnings and profits, basis of stock or securities, and basis of assets.

(c) Transactions to be treated as exchanges**(1) Section 355 distribution**

For purposes of this section, any distribution described in section 355 (or so much of section 356 as relates to section 355) shall be

treated as an exchange whether or not it is an exchange.

(2) Contribution of capital to controlled corporations

For purposes of this chapter, any transfer of property to a foreign corporation as a contribution to the capital of such corporation by one or more persons who, immediately after the transfer, own (within the meaning of section 318) stock possessing at least 80 percent of the total combined voting power of all classes of stock of such corporation entitled to vote shall be treated as an exchange of such property for stock of the foreign corporation equal in value to the fair market value of the property transferred.

(d) Special rules relating to transfers of intangibles**(1) In general**

Except as provided in regulations prescribed by the Secretary, if a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B)) to a foreign corporation in an exchange described in section 351 or 361—

(A) subsection (a) shall not apply to the transfer of such property, and

(B) the provisions of this subsection shall apply to such transfer.

(2) Transfer of intangibles treated as transfer pursuant to sale of contingent payments**(A) In general**

If paragraph (1) applies to any transfer, the United States person transferring such property shall be treated as—

(i) having sold such property in exchange for payments which are contingent upon the productivity, use, or disposition of such property, and

(ii) receiving amounts which reasonably reflect the amounts which would have been received—

(I) annually in the form of such payments over the useful life of such property, or

(II) in the case of a disposition following such transfer (whether direct or indirect), at the time of the disposition.

The amounts taken into account under clause (ii) shall be commensurate with the income attributable to the intangible.

(B) Effect on earnings and profits

For purposes of this chapter, the earnings and profits of a foreign corporation to which the intangible property was transferred shall be reduced by the amount required to be included in the income of the transferor of the intangible property under subparagraph (A)(ii).

(C) Amounts received treated as ordinary income

For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income. For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.

(3) Regulations relating to transfers of intangibles to partnerships

The Secretary may provide by regulations that the rules of paragraph (2) also apply to the transfer of intangible property by a United States person to a partnership in circumstances consistent with the purposes of this subsection.

(e) Treatment of distributions described in section 355 or liquidations under section 332

(1) Distributions described in section 355

In the case of any distribution described in section 355 (or so much of section 356 as relates to section 355) by a domestic corporation to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section.

(2) Liquidations under section 332

In the case of any liquidation to which section 332 applies, except as provided in regulations, subsections (a) and (b)(1) of section 337 shall not apply where the 80-percent distributee (as defined in section 337(c)) is a foreign corporation.

(f) Other transfers

To the extent provided in regulations, if a United States person transfers property to a foreign corporation as paid-in surplus or as a contribution to capital (in a transaction not otherwise described in this section), such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

- (1) the fair market value of the property so transferred, over
- (2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor.

(Aug. 16, 1954, ch. 736, 68A Stat. 119; Pub. L. 91-681, §1(a), Jan. 12, 1971, 84 Stat. 2065; Pub. L. 94-455, title X, §1042(a), Oct. 4, 1976, 90 Stat. 1634; Pub. L. 97-248, title II, §213(d), Sept. 3, 1982, 96 Stat. 465; Pub. L. 98-369, div. A, title I, §131(a)-(c), July 18, 1984, 98 Stat. 662-664; Pub. L. 99-514, title VI, §631(d)(1), title XII, §1231(e)(2), title XVIII, §1810(g)(1), (4), Oct. 22, 1986, 100 Stat. 2272, 2563, 2828, 2829; Pub. L. 100-647, title I, §1006(e)(13)(A), Nov. 10, 1988, 102 Stat. 3402; Pub. L. 101-508, title XI, §11702(a)(1), Nov. 5, 1990, 104 Stat. 1388-514; Pub. L. 105-34, title XI, §1131(b)(2), (4), (5)(A), Aug. 5, 1997, 111 Stat. 979, 980; Pub. L. 106-170, title V, §532(c)(1)(C), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108-357, title IV, §406(a), Oct. 22, 2004, 118 Stat. 1498.)

CODIFICATION

Another section 1131(b) of Pub. L. 105-34 enacted section 684 of this title.

AMENDMENTS

2004—Subsec. (d)(2)(C). Pub. L. 108-357 inserted at end “For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.”

1999—Subsec. (a)(3)(B)(i). Pub. L. 106-170 substituted “section 1221(a)” for “section 1221”.

1997—Subsec. (d)(2)(C). Pub. L. 105-34, §1131(b)(4), amended heading and text of subpar. (C) generally.

Prior to amendment, text read as follows: “For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income from sources within the United States.”

Subsec. (d)(3). Pub. L. 105-34, §1131(b)(5)(A), added par. (3).

