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

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

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE

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

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

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

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

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

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

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

SAVINGS PROVISION

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

Subchapter C—Corporate Distributions and Adjustments

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

AMENDMENTS

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

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

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

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

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

PART I—DISTRIBUTIONS BY CORPORATIONS

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

SUBPART A—EFFECTS ON RECIPIENTS

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

§ 301. Distributions of property

(a) In general

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

(b) Amount distributed

(1) General rule

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

(2) Reduction for liabilities

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

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

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

(3) Determination of fair market value

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

(c) Amount taxable

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

(1) Amount constituting dividend

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

(2) Amount applied against basis

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

(3) Amount in excess of basis

(A) In general

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

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

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

(d) Basis

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

(e) Special rule for certain distributions received by 20 percent corporate shareholder

(1) In general

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

(2) 20 percent corporate shareholder

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

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

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

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

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

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

(4) Regulations

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

(f) Special rules

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

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

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

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

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

AMENDMENT OF SECTION

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

AMENDMENTS

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

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

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

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

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

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

1987—Subsec. (f)(1). Pub. L. 100–203 substituted ''subsections (k) and (n)'' for ''subsection (n)''.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

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

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

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

EFFECTIVE DATE OF 1987 AMENDMENT

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

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

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

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

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

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

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

EFFECTIVE DATE OF 1971 AMENDMENT

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

EFFECTIVE DATE OF 1969 AMENDMENT

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

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

EFFECTIVE DATE OF 1966 AMENDMENTS

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

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

EFFECTIVE DATE OF 1964 AMENDMENTS

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

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

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 5(d) of Pub. L. 87–834 provided that: ''The amendments made by this section [amending this section and section 245 of this title] shall apply to distributions made after December 31, 1962.''

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

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

STUDY OF CORPORATE PROVISIONS

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 302. Distributions in redemption of stock

(a) General rule

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

(b) Redemptions treated as exchanges

(1) Redemptions not equivalent to dividends

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

(2) Substantially disproportionate redemption of stock

(A) In general

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

(B) Limitation

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

(C) Definitions

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

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

is less than 80 percent of—

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

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

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

(D) Series of redemptions

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

(3) Termination of shareholder's interest

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

(4) Redemption from noncorporate shareholder in partial liquidation

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

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

(B) in partial liquidation of the distributing corporation.

(5) Application of paragraphs

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

(c) Constructive ownership of stock

(1) In general

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

(2) For determining termination of interest

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

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

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

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

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

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

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

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

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

(C) Special rule for waivers by entities

(i) In general

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

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

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

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

(ii) Definitions

For purposes of this subparagraph—

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

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

(d) Redemptions treated as distributions of property

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

(e) Partial liquidation defined

(1) In general

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

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

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

(2) Termination of business

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

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

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

(3) Qualified trade or business

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

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

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

(4) Redemption may be pro rata

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

(5) Treatment of certain pass-thru entities

For purposes of determining under subsection (b)(4) whether any stock is held by a shareholder who is not a corporation, any stock held by a partnership, estate, or trust shall be treated as if it were actually held proportionately by its partners or beneficiaries.

(f) Cross references

For special rules relating to redemption—

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

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

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

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

AMENDMENTS

1984—Subsec. (f)(3). Pub. L. 98–369 substituted ''complete liquidation'' for ''partial or complete liquidation''.

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT; PARTIAL LIQUIDATIONS

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

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

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

''(2) EXCEPTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(A) paragraph (2), and

''(B) applying section 346(a)(2) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) [Sept. 3, 1982] to distributions to which (but for paragraph (2)) the amendments made by this section would apply,

a plan of liquidation shall be treated as adopted when approved by the corporation's board of directors.

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

SAVINGS PROVISIONS

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

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

(a) In general

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

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

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

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

(b) Limitations on application of subsection (a)

(1) Period for distribution

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

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

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

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

(2) Relationship of stock to decedent's estate

(A) In general

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

(i) the value of the gross estate of such decedent, over

(ii) the sum of the amounts allowable as a deduction under section 2053 or 2054.

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

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

(3) Relationship of shareholder to estate tax

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

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

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

(A) the aggregate of the amounts referred to in paragraph (1) or (2) of subsection (a) which remained unpaid immediately before the distribution, or

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

(c) Stock with substituted basis

If—

(1) a shareholder owns stock of a corporation (referred to in this subsection as ''new stock'') the basis of which is determined by reference to the basis of stock of a corporation (referred to in this subsection as ''old stock''),

(2) the old stock was included (for Federal estate tax purposes) in determining the gross estate of a decedent, and

(3) subsection (a) would apply to a distribution of property to such shareholder in redemption of the old stock,

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

(d) Special rules for generation-skipping transfers

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

(1) the stock shall be deemed to be included in the gross estate of such individual;

(2) taxes of the kind referred to in subsection (a)(1) which are imposed because of the generation-skipping transfer shall be treated as imposed because of such individual's death (and for this purpose the tax imposed by section 2601 shall be treated as an estate tax);

(3) the period of distribution shall be measured from the date of the generation-skipping transfer; and

(4) the relationship of stock to the decedent's estate shall be measured with reference solely to the amount of the generation-skipping transfer.

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

AMENDMENTS

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

''(1) the stock shall be deemed to be included in the gross estate of the deemed transferor;

''(2) taxes of the kind referred to in subsection (a)(1) which are imposed because of the generation-skipping transfer shall be treated as imposed because of the deemed transferor's death (and for this purpose the tax imposed by section 2601 shall be treated as an estate tax);

''(3) the period of distribution shall be measured from the date of the generation-skipping transfer; and

''(4) the relationship of stock to the decedent's estate shall be measured with reference solely to the amount of the generation-skipping transfer.''

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

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

§ 304. Redemption through use of related corporations

(a) Treatment of certain stock purchases

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

For purposes of sections 302 and 303, if—

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

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

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

(2) Acquisition by subsidiary

For purposes of sections 302 and 303, if—

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

(B) the issuing corporation controls the acquiring corporation,

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

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

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

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

(2) Amount constituting dividend

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

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

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

(3) Coordination with section 351

(A) Property treated as received in redemption

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

(B) Certain assumptions of liability, etc.

(i) In general

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

(I) assumed by the acquiring corporation, or

(II) to which the stock is subject,

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

(ii) Extension of obligations, etc.

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

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

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

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

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

(C) Distributions incident to formation of bank holding companies

If—

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

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

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

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

(D) Definitions and special rule

For purposes of subparagraph (C) and this subparagraph—

(i) Qualified minority shareholder

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

(ii) BHC

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

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

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

(4) Treatment of certain intragroup transactions

(A) In general

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

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

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

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

(B) Definitions

For purposes of this paragraph—

(i) Affiliated group

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

(ii) Intragroup stock

The term ''intragroup stock'' means any stock which—

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

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

(5) Acquisitions by foreign corporations

(A) In general

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

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

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

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

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

(B) Regulations

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

(6) Avoidance of multiple inclusions, etc.

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

(c) Control

(1) In general

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

(2) Stock acquired in the transaction

For purposes of subsection (a)(1)—

(A) General rule

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

(B) Definition of control group

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

(3) Constructive ownership

(A) In general

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

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

For purposes of subparagraph (A)—

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

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

(I) by substituting ''5 percent'' for ''50 percent'', and

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

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

REFERENCES IN TEXT

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

AMENDMENTS

1998—Subsec. (b)(5)(B), (C). Pub. L. 105–206, § 6010(d)(1), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: ''For purposes of subparagraph (A), the rules of section 1248(d) shall apply except to the extent otherwise provided by the Secretary.''

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

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

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

1988—Subsec. (b)(4)(A). Pub. L. 100–647 substituted ''stock from 1 member'' for ''stock of 1 member''.

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1998 AMENDMENT

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

EFFECTIVE DATE OF 1997 AMENDMENT

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

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

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

''(2) EXCEPTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

''(I) December 15, 1987, or

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1982 AMENDMENT

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

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

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

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

''(B) January 1, 1983.

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

EFFECTIVE DATE OF 1964 AMENDMENT

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

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 305. Distributions of stock and stock rights

(a) General rule

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

(b) Exceptions

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

(1) Distributions in lieu of money

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

(A) in its stock, or

(B) in property.

(2) Disproportionate distributions

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

(A) the receipt of property by some shareholders, and

(B) an increase in the proportionate interests of other shareholders in the assets or earnings and profits of the corporation.

(3) Distributions of common and preferred stock

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

(A) the receipt of preferred stock by some common shareholders, and

(B) the receipt of common stock by other common shareholders.

(4) Distributions on preferred stock

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

(5) Distributions of convertible preferred stock

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

(c) Certain transactions treated as distributions

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

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

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

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

(d) Definitions

(1) Rights to acquire stock

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

(2) Shareholders

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

(e) Treatment of purchaser of stripped preferred stock

(1) In general

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

(A) the redemption price for such stock, over

(B) the price at which such person purchased such stock.

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

(2) Basis adjustments

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

(3) Tax treatment of person stripping stock

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

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

(4) Amounts treated as ordinary income

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

(5) Stripped preferred stock

For purposes of this subsection—

(A) In general

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

(B) Description of stock

Stock is described in this subsection if such stock—

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

(ii) has a fixed redemption price.

(6) Purchase

For purposes of this subsection, the term ''purchase'' means—

(A) any acquisition of stock, where

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

(7) Cross reference

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

(f) Cross references

For special rules—

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

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

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2004 AMENDMENT

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

EFFECTIVE DATE OF 1993 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

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

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

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

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

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

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

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1969 AMENDMENT

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

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

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

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

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

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

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

''(i) nonconvertible preferred stock.

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

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

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

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

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

''(5) With respect to distributions made or considered as made after January 10, 1969, in taxable years ending after such date, to the extent that the amendment made by subsection (a) [amending this section] does not apply by reason of paragraph (2), (3), or (4) of this subsection, section 305 of the Internal Revenue Code of 1986 (as in effect before the amendment made by subsection (a)) shall continue to apply.''

SAVINGS PROVISION

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

§ 306. Dispositions of certain stock

(a) General rule

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

(1) Dispositions other than redemptions

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

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

(i) the amount realized, exceeds

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

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

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

(ii) the adjusted basis of the stock,

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

(C) No loss shall be recognized.

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

(2) Redemption

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

(b) Exceptions

Subsection (a) shall not apply—

(1) Termination of shareholder's interest, etc.

(A) Not in redemption

If the disposition—

(i) is not a redemption;

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

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

(B) In redemption

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

(2) Liquidations

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

(3) Where gain or loss is not recognized

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

(4) Transactions not in avoidance

If it is established to the satisfaction of the Secretary—

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

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

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

(c) Section 306 stock defined

(1) In general

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

(A) Distributed to seller

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

(B) Received in a corporate reorganization or separation

Stock which is not common stock and—

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

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

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

(C) Stock having transferred or substituted basis

Except as otherwise provided in subparagraph (B), stock the basis of which (in the hands of the shareholder selling or otherwise disposing of such stock) is determined by reference to the basis (in the hands of such shareholder or any other person) of section 306 stock.

(2) Exception where no earnings and profits

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

(3) Certain stock acquired in section 351 exchange

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

(A) for purposes of the preceding sentence, and

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

(4) Application of attribution rules for certain purposes

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

(d) Stock rights

For purposes of this section—

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

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

(e) Convertible stock

For purposes of subsection (c)—

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

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

(f) Source of gain

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

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

(g) Change in terms and conditions of stock

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

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

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

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

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

AMENDMENT OF SECTION

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

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

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

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

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

REPEALS

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

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

SAVINGS PROVISION

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

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

(a) General rule

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

(b) Exception for certain stock rights

(1) In general

If—

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

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

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

(2) Election

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

(c) Cross reference

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

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

AMENDMENTS

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

SUBPART B—EFFECTS ON CORPORATION

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

§311. Taxability of corporation on distribution

(a) General rule

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

(1) its stock (or rights to acquire its stock), or

(2) property.

(b) Distributions of appreciated property

(1) In general

If—

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

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

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

(2) Treatment of liabilities

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

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

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (d)(2). Pub. L. 94–452 and Pub. L. 94–455 § 1901(a)(42)(B)(i), (C), struck out subpar. (C) relating to certain distributions before Dec. 1, 1974, struck out ''26 Stat. 209;'' before ''15 U.S.C. 1–7)'' and ''38 Stat. 730;'' before ''15 U.S.C. 12–27)'' in subpar. (D), added subpar. (H), and redesignated subpars. (D) to (G), as so amended, as subpars. (C) to (F), respectively.

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

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(5) EXCEPTION FOR CERTAIN DISTRIBUTIONS.—

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

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

''(I) the controlled corporation, or

''(II) any subsidiary controlled corporation,

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

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

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

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

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

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

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

''(ii) The term 'controlled corporation' means a corporation with respect to which 50 percent or more of the outstanding stock of its common parent is tendered for pursuant to a tender offer outstanding on March 7, 1984.

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

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

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

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

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

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

EFFECTIVE DATE OF 1982 AMENDMENTS; EXCEPTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

''(C) such distributions are made pursuant to 1 of 2 options contained in a contract between such company and such shareholder which is binding on August 31, 1982, and at all times thereafter,

then such distributions of timberland having an aggregate fair market value on August 31, 1982, not in excess of $10,000,000 shall be treated as distributions to which section 311(d)(2)(A) of such Code (as in effect before the date of the enactment of this Act [Sept. 3, 1982] applies.''

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENTS

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

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

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

EFFECTIVE DATE OF 1969 AMENDMENT

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

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

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

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

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

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

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

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

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

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

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

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

''(4) The amendments made by subsections (a) and (b) shall not apply to a distribution by a corporation of property (held on December 1, 1969, by the distributing corporation or a corporation which was a wholly owned subsidiary of the distributing corporation on such date) in redemption of stock outstanding on November 30, 1969, which is redeemed and canceled before July 31, 1971, if—

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

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

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

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

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

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

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

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

§ 312. Effect on earnings and profits

(a) General rule

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

(1) the amount of money,

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

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

(b) Distributions of appreciated property

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

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

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

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

(c) Adjustments for liabilities

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

(1) the amount of any liability to which the property distributed is subject, and

(2) the amount of any liability of the corporation assumed by a shareholder in connection with the distribution.

(d) Certain distributions of stock and securities

(1) In general

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

(A) if no gain to such distributee from the receipt of such stock or securities, or property, was recognized under this title, or

(B) if the distribution was not subject to tax in the hands of such distributee by reason of section 305(a).

