PART VI—TREATMENT OF CERTAIN CORPORATE INTERESTS AS STOCK OR INDEBTEDNESS

Sec.
385. Treatment of certain interests in corporations as stock or indebtedness.

AMENDMENTS

1969—Pub. L. 91–172, title IV, § 415(a), Dec. 30, 1969, 83 Stat. 613, added part heading and analysis of sections.

§ 385. Treatment of certain interests in corporations as stock or indebtedness

(a) Authority to prescribe regulations

The Secretary is authorized to prescribe such regulations as may be necessary or appropriate to determine whether an interest in a corporation is to be treated for purposes of this title as stock or indebtedness (or as in part stock and in part indebtedness).

(b) Factors

The regulations prescribed under this section shall set forth factors which are to be taken into account in determining with respect to a particular factual situation whether a debtor-creditor relationship exists or a corporation-shareholder relationship exists. The factors so set forth in the regulations may include among other factors:

(1) whether there is a written unconditional promise to pay on demand or on a specified date a sum certain in money in return for an adequate consideration in money or money's worth, and to pay a fixed rate of interest,

(2) whether there is subordination to or preference over any indebtedness of the corporation,

(3) the ratio of debt to equity of the corporation,

(4) whether there is convertibility into the stock of the corporation, and

(5) the relationship between holdings of stock in the corporation and holdings of the interest in question.

(c) Effect of classification by issuer

(1) In general

The characterization (as of the time of issuance) by the issuer as to whether an interest in a corporation is stock or indebtedness shall be binding on such issuer and on all holders of such interest (but shall not be binding on the Secretary).

(2) Notification of inconsistent treatment

Except as provided in regulations, paragraph (1) shall not apply to any holder of an interest if such holder on his return discloses that he is treating such interest in a manner inconsistent with the characterization referred to in paragraph (1).

(3) Regulations

The Secretary is authorized to require such information as the Secretary determines to be necessary to carry out the provisions of this subsection.

(Added Pub. L. 91–172, title IV, § 415(a), Dec. 30, 1969, 83 Stat. 613; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–239, title VII, § 7208(a)(1), Dec. 19, 1989, 103 Stat. 2337; Pub. L. 102–486, title XIX, § 1936(a), Oct. 24, 1992, 106 Stat. 3032.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–486 added subsec. (c).

1989—Subsec. (a). Pub. L. 101–239 inserted ''(or as in part stock and in part indebtedness)'' before period at end.

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1936(b) of Pub. L. 102–486 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to instruments issued after the date of the enactment of this Act [Oct. 24, 1992].''

REGULATIONS NOT TO BE APPLIED RETROACTIVELY

Section 7208(a)(2) of Pub. L. 101–239 provided that: ''Any regulations issued pursuant to the authority granted by the amendment made by paragraph (1) [amending this section] shall only apply with respect to instruments issued after the date on which the Secretary of the Treasury or his delegate provides public guidance as to the characterization of such instruments whether by regulation, ruling, or otherwise.''

[PART VII—REPEALED]

[§ 386. Repealed. Pub. L. 100–647, title I, § 1006(e)(8)(A), Nov. 10, 1988, 102 Stat. 3401]

Section, added Pub. L. 98–369, div. A, title I, § 75(a), July 18, 1984, 98 Stat. 594; amended Pub. L. 99–514, title XVIII, § 1805(c)(1), Oct. 22, 1986, 100 Stat. 2810, related to transfers of partnership and trust interests by corporations.

EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 1988 Amendment note under section 1 of this title.

[§§ 391 to 395. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(55), Oct. 4, 1976, 90 Stat. 1773]

Section 391, acts Aug. 16, 1954, ch. 736, 68A Stat. 131; Sept. 2, 1958, Pub. L. 85–866, title I, § 22(a), 72 Stat. 1620, related to effective date of section 301 et seq. of this title.

Section 392, act Aug. 16, 1954, ch. 736, 68A Stat. 131, related to effective date of section 331 et seq. of this title.

Section 393, act Aug. 16, 1954, ch. 736, 68A Stat. 132, related to effective date of section 351 et seq. of this title.

Section 394, act Aug. 16, 1954, ch. 736, 68A Stat. 133, related to effective date of section 381 et seq. of this title.

Section 395, act Aug. 16, 1954, ch. 736, 68A Stat. 133, related to special rules for application of this subchapter.

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.

Subchapter D—Deferred Compensation, Etc.

Part
I. Pension, profit-sharing, stock bonus plans, etc.
II. Certain stock options.
III Rules relating to minimum funding standards and benefit limitations.[1]

[1] Period editorially supplied.