Subsec. (f). Pub. L. 105-34, §1131(b)(2), added subsec. (f).

1990—Subsec. (a)(5). Pub. L. 101-508 substituted “subsection (a) or (b) of section 361” for “section 361”.

1988—Subsec. (a)(5), (6). Pub. L. 100-647 added par. (5) and redesignated former par. (5) as (6).

1986—Subsec. (a)(1). Pub. L. 99-514, §1810(g)(4)(A), struck out “355,” after “354.”

Subsec. (d)(2)(A). Pub. L. 99-514, §1231(e)(2), inserted at end “The amounts taken into account under clause (i) shall be commensurate with the income attributable to the intangible.”

Subsec. (e). Pub. L. 99-514, §631(d)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e), treatment of distributions described in section 336 or 355, read as follows: “In the case of any distribution described in section 336 or 355 (or so much of section 356 as relates to section 355) by a domestic corporation which is made to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section.”

Subsec. (f). Pub. L. 99-514, §1810(g)(1), struck out subsec. (f) which related to transitional rules in the case of any exchanges beginning before Jan. 1, 1978.

Pub. L. 99-514, §1810(g)(4)(B), in heading substituted “distributions described in section 336 or 355” for “liquidations under section 336”, and in text inserted “or 355 (or so much of section 356 as relates to section 355)”.

1984—Subsec. (a). Pub. L. 98-369, §131(a), amended subsec. (a) generally, revising provisions of pars. (1) and (2), and adding pars. (3) to (5).

Subsec. (d). Pub. L. 98-369, §131(b), amended subsec. (d) generally, substituting provision providing special rules relating to transfers of intangibles for provision providing special rules relating to transfers of intangibles by possession corporation.

Subsecs. (e), (f). Pub. L. 98-369, §131(c), added subsec. (e) and redesignated former subsec. (e) as (f).

1982—Subsecs. (d), (e). Pub. L. 97-248 added subsec. (d) and redesignated former subsec. (d) as (e).

1976—Pub. L. 94-455, among other changes, inserted provisions permitting nonrecognition of gain if a request for a ruling that tax avoidance is not present is filed within 183 days after beginning of an exchange, relating to an organization, reorganization, and liquidation of a foreign corporation, in the case of outbound transfers, however, for all other transfers, regulations are to provide the extent that earnings are to be taken into account as dividends and provisions relating to Tax Court review of the tax avoidance rulings.

1971—Subsec. (a). Pub. L. 91-681 designated existing provisions as subsec. (a), and, as so designated, inserted provisions relating to instances of an exchange, described in subsec. (b). Provisions relating to distributions described in section 355 (or so much of section 356 as relates to section 355) were stricken and were transferred to subsec. (c).

Subsec. (b). Pub. L. 91-681 added subsec. (b).

Subsec. (c). Pub. L. 91-681 designated as subsec. (c) provisions relating to distribution described in section 355 (or so much of section 356 as relates to section 355).

Subsec. (d). Pub. L. 91-681 added subsec. (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title IV, §406(b), Oct. 22, 2004, 118 Stat. 1498, provided that: “The amendment made by this section [amending this section] shall apply to amounts treated as received pursuant to section 367(d)(2) of the Internal Revenue Code of 1986 on or after August 5, 1997.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any trans-

action entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1131(d) of Pub. L. 105-34 provided that: “The amendments made by this section [enacting section 684 of this title, amending this section and sections 721, 814, 1035, and 6422 of this title, and repealing sections 1057, 1491, 1492, and 1494 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by 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

Section 1006(e)(13)(B) of Pub. L. 100-647 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to exchanges on or after June 21, 1988, except that such amendment shall not apply to any exchange pursuant to any reorganization for which a plan of reorganization was adopted before June 21, 1988.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(d)(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 1231(e)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, but only with respect to transfers after Nov. 16, 1985, or licenses granted after such date, or before such date with respect to property not in existence or owned by taxpayer on such date, except that for purposes of section 936(h)(5)(C) of this title, such amendment applicable to taxable years beginning after Dec. 31, 1986, without regard to when the transfer or license was made, see section 1231(g)(2) of Pub. L. 99-514, set out as a note under section 936 of this title.

Amendment by section 1810(g)(1), (4) 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

Section 131(g) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting section 6038B of this title, amending this section and sections 1492, 1494, 6501, and 7482 of this title, and repealing section 7477 of this title] shall apply to transfers or exchanges after December 31, 1984, in taxable years ending after such date.

“(2) SPECIAL RULE FOR CERTAIN TRANSFERS OF INTANGIBLES.—

“(A) IN GENERAL.—If, after June 6, 1984, and before January 1, 1985, a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to a foreign corporation or in a transfer described in section 1491, such transfer shall be treated for purposes of sections 367(a), 1492(2), and 1494(b) of such Code as pursuant to a plan having as 1 of its principal purposes the avoidance of Federal income tax.