(2) Prior distributions

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

(3) Stock or securities

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

[(e) Repealed. Pub. L. 98–369, div. A, title I, §61(a)(2)(B), July 18, 1984, 98 Stat. 581]

(f) Effect on earnings and profits of gain or loss and of receipt of tax-free distributions

(1) Effect on earnings and profits of gain or loss

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

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

(B) for purposes of the computation of the earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

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

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

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

(A) no such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made; and

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

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

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

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

(h) Allocation in certain corporate separations and reorganizations

(1) Section 355

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

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

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

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

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

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

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

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

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

(k) Effect of depreciation on earnings and profits

(1) General rule

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

(2) Exception

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

(3) Exception for tangible property

(A) In general

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

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

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

(4) Certain foreign corporations

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

(5) Basis adjustment not taken into account

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

(*l*) Discharge of indebtedness income

(1) Does not increase earnings and profits if applied to reduce basis

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

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

If—

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

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

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

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

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

poration (within the meaning of section 957) and the issuance did not have as a purpose the avoidance of section 163(f) of this subsection[1]

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

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

(1) Construction period carrying charges

(A) In general

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

(i) no deduction shall be allowed with respect to such amount, and

(ii) the basis of the property with respect to which such charges are allocable shall be increased by such amount.

(B) Construction period carrying charges defined

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

(i) interest paid or accrued on indebtedness incurred or continued to acquire, construct, or carry property,

(ii) property taxes, and

(iii) similar carrying charges,

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

(C) Construction period

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

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

(A) Intangible drilling costs

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

(i) shall be capitalized, and

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

(B) Mineral exploration and development costs

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

(i) shall be capitalized, and

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

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

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

(3) Certain amortization provisions not to apply

Sections 173 and 248 shall not apply.

(4) LIFO inventory adjustments

(A) In general

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

(B) LIFO recapture amount

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

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

(ii) the inventory amount of such assets under the LIFO method.

(C) Definitions

For purposes of this paragraph—

(i) LIFO method

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

(ii) Inventory assets

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

(iii) Inventory amount

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

(I) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

(II) if subclause (I) does not apply, by using cost or market, whichever is lower.

(5) Installment sales

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

(6) Completed contract method of accounting

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

(7) Redemptions

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

(8) Special rule for certain foreign corporations

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

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

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

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

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

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

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

REFERENCES IN TEXT

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

AMENDMENTS

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

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

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

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

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

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

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

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

''(A) a declining balance method,

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

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

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

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

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

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

1988—Subsec. (b). Pub. L. 100–647, § 1018(d)(4), as amended by Pub. L. 101–239, § 7811(m)(2), substituted ''of any property (other than an obligation of such corporation)'' for ''of any property'' in introductory provisions.

Subsec. (k)(4). Pub. L. 100–647, § 1002(a)(3), substituted ''paragraph (1)'' for ''paragraphs (1) and (3)''.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (n). Pub. L. 98–369, §61(a)(1), added subsec. (n).

Subsec. (*o*). Pub. L. 98–369, §61(c)(1)(B), added subsec. (*o*).

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

1982—Subsec. (e). Pub. L. 97–248, §222(e)(3), struck out ''partial liquidations and'' in heading, and in text struck out ''in partial liquidation (whether before, on, or after June 22, 1954) or'' after ''amounts distributed''.

Subsec. (k)(5). Pub. L. 97–248, §205(a)(3), added par. (5).

Subsec. (m). Pub. L. 97–248, §310(b)(3), added subsec. (m).

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (m). Pub. L. 91–172, §442(a), added subsec. (m).

1966—Subsec. (c)(3). Pub. L. 89–570 inserted reference to section 617(d)(1).

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

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

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

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

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

EFFECTIVE DATE OF 2006 AMENDMENT

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

EFFECTIVE DATE OF 2005 AMENDMENT

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

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

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

EFFECTIVE DATE OF 2004 AMENDMENT

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

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

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

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

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1985 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

''(1) ADJUSTMENTS TO EARNINGS AND PROFITS.—

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

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

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

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

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

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

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

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

Section 1804(f)(1)(F) of Pub. L. 99–514 provided that: ''Any reference in subsection (e) of section 61 of the Tax Reform Act of 1984 [set out above] to a paragraph of section 312(n) of the Internal Revenue Code of 1954 [now 1986] shall be treated as a reference to such paragraph as in effect before its redesignation by subparagraph (D) [see 1986 Amendment note above].''

Section 63(c) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section and section 368 of this title] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 111(e)(5) of Pub. L. 98–369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98–369, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 205(a)(3) of Pub. L. 97–248 applicable to periods after Dec. 31, 1982, under rules similar to the rules of section 48(m) of this title, with certain qualifications, see section 205(c)(1) of Pub. L. 97–248, set out as an Effective Date note under section 196 of this title.

Amendment by section 222(e)(3) of Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

Amendment by section 310(b)(3) of Pub. L. 97–248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97–248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in proceedings in bankruptcy cases or similar judicial proceedings or in proceedings under Title 11, Bankruptcy, commencing on or before Dec. 31, 1980, except as otherwise provided, see section 7 of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–628 applicable to distributions made after Nov. 10, 1978, see section 3(d) of Pub. L. 95–628, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(1)(D) of Pub. L. 94–455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as a note under section 1254 of this title.

Amendment by section 1901(a)(43) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

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

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 211(b)(3) of Pub. L. 91–172 applicable to taxable years beginning after December 31, 1969, see section 211(c) of Pub. L. 91–172, set out as a note under section 301 of this title.

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

EFFECTIVE DATE OF 1966 AMENDMENT

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

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88–484 applicable with respect to transactions after Aug. 22, 1964 in taxable years ending after such date, see section 2 of Pub. L. 88–484, set out as a note under section 301 of this title.

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

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by section 13(f)(3) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

Pub. L. 87–834, §14(c), Oct. 16, 1962, 76 Stat. 1041, provided that: ''The amendments made by this section [enacting sections 1246 and 1247 of this title and amending this section and sections 751 and 1223 of this title] shall apply with respect to taxable years beginning after December 31, 1962.''

Section 3(g) of Pub. L. 87–403 provided that: ''The amendments made by this section [amending this section and sections 535, 543, 545, 556 and 561 of this title] shall apply only with respect to distributions made after the date of the enactment of this Act [Feb. 2, 1962].''

SAVINGS PROVISION

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

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

SUBPART C—DEFINITIONS; CONSTRUCTIVE OWNERSHIP OF STOCK

Sec.
316. Dividend defined.
317. Other definitions.
318. Constructive ownership of stock.

§ 316. Dividend defined

(a) General rule

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

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

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

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

(b) Special rules

(1) Certain insurance company dividends

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

(2) Distributions by personal holding companies

(A) In the case of a corporation which—

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

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

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

(B) For purposes of subparagraph (A), the term ''distribution of property'' includes a distribution in complete liquidation occurring within 24 months after the adoption of a plan of liquidation, but—

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

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

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

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

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

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

AMENDMENTS

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

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

Subsec. (b)(3). Pub. L. 94–455, § 1601(d), added par. (3).

1964—Subsec. (b)(2). Pub. L. 88–272 inserted definition of ''distribution of property''.

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1964 AMENDMENT

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

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

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

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

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

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

EFFECTIVE DATE OF 1956 AMENDMENT

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

§317. Other definitions

(a) Property

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

(b) Redemption of stock

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

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

§318. Constructive ownership of stock

(a) General rule

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

(1) Members of family

(A) In general

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

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

(ii) his children, grandchildren, and parents.

(B) Effect of adoption

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

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

(A) From partnerships and estates

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

(B) From trusts

(i) Stock owned, directly or indirectly, by or for a trust (other than an employees' trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust.

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

(C) From corporations

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

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

(A) To partnerships and estates

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

(B) To trusts

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

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

(C) To corporations

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

(4) Options

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

(5) Operating rules

(A) In general

Except as provided in subparagraphs (B) and (C), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), or (4), shall, for purposes of applying paragraphs (1), (2), (3), and (4), be considered as actually owned by such person.

(B) Members of family

Stock constructively owned by an individual by reason of the application of paragraph (1) shall not be considered as owned by him for purposes of again applying paragraph (1) in order to make another the constructive owner of such stock.

(C) Partnerships, estates, trusts, and corporations

Stock constructively owned by a partnership, estate, trust, or corporation by reason of the application of paragraph (3) shall not be considered as owned by it for purposes of applying paragraph (2) in order to make another the constructive owner of such stock.

(D) Option rule in lieu of family rule

For purposes of this paragraph, if stock may be considered as owned by an individual under paragraph (1) or (4), it shall be considered as owned by him under paragraph (4).

(E) S corporation treated as partnership

For purposes of this subsection—

(i) an S corporation shall be treated as a partnership, and

(ii) any shareholder of the S corporation shall be treated as a partner of such partnership.

The preceding sentence shall not apply for purposes of determining whether stock in the S corporation is constructively owned by any person.

(b) Cross references

For provisions to which the rules contained in subsection (a) apply, see—

(1) section 302 (relating to redemption of stock);

(2) section 304 (relating to redemption by related corporations);

(3) section 306(b)(1)(A) (relating to disposition of section 306 stock);

(4) section 338(h)(3) (defining purchase);

(5) section 382(*l*)(3) (relating to special limitations on net operating loss carryovers);

(6) section 856(d) (relating to definition of rents from real property in the case of real estate investment trusts);

(7) section 958(b) (relating to constructive ownership rules with respect to controlled foreign corporations); and

(8) section 6038(e)(2) (relating to information with respect to certain foreign corporations).

(Aug. 16, 1954, ch. 736, 68A Stat. 99; Pub. L. 86–779, § 10(h), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 87–834, § 20(d)(1), Oct. 16, 1962, 76 Stat. 1063; Pub. L. 88–554, § 4(a), (b)(2), Aug. 31, 1964, 78 Stat. 762, 763; Pub. L. 97–248, title II, § 224(c)(3), Sept. 3, 1982, 96 Stat. 489; Pub. L. 98–369, div. A, title VII, §§ 712(k)(5)(E), 721(j), July 18, 1984, 98 Stat. 950, 969; Pub. L. 99–514, title VI, § 621(c)(1), Oct. 22, 1986, 100 Stat. 2266; Pub. L. 105–34, title XI, § 1142(e)(3), Aug. 5, 1997, 111 Stat. 983; Pub. L. 109–135, title IV, § 412(u), Dec. 21, 2005, 119 Stat. 2638.)

AMENDMENTS

2005—Subsec. (b)(8). Pub. L. 109–135 substituted ''section 6038(e)(2)'' for ''section 6038(d)(2)''.

1997—Subsec. (b)(8). Pub. L. 105–34 substituted ''6038(d)(2)'' for ''6038(d)(1)''.

1986—Subsec. (b)(5). Pub. L. 99–514 substituted ''382(*l*)(3)'' for ''382(a)(3)''.

1984—Subsec. (a)(5)(E). Pub. L. 98–369, § 721(j), added subpar. (E).

Subsec. (b)(4). Pub. L. 98–369, § 712(k)(5)(E), substituted ''section 338(h)(3) (defining purchase)'' for ''section 338(h)(3)(B) (relating to purchase of stock from subsidiaries, etc.)''.

1982—Subsec. (b)(4). Pub. L. 97–248 substituted ''section 338(h)(3)(B) (relating to purchase of stock from subsidiaries, etc.)'' for ''section 334(b)(3)(C) (relating to basis of property received in certain liquidations of subsidiaries)''.

1964—Subsec. (a). Pub. L. 88–554, § 4(a), struck out sidewise attribution by providing that when stock is attributed to a partnership, estate, trust, or corporation from a partner, shareholder, or beneficiary, this stock is not to be attributed again to another partner, beneficiary, or shareholder.

Subsec. (b)(7), (8). Pub. L. 88–554, § 4(b)(2), added par. (7) and redesignated former par. (7) as (8).

1962—Subsec. (b)(7). Pub. L. 87–834 added par. (7).

1960—Subsec. (b)(6). Pub. L. 86–779 added par. (6).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1142(f) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and sections 901 and 6038 of this title] shall apply to annual accounting periods beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any ownership change after Dec. 31, 1986, except as otherwise provided, see section 621(f) of Pub. L. 99–514, as amended, set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 712(k)(5)(E) of Pub. L. 98–369 not applicable to any qualified stock purchase where the acquisition date is before Sept. 1, 1982, see section 712(k)(9)(A) of Pub. L. 98–369, set out as a note under section 338 of this title.

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

Amendment by section 721(j) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 4(c) of Pub. L. 88–554, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and sections 304, 382, 856, 958, and 6038 of this title] shall take effect on the date of the enactment of

this Act, [Aug. 31, 1964], except that, for purposes of sections 302 and 304 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], such amendments shall not apply with respect to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

PART II—CORPORATE LIQUIDATIONS

Subpart
A. Effects on recipients.
B. Effects on corporation.
[C. Repealed.]
D. Definition and special rule.

AMENDMENT OF ANALYSIS

For termination of amendment by Pub. L. 108–27, see section 303 of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

AMENDMENTS

2003—Pub. L. 108–27, title III, §§302(e)(4)(B)(iii), 303, May 28, 2003, 117 Stat. 764, temporarily struck out item for subpart C ''Collapsible corporations''.

1982—Pub. L. 97–248, title II, §222(e)(8)(B), Sept. 3, 1982, 96 Stat. 481, inserted ''and special rule'' in item for subpart D.

1976—Pub. L. 94–455, title XIX, §1901(b)(12)(B), Oct. 4, 1976, 90 Stat. 1795, struck out in table of subparts for part II of subchapter C of chapter 1 in subpart (C) ''; foreign personal holding companies'' after ''corporations''.

SUBPART A—EFFECTS ON RECIPIENTS

Sec.
331. Gain or loss to shareholder in corporate liquidations.[1]
332. Complete liquidations of subsidiaries.
[333. Repealed.]
334. Basis of property received in liquidations.

AMENDMENTS

1986—Pub. L. 99–514, title VI, §631(e)(16), Oct. 22, 1986, 100 Stat. 2275, struck out item 333 ''Election as to recognition of gain in certain liquidations''.

§ 331. Gain or loss to shareholders in corporate liquidations

(a) Distributions in complete liquidation treated as exchanges

Amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

(b) Nonapplication of section 301

Section 301 (relating to effects on shareholder of distributions of property) shall not apply to any distribution of property (other than a distribution referred to in paragraph (2)(B) of section 316(b)) in complete liquidation.

(c) Cross reference

For general rule for determination of the amount of gain or loss recognized, see section 1001.

[1] So in original. Does not conform to section catchline.

(Aug. 16, 1954, ch. 736, 68A Stat. 101; Pub. L. 88–272, title II, §225(f)(2), Feb. 26, 1964, 78 Stat. 88; Pub. L. 94–455, title XIX, §1901(b)(28)(A), Oct. 4, 1976, 90 Stat. 1799; Pub. L. 97–248, title II, §222(a), (e)(1)(B), Sept. 3, 1982, 96 Stat. 478, 480.)

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–248, §222(a), substituted provisions that amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock for provisions that, in complete liquidations, amounts distributed shall be treated as in full payment in exchange for the stock, while amounts distributed in partial liquidation shall be treated as in part or full payment in exchange for the stock.

Subsec. (b). Pub. L. 97–248, §222(e)(1)(B), struck out ''partial or'' before ''complete liquidation''.

1976—Subsec. (c). Pub. L. 94–455 substituted ''reference'' for ''references'' in heading and struck out cross reference relating to general rule for determination of the amount of gain or loss to the distributee and substituted ''section 1001'' for ''section 1002''.

1964—Subsec. (b). Pub. L. 88–272 inserted ''(other than a distribution referred to in paragraph (2)(B) of section 316(b))''.

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to distribution made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

LIQUIDATIONS BEFORE JANUARY 1, 1966

Section 225(h) of Pub. L. 88–272 provided that in the case of corporations referred to in former subsec. (g)(3) of this section the amendments made by section 225 of Pub. L. 88–272 do not apply if there is a complete liquidation of such corporation and if the distribution of all the property under such liquidation occurs before Jan. 1, 1966, except for certain liquidations to which section 332 of this title applies.

§ 332. Complete liquidations of subsidiaries

(a) General rule

No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(b) Liquidations to which section applies

For purposes of this section, a distribution shall be considered to be in complete liquidation only if—

(1) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) meeting the requirements of section 1504(a)(2); and either

(2) the distribution is by such other corporation in complete cancellation or redemption of

all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(3) such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within 3 years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year, the Secretary may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such 3-year period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, the assessment and collection of all income taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this subsection shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for purposes of this subsection a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (A) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, on an exchange described in section 361, and (B) the complete cancellation or redemption under the plan, as a result of exchanges described in section 354, of the shares not owned by the taxpayer.

(c) Deductible liquidating distributions of regulated investment companies and real estate investment trusts

If a corporation receives a distribution from a regulated investment company or a real estate investment trust which is considered under subsection (b) as being in complete liquidation of such company or trust, then, notwithstanding any other provision of this chapter, such corporation shall recognize and treat as a dividend from such company or trust an amount equal to the deduction for dividends paid allowable to such company or trust by reason of such distribution.

(d) Recognition of gain on liquidation of certain holding companies

(1) In general

In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

(A) subsection (a) and section 331 shall not apply to such distribution, and

(B) such distribution shall be treated as a distribution of property to which section 301 applies.

(2) Applicable holding company

For purposes of this subsection:

(A) In general

The term ''applicable holding company'' means any domestic corporation—

(i) which is a common parent of an affiliated group,

(ii) stock of which is directly owned by the distributee foreign corporation,

(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

(B) Affiliated group

For purposes of this subsection, the term ''affiliated group'' has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) of section 1504(b)).

(3) Coordination with subpart F

If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

(4) Regulations

The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.

(Aug. 16, 1954, ch. 736, 68A Stat. 102; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title VI, § 631(e)(2), title XVIII, § 1804(e)(6)(A), Oct. 22, 1986, 100 Stat. 2273, 2803; Pub. L. 105–277, div. J, title III, § 3001(a), (b)(1), Oct. 21, 1998, 112 Stat. 2681–904; Pub. L. 108–357, title VIII, § 893(a), Oct. 22, 2004, 118 Stat. 1646; Pub. L. 109–135, title IV, § 412(v), Dec. 21, 2005, 119 Stat. 2638.)

AMENDMENTS

2005—Subsec. (d)(1)(B). Pub. L. 109–135 substituted ''distribution of property to which section 301 applies'' for ''distribution to which section 301 applies''.

2004—Subsec. (d). Pub. L. 108–357 added subsec. (d).

1998—Subsec. (b). Pub. L. 105–277, § 3001(b)(1), substituted ''this section'' for ''subsection (a)'' in introductory provisions.

Subsec. (c). Pub. L. 105–277, §3001(a), added subsec. (c).

1986—Subsec. (b)(1). Pub. L. 99–514, §1804(e)(6)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends); and either''.

Subsec. (c). Pub. L. 99–514, §631(e)(2), struck out subsec. (c) containing special rule for indebtedness of subsidiary to parent in relation to complete liquidations of subsidiaries.

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

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §893(b), Oct. 22, 2004, 118 Stat. 1647, provided that: ''The amendment made by this section [amending this section] shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title III, §3001(c), Oct. 21, 1998, 112 Stat. 2681–904, provided that: ''The amendments made by this section [amending this section and section 334 of this title] shall apply to distributions after May 21, 1998.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(2) 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.

Section 1804(e)(6)(B) of Pub. L. 99–514 provided that:

''(i) IN GENERAL.—Except as provided in clause (iii), the amendment made by subparagraph (A) [amending this section] shall apply with respect to plans of complete liquidation adopted after March 28, 1985.

''(ii) CERTAIN DISTRIBUTIONS MADE AFTER DECEMBER 31, 1984.—Except as provided in clause (iii), the amendment made by subparagraph (A) shall also apply with respect to plans of complete liquidations adopted on or before March 28, 1985, pursuant to which any distribution is made in a taxable year beginning after December 31, 1984 (December 31, 1983, in the case of an affiliated group to which an election under section 60(b)(7) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out as a note under section 1504 of this title] applies), but only if the liquidating corporation and any corporation which receives a distribution in complete liquidation of such corporation are members of an affiliated group of corporations filing a consolidated return for the taxable year which includes the date of the distribution.

''(iii) TRANSITIONAL RULE FOR AFFILIATED GROUPS.—The amendment made by subparagraph (A) shall not apply with respect to plans of complete liquidation if the liquidating corporation is a member of an affiliated group of corporations under section 60(b) (2), (5), (6), or (8) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out as a note under section 1504 of this title], for all taxable years which include the date of any distribution pursuant to such plan.''

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.

[§333. Repealed. Pub. L. 99–514, title VI, §631(e)(3), Oct. 22, 1986, 100 Stat. 2273]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 103; Feb. 26, 1964, Pub. L. 88–272, title II, §225(g), 78 Stat. 89; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(a)(44), 1906(b)(13)(A), 1951(b)(6)(A), 90 Stat. 1772, 1834, 1838, related to election as to recognition of gain in certain liquidations.

EFFECTIVE DATE OF REPEAL

Repeal 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.

§334. Basis of property received in liquidations

(a) General rule

If property is received in a distribution in complete liquidation, and if gain or loss is recognized on receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution.

(b) Liquidation of subsidiary

(1) In general

If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in the hands of such distributee—

(A) the basis of such property shall be the fair market value of the property at the time of the distribution in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, and

(B) the basis of any property described in section 362(e)(1)(B) shall be the fair market value of the property at the time of the distribution in any case in which such distributee's aggregate adjusted basis of such property would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.

(2) Corporate distributee

For purposes of this subsection, the term ''corporate distributee'' means only the corporation which meets the stock ownership requirements specified in section 332(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 104; Pub. L. 89–809, title II, §202(a), (b), Nov. 13, 1966, 80 Stat. 1576; Pub. L. 94–455, title XIX, §§1901(a)(45), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1772, 1834; Pub. L. 97–248, title II, §§222(e)(1)(C), 224(b), Sept. 3,

1982, 96 Stat. 480, 488; Pub. L. 99–514, title VI, § 631(e)(4), Oct. 22, 1986, 100 Stat. 2273; Pub. L. 100–647, title I, § 1006(e)(6), Nov. 10, 1988, 102 Stat. 3401; Pub. L. 105–277, div. J, title III, § 3001(b)(2), Oct. 21, 1998, 112 Stat. 2681–904; Pub. L. 108–357, title VIII, § 836(b), Oct. 22, 2004, 118 Stat. 1595; Pub. L. 109–135, title IV, § 403(dd)(1), Dec. 21, 2005, 119 Stat. 2630.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–135 substituted ''except that, in the hands of such distributee—'' for ''except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—'' in introductory provisions, added subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

''(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

''(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.''

2004—Subsec. (b)(1). Pub. L. 108–357 reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: ''If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution.''

1998—Subsec. (b)(1). Pub. L. 105–277 substituted ''section 332'' for ''section 332(a)''.

1988—Subsec. (b). Pub. L. 100–647 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) DISTRIBUTION IN COMPLETE LIQUIDATION.—If property is received by a corporation in a distribution in a complete liquidation to which section 332(a) applies, the basis of the property in the hands of the distributee shall be the same as it would be in the hands of the transferor.

''(2) TRANSFERS TO WHICH SECTION 332(c) APPLIES.—If property is received by a corporation in a transfer to which section 332(c) applies, the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor.

''(3) DISTRIBUTEE DEFINED.—For purposes of this subsection, the term 'distributee' means only the corporation which meets the 80-percent stock ownership requirements specified in section 332(b).''

1986—Subsec. (a). Pub. L. 99–514, § 631(e)(4)(A), struck out ''(other than a distribution to which section 333 applies)'' after ''liquidation''.

Subsec. (c). Pub. L. 99–514, § 631(e)(4)(B), struck out subsec. (c) relating to property received in liquidation under section 333.

1982—Subsec. (a). Pub. L. 97–248, § 222(e)(1)(C), struck out ''partial or'' before ''complete liquidation''.

Subsec. (b). Pub. L. 97–248, § 224(b), struck out heading to par. (1) ''In general'', redesignated first sentence as par. (1) with heading ''Distribution in complete liquidation'', in par. (1) as so redesignated substituted reference to section 332(a) for reference to section 332(b) relating to a distribution in complete liquidation, struck out reference to par. (2) as an exception to the determination of basis, redesignated second sentence as par. (2) with heading ''Transfers to which section 332(c) applies'', in par. (2) as so redesignated struck out reference to par. (2) as an exception to the determination of basis, struck out par. (2) which had provided that if property was received by a corporation in a distribution in complete liquidation of another corporation and if the distribution was pursuant to a plan of liquidation adopted not more than 2 years after the date of the transaction described below, or in the case of a series of transactions, the date of the last such transaction, and stock of the distributing corporation 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 (except nonvoting stock which was limited and preferred as to dividends), was acquired by the distributee by purchase (as defined in par. (3)) during a 12-month period beginning with the earlier of the date of the first acquisition by purchase of such stock, or if any of such stock was acquired in an acquisition which is a purchase within the meaning of second sentence of par. (3), the date on which the distributee was first considered under section 318(a) as owning stock owned by the corporation from which such acquisition was made, then the basis of the property in the hands of the distributee would be the adjusted basis of the stock with respect to which the distribution was made, and under regulations prescribed by the Secretary, proper adjustment in the adjusted basis of any stock would be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of liquidation, for any money received, for any liabilities assumed or subject to which the property was received, and for other items, and struck out par. (3) which provided that ''purchase'' meant any acquisition of stock, but only if the basis of the stock in the hands of the distributee was not determined in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or under section 1014(a) of this title the stock was not acquired in an exchange to which section 351 of this title applies, and the stock was not acquired from a person the ownership of whose stock would, under section 318(a) of this title, be attributed to the person acquiring such stock, but that ''purchase'' also meant an acquisition of stock from a corporation when ownership of such stock would be attributed under section 318(a) to the person acquiring such stock, if the stock of such corporation by reason of which such ownership would be attributed was acquired by purchase, and redesignated par. (4) as (3).

1976—Subsec. (b)(2). Pub. L. 94–455, §§ 1901(a)(45), 1906(b)(13)(A), struck out in subpar. (A) provision relating to distributions made pursuant to a plan of liquidation adopted on or before June 22, 1954, and in provisions following subpar. (B)(ii) ''or his delegate'' after ''Secretary''.

1966—Subsec. (b)(2)(B). Pub. L. 89–809, § 202(b), inserted provisions for the determination of the date on which to commence the running of the 12-month period during which the distributee must have acquired the stock by purchase by adding clauses (i) and (ii).

Subsec. (b)(3). Pub. L. 89–809, § 202(a), inserted provision that, for purposes of par. (2)(B), ''purchase'' also means an acquisition of stock from a corporation when ownership of such stock would be attributed under section 318(a) to the person acquiring such stock, if the stock of such corporation by reason of which such ownership would be attributed was acquired by purchase.

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, § 836(c)(2), Oct. 22, 2004, 118 Stat. 1596, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to liquidations after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to distributions after May 21, 1998, see section 3001(c) of Pub. L. 105–277, set out as a note under section 332 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

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

Amendment by section 224(b) of Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(45) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 202(d) of Pub. L. 89–809 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to acquisitions of stock after December 31, 1965. The amendment made by subsections (b) and (c) [amending this section and section 453 of this title] shall apply only with respect to distributions made after the date of the enactment of this Act [Nov. 13, 1966].''

ADJUSTMENT FOR LIABILITY TO BASIS OF PROPERTY DISTRIBUTED IN COMPLETE LIQUIDATION OF CORPORATION PRIOR TO JULY 1, 1957; DEDUCTION FOR UNCOMPENSATED LIABILITY

Pub. L. 93–497, § 3, Oct. 29, 1974, 88 Stat. 1534, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) Notwithstanding the provisions of section 334 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to basis of property received in liquidations), no adjustment to the basis of any property distributed in complete liquidation of a corporation prior to July 1, 1957, shall be made for any liability if—

''(1) the distributor and distributee did not consider the liability relevant to the value of the stock with respect to which the distribution was made,

''(2) the distributor and distributee reasonably relied upon a decision of a United States district court specifically adjudicating the amount of the liability and its affirmance by the appropriate United States court of appeals, and

''(3) the amount of liability so adjudicated was not greater than would be compensated for by insurance.

The provisions of this section apply without regard to whether such decision was subsequently reversed or modified by that United States court of appeals following distribution of such property in complete liquidation.

''(b) To the extent that the liability described in subsection (a) is not compensated for by insurance or otherwise, the amount thereof shall be allowed as a deduction under the appropriate provision of the Internal Revenue Code of 1986 for the taxable year in which payment thereof was made and shall be effective in determining income tax liabilities of all taxable years prior thereto.''

SUBPART B—EFFECTS ON CORPORATION

Sec.
336. Gain or loss recognized on property distributed in complete liquidation.
337. Nonrecognition for property distributed to parent in complete liquidation of subsidiary.
338. Certain stock purchases treated as asset acquisitions.

AMENDMENTS

1986—Pub. L. 99–514, title VI, § 631(e)(17), Oct. 22, 1986, 100 Stat. 2275, substituted ''Gain or loss recognized on property distributed in complete liquidation'' for ''General rule'' in item 336 and ''Nonrecognition for property distributed to parent in complete liquidation of subsidiary'' for ''Gain or loss on sales or exchanges in connection with certain liquidations'' in item 337.

1982—Pub. L. 97–248, title II, § 224(c)(9), Sept. 3, 1982, 96 Stat. 489, substituted ''Certain stock purchases treated as asset acquisitions'' for ''Effect on earnings and profits'' in item 338.

§ 336. Gain or loss recognized on property distributed in complete liquidation

(a) General rule

Except as otherwise provided in this section or section 337, gain or loss shall be recognized to a liquidating corporation on the distribution of property in complete liquidation as if such property were sold to the distributee at its fair market value.

(b) Treatment of liabilities

If any property distributed in the liquidation is subject to a liability or the shareholder assumes a liability of the liquidating corporation in connection with the distribution, for purposes of subsection (a) and section 337, the fair market value of such property shall be treated as not less than the amount of such liability.

(c) Exception for liquidations which are part of a reorganization

For provision providing that this subpart does not apply to distributions in pursuance of a plan of reorganization, see section 361(c)(4).