“(B) WAIVER.—Subject to such terms and conditions as the Secretary of the Treasury or his delegate may prescribe, the Secretary may waive the application of subparagraph (A) with respect to any transfer.

“(3) RULING REQUEST BEFORE MARCH 1, 1984.—The amendments made by this section (and the provisions of paragraph (2) of this subsection) shall not apply to any transfer or exchange of property described in a request filed before March 1, 1984, under section 367(a), 1492(2), or 1494(b) of the Internal Revenue Code of 1986 (as in effect before such amendments).”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to taxable years ending after Aug. 14, 1982, see section 213(e)(3) of Pub. L. 97-248, set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1042(e) of Pub. L. 94-455, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) The amendments made by this section (other than by subsection (d)) [amending this section and sections 751 and 1248 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date. The amendments made by subsection (d) [enacting section 7477 of this title and amending sections 7476 and 7482 of this title] shall apply with respect to pleadings filed with the Tax Court after the date of the enactment of this Act [Oct. 4, 1976] but only with respect to transfers beginning after October 9, 1975.

“(2) In the case of any exchange described in section 367 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on December 31, 1974) in any taxable year beginning after December 31, 1962, and before the date of the enactment of this Act [Oct. 4, 1976], which does not involve the transfer of property to or from a United States person, a taxpayer shall have for purposes of such section until 183 days after the date of the enactment of this Act [Oct. 4, 1976] to file a request with the Secretary of the Treasury or his delegate seeking to establish to the satisfaction of the Secretary of the Treasury or his delegate that such exchange was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes and that for purposes of such section a foreign corporation is to be treated as a foreign corporation.”

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(c) of Pub. L. 91-681, 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 section 1492 of this title] shall apply to transfers made after December 31, 1967; except that sections 367(d) and 1492 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) shall apply only with respect to transfers made after December 31, 1970.”

APPLICABILITY OF SUBSECTION (e)(2)

Section 1006(e)(13)(C) of Pub. L. 100-647 provided that: “Section 367(e)(2) of the 1986 Code (as amended by the Reform Act [Pub. L. 99-514]) shall not apply in the case of any corporation completely liquidated before June 10, 1987, into a corporation organized in a country which has an income tax treaty with the United States.”

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.

§ 368. Definitions relating to corporate reorganizations

(a) Reorganization

(1) In general

For purposes of parts I and II and this part, the term “reorganization” means—

- (A) a statutory merger or consolidation;
- (B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);
- (C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other shall be disregarded;
- (D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356;
- (E) a recapitalization;
- (F) a mere change in identity, form, or place of organization of one corporation, however effected; or
- (G) a transfer by a corporation of all or part of its assets to another corporation in a title 11 or similar case; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356.

(2) Special rules relating to paragraph (1)

(A) Reorganizations described in both paragraph (1)(C) and paragraph (1)(D)

If a transaction is described in both paragraph (1)(C) and paragraph (1)(D), then, for purposes of this subchapter (other than for purposes of subparagraph (C)), such transaction shall be treated as described only in paragraph (1)(D).

(B) Additional consideration in certain paragraph (1)(C) cases

If—

- (i) one corporation acquires substantially all of the properties of another corporation,
- (ii) the acquisition would qualify under paragraph (1)(C) but for the fact that the

acquiring corporation exchanges money or other property in addition to voting stock, and

- (iii) the acquiring corporation acquires, solely for voting stock described in paragraph (1)(C), property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation,

then such acquisition shall (subject to subparagraph (A) of this paragraph) be treated as qualifying under paragraph (1)(C). Solely for the purpose of determining whether clause (iii) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation shall be treated as money paid for the property.

(C) Transfers of assets or stock to subsidiaries in certain paragraph (1)(A), (1)(B), (1)(C), and (1)(G) cases

A transaction otherwise qualifying under paragraph (1)(A), (1)(B), or (1)(C) shall not be disqualified by reason of the fact that part or all of the assets or stock which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets or stock. A similar rule shall apply to a transaction otherwise qualifying under paragraph (1)(G) where the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets.

(D) Use of stock of controlling corporation in paragraph (1)(A) and (1)(G) cases

The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subparagraph as “controlling corporation”) which is in control of the acquiring corporation, of substantially all of the properties of another corporation shall not disqualify a transaction under paragraph (1)(A) or (1)(G) if—

- (i) no stock of the acquiring corporation is used in the transaction, and
- (ii) in the case of a transaction under paragraph (1)(A), such transaction would have qualified under paragraph (1)(A) had the merger been into the controlling corporation.