(d) Limitations on recognition of loss

(1) No loss recognized in certain distributions to related persons

(A) In general

No loss shall be recognized to a liquidating corporation on the distribution of any property to a related person (within the meaning of section 267) if—

(i) such distribution is not pro rata, or

(ii) such property is disqualified property.

(B) Disqualified property

For purposes of subparagraph (A), the term ''disqualified property'' means any property which is acquired by the liquidating corporation in a transaction to which section 351 applied, or as a contribution to capital, during the 5-year period ending on the date of the distribution. Such term includes any property if the adjusted basis of such property is determined (in whole or in part) by reference to the adjusted basis of property described in the preceding sentence.

(2) Special rule for certain property acquired in certain carryover basis transactions

(A) In general

For purposes of determining the amount of loss recognized by any liquidating corporation on any sale, exchange, or distribution of property described in subparagraph (B), the adjusted basis of such property shall be reduced (but not below zero) by the excess (if any) of—

(i) the adjusted basis of such property immediately after its acquisition by such corporation, over

(ii) the fair market value of such property as of such time.

(B) Description of property

(i) In general

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

(I) such property is acquired by the liquidating corporation in a transaction to which section 351 applied or as a contribution to capital, and

(II) the acquisition of such property by the liquidating corporation was part of a plan a principal purpose of which was to recognize loss by the liquidating corporation with respect to such property in connection with the liquidation.

Other property shall be treated as so described if the adjusted basis of such other property is determined (in whole or in part) by reference to the adjusted basis of property described in the preceding sentence.

(ii) Certain acquisitions treated as part of plan

For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidated corporation after the date 2 years before the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as acquired as part of a plan described in clause (i)(II).

(C) Recapture in lieu of disallowance

The Secretary may prescribe regulations under which, in lieu of disallowing a loss under subparagraph (A) for a prior taxable year, the gross income of the liquidating corporation for the taxable year in which the plan of complete liquidation is adopted shall be increased by the amount of the disallowed loss.

(3) Special rule in case of liquidation to which section 332 applies

In the case of any liquidation to which section 332 applies, no loss shall be recognized to the liquidating corporation on any distribution in such liquidation. The preceding sentence shall apply to any distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution.

(e) Certain stock sales and distributions may be treated as asset transfers

Under regulations prescribed by the Secretary, if—

(1) a corporation owns stock in another corporation meeting the requirements of section 1504(a)(2), and

(2) such corporation sells, exchanges, or distributes all of such stock,

an election may be made to treat such sale, exchange, or distribution as a disposition of all of the assets of such other corporation, and no gain or loss shall be recognized on the sale, exchange, or distribution of such stock.

(Added Pub. L. 99–514, title VI, § 631(a), Oct. 22, 1986, 100 Stat. 2269; amended Pub. L. 100–647, title I, §§ 1006(e)(1)–(3), (21)(A), 1018(d)(5)(D), Nov. 10, 1988, 102 Stat. 3400, 3403, 3580.)

PRIOR PROVISIONS

A prior section 336, acts Aug. 16, 1954, ch. 736, 68A Stat. 106; Apr. 2, 1980, Pub. L. 96–223, title IV, § 403(b)(1), 94 Stat. 304; Oct. 19, 1980, Pub. L. 96–471, § 2(b)(1), (c)(1), 94 Stat. 2253, 2254; Sept. 3, 1982, Pub. L. 97–248, title II, § 222(b), (e)(1)(D), 224(c)(4), 96 Stat. 478, 480, 489, related to distributions of property in liquidation, prior to repeal by Pub. L. 99–514, § 631(a).

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647, § 1006(e)(21)(A), substituted ''liabilities'' for ''liabilities in excess of basis'' in heading.

Subsec. (c). Pub. L. 100–647, § 1018(d)(5)(D), substituted ''liquidations which are part of a reorganization'' for ''certain liquidations to which part III applies'' in heading and amended text generally. Prior to amendment, text read as follows: ''This section shall not apply with respect to any distribution of property to the extent there is nonrecognition of gain or loss with respect to such property to the recipient under part III.''

Subsec. (d)(2)(B)(ii). Pub. L. 100–647, § 1006(e)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidating corporation during the 2-year period ending on the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as part of a plan described in clause (i)(II).''

Subsec. (d)(3). Pub. L. 100–647, § 1006(e)(2), inserted at end ''The preceding sentence shall apply to any distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution.''

Subsec. (e). Pub. L. 100–647, § 1006(e)(3), substituted ''an election may be made'' for ''such corporation may elect'' in concluding provisions.

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

Section 633 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1006(g), Nov. 10, 1988, 102 Stat. 3407, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle D (§§631–634) of title VI of Pub. L. 99–514, enacting this section and section 337 of this title, amending sections 26, 311, 312, 332, 334, 338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248, 1255, 1276, 1363, 1366, 1374, and 1375 of this title, and repealing former sections 333, 336, and 337 of this title] shall apply to—

''(1) 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 January 1, 1987,

''(2) any transaction described in section 338 of the Internal Revenue Code of 1986 for which the acquisition date occurs after December 31, 1986, and

''(3) any distribution (not in complete liquidation) made after December 31, 1986.

''(b) BUILT-IN GAINS OF S CORPORATIONS.—

''(1) IN GENERAL.—The amendments made by section 632 (other than subsection (b) thereof) [amending sections 26, 1366, 1374, and 1375 of this title] shall apply to taxable years beginning after December 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after December 31, 1986.

''(2) APPLICATION OF PRIOR LAW.—In the case of any taxable year of an S corporation which begins after December 31, 1986, and to which the amendments made by section 632 (other than subsection (b) thereof) do not apply, paragraph (1) of section 1374(b) of the Internal Revenue Code of 1954 (as in effect on the date before the date of the enactment of this Act [Oct. 22, 1986]) shall be applied as if it read as follows:

'''(1) an amount equal to 34 percent of the amount by which the net capital gain of the corporation for the taxable year exceeds $25,000, or'[.]

''(c) EXCEPTION FOR CERTAIN PLANS OF LIQUIDATION AND BINDING CONTRACTS.—

''(1) IN GENERAL.—The amendments made by this subtitle shall not apply to—

''(A) any distribution or sale or exchange made pursuant to a plan of liquidation adopted before August 1, 1986, if the liquidating corporation is completely liquidated before January 1, 1988,

''(B) any distribution or sale or exchange made by any corporation if more than 50 percent of the voting stock (by value) of such corporation is acquired on or after August 1, 1986, pursuant to a written binding contract in effect before such date and if such corporation is completely liquidated before January 1, 1988,

''(C) any distribution or sale or exchange made by any corporation if substantially all of the assets of such corporation are sold on or after August 1, 1986, pursuant to 1 or more written binding contracts in effect before such date and if such corporation is completely liquidated before January 1, 1988, or

''(D) any transaction described in section 338 of the Internal Revenue Code of 1986 with respect to any target corporation if a qualified stock purchase of such target corporation is made on or after August 1, 1986, pursuant to a written binding contract in effect before such date and the acquisition date (within the meaning of such section 338) is before January 1, 1988.

''(2) SPECIAL RULE FOR CERTAIN ACTIONS TAKEN BEFORE NOVEMBER 20, 1985.—For purposes of paragraph (1), transactions shall be treated as pursuant to a plan of liquidation adopted before August 1, 1986, if—

''(A) before November 20, 1985—

''(i) the board of directors of the liquidating corporation adopted a resolution to solicit shareholder approval for a transaction of a kind described in section 336 or 337, or

''(ii) the shareholders or board of directors have approved such a transaction,

''(B) before November 20, 1985—

''(i) there has been an offer to purchase a majority of the voting stock of the liquidating corporation, or

''(ii) the board of directors of the liquidating corporation has adopted a resolution approving an acquisition or recommending the approval of an acquisition to the shareholders, or

''(C) before November 20, 1985, a ruling request was submitted to the Secretary of the Treasury or his delegate with respect to a transaction of a kind described in section 336 or 337 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this subtitle).

For purposes of the preceding sentence, any action taken by the board of directors or shareholders of a corporation with respect to any subsidiary of such corporation shall be treated as taken by the board of directors or shareholders of such subsidiary.

''(d) TRANSITIONAL RULE FOR CERTAIN SMALL CORPORATIONS.—

''(1) IN GENERAL.—In the case of the complete liquidation before January 1, 1989, of a qualified corporation, the amendments made by this subtitle shall not apply to the applicable percentage of each gain or loss which (but for this paragraph) would be recognized by the liquidating corporation by reason of the amendments made by this subtitle. Section 333 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) shall continue to apply to any complete liquidation described in the preceding sentence.

''(2) PARAGRAPH (1) NOT TO APPLY TO CERTAIN ITEMS.—Paragraph (1) shall not apply to—

''(A) any gain or loss which is an ordinary gain or loss (determined without regard to section 1239 of the Internal Revenue Code of 1986),

''(B) any gain or loss on a capital asset held for not more than 6 months, and

''(C) any gain on an asset acquired by the qualified corporation if—

''(i) the basis of such asset in the hands of the qualified corporation is determined (in whole or in part) by reference to the basis of such asset in the hands of the person from whom acquired, and

''(ii) a principal purpose for the transfer of such asset to the qualified corporation was to secure the benefits of this subsection.

''(3) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means—

''(A) 100 percent if the applicable value of the qualified corporation is less than $5,000,000, or

''(B) 100 percent reduced by an amount which bears the same ratio to 100 percent as—

''(i) the excess of the applicable value of the corporation over $5,000,000, bears to

''(ii) $5,000,000.

''(4) APPLICABLE VALUE.—For purposes of this subsection, the applicable value is the fair market value of all of the stock of the corporation on the date of the adoption of the plan of complete liquidation (or if greater, on August 1, 1986).

''(5) QUALIFIED CORPORATION.—For purposes of this subsection, the term 'qualified corporation' means any corporation if—

''(A) on August 1, 1986, and at all times thereafter before the corporation is completely liquidated, more than 50 percent (by value) of the stock in such corporation is held by a qualified group, and

''(B) the applicable value of such corporation does not exceed $10,000,000.

''(6) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) QUALIFIED GROUP.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'qualified group' means any group of 10 or fewer qualified persons who at all times during the 5-year period ending on the date of the adoption of the plan of complete liquidation (or, if shorter, the period during which the corpora-

tion or any predecessor was in existence) owned (or was treated as owning under the rules of subparagraph (C)) more than 50 percent (by value) of the stock in such corporation.

''(ii) 5-YEAR OWNERSHIP REQUIREMENT NOT TO APPLY IN CERTAIN CASES.—In the case of—

''(I) any complete liquidation pursuant to a plan of liquidation adopted before March 31, 1988,

''(II) any distribution not in liquidation made before March 31, 1988,

''(III) an election to be an S corporation filed before March 31, 1988, or

''(IV) a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before March 31, 1988,

the term 'qualified group' means any group of 10 or fewer qualified persons.

''(B) QUALIFIED PERSON.—The term 'qualified person' means—

''(i) an individual,

''(ii) an estate, or

''(iii) any trust described in clause (ii) or clause (iii) of section 1361(c)(2)(A) of the Internal Revenue Code of 1986.

''(C) ATTRIBUTION RULES.—

''(i) IN GENERAL.—Any stock owned by a corporation, trust (other than a trust referred to in subparagraph (B)(iii)[)], or partnership shall be treated as owned proportionately by its shareholders, beneficiaries, or partners, and shall not be treated as owned by such corporation, trust, or partnership. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

''(ii) FAMILY MEMBERS.—Stock owned (or treated as owned) by members of the same family (within the meaning of section 318(a)(1) of the Internal Revenue Code of 1986) shall be treated as owned by 1 person, and shall be treated as owned by such 1 person for any period during which it was owned (or treated as owned) by any such member.

''(iii) TREATMENT OF CERTAIN TRUSTS.—Stock owned (or treated as owned) by the estate of any decedent or by any trust referred to in subparagraph (B)(iii) with respect to such decedent shall be treated as owned by 1 person and shall be treated as owned by such 1 person for the period during which it was owned (or treated as owned) by such estate or any such trust or by the decedent.

''(D) SPECIAL HOLDING PERIOD RULES.—Any property acquired by reason of the death of an individual shall be treated as owned at all times during which such property was owned (or treated as owned) by the decedent.

''(E) CONTROLLED GROUP OF CORPORATIONS.—All members of the same controlled group (as defined in section 267(f)(1) of such Code) shall be treated as 1 corporation for purposes of determining whether any of such corporations met the requirement of paragraph (5)(B) and for purposes of determining the applicable percentage with respect to any of such corporations. For purposes of the preceding sentence, an S corporation shall not be treated as a member of a controlled group unless such corporation was a C corporation for its taxable year which includes August 1, 1986, or it was not described for such taxable year in paragraph (1) or (2) of section 1374(c) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]).

''(7) SECTION 338 TRANSACTIONS.—The provisions of this subsection shall also apply in the case of a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before January 1, 1989.

''(8) APPLICATION OF SECTION 1374.—Rules similar to the rules of this subsection shall apply for purposes of applying section 1374 of the Internal Revenue Code of 1986 (as amended by section 632) in the case of a qualified corporation which makes an election to be an S corporation under section 1362 of such Code before January 1, 1989, without regard to whether such corporation is completely liquidated.

''(9) APPLICATION TO NONLIQUIDATING DISTRIBUTIONS.—The provisions of this subsection shall also apply in the case of any distribution (not in complete liquidation) made by a qualified corporation before January 1, 1989, without regard to whether such corporation is completely liquidated.

''(e) COMPLETE LIQUIDATION DEFINED.—For purposes of this section, a corporation shall be treated as completely liquidated if all of the assets of such corporation are distributed in complete liquidation, less assets retained to meet claims.

''(f) OTHER TRANSITIONAL RULES.—

''(1) The amendments made by this subtitle shall not apply to any liquidation of a corporation incorporated under the laws of Pennsylvania on August 3, 1970, if—

''(A) the board of directors of such corporation approved a plan of liquidation before January 1, 1986,

''(B) an agreement for the sale of a material portion of the assets of such corporation was signed on May 9, 1986 (whether or not the assets are sold in accordance with such agreement), and

''(C) the corporation is completely liquidated on or before December 31, 1988.

''(2) The amendments made by this subtitle shall not apply to any liquidation (or deemed liquidation under section 338 of the Internal Revenue Code of 1986) of a diversified financial services corporation incorporated under the laws of Delaware on May 9, 1929 (or any direct or indirect subsidiary of such corporation), pursuant to a binding written contract entered into on or before December 31, 1986; but only if the liquidation is completed (or in the case of a section 338 election, the acquisition date occurs) before January 1, 1988.

''(3) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange—

''(A) of the assets owned (directly or indirectly) by a testamentary trust established under the will of a decedent dying on June 15, 1956, or its beneficiaries,

''(B) made pursuant to a court order in an action filed on January 18, 1984, if such order—

''(i) is issued after July 31, 1986, and

''(ii) directs the disposition of the assets of such trust and the division of the trust corpus into 3 separate sub-trusts.