(E) Statutory merger using voting stock of corporation controlling merged corporation

A transaction otherwise qualifying under paragraph (1)(A) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subparagraph as the “controlling corporation”) which before the merger was in control of the merged corporation is used in the transaction, if—

- (i) after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and
- (ii) in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of

the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

(F) Certain transactions involving 2 or more investment companies

(i) If immediately before a transaction described in paragraph (1) (other than subparagraph (E) thereof), 2 or more parties to the transaction were investment companies, then the transaction shall not be considered to be a reorganization with respect to any such investment company (and its shareholders and security holders) unless it was a regulated investment company, a real estate investment trust, or a corporation which meets the requirements of clause (ii).

(ii) A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer. For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust.

(iii) For purposes of this subparagraph the term “investment company” means a regulated investment company, a real estate investment trust, or a corporation 50 percent or more of the value of whose total assets are stock and securities and 80 percent or more of the value of whose total assets are assets held for investment. In making the 50-percent and 80-percent determinations under the preceding sentence, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary’s assets, and a corporation shall be considered a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock outstanding.

(iv) For purposes of this subparagraph, in determining total assets there shall be excluded cash and cash items (including receivables). Government securities, and, under regulations prescribed by the Secretary, assets acquired (through incurring indebtedness or otherwise) for purposes of meeting the requirements of clause (ii) or ceasing to be an investment company.

(v) This subparagraph shall not apply if the stock of each investment company is owned substantially by the same persons in the same proportions.

(vi) If an investment company which does not meet the requirements of clause

(ii) acquires assets of another corporation, clause (i) shall be applied to such investment company and its shareholders and security holders as though its assets had been acquired by such other corporation. If such investment company acquires stock of another corporation in a reorganization described in section 368(a)(1)(B), clause (i) shall be applied to the shareholders of such investment company as though they had exchanged with such other corporation all of their stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange. For purposes of section 1001, the deemed acquisition or exchange referred to in the two preceding sentences shall be treated as a sale or exchange of property by the corporation and by the shareholders and security holders to which clause (i) is applied.

(vii) For purposes of clauses (ii) and (iii), the term “securities” includes obligations of State and local governments, commodity futures contracts, shares of regulated investment companies and real estate investment trusts, and other investments constituting a security within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a-2(36)).¹

[(viii) Repealed. Pub. L. 98-369, div. A, title I, §174(b)(5)(D), July 18, 1984, 98 Stat. 707]

(G) Distribution requirement for paragraph (1)(C)

(i) In general

A transaction shall fail to meet the requirements of paragraph (1)(C) unless the acquired corporation distributes the stock, securities, and other properties it receives, as well as its other properties, in pursuance of the plan of reorganization. For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to the plan of reorganization, any distribution to its creditors in connection with such liquidation shall be treated as pursuant to the plan of reorganization.

(ii) Exception

The Secretary may waive the application of clause (i) to any transaction subject to any conditions the Secretary may prescribe.

(H) Special rules for determining whether certain transactions are qualified under paragraph (1)(D)

For purposes of determining whether a transaction qualifies under paragraph (1)(D)—

(i) in the case of a transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, the term “control” has the meaning given such term by section 304(c), and

(ii) in the case of a transaction with respect to which the requirements of section

¹ So in original. A reference to 15 U.S.C. 80a-2(a)(36) was probably intended.

355 (or so much of section 356 as relates to section 355) are met, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock, or the fact that the corporation whose stock was distributed issues additional stock, shall not be taken into account.

(3) Additional rules relating to title 11 and similar cases

(A) Title 11 or similar case defined

For purposes of this part, the term “title 11 or similar case” means—

- (i) a case under title 11 of the United States Code, or
- (ii) a receivership, foreclosure, or similar proceeding in a Federal or State court.

(B) Transfer of assets in a title 11 or similar case

In applying paragraph (1)(G), a transfer of the assets of a corporation shall be treated as made in a title 11 or similar case if and only if—

- (i) any party to the reorganization is under the jurisdiction of the court in such case, and
- (ii) the transfer is pursuant to a plan of reorganization approved by the court.

(C) Reorganizations qualifying under paragraph (1)(G) and another provision

If a transaction would (but for this subparagraph) qualify both—

- (i) under subparagraph (G) of paragraph (1), and
- (ii) under any other subparagraph of paragraph (1) or under section 332 or 351,

then, for purposes of this subchapter (other than section 357(c)(1)), such transaction shall be treated as qualifying only under subparagraph (G) of paragraph (1).

(D) Agency receivership proceedings which involve financial institutions

For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court.

(E) Application of paragraph (2)(E)(ii)

In the case of a title 11 or similar case, the requirement of clause (ii) of paragraph (2)(E) shall be treated as met if—

- (i) no former shareholder of the surviving corporation received any consideration for his stock, and
- (ii) the former creditors of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, debt of the surviving corporation which had a fair market value equal to 80 percent or more of the total fair market value of the debt of the surviving corporation.

(b) Party to a reorganization

For purposes of this part, the term “a party to a reorganization” includes—

(1) a corporation resulting from a reorganization, and

(2) both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

In the case of a reorganization qualifying under paragraph (1)(B) or (1)(C) of subsection (a), if the stock exchanged for the stock or properties is stock of a corporation which is in control of the acquiring corporation, the term “a party to a reorganization” includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under paragraph (1)(A), (1)(B), or (1)(C), or (1)(G) of subsection (a) by reason of paragraph (2)(C) of subsection (a), the term “a party to a reorganization” includes the corporation controlling the corporation to which the acquired assets or stock are transferred. In the case of a reorganization qualifying under paragraph (1)(A) or (1)(G) of subsection (a) by reason of paragraph (2)(D) of that subsection, the term “a party to a reorganization” includes the controlling corporation referred to in such paragraph (2)(D). In the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E), the term “party to a reorganization” includes the controlling corporation referred to in subsection (a)(2)(E).

(c) Control defined

For purposes of part I (other than section 304), part II, this part, and part V, the term “control” means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 120; Pub. L. 88-272, title II, §218(a), (b), Feb. 26, 1964, 78 Stat. 57; Pub. L. 90-621, §1(a), (b), Oct. 22, 1968, 82 Stat. 1310, 1311; Pub. L. 91-693, §1(a), (b), Jan. 12, 1971, 84 Stat. 2077; Pub. L. 94-455, title VIII, §806(f)(1), title XXI, §2131(a), Oct. 4, 1976, 90 Stat. 1605, 1922; Pub. L. 95-600, title VII, §701(j)(1), Nov. 6, 1978, 92 Stat. 2905; Pub. L. 96-589, §4(a)-(d), (h)(3), (4), Dec. 24, 1980, 94 Stat. 3401-3403, 3405; Pub. L. 97-34, title II, §241, Aug. 13, 1981, 95 Stat. 254; Pub. L. 97-248, title II, §225(a), Sept. 3, 1982, 96 Stat. 490; Pub. L. 97-448, title III, §304(b), (c), Jan. 12, 1983, 96 Stat. 2398; Pub. L. 98-369, div. A, title I, §§63(a), 64(a), 174(b)(5)(D), July 18, 1984, 98 Stat. 583, 584, 707; Pub. L. 99-514, title VI, §621(e)(1), title IX, §904(a), title XVIII, §§1804(g)(2), (h), 1879(l)(1), Oct. 22, 1986, 100 Stat. 2266, 2385, 2806, 2909; Pub. L. 100-647, title I, §1018(q)(5), title IV, §4012(b)(1)(A), Nov. 10, 1988, 102 Stat. 3586, 3656; Pub. L. 101-73, title XIV, §1401(a)(1), (b)(1), Aug. 9, 1989, 103 Stat. 548, 549; Pub. L. 105-34, title X, §1012(c)(2), Aug. 5, 1997, 111 Stat. 917; Pub. L. 105-206, title VI, §6010(c)(3)(B), July 22, 1998, 112 Stat. 813; Pub. L. 105-277, div. J, title IV, §4003(f)(2), Oct. 21, 1998, 112 Stat. 2681-910; Pub. L. 106-36, title III, §3001(a)(3), June 25, 1999, 113 Stat. 182.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(2)(F)(vii), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classifica-

tion of this Act to the Code, see section 80a-51 of Title 15 and Tables.

AMENDMENTS

1999—Subsec. (a)(1)(C). Pub. L. 106-36, §3001(a)(3)(A), struck out “, or the fact that property acquired is subject to a liability,” before “shall be disregarded”.

Subsec. (a)(2)(B). Pub. L. 106-36, §3001(a)(3)(B), which directed amendment of concluding provisions by striking out “, and the amount of any liability to which any property acquired from the acquiring corporation is subject,” was executed by striking out “, and the amount of any liability to which any property acquired by the acquiring corporation is subject,” after “acquiring corporation”, to reflect the probable intent of Congress.

1998—Subsec. (a)(2)(H)(ii). Pub. L. 105-277 inserted “, or the fact that the corporation whose stock was distributed issues additional stock,” after “dispose of part or all of the distributed stock”.

Pub. L. 105-206 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “in the case of a transaction with respect to which the requirements of section 355 are met, the shareholders described in paragraph (1)(D) shall be treated as having control of the corporation to which the assets are transferred if such shareholders own (immediately after the distribution) stock possessing—

“(I) more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

“(II) more than 50 percent of the total value of shares of all classes of stock of such corporation.”