For purposes of the preceding sentence, an election under section 338(g) of the Internal Revenue Code of 1986 (or an election under section 338(h)(10) of such Code qualifying as a section 337 liquidation pursuant to regulations prescribed by the Secretary under section 1.338(h)(10)–1T(j)) made in connection with a sale or exchange pursuant to a court order described in subparagraph (B) shall be treated as a sale of [or] exchange.

''(4)(A) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange—

''(i) if—

''(I) an option agreement to sell substantially all of the assets of a selling corporation organized under the laws of Massachusetts on October 20, 1976, is executed before August 1, 1986, the corporation adopts (by approval of its shareholders) a conditional plan of liquidation before August 1, 1986 to become effective upon the exercise of such option agreement (or modification thereto), and the assets are sold pursuant to the exercise of the option (as originally executed or subsequently

modified provided that the purchase price is not thereby increased), or

''(II) in the event that the optionee does not acquire substantially all the assets of the corporation, the optionor corporation sells substantially all its assets to another purchaser at a purchase price not greater than that contemplated by such option agreement pursuant to an effective plan of liquidation, and

''(ii) the complete liquidation of the corporation occurs within 12 months of the time the plan of liquidation becomes effective, but in no event later than December 31, 1989.

''(B) For purposes of subparagraph (A), a distribution, or sale, or exchange, of a distributee corporation (within the meaning of section 337(c)(3) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of subparagraph (A) if its subsidiary satisfies the requirements of subparagraph (A).

''(C) For purposes of section 56 of the Internal Revenue Code of 1986 (as amended by this Act), any gain or loss not recognized by reason of this paragraph shall not be taken into account in determining the adjusted net book income of the corporation.

''(5) In the case of a corporation incorporated under the laws of Wisconsin on April 3, 1948—

''(A) a voting trust established not later than December 31, 1987, shall qualify as a trust permitted as a shareholder of an S corporation and shall be treated as only 1 shareholder if the holders of beneficial interests in such voting trust are—

''(i) employees or retirees of such corporation, or

''(ii) in the case of stock or voting trust certificates acquired from an employee or retiree of such corporation, the spouse, child, or estate of such employee or retiree or a trust created by such employee or retiree which is described in section 1361(c)(2) of the Internal Revenue Code of 1986 (or treated as described in such section by reason of section 1361(d) of such Code), and

''(B) the amendment made by section 632 (other than subsection (b) thereof) shall not apply to such corporation if it elects to be an S corporation before January 1, 1989.

''(6) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated on January 26, 1982, under the laws of the State of Alabama with a principal place of business in Colbert County, Alabama, but only if such corporation is completely liquidated on or before December 31, 1987.

''(7) The amendments made by this subtitle shall not apply to the acquisition by a Delaware bank holding company of all of the assets of an Iowa bank holding company pursuant to a written contract dated December 9, 1981.

''(8) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated under the laws of Delaware on January 20, 1984, if more than 40 percent of the stock of such corporation was acquired by purchase on June 11, 1986, and there was a tender offer with respect to all additional outstanding shares of such corporation on July 29, 1986, but only if the corporation is completely liquidated on or before December 31, 1987.

''(g) TREATMENT OF CERTAIN DISTRIBUTIONS IN RESPONSE TO HOSTILE TENDER OFFER.—

''(1) IN GENERAL.—No gain or loss shall be recognized under the Internal Revenue Code of 1986 to a corporation (hereinafter in this subsection referred to as 'parent') on a qualified distribution.

''(2) QUALIFIED DISTRIBUTION DEFINED.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'qualified distribution' means a distribution—

''(i) by parent of all of the stock of a qualified subsidiary in exchange for stock of parent which was acquired for purposes of such exchange pursuant to a tender offer dated February 16, 1982, and

''(ii) pursuant to a contract dated February 13, 1982, and

''(iii) which was made not more than 60 days after the board of directors of parent recommended rejection of an unsolicited tender offer to obtain control of parent.

''(B) QUALIFIED SUBSIDIARY.—The term 'qualified subsidiary' means a corporation created or organized under the laws of Delaware on September 7, 1976, all of the stock of which was owned by parent immediately before the qualified distribution.''

§ 337. Nonrecognition for property distributed to parent in complete liquidation of subsidiary

(a) In general

No gain or loss shall be recognized to the liquidating corporation on the distribution to the 80-percent distributee of any property in a complete liquidation to which section 332 applies.

(b) Treatment of indebtedness of subsidiary, etc.

(1) Indebtedness of subsidiary to parent

If—

(A) a corporation is liquidated in a liquidation to which section 332 applies, and

(B) on the date of the adoption of the plan of liquidation, such corporation was indebted to the 80-percent distributee,

for purposes of this section and section 336, any transfer of property to the 80-percent distributee in satisfaction of such indebtedness shall be treated as a distribution to such distributee in such liquidation.

(2) Treatment of tax-exempt distributee

(A) In general

Except as provided in subparagraph (B), paragraph (1) and subsection (a) shall not apply where the 80-percent distributee is an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(B) Exception where property will be used in unrelated business

(i) In general

Subparagraph (A) shall not apply to any distribution of property to an organization described in section 511(a)(2) if, immediately after such distribution, such organization uses such property in an activity the income from which is subject to tax under section 511(a).

(ii) Later disposition or change in use

If any property to which clause (i) applied is disposed of by the organization acquiring such property, notwithstanding any other provision of law, any gain (not in excess of the amount not recognized by reason of clause (i)) shall be included in such organization's unrelated business taxable income. For purposes of the preceding sentence, if such property ceases to be used in an activity referred to in clause (i), such organization shall be treated as having disposed of such property on the date of such cessation.

(c) 80-percent distributee

For purposes of this section, the term ''80-percent distributee'' means only the corporation

which meets the 80-percent stock ownership requirements specified in section 332(b). For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation.

(d) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of the amendments made by subtitle D of title VI of the Tax Reform Act of 1986, including—

(1) regulations to ensure that such purposes may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations and part III of this subchapter) or through the use of a regulated investment company, real estate investment trust, or tax-exempt entity, and

(2) regulations providing for appropriate coordination of the provisions of this section with the provisions of this title relating to taxation of foreign corporations and their shareholders.

(Added Pub. L. 99–514, title VI, § 631(a), Oct. 22, 1986, 100 Stat. 2271; amended Pub. L. 100–203, title X, § 10223(a), Dec. 22, 1987, 101 Stat. 1330–411; Pub. L. 100–647, title I, § 1006(e)(4), (5)(A), Nov. 10, 1988, 102 Stat. 3400.)

REFERENCES IN TEXT

The Tax Reform Act of 1986, referred to in subsec. (d), is Pub. L. 99–514, Oct. 22, 1986, 100 Stat. 2085, as amended. Subtitle D (§§ 631–634) of title VI of the Tax Reform Act of 1986 enacted sections 336 and 337 of this title, amended sections 26, 311, 312, 332, 334, 338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248, 1255, 1276, 1363, 1366, 1374, and 1375 of this title, and repealed former sections 333, 336, and 337 of this title. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 337, acts Aug. 16, 1954, ch. 736, 68A Stat. 106; Sept. 2, 1958, Pub. L. 85–866, title I, § 19, 72 Stat. 1615; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§ 1901(a)(46), 1906(b)(13)(A), title XXI, § 2118(a), 90 Stat. 1772, 1834, 1912; Nov. 6, 1978, Pub. L. 95–600, title VII, § 701(i)(1), 92 Stat. 2904; Nov. 10, 1978, Pub. L. 95–628, § 4(a), 92 Stat. 3628; Apr. 2, 1980, Pub. L. 96–223, title IV, § 403(b)(2)(A), 94 Stat. 304; Oct. 19, 1980, Pub. L. 96–471, § 2(c)(2), 94 Stat. 2254; Dec. 24, 1980, Pub. L. 96–589, § 5(c), 94 Stat. 3405; Sept. 3, 1982, Pub. L. 97–248, title II, § 224(c)(5), (6), 96 Stat. 489; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1804(e)(7)(A), 100 Stat. 2803, related to gain or loss on sales or exchanges in connection with certain liquidations, prior to repeal by Pub. L. 99–514, § 631(a).

AMENDMENTS

1988—Subsec. (b)(2)(B)(i). Pub. L. 100–647, § 1006(e)(4)(A), (B), substituted ''described in section 511(a)(2)'' for ''described in section 511(a)(2) or 511(b)(2)'' and ''in an activity the income from which is subject to tax under section 511(a)'' for ''in an unrelated trade or business (as defined in section 513)''.

Subsec. (b)(2)(B)(ii). Pub. L. 100–647, § 1006(e)(4)(C), substituted ''an activity referred to in clause (i)'' for ''an unrelated trade or business of such organization''.

Subsec. (d). Pub. L. 100–647, § 1006(e)(5)(A), in introductory provisions, substituted ''amendments made by subtitle D of title VI of the Tax Reform Act of 1986'' for ''amendments made to this subpart by the Tax Reform Act of 1986'', and in par. (1), substituted ''this subchapter) or through the use of a regulated investment company, real estate investment trust, or tax-exempt entity'' for ''this subchapter)''.

1987—Subsec. (c). Pub. L. 100–203 inserted at end ''For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(e)(5)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A)(ii) [amending this section] shall not apply to any reorganization if before June 10, 1987—

''(i) the board of directors of a party to the reorganization adopted a resolution to solicit shareholder approval for the transaction, or

''(ii) the shareholders or the board of directors of a party to the reorganization approved the transaction.''

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 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

Section 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 a note under section 336 of this title.

§ 338. Certain stock purchases treated as asset acquisitions

(a) General rule

For purposes of this subtitle, if a purchasing corporation makes an election under this section (or is treated under subsection (e) as having made such an election), then, in the case of any qualified stock purchase, the target corporation—

(1) shall be treated as having sold all of its assets at the close of the acquisition date at fair market value in a single transaction, and

(2) shall be treated as a new corporation which purchased all of the assets referred to in paragraph (1) as of the beginning of the day after the acquisition date.

(b) Basis of assets after deemed purchase

(1) In general

For purposes of subsection (a), the assets of the target corporation shall be treated as purchased for an amount equal to the sum of—

(A) the grossed-up basis of the purchasing corporation's recently purchased stock, and

(B) the basis of the purchasing corporation's nonrecently purchased stock.

(2) Adjustment for liabilities and other relevant items

The amount described in paragraph (1) shall be adjusted under regulations prescribed by the Secretary for liabilities of the target corporation and other relevant items.

(3) Election to step-up the basis of certain target stock

(A) In general

Under regulations prescribed by the Secretary, the basis of the purchasing corporation's nonrecently purchased stock shall be the basis amount determined under subparagraph (B) of this paragraph if the purchasing corporation makes an election to recognize gain as if such stock were sold on the acquisition date for an amount equal to the basis amount determined under subparagraph (B).

(B) Determination of basis amount

For purposes of subparagraph (A), the basis amount determined under this subparagraph shall be an amount equal to the grossed-up basis determined under subparagraph (A) of paragraph (1) multiplied by a fraction—

(i) the numerator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

(ii) the denominator of which is 100 percent minus the percentage referred to in clause (i).

(4) Grossed-up basis

For purposes of paragraph (1), the grossed-up basis shall be an amount equal to the basis of the corporation's recently purchased stock, multiplied by a fraction—

(A) the numerator of which is 100 percent, minus the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

(B) the denominator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's recently purchased stock.

(5) Allocation among assets

The amount determined under paragraphs (1) and (2) shall be allocated among the assets of the target corporation under regulations prescribed by the Secretary.

(6) Definitions of recently purchased stock and nonrecently purchased stock

For purposes of this subsection—

(A) Recently purchased stock

The term ''recently purchased stock'' means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which was purchased by such corporation during the 12-month acquisition period.

(B) Nonrecently purchased stock

The term ''nonrecently purchased stock'' means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which is not recently purchased stock.

[(c) Repealed. Pub. L. 99–514, title VI, § 631(b)(2), Oct. 22, 1986, 100 Stat. 2272]

(d) Purchasing corporation; target corporation; qualified stock purchase

For purposes of this section—

(1) Purchasing corporation

The term ''purchasing corporation'' means any corporation which makes a qualified stock purchase of stock of another corporation.

(2) Target corporation

The term ''target corporation'' means any corporation the stock of which is acquired by another corporation in a qualified stock purchase.

(3) Qualified stock purchase

The term ''qualified stock purchase'' means any transaction or series of transactions in which stock (meeting the requirements of section 1504(a)(2)) of 1 corporation is acquired by another corporation by purchase during the 12-month acquisition period.

(e) Deemed election where purchasing corporation acquires asset of target corporation

(1) In general

A purchasing corporation shall be treated as having made an election under this section with respect to any target corporation if, at any time during the consistency period, it acquires any asset of the target corporation (or a target affiliate).

(2) Exceptions

Paragraph (1) shall not apply with respect to any acquisition by the purchasing corporation if—

(A) such acquisition is pursuant to a sale by the target corporation (or the target affiliate) in the ordinary course of its trade or business,

(B) the basis of the property acquired is determined wholly by reference to the adjusted basis of such property in the hands of the person from whom acquired,

(C) such acquisition was before September 1, 1982, or

(D) such acquisition is described in regulations prescribed by the Secretary and meets such conditions as such regulations may provide.

(3) Anti-avoidance rule

Whenever necessary to carry out the purpose of this subsection and subsection (f), the Secretary may treat stock acquisitions which are pursuant to a plan and which meet the requirements of section 1504(a)(2) as qualified stock purchases.

(f) Consistency required for all stock acquisitions from same affiliated group

If a purchasing corporation makes qualified stock purchases with respect to the target corporation and 1 or more target affiliates during any consistency period, then (except as otherwise provided in subsection (e))—

(1) any election under this section with respect to the first such purchase shall apply to each other such purchase, and

(2) no election may be made under this section with respect to the second or subsequent such purchase if such an election was not made with respect to the first such purchase.

(g) Election

(1) When made

Except as otherwise provided in regulations, an election under this section shall be made

not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(2) Manner

An election by the purchasing corporation under this section shall be made in such manner as the Secretary shall by regulations prescribe.

(3) Election irrevocable

An election by a purchasing corporation under this section, once made, shall be irrevocable.

(h) Definitions and special rules

For purposes of this section—

(1) 12-month acquisition period

The term ''12-month acquisition period'' means the 12-month period beginning with the date of the first acquisition by purchase of stock included in a qualified stock purchase (or, if any of such stock was acquired in an acquisition which is a purchase by reason of subparagraph (C) of paragraph (3), the date on which the acquiring corporation is first considered under section 318(a) (other than paragraph (4) thereof) as owning stock owned by the corporation from which such acquisition was made).

(2) Acquisition date

The term ''acquisition date'' means, with respect to any corporation, the first day on which there is a qualified stock purchase with respect to the stock of such corporation.

(3) Purchase

(A) In general

The term ''purchase'' means any acquisition of stock, but only if—

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

(ii) the stock is not acquired in an exchange to which section 351, 354, 355, or 356 applies and is not acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction, and

(iii) the stock is not acquired from a person the ownership of whose stock would, under section 318(a) (other than paragaraph[1] (4) thereof), be attributed to the person acquiring such stock.

(B) Deemed purchase under subsection (a)

The term ''purchase'' includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined under regulations prescribed by the Secretary.

(C) Certain stock acquisitions from related corporations

(i) In general

Clause (iii) of subparagraph (A) shall not apply to an acquisition of stock from a related corporation if at least 50 percent in value of the stock of such related corporation was acquired by purchase (within the meaning of subparagraphs (A) and (B)).

(ii) Certain distributions

Clause (i) of subparagraph (A) shall not apply to an acquisition of stock described in clause (i) of this subparagraph if the corporation acquiring such stock—

(I) made a qualified stock purchase of stock of the related corporation, and

(II) made an election under this section (or is treated under subsection (e) as having made such an election) with respect to such qualified stock purchase.

(iii) Related corporation defined

For purposes of this subparagraph, a corporation is a related corporation if stock owned by such corporation is treated (under section 318(a) other than paragraph (4) thereof) as owned by the corporation acquiring the stock.

(4) Consistency period

(A) In general

Except as provided in subparagraph (B), the term ''consistency period'' means the period consisting of—

(i) the 1-year period before the beginning of the 12-month acquisition period for the target corporation,

(ii) such acquisition period (up to and including the acquisition date), and

(iii) the 1-year period beginning on the day after the acquisition date.

(B) Extension where there is plan

The period referred to in subparagraph (A) shall also include any period during which the Secretary determines that there was in effect a plan to make a qualified stock purchase plus 1 or more other qualified stock purchases (or asset acquisitions described in subsection (e)) with respect to the target corporation or any target affiliate.

(5) Affiliated group

The term ''affiliated group'' has the meaning given to such term by section 1504(a) (determined without regard to the exceptions contained in section 1504(b)).

(6) Target affiliate

(A) In general

A corporation shall be treated as a target affiliate of the target corporation if each of such corporations was, at any time during so much of the consistency period as ends on the acquisition date of the target corporation, a member of an affiliated group which had the same common parent.

(B) Certain foreign corporations, etc.

Except as otherwise provided in regulations (and subject to such conditions as may be provided in regulations)—

[1] So in original.

(i) the term ''target affiliate'' does not include a foreign corporation, a DISC, or a corporation to which an election under section 936 applies, and

(ii) stock held by a target affiliate in a foreign corporation or a domestic corporation which is a DISC or described in section 1248(e) shall be excluded from the operation of this section.

[(7) Repealed. Pub. L. 100–647, title I, §1006(e)(20), Nov. 10, 1988, 102 Stat. 3403]

(8) Acquisitions by affiliated group treated as made by 1 corporation

Except as provided in regulations prescribed by the Secretary, stock and asset acquisitions made by members of the same affiliated group shall be treated as made by 1 corporation.

(9) Target not treated as member of affiliated group

Except as otherwise provided in paragraph (10) or in regulations prescribed under this paragraph, the target corporation shall not be treated as a member of an affiliated group with respect to the sale described in subsection (a)(1).

(10) Elective recognition of gain or loss by target corporation, together with nonrecognition of gain or loss on stock sold by selling consolidated group

(A) In general

Under regulations prescribed by the Secretary, an election may be made under which if—

(i) the target corporation was, before the transaction, a member of the selling consolidated group, and

(ii) the target corporation recognizes gain or loss with respect to the transaction as if it sold all of its assets in a single transaction,

then the target corporation shall be treated as a member of the selling consolidated group with respect to such sale, and (to the extent provided in regulations) no gain or loss will be recognized on stock sold or exchanged in the transaction by members of the selling consolidated group.

(B) Selling consolidated group

For purposes of subparagraph (A), the term ''selling consolidated group'' means any group of corporations which (for the taxable period which includes the transaction)—

(i) includes the target corporation, and

(ii) files a consolidated return.

To the extent provided in regulations, such term also includes any affiliated group of corporations which includes the target corporation (whether or not such group files a consolidated return).

(C) Information required to be furnished to the Secretary

Under regulations, where an election is made under subparagraph (A), the purchasing corporation and the common parent of the selling consolidated group shall, at such times and in such manner as may be provided in regulations, furnish to the Secretary the following information:

(i) The amount allocated under subsection (b)(5) to goodwill or going concern value.

(ii) Any modification of the amount described in clause (i).

(iii) Any other information as the Secretary deems necessary to carry out the provisions of this paragraph.

(11) Elective formula for determining fair market value

For purposes of subsection (a)(1), fair market value may be determined on the basis of a formula provided in regulations prescribed by the Secretary which takes into account liabilities and other relevant items.

[(12) Repealed. Pub. L. 99–514, title VI, §631(e)(5), Oct. 22, 1986, 100 Stat. 2273]

(13) Tax on deemed sale not taken into account for estimated tax purposes

For purposes of section 6655, tax attributable to the sale described in subsection (a)(1) shall not be taken into account. The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).

[(14) Repealed. Pub. L. 108–27, title III, §302(e)(4)(B)(i), May 28, 2003, 117 Stat. 763]

(15) Combined deemed sale return

Under regulations prescribed by the Secretary, a combined deemed sale return may be filed by all target corporations acquired by a purchasing corporation on the same acquisition date if such target corporations were members of the same selling consolidated group (as defined in subparagraph (B) of paragraph (10)).

(16) Coordination with foreign tax credit provisions

Except as provided in regulations, this section shall not apply for purposes of determining the source or character of any item for purposes of subpart A of part III of subchapter N of this chapter (relating to foreign tax credit). The preceding sentence shall not apply to any gain to the extent such gain is includible in gross income as a dividend under section 1248 (determined without regard to any deemed sale under this section by a foreign corporation).

(i) Regulations

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

(1) regulations to ensure that the purpose of this section to require consistency of treatment of stock and asset sales and purchases may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations) and

(2) regulations providing for the coordination of the provisions of this section with the provision of this title relating to foreign corporations and their shareholders.

(Added Pub. L. 97–248, title II, §224(a), Sept. 3, 1982, 96 Stat. 485; amended Pub. L. 97–448, title

III, § 306(a)(8)(A)(i), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 98–369, div. A, title VII, § 712(k)(1)–(5)(D), (6), (7), July 18, 1984, 98 Stat. 948–952; Pub. L. 99–514, title VI, § 631(b), (e)(5), title XII, § 1275(c)(6), title XVIII, §§ 1804(e)(8)(A), 1899A(7), Oct. 22, 1986, 100 Stat. 2272, 2273, 2599, 2804, 2958; Pub. L. 100–647, title I, §§ 1006(e)(20), 1012(bb)(5)(A), 1018(d)(9), Nov. 10, 1988, 102 Stat. 3403, 3535, 3581; Pub. L. 101–508, title XI, § 11323(c)(1), Nov. 5, 1990, 104 Stat. 1388–465; Pub. L. 108–27, title III, § 302(e)(4)(B)(i), May 28, 2003, 117 Stat. 763; Pub. L. 108–357, title VIII, § 839(a), Oct. 22, 2004, 118 Stat. 1597.)

AMENDMENT OF SECTION

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

PRIOR PROVISIONS

A prior section 338, act Aug. 16, 1954, ch. 736, 68A Stat. 107, made reference to a special rule relating to the effect on earnings and profits of certain distributions in partial liquidation in section 312(e), prior to repeal by Pub. L. 97–248, § 222(e)(4).

AMENDMENTS

2004—Subsec. (h)(13). Pub. L. 108–357 inserted at end ''The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).''

2003—Subsec. (h)(14). Pub. L. 108–27, §§ 302(e)(4)(B)(i), 303, temporarily struck out heading and text of par. (14). Text read as follows: ''For purposes of determining whether section 341 applies to a disposition within 1 year after the acquisition date of stock by a shareholder (other than the acquiring corporation) who held stock in the target corporation on the acquisition date, section 341 shall be applied without regard to this section.'' See Effective and Termination Dates of 2003 Amendment note below.

1990—Subsec. (h)(10)(C). Pub. L. 101–508 added subpar. (C).

1988—Subsec. (e)(3). Pub. L. 100–647, § 1018(d)(9), substituted ''which meet the requirements of section 1504(a)(2)'' for ''which meet the 80 percent requirements of subparagraphs (A) and (B) of subsection (d)(3)''.

Subsec. (h)(7). Pub. L. 100–647, § 1006(e)(20), struck out par. (7) which read as follows: ''ADDITIONAL PERCENTAGE MUST BE ATTRIBUTABLE TO PURCHASE, ETC.—For purposes of subsection (c)(1), any increase in the maximum percentage of stock taken into account over the percentage of stock (by value) of the target corporation held by the purchasing corporation on the acquisition date shall be taken into account only to the extent such increase is attributable to—

''(A) purchase, or

''(B) a redemption of stock of the target corporation—

''(i) to which section 302(a) applies, or

''(ii) in the case of a shareholder who is not a corporation, to which section 301 applies.''

Subsec. (h)(16). Pub. L. 100–647, § 1012(bb)(5)(A), added par. (16).

1986—Subsec. (a)(1). Pub. L. 99–514, § 631(b)(1), struck out ''to which section 337 applies'' after ''in a single transaction''.

Subsec. (c). Pub. L. 99–514, § 631(b)(2), struck out subsec. (c) relating to special rules for coordination with section 337 where purchasing corporation holds less than 100 percent of stock, and in case of certain redemptions where an election is made under this section.

Subsec. (d)(3). Pub. L. 99–514, § 1804(e)(8)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'qualified stock purchase' means any transaction or series of transactions in which stock of 1 corporation possessing—

''(A) at least 80 percent of total combined voting power of all classes of stock entitled to vote, and

''(B) at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends),

is acquired by another corporation by purchase during the 12-month acquisition period.''

Subsec. (h)(3)(C)(i). Pub. L. 99–514, § 1899A(7), substituted ''subparagraphs'' for ''subparagraph''.

Subsec. (h)(6)(B)(i). Pub. L. 99–514, § 1275(c)(6), struck out ''a corporation described in section 934(b),'' after ''DISC,''.

Subsec. (h)(10)(B). Pub. L. 99–514, § 631(b)(3), inserted provision that to the extent provided in regulations, term ''selling consolidated group'' also includes any affiliated group of corporations which includes the target corporation (whether or not such group files a consolidated return).

Subsec. (h)(12). Pub. L. 99–514, § 631(e)(5), struck out par. (12) relating to applicability of section 337 where target had adopted plan for complete liquidation.

1984—Subsec. (a)(1). Pub. L. 98–369, § 712(k)(1)(A), inserted ''at fair market value'' after ''acquisition date''.

Subsec. (b). Pub. L. 98–369, § 712(k)(1)(B), substituted ''Basis of assets after deemed purchase'' for ''Price at which deemed sale made'' in heading.

Subsec. (b)(1). Pub. L. 98–369, § 712(k)(1)(B), amended par. (1) generally, substituting ''as purchased for an amount equal to the sum of'' for ''as sold (and purchased) at an amount equal to'' in introductory text, ''purchasing corporation's recently purchased stock, and'' for ''purchasing corporation's stock in the target corporation on the acquisition date'' in subpar. (A), and ''the basis of the purchasing corporation's nonrecently purchased stock'' in subpar. (B) in lieu of provision relating to adjustment for liabilities and other relevant items, now covered in par. (2).

Subsec. (b)(2). Pub. L. 98–369, § 712(k)(1)(B), amended par. (2) generally, incorporating former par. (1)(B) provision, inserting heading ''Adjustment for liabilities and other relevant items'' and substituting ''adjusted under regulations'' for ''properly adjusted under regulations''. Former par. (2) redesignated (4).

Subsec. (b)(3). Pub. L. 98–369, § 712(k)(1)(B), added par. (3). Former par. (3) redesignated (5).

Subsec. (b)(4). Pub. L. 98–369, § 712(k)(1)(B), redesignated former par. (2) as (4), substituted in introductory text ''corporation's recently purchased stock,'' for ''purchasing corporation's stock in the target corporation on the acquisition date'', inserted in subpar. (A) ''minus the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock'', and substituted in subpar. (B) ''in the target corporation attributable to the purchasing corporation's recently purchased stock'' for ''of the target corporation held by the purchasing corporation on the acquisition date''.

Subsec. (b)(5). Pub. L. 98–369, § 712(k)(1)(B), redesignated former par. (3) as (5) and inserted reference to par. (2).

Subsec. (b)(6). Pub. L. 98–369, § 712(k)(1)(B), added par. (6).

Subsec. (c)(1). Pub. L. 98–369, § 712(k)(2), inserted in last sentence ''and section 333 does not apply to such liquidation''.

Subsec. (e)(2). Pub. L. 98–369, § 712(k)(3), substituted ''wholly'' for ''(in whole or in part)'' in subpar. (B), struck out subpar. (D) providing for nonapplication of par. (1) to any acquisition by the purchasing corporation if, to the extent provided in regulations, the property acquired is located outside the United States, redesignated subpar. (E) as (D), and, in subpar. (D) as redesignated, inserted ''and meets such conditions as such regulations may provide''.

Subsec. (g)(1). Pub. L. 98–369, § 712(k)(4), substituted ''the 15th day of the 9th month beginning after the month in which the acquisition date occurs'' for ''75 days after the acquisition date''.

Subsec. (h)(1). Pub. L. 98–369, § 712(k)(5)(C), included within 12-month acquisition period the period begin-

ning with the date on which the acquiring corporation is first considered as owning stock owned by corporation from which acquisition was made.

Subsec. (h)(3)(A)(ii). Pub. L. 98–369, §712(k)(5)(D), included references to sections 354, 355, and 356 and in defining ''purchase'' provided that the stock not be acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction.

Subsec. (h)(3)(B). Pub. L. 98–369, §712(k)(5)(A), substituted in heading ''under subsection (a)'' for ''of stock of subsidiaries'' and in text ''The term 'purchase' includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined under regulations prescribed by the Secretary'' for ''If stock in a corporation is acquired by purchase (within the meaning of subparagraph (A)) and, as a result of such acquisition, the corporation making such purchase is treated (by reason of section 318(a)) as owning stock in a 3rd corporation, the corporation making such purchase shall be treated as having purchased such stock in such 3rd corporation. The corporation making such purchase shall be treated as purchasing stock in the 3rd corporation by reason of the preceding sentence on the first day on which the purchasing corporation is considered under section 318(a) as owning such stock''.

Subsec. (h)(3)(C). Pub. L. 98–369, §712(k)(5)(B), added subpar. (C).

Subsec. (h)(7). Pub. L. 98–369, §712(k)(6)(A), added par. (7) and struck out former par. (7) which had provided that acquisitions by purchasing corporation include acquisitions by corporations affiliated with purchasing corporation. See subsec. (h)(8).

Subsec. (h)(8). Pub. L. 98–369, §712(k)(6)(A), added par. (8) incorporating former par. (7) provision stating that ''Except as otherwise provided in regulations, an acquisition of stock or assets by any member of an affiliated group which includes a purchasing corporation shall be treated as made by the purchasing corporation.'' Former par. (8) redesignated (9).