1997—Subsec. (a)(2)(H). Pub. L. 105-34 amended heading and text of subpar. (H) generally. Prior to amendment, text read as follows: “In the case of any transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction qualifies under subparagraph (D) of paragraph (1), the term ‘control’ has the meaning given to such term by section 304(c).”

1989—Subsec. (a)(3)(D). Pub. L. 101-73, §1401(b)(1), repealed amendment made by Pub. L. 99-514, §904(a), see 1986 Amendment note below.

Pub. L. 101-73, §1401(a)(1), inserted “receivership” in heading and amended text generally, changing the structure of the subparagraph from one consisting of five clauses designated (i) to (v) to one consisting of a single undesignated subparagraph.

1988—Subsec. (a)(2)(F)(ii). Pub. L. 100-647, §1018(q)(5), struck out “(other than stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause (ii))” after “any one issuer” and after “or fewer issuers” and inserted at end “For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust.”

Subsec. (a)(3)(D)(iv), (v). Pub. L. 100-647, §4012(b)(1)(A), amended subpar. (D), as in effect before the amendment made by section 904(a) of Pub. L. 99-514, by adding cls. (iv) and (v).

1986—Subsec. (a)(2)(A). Pub. L. 99-514, §1804(h)(3), inserted “(other than for purposes of subparagraph (C))” after “subchapter”.

Subsec. (a)(2)(F)(ii). Pub. L. 99-514, §1879(l)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer.”

Subsec. (a)(2)(G)(i). Pub. L. 99-514, §1804(g)(2), inserted “For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to the plan of reorganization, any distribution to its creditors in connection with such liquidation shall be treated as pursuant to the plan of reorganization.”

Subsec. (a)(2)(H). Pub. L. 99-514, §1804(h)(2), added subpar. (H).

Subsec. (a)(3)(D). Pub. L. 99-514, §904(a), (c)(1), as amended by Pub. L. 100-647, §4012(a)(1), which (applicable to acquisitions after Dec. 31, 1989, in taxable years ending after such date) directed amendment of subpar. (D) to read “(D) AGENCY RECEIVERSHIP PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court.”, was repealed by Pub. L. 101-73, §1401(b)(1), (c)(4), eff. Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendments made by such section had not been enacted.

Subsec. (c). Pub. L. 99-514, §1804(h)(1), in amending subsec. (c) generally, struck out par. (1) designation and struck out par. (2) defining term “control” as having meaning given to such term by section 304(c) in case of any transaction with respect to which requirements of subpars. (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction is described in subpar. (D) of subsec. (a)(1).

Pub. L. 99-514, §621(e)(1), repealed amendment by Pub. L. 94-455, §806(f)(1). See 1976 Amendment note below.

1984—Subsec. (a)(2)(F)(viii). Pub. L. 98-369, §174(b)(5)(D), struck out cl. (viii) which provided that in applying paragraph (3) of section 267(b) in respect of any transaction to which this subparagraph applies, the reference to a personal holding company in such paragraph (3) be treated as including a reference to an investment company and the determination of whether a corporation is an investment company be made as of the time immediately before the transaction instead of with respect to the taxable year referred to in such paragraph (3).

Subsec. (a)(2)(G). Pub. L. 98-369, §63(a), added subpar. (G).

Subsec. (c). Pub. L. 98-369, §64(a), designated existing provisions as par. (1) and added par. (2).

1983—Subsec. (a)(2)(C). Pub. L. 97-448, §304(b), struck out “or stock” after “acquisition of the assets”.

Subsec. (a)(3)(B)(i). Pub. L. 97-448, §304(c), substituted “any party to the reorganization” for “such corporation”.

1982—Subsec. (a)(1)(F). Pub. L. 97-248 inserted “of one corporation” after “place of organization”.

1981—Subsec. (a)(3)(D). Pub. L. 97-34 substituted “Agency proceedings” for “Agency receivership proceedings” in heading, incorporated existing provisions in text designated cl. (i), inserted in cl. (i)(II) definition for term “title 11 or similar case”, and added cls. (ii) and (iii).

1980—Subsec. (a)(1)(G). Pub. L. 96-589, §4(a), (h)(3), added subpar. (G).

Subsec. (a)(2)(C). Pub. L. 96-589, §4(c), inserted provision that a similar rule would apply to a transaction otherwise qualifying under par. (1)(G), where the requirements of subpars. (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets or stock.

Subsec. (a)(2)(D). Pub. L. 96-589, §4(d), among other changes, inserted reference to par. (1)(G).

Subsec. (a)(3). Pub. L. 96-589, §4(b), added par. (3).