Subsec. (h)(9). Pub. L. 98–369, §712(k)(6)(A), (B), redesignated former par. (8) as (9) and substituted therein ''paragraph (10)'' for ''paragraph (9)''. Former par. (9) redesignated (10).

Subsec. (h)(10). Pub. L. 98–369, §712(k)(6)(A), redesignated former par. (9) as (10).

Subsec. (h)(11) to (15). Pub. L. 98–369, §712(k)(6)(C), added pars. (11) to (15).

Subsec. (i). Pub. L. 98–369, §712(k)(7), provided in introductory text that the regulations be appropriate to carry out the purposes of this section; designated existing provisions as par. (1) and substituted therein ''treatment of stock and asset sales and purchases'' for ''treatment of stock and asset purchases with respect to a target corporation and its target affiliates (whether by treating all of them as stock purchases or as asset purchases)'' before ''may not be circumvented'', and added par. (2).

1983—Subsec. (h)(8), (9). Pub. L. 97–448 added pars. (8) and (9).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §839(b), Oct. 22, 2004, 118 Stat. 1597, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

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

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

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11323(d) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1060 and 6724 of this title] shall apply to acquisitions after October 9, 1990.

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

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(bb)(5)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to qualified stock purchases (as defined in section 338(d)(3) of the 1986 Code) after March 31, 1988, except that, in the case of an election under section 338(h)(10) of the 1986 Code, such amendment shall apply to qualified stock purchases (as so defined) after June 10, 1987.''

Amendment by sections 1006(e)(20) and 1018(d)(9) 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(b), (e)(5) 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 1275(c)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Section 1804(e)(8)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply in cases where the 12-month acquisition period (as defined in section 338(h)(1) of the Internal Revenue Code of 1954 [now 1986] begins after December 31, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 712(k)(9) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—The amendments made by this subsection [amending this section and sections 269 and 318 of this title] shall not apply to any qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) where the acquisition date (as defined in section 338(h)(2) of such Code) is before September 1, 1982.

''(B) EXTENSION OF TIME FOR MAKING ELECTION.—In the case of any qualified stock purchase described in subparagraph (A), the time for making an election under section 338 of such Code shall not expire before the close of the 60th day after the date of the enactment of this Act [July 18, 1984].''

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

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE

Section 224(d) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(8)(B), Jan. 12, 1983, 96 Stat. 2403; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 168, 318, 334, 336, 337, 381, and 617 of this title] shall apply to any target corporation (within the meaning of section 338 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by this section) with respect to which the acquisition date (within the meaning of such section) occurs after August 31, 1982.

''(2) CERTAIN ACQUISITIONS BEFORE SEPTEMBER 1, 1982.—If—

''(A) an acquisition date (within the meaning of section 338 of such Code without regard to paragraph (5) of this subsection) occurred after August 31, 1980, and before September 1, 1982,

''(B) the target corporation (within the meaning of section 338 of such Code) is not liquidated before September 1, 1982, and

''(C) the purchasing corporation (within the meaning of section 338 of such Code makes, not later than November 15, 1982, an election under section 338 of such Code,

then the amendments made by this section shall apply to the acquisition of such target corporation.

''(3) CERTAIN ACQUISITIONS OF FINANCIAL INSTITUTIONS.—In any case in which—

''(A) there is, on July 22, 1982, a binding contract to acquire control (within the meaning of section 368(c) of such Code of any financial institution,

''(B) the approval of one or more regulatory authorities is required in order to complete such acquisition, and

''(C) within 90 days after the date of the final approval of the last such regulatory authority granting final approval, a plan of complete liquidation of such financial institution is adopted,

then the purchasing corporation may elect not to have the amendments made by this section apply to the acquisition pursuant to such contract.

''(4) EXTENSION OF TIME FOR MAKING ELECTIONS; REVOCATION OF ELECTIONS.—

''(A) EXTENSION.—The time for making an election under section 338 of such Code shall not expire before the close of February 28, 1983.

''(B) REVOCATION.—Any election made under section 338 of such Code may be revoked by the purchasing corporation if revoked before March 1, 1983.

''(5) RULES FOR ACQUISITIONS DESCRIBED IN PARAGRAPH (2).—

''(A) IN GENERAL.—For purposes of applying section 338 of such Code with respect to any acquisition described in paragraph (2)—

''(i) the date selected under subparagraph (B) of this paragraph shall be treated as the acquisition date,

''(ii) a rule similar to the last sentence of section 334(b)(2) of such Code (as in effect on August 31, 1982) shall apply, and

''(iii) subsections (e), (f), and (i) of such section 338, and paragraphs (4), (6), (8), and (9) of subsection (h) of such section 338, shall not apply.

''(B) SELECTION OF ACQUISITION DATE BY PURCHASING CORPORATION.—The purchasing corporation may select any date for purposes of subparagraph (A)(i) if such date—

''(i) is after the later of June 30, 1982, or the acquisition date (within the meaning of section 338 of such Code without regard to this paragraph), and

''(ii) is on or before the date on which the election described in paragraph (2)(C) is made.''

TREATMENT OF CERTAIN CORPORATION ORGANIZED ON FEBRUARY 22, 1983

Section 1804(e)(9) of Pub. L. 99–514 provided that: ''In the case of a Rhode Island corporation which was organized on February 22, 1983, and which on February 25, 1983—

''(A) purchased the stock of another corporation,

''(B) filed an election under section 338(g) of the Internal Revenue Code of 1986 with respect to such purchase, and

''(C) merged into the acquired corporation,

such purchase of stock shall be considered as made by the acquiring corporation, such election shall be valid, and the acquiring corporation shall be considered a purchasing corporation for purposes of section 338 of such Code without regard to the duration of the existence of the acquiring corporation.''

SPECIAL RULES FOR DEEMED PURCHASES UNDER PRIOR LAW

Section 712(k)(10) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, before October 20, 1983, a corporation was treated as making a qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), but would not be so treated under the amendments made by paragraphs (5) and (6) [amending subsec. (h) and section 318(b)(4) of this title] of this subsection, the amendments made by such paragraphs shall not apply to such purchase unless such corporation elects (at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to have the amendments made by such paragraphs apply.''

EXCEPTION FOR STOCK PURCHASES IN CONTEMPLATION OF TARGET CORPORATION AS MEMBER OF AFFILIATED GROUP

Section 306(a)(8)(A)(ii) of Pub. L. 97–448, as amended by Pub. L. 98–369, div. A, title VII, § 722(a)(3), July 18, 1984, 98 Stat. 973; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(I) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after September 1, 1982, and on or before the date of the enactment of this Act [Jan. 12, 1983], and

''(II) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the target corporation would be treated as a member of the affiliated group which includes the selling corporation,

then the amendment made by clause (i) [amending subsec. (h)] shall not apply to such qualified stock purchase.''

[SUBPART C—REPEALED]

[§ 341. Repealed. Pub. L. 108–27, title III, § 302(e)(4)(A), May 28, 2003, 117 Stat. 763]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 107; Pub. L. 85–866, title I, § 20(a), Sept. 2, 1958, 72 Stat. 1615; Pub. L. 87–834, § 13(f)(4), Oct. 16, 1962, 76 Stat. 1035; Pub. L. 88–272, title II, § 231(b)(4), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88–484, § 1(a), Aug. 22, 1964, 78 Stat. 596; Pub. L. 89–570, § 1(b)(4), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title II, § 211(b)(4), title V, § 514(b)(1), Dec. 30, 1969, 83 Stat. 570, 643; Pub. L. 94–455, title II, § 205(c)(2), title XIV, § 1402(b)(1)(B), (2), title XIX, §§ 1901(b)(3)(A), (I), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1731, 1732, 1792, 1793, 1834; Pub. L. 97–34, title V, § 505(c)(2), Aug. 13, 1981, 95 Stat. 332; Pub. L. 97–248, title II, § 222(e)(5), Sept. 3, 1982, 96 Stat. 480; Pub. L. 98–369, div. A, title I, §§ 43(c)(1), 65(a)–(c), 135(a), title IV, § 492(b)(2), title X,

§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 sentence, 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 transfers pursuant to an application to form a BHC filed with the Federal Reserve Board before Aug. 16, 1982, see section 226(c) of Pub. L. 97–248, set out as a note under section 304 of this title.

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 reason 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 combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock.

(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 series 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, ⅔ 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, ¾ 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 nonrecognition 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(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, §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 (ii) 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.

Sec.
383. Special limitations on certain excess credits, etc.
384. Limitation on use of preacquisition losses to offset built-in gains.

AMENDMENTS

1987—Pub. L. 100–203, title X, §10226(b), Dec. 22, 1987, 101 Stat. 1330–415, added item 384.

1986—Pub. L. 99–514, title VI, §621(c)(2), Oct. 22, 1986, 100 Stat. 2266, substituted ''Limitation on net operating loss carryforwards and certain built-in losses following ownership change'' for ''Special limitations on net operating loss carryovers'' in item 382 and ''Special limitations on certain excess credits, etc.'' for ''Special limitations on unused business credits, research credits, foreign taxes, and capital losses'' in item 383.

1984—Pub. L. 98–369, div. A, title IV, §474(r)(12)(C), July 18, 1984, 98 Stat. 842, substituted ''unused business credits, research credits, foreign taxes, and capital losses'' for ''carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses'' in item 383.

1981—Pub. L. 97–34, title II, §221(b)(1)(E), title III, §331(d)(1)(E), Aug. 13, 1981, 95 Stat. 246, 295, inserted references to alcohol fuel credits, research credits, and employee stock ownership credits in item 383. For applicability of amendment by section 221(b)(1)(E) to amounts paid or incurred after June 30, 1981, and before Jan. 1, 1986, see section 221(d) of Pub. L. 97–34, set out as an Effective Date note under section 30 of this title.

1977—Pub. L. 95–30, title II, §202(d)(3)(D), May 23, 1977, 91 Stat. 148, inserted ''new employee credits,'' after ''work incentive program credits,'' in item 383.

1971—Pub. L. 92–178, title III, §302(b), Dec. 10, 1971, 85 Stat. 521, added item 383.

§381. Carryovers in certain corporate acquisitions

(a) General rule

In the case of the acquisition of assets of a corporation by another corporation—

(1) in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies; or

(2) in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c). For purposes of the preceding sentence, a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

(b) Operating rules

Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368(a)(1)—

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

(3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss or a net capital loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

(c) Items of the distributor or transferor corporation

The items referred to in subsection (a) are:

(1) Net operating loss carryovers

The net operating loss carryovers determined under section 172, subject to the following conditions and limitations:

(A) the taxable year of the acquiring corporation to which the net operating loss carryovers of the distributor or transferor corporation are first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) In determining the net operating loss deduction, the portion of such deduction attributable to the net operating loss carryovers of the distributor or transferor corporation to the first taxable year of the acquiring corporation ending after the date of distribution or transfer shall be limited to an amount which bears the same ratio to the taxable income (determined without regard to a net operating loss deduction) of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For the purpose of determining the amount of the net operating loss carryovers under section 172(b)(2), a net operating loss for a taxable year (hereinafter in this subparagraph referred to as the ''loss year'') of a distributor or transferor corporation which ends on or before the end of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. For the same purpose, the taxable income for a ''prior taxable year'' (as the term is used in section 172(b)(2)) shall be computed as provided in such section; except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation—

(i) such taxable year shall (for the purpose of this subparagraph only) be considered to be 2 taxable years (hereinafter in this subparagraph referred to as the ''pre-acquisition part year'' and the ''post-acquisition part year'');

(ii) the pre-acquisition part year shall begin on the same day as such taxable year begins and shall end on the date of distribution or transfer;

(iii) the post-acquisition part year shall begin on the day following the date of dis-

tribution or transfer and shall end on the same day as the end of such taxable year;

(iv) the taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)(A) but without a net operating loss deduction) shall be divided between the pre-acquisition part year and the post-acquisition part year in proportion to the number of days in each;

(v) the net operating loss deduction for the pre-acquisition part year shall be determined as provided in section 172(b)(2)(B), but without regard to a net operating loss year of the distributor or transferor corporation; and

(vi) the net operating loss deduction for the post-acquisition part year shall be determined as provided in section 172(b)(2)(B).

(2) Earnings and profits

In the case of a distribution or transfer described in subsection (a)—

(A) the earnings and profits or deficit in earnings and profits, as the case may be, of the distributor or transferor corporation shall, subject to subparagraph (B), be deemed to have been received or incurred by the acquiring corporation as of the close of the date of the distribution or transfer; and

(B) a deficit in earnings and profits of the distributor, transferor, or acquiring corporation shall be used only to offset earnings and profits accumulated after the date of transfer. For this purpose, the earnings and profits for the taxable year of the acquiring corporation in which the distribution or transfer occurs shall be deemed to have been accumulated after such distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of the acquiring corporation for such taxable year (computed without regard to any earnings and profits received from the distributor or transferor corporation, as described in subparagraph (A) of this paragraph) as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(3) Capital loss carryover

The capital loss carryover determined under section 1212, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the capital loss carryover of the distributor or transferor corporation is first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) The capital loss carryover shall be a short-term capital loss in the taxable year determined under subparagraph (A) but shall be limited to an amount which bears the same ratio to the capital gain net income (determined without regard to a short-term capital loss attributable to capital loss carryover), if any, of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For purposes of determining the amount of such capital loss carryover to taxable years following the taxable year determined under subparagraph (A), the capital gain net income in the taxable year determined under subparagraph (A) shall be considered to be an amount equal to the amount determined under subparagraph (B).

(4) Method of accounting

The acquiring corporation shall use the method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of computing taxable income adopted pursuant to regulations prescribed by the Secretary.

(5) Inventories

In any case in which inventories are received by the acquiring corporation, such inventories shall be taken by such corporation (in determining its income) on the same basis on which such inventories were taken by the distributor or transferor corporation, unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of taking inventory adopted pursuant to regulations prescribed by the Secretary.

(6) Method of computing depreciation allowance

The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under sections 167 and 168 on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.

[(7) Repealed. June 15, 1955, ch. 143, § 2(1), 69 Stat. 134]

(8) Installment method

If the acquiring corporation acquires installment obligations (the income from which the distributor or transferor corporation reports on the installment basis under section 453) the acquiring corporation shall, for purposes of section 453, be treated as if it were the distributor or transferor corporation.

(9) Amortization of bond discount or premium

If the acquiring corporation assumes liability for bonds of the distributor or transferor corporation issued at a discount or premium, the acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of determining the amount of amortization allowable or includible with respect to such discount or premium.

(10) Treatment of certain mining development and exploration expenses of distributor of transferor corporation

The acquiring corporation shall be entitled to deduct, if it were the distributor or transferor corporation, expenses deferred under section 616 (relating to certain development expenditures) if the distributor or transferor corporation has so elected.

(11) Contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans

The acquiring corporation shall be considered to be the distributor or transferor corporation after the date of distribution or transfer for the purpose of determining the amounts deductible under section 404 with respect to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

(12) Recovery of tax benefit items

If the acquiring corporation is entitled to the recovery of any amounts previously deducted by (or allowable as credits to) the distributor or transferor corporation, the acquiring corporation shall succeed to the treatment under section 111 which would apply to such amounts in the hands of the distributor or transferor corporation.

(13) Involuntary conversions under section 1033

The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of applying section 1033.

(14) Dividend carryover to personal holding company

The dividend carryover (described in section 564) to taxable years ending after the date of distribution or transfer.

[(15) Repealed. Pub. L. 101–508, title XI, § 11801(c)(10)(A), Nov. 5, 1990, 104 Stat. 1388–526]

(16) Certain obligations of distributor or transferor corporation

If the acquiring corporation—

(A) assumes an obligation of the distributor or transferor corporation which, after the date of the distribution or transfer, gives rise to a liability, and

(B) such liability, if paid or accrued by the distributor or transferor corporation, would have been deductible in computing its taxable income,

the acquiring corporation shall be entitled to deduct such items when paid or accrued, as the case may be, as if such corporation were the distributor or transferor corporation. A corporation which would have been an acquiring corporation under this section if the date of distribution or transfer had occurred on or after the effective date of the provisions of this subchapter applicable to a liquidation or reorganization, as the case may be, shall be entitled, even though the date of distribution or transfer occurred before such effective date, to apply this paragraph with respect to amounts paid or accrued in taxable years beginning after December 31, 1953, on account of such obligations of the distributor or transferor corporation. This paragraph shall not apply if such obligations are reflected in the amount of stock, securities, or property transferred by the acquiring corporation to the transferor corporation for the property of the transferor corporation.

(17) Deficiency dividend of personal holding company

If the acquiring corporation pays a deficiency dividend (as defined in section 547(d)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 547.

(18) Percentage depletion on extraction of ores or minerals from the waste or residue of prior mining

The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of section 613(c)(3) (relating to extraction of ores or minerals from the ground).

(19) Charitable contributions in excess of prior years' limitation

Contributions made in the taxable year ending on the date of distribution or transfer and the 4 prior taxable years by the distributor or transferor corporation in excess of the amount deductible under section 170(b)(2) for such taxable years shall be deductible by the acquiring corporation for its taxable years which begin after the date of distribution or transfer, subject to the limitations imposed in section 170(b)(2). In applying the preceding sentence, each taxable year of the distributor or transferor corporation beginning on or before the date of distribution or transfer shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

[(20), (21) Repealed. Pub. L. 94–455, title XIX, § 1901(a)(54), (b)(16), Oct. 4, 1976, 90 Stat. 1773, 1796]

(22) Successor insurance company

If the acquiring corporation is an insurance company taxable under subchapter L, there shall be taken into account (to the extent proper to carry out the purposes of this section and of subchapter L, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter L in respect of the distributor or transferor corporation.

(23) Deficiency dividend of regulated investment company or real estate investment trust

If the acquiring corporation pays a deficiency dividend (as defined in section 860(f)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such pay-

ments, be entitled to the deficiency dividend deduction provided in section 860.

(24) Credit under section 38

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation.

(25) Credit under section 53

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 53, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 53 in respect of the distributor or transferor corporation.

(26) Enterprise zone provisions

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and subchapter U, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter U in respect of the distributor or transferor corporation.

(d) Operations loss carrybacks and carryovers of life insurance companies

For application of this part to operations loss carrybacks and carryovers of life insurance companies, see section 810.

(Aug. 16, 1954, ch. 736, 68A Stat. 124; June 15, 1955, ch. 143, § 2(1), 69 Stat. 134; Jan. 28, 1956, ch. 15, § 1, 70 Stat. 7; Pub. L. 85–866, title I, § 29(c), Sept. 2, 1958, 72 Stat. 1628; Pub. L. 86–69, § 3(c), June 25, 1959, 73 Stat. 139; Pub. L. 87–834, § 2(d), Oct. 16, 1962, 76 Stat. 971; Pub. L. 88–272, title II, §§ 209(d)(2), 225(i)(3), Feb. 26, 1964, 78 Stat. 46, 92; Pub. L. 90–240, § 5(d), Jan. 2, 1968, 81 Stat. 778; Pub. L. 91–172, title V, §§ 504(c)(2), 512(c), 521(f), Dec. 30, 1969, 83 Stat. 633, 639, 654; Pub. L. 92–178, title VI, § 601(c)(3), Dec. 10, 1971, 85 Stat. 557; Pub. L. 94–455, title XVI, § 1601(e), title XIX, §§ 1901(a)(54), (b)(16), (17), (21)(B), (33)(N), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1746, 1773, 1796, 1797, 1802, 1834; Pub. L. 95–30, title II, § 202(d)(3)(A), May 23, 1977, 91 Stat. 148; Pub. L. 95–600, title III, § 362(d)(2), Nov. 6, 1978, 92 Stat. 2851; Pub. L. 96–223, title II, § 232(b)(2)(B), Apr. 2, 1980, 94 Stat. 276; Pub. L. 96–471, § 2(b)(2), Oct. 19, 1980, 94 Stat. 2253; Pub. L. 96–589, § 4(g), Dec. 24, 1980, 94 Stat. 3404; Pub. L. 97–34, title II, §§ 208, 221(b)(1)(B), title III, § 331(d)(1)(B), Aug. 13, 1981, 95 Stat. 226, 246, 294; Pub. L. 97–248, title II, § 224(c)(7), Sept. 3, 1982, 96 Stat. 489; Pub. L. 97–448, title I, §§ 102(h)(3), 103(g)(2)(F), Jan. 12, 1983, 96 Stat. 2372, 2379; Pub. L. 98–369, div. A, title II, § 211(b)(4), title IV, § 474(r)(11), July 18, 1984, 98 Stat. 754, 841; Pub. L. 99–514, title II, § 231(d)(3)(F), title IV, § 411(b)(2)(C)(iii), title VII, § 701(e)(1), title XVIII, § 1812(a)(3), Oct. 22, 1986, 100 Stat. 2179, 2227, 2342, 2833; Pub. L. 100–203, title X, § 10202(c)(3), Dec. 22, 1987, 101 Stat. 1330–392; Pub. L. 100–647, title I, § 1002(a)(13), Nov. 10, 1988, 102 Stat. 3355; Pub. L. 101–239, title VII, § 7841(d)(10), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 101–508, title XI, §§ 11801(c)(10)(A), 11812(b)(6), Nov. 5, 1990, 104 Stat. 1388–526, 1388–535; Pub. L. 103–66, title XIII, § 13302(e), Aug. 10, 1993, 107 Stat. 556; Pub. L. 104–188, title I, § 1704(t)(26), Aug. 20, 1996, 110 Stat. 1888.)

AMENDMENTS

1996—Subsec. (c)(26), (27). Pub. L. 104–188 amended directory language of Pub. L. 101–239. See 1989 Amendment note below.

1993—Subsec. (c)(26). Pub. L. 103–66 added par. (26).

1990—Subsec. (c)(6). Pub. L. 101–508, § 11812(b)(6)(A), substituted ''sections 167 and 168'' for ''subsections (b), (j), and (k) of section 167''.

Subsec. (c)(15). Pub. L. 101–508, § 11801(c)(10)(A), struck out par. (15) ''Indebtedness of certain personal holding companies'' which read as follows: ''The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of subsection (c) of section 545, relating to deduction with respect to payment of certain indebtedness.''

Subsec. (c)(24) to (26). Pub. L. 101–508, § 11812(b)(6)(B), redesignated pars. (25) and (26) as (24) and (25), respectively, and struck out former par. (24) ''Method of computing depreciation deduction'' which read as follows: ''The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the deduction allowable under section 168(a) on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.''

1989—Subsec. (c)(26), (27). Pub. L. 101–239, as amended by Pub. L. 104–188, redesignated par. (27) as (26).

1988—Subsec. (c)(24). Pub. L. 100–647 substituted ''depreciation deduction'' for ''recovery allowance for recovery property'' in heading.

1987—Subsec. (c)(8). Pub. L. 100–203 struck out ''or 453A'' after ''section 453'' in two places.

1986—Subsec. (c)(10). Pub. L. 99–514, § 411(b)(2)(C)(iii), struck out last sentence which read: ''For the purpose of applying the limitation provided in section 617(h), if, for any taxable year, the distributor or transferor corporation was allowed a deduction under section 617(a), the acquiring corporation shall be deemed to have been allowed such deduction.''

Subsec. (c)(12). Pub. L. 99–514, § 1812(a)(3), amended par. (12) generally. Prior to amendment, par. (12), recovery of bad debts, prior taxes, or delinquency amounts, read as follows: ''If the acquiring corporation is entitled to the recovery of bad debts, prior taxes, or delinquency amounts previously deducted or credited by the distributor or transferor corporation, the acquiring corporation shall include in its income such amounts as would have been includible by the distributor or transferor corporation in accordance with section 111 (relating to the recovery of bad debts, prior taxes, and delinquency amounts).''

Subsec. (c)(25), (26). Pub. L. 99–514, § 231(d)(3)(F), redesignated par. (26) as (25). Former par. (25), relating to credit under section 30, was struck out.

Subsec. (c)(27). Pub. L. 99–514, § 701(e)(1), added par. (27).

1984—Subsec. (c)(23). Pub. L. 98–369, § 474(r)(11)(B), redesignated par. (25) as (23). Former par. (23), relating to credit under section 38 for investment in certain depreciable property, was struck out.

Subsec. (c)(24). Pub. L. 98–369, § 474(r)(11)(B), redesignated par. (28) as (24). Former par. (24), relating to credit under section 40 for work incentive program expenses, was struck out.

Subsec. (c)(25). Pub. L. 98–369, § 474(r)(11)(B), (C), redesignated par. (29) as (25), and substituted ''30'' for ''44F'' wherever appearing in heading and text. Former par. (25) redesignated (23).

Subsec. (c)(26). Pub. L. 98–369, § 474(r)(11)(D), added par. (26). Former par. (26), relating to credit under sec-

tion 44B for employment of certain new employees, was struck out.

Subsec. (c)(27). Pub. L. 98–369, §474(r)(11)(A), struck out par. (27) relating to credit under section 44E for alcohol used as fuel.

Subsec. (c)(28), (29). Pub. L. 98–369, §474(r)(11)(B), redesignated pars. (28) and (29) as (24) and (25), respectively.

Subsec. (c)(30). Pub. L. 98–369, §474(r)(11)(A), struck out par. (30) relating to credit under section 44G.

Subsec. (d). Pub. L. 98–369, §211(b)(4), substituted ''section 810'' for ''section 812(f)''.

1983—Subsec. (c)(28), (29). Pub. L. 97–448, §102(h)(3), redesignated par. (28), relating to credit under section 44F, as (29). Former par. (29) redesignated (30).

Subsec. (c)(30). Pub. L. 97–448, §103(g)(2)(F), redesignated former par. (29), relating to credit under section 44G, as (30).

1982—Subsec. (a)(1). Pub. L. 97–248 struck out '', except in a case in which the basis of the assets distributed is determined under section 334(b)(2)'' after ''applies''.

1981—Subsec. (c)(28). Pub. L. 97–34, §208, added par. (28) relating to recovery allowance for recovery property.

Pub. L. 97–34, §221(b)(1)(B), added par. (28) relating to credit under section 44F.

Subsec. (c)(29). Pub. L. 97–34, §331(d)(1)(B), added par. (29).

1980—Subsec. (a). Pub. L. 96–589, §4(g)(2), inserted provisions that a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

Subsec. (a)(2). Pub. L. 96–589, §4(g)(1), substituted ''subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1)'' for ''subparagraph (A), (C), (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met), or (F) of section 368(a)(1)''.

Subsec. (c)(8). Pub. L. 96–471 substituted ''reports on the installment basis under section 453 or 453A'' for ''has elected, under section 453, to report on the installment basis'' and ''for purposes of section 453 or 453A'' for ''for purposes of section 453.''

Subsec. (c)(27). Pub. L. 96–223 added par. (27).

1978—Subsec. (c)(25). Pub. L. 95–600 substituted ''regulated investment company or real estate investment trust'' for ''real estate investment trust'' in heading, and in text ''section 860(f)'' for ''section 859(d)'' and ''section 860'' for ''section 859''.

1977—Subsec. (c)(26). Pub. L. 95–30 added par. (26).

1976—Subsec. (b)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(3). Pub. L. 94–455, §1901(b)(33)(N), substituted in subpars. (B) and (C) ''capital gain net income'' for ''net capital gain''.

Subsec. (c)(4), (5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(10). Pub. L. 94–455, §1901(b)(21(B), among other changes, substituted reference to section 616 (relating to certain development expenditures) if the distributor or transferor corporation has so elected for reference to sections 615 and 616 (relating to pre-1970 exploration expenditures and development expenditures, respectively) if the distributor or transferor corporation has so elected and struck out provisions that if, for any taxable year, the distributor of transferor corporation was allowed or made the election of the deduction under section 615 of this title, the acquiring corporation shall be deemed to have been allowed or to have made such election of the deduction under section 615 of this title.

Subsec. (c)(15). Pub. L. 94–455, §1901(b)(17), substituted ''subsection (c)'' for ''subsections (b)(7) and (c)''.

Subsec. (c)(20). Pub. L. 94–455, §1901(a)(54), struck out par. (20) which related to carry-over of unused pension trust deductions in certain cases.

Subsec. (c)(21). Pub. L. 94–455, §1901(b)(16), struck out par. (21) which related to pre-1954 adjustments resulting from change in method of accounting.

Subsec. (c)(22) to (24). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(25). Pub. L. 94–455, §1601(e), added par. (25).

1971—Subsec. (c)(24). Pub. L. 92–178 added par. (24).

1969—Subsec. (b)(3). Pub. L. 91–172, §512(c), substituted ''a net operating loss or a net capital loss'' for ''a net operating loss''.

Subsec. (c)(6). Pub. L. 91–172, §521(f), substituted ''subsections (b), (j) and (k) of section 167'' for ''paragraphs (2), (3) and (4) of section 167(b)'' and inserted reference to adjusted basis in the hand of the distributor or transferor corporation.

Subsec. (c)(10). Pub. L. 91–172, §504(c)(2), substituted ''Treatment of certain mining exploration and development expenses of distributor or transferor corporation'' for ''Treatment of certain expenses deferred by the election of distributor or transferor corporation'' in heading, limited deduction of expenses deferred under sections 615 and 616 of this title by the acquiring corporation as if it were the distributor or transferor corporation to pre-1970 exploration and development expenditures, and inserted provision that if distributor or transferor corporation, for any taxable year, was allowed the deduction in sections 615(a) or 617(a) of this title or made the election provided in section 615(b) of this title, acquiring corporation shall be deemed to have been allowed such deduction or deductions or to have made such election, as the case may be, for the purpose of applying the limitation provided in section 617 of this title.

1968—Subsec. (c)(22). Pub. L. 90–240 substituted successor insurance companies for successor life insurance companies as the business enterprise covered, substituted reference to insurance companies taxable under subchapter L for reference to life insurance companies as defined in section 801(a), and substituted reference to the purposes of this section and of subchapter L for reference to the purposes of this section and part I of subchapter L.

1964—Subsec