Subsec. (b). Pub. L. 96-589, §4(h)(4), substituted “paragraph (1)(A), (1)(B), (1)(C), or (1)(G) of subsection (a) by reason of paragraph (2)(C)” and “paragraph (1)(A) or (1)(G) of subsection (a) by reason of paragraph (2)(D)” for “paragraph (1)(A), (1)(B), or (1)(C) of subsection (a) by reason of paragraph (2)(C)” and “paragraph (1)(A) of subsection (a) by reason of paragraph (2)(D)”, respectively.

1978—Subsec. (a)(2)(F). Pub. L. 95-600 substituted in cl. (iii), first sentence, “50 percent or more” and “80

percent or more" for "more than 50 percent" and "more than 80 percent"; substituted in cl. (vi), first sentence, "does not meet the requirements" for "is not diversified within the meaning"; struck from cl. (vi), second sentence, "(hereafter referred to as the ('actual acquisition'))" after "section 368(a)(1)(B)" and "and security holders" after "the shareholders" and substituted "stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange" for "stock in such investment company for a percentage of the value of the total outstanding stock of the other corporation equal to the percentage of the value of the total outstanding stock of such investment company which such shareholders own immediately after the actual acquisition"; and added cls. (vii) and (viii).

1976—Subsec. (a)(2)(F). Pub. L. 94-455, §2131(a), added subpar. (F).

Subsec. (c). Pub. L. 94-455, §806(f)(1), which substituted "this part, and Part V," for "and this part," was repealed by Pub. L. 99-514, §621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

1971—Subsec. (a)(2)(E). Pub. L. 91-693, §1(a), added subpar. (E).

Subsec. (b). Pub. L. 91-693, §1(b), defined "party to a reorganization" in the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E).

1968—Subsec. (a)(2)(D). Pub. L. 90-621, §1(a), added subpar. (D).

Subsec. (b). Pub. L. 90-621, §1(b), inserted reference to the inclusion of the controlling corporation in term "a party to a reorganization" in reorganizations qualifying under paragraph (1)(A) of subsection (a) by reason of paragraph (2)(D) of subsection (a).

1964—Subsec. (a). Pub. L. 88-272, §218(a), (b)(1), inserted "(or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation)" in par. (1)(B), and in par. (2)(C), inserted references to par. (1)(B), and substituted "assets or stock" for "assets" wherever appearing.

Subsec. (b). Pub. L. 88-272, §218(b)(2), inserted references to par. (1)(B) wherever appearing.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106-36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 4003(l) of Pub. L. 105-277, set out as a note under section 86 of this title.

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 Pub. L. 105-34 applicable, with certain exceptions, to transfers after Aug. 5, 1997, see section 1012(d) of Pub. L. 105-34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Repeal of amendment by section 904(a) of Pub. L. 99-514 effective Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendment had not been enacted, see section 1401(b)(1) of Pub. L. 101-73, set out as a Repeal of Provisions Relating to Repeal of Special Reorganization Rules for Financial Institutions note set out under section 597 of this title, and section 1401(c)(4) of Pub. L. 101-73, set out as Effective Date of 1989 Amendment note under section 597 of this title.

Section 1401(c)(1) of Pub. L. 101-73 provided that: "The amendment made by subsection (a)(1) [amending

this section] shall apply to acquisitions on or after May 10, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(q)(5) 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.

Section 4012(b)(1)(C)(i) of Pub. L. 100-647 provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Nov. 10, 1988] and before January 1, 1990."

EFFECTIVE DATE OF 1986 AMENDMENT

Repeal of amendment by section 806(f)(1) of Pub. L. 94-455 effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99-514, set out as a note under section 382 of this title.

Section 904(c)(1) of Pub. L. 99-514, as amended by Pub. L. 100-647, title IV, §4012(a)(1), Nov. 10, 1988, 102 Stat. 3656, which provided that the amendments made by subsection (a), amending this section, were to apply to acquisitions after Dec. 31, 1989, in taxable years ending after such date, was repealed by Pub. L. 101-73, title XIV, §1401(b)(1), Aug. 9, 1989, 103 Stat. 549.

Amendment by section 1804(g)(2) of Pub. L. 99-514 applicable to plans of reorganizations adopted after Oct. 22, 1986, see section 1804(g)(4) of Pub. L. 99-514, set out as a note under section 361 of this title.

Amendment by section 1804(h) 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 1879(l)(2) of Pub. L. 99-514 provided that: "The amendment made by this subsection [amending this section] shall apply as if included in section 2131 of the Tax Reform Act of 1976 [Pub. L. 94-455]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 63(a) of Pub. L. 98-369 applicable to transactions pursuant to plans adopted after July 18, 1984, see section 63(c) of Pub. L. 98-369, set out as a note under section 312 of this title.

Section 64(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 174(b)(5)(D) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98-369, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 311(b)(2) of Pub. L. 97-448 provided that: "The amendment made by subsection (b) of section 304 [amending this section] shall take effect as if included in the amendments made by section 4 of such Act [Pub. L. 96-589, the Bankruptcy Tax Act of 1980, see 1980 Amendment notes above]."

EFFECTIVE DATE OF 1982 AMENDMENT

Section 225(b) of Pub. L. 97-248 provided that: "(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to transactions occurring after August 31, 1982.

"(2) PLANS ADOPTED ON OR BEFORE AUGUST 31, 1982.—The amendment made by subsection (a) shall not apply with respect to plans of reorganization adopted on or before August 31, 1982, but only if the transaction occurs before January 1, 1983."

EFFECTIVE DATE OF 1981 AMENDMENT

Section 246(a) of Pub. L. 97-34 provided that: "The amendment made by sections 241 and 242 [amending this section and section 382 of this title] shall apply to any transfer made on or after January 1, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(j)(2) of Pub. L. 95-600, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraph (1) [amending this section] shall apply as if included in section 368(a)(2)(F) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 2131(a) of the Tax Reform Act of 1976 [Pub. L. 94-455, title XX, § 2131(a), Oct. 4, 1976, 90 Stat. 1922]."

"(B) Clause (viii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to losses sustained after September 26, 1977.

"(C) Clause (vii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to transfers made after September 26, 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2131(f)(1), (2) of Pub. L. 94-455, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.

"(2) The amendment made by subsection (a) shall not apply to transfers made in accordance with a ruling issued by the Internal Revenue Service before February 18, 1976, holding that a proposed transaction would be a reorganization described in paragraph (1) of section 368(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

For effective date of amendment by section 806(f)(1) of Pub. L. 94-455, see section 806(g)(2), (3) of Pub. L. 94-455, formerly set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(c) of Pub. L. 91-693 provided that: "The amendments made by this section [amending this section] shall apply to statutory mergers occurring after December 31, 1970."

EFFECTIVE DATE OF 1968 AMENDMENT

Section 1(c) of Pub. L. 90-621 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to statutory mergers occurring after the date of the enactment of this Act [Oct. 22, 1968]."

EFFECTIVE DATE OF 1964 AMENDMENT

Section 218(c) of Pub. L. 88-272 provided that: "The amendments made by this section [amending this section] shall apply with respect to transactions after December 31, 1963, in taxable years ending after such date."

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.

[PART IV—REPEALED]

[§§ 370 to 372. Repealed. Pub. L. 101-508, title XI, § 11801(a)(19), Nov. 5, 1990, 104 Stat. 1388-521]

Section 370, added Pub. L. 96-589, § 4(f), Dec. 24, 1980, 94 Stat. 3404, related to termination of part.

Section 371, acts Aug. 16, 1954, ch. 736, 68A Stat. 121; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1901(a)(50), 90 Stat. 1773, related to reorganization in certain receivership and bankruptcy proceedings.

Section 372, acts Aug. 16, 1954, ch. 736, 68A Stat. 122; Sept. 2, 1958, Pub. L. 85-866, title I, § 95(a), 72 Stat. 1671; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§ 1901(a)(51), (b)(14)(A), 1906(b)(13)(A), 90 Stat. 1773, 1795, 1834, related to basis in connection with certain receivership and bankruptcy proceedings.

SAVINGS PROVISION

For provisions that nothing in repeal 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.

[§ 373. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(52), Oct. 4, 1976, 90 Stat. 1773]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 123; June 29, 1956, ch. 463, § 3, 70 Stat. 403, related to loss not recognized in certain railroad reorganizations.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

[§ 374. Repealed. Pub. L. 101-508, title XI, § 11801(a)(19), Nov. 5, 1990, 104 Stat. 1388-521]

Section, added June 29, 1956, ch. 463, § 1, 70 Stat. 402; amended Mar. 31, 1976, Pub. L. 94-253, § 1(a), (d), 90 Stat. 295, 296; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1901(a)(53), (b)(10)(A), (14)(B), (C), 90 Stat. 1773, 1795, 1796; Nov. 6, 1978, Pub. L. 95-600, title III, § 369(a), 92 Stat. 2857; Apr. 1, 1980, Pub. L. 96-222, title I, § 103(a)(14), 94 Stat. 214; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1899A(9), 100 Stat. 2958, related to nonrecognition of gain or loss in certain railroad reorganizations.

SAVINGS PROVISION

For provisions that nothing in repeal 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.

PART V—CARRYOVERS

Sec.

381. Carryovers in certain corporate acquisitions.
382. Limitation on net operating loss carryforwards and certain built-in losses following ownership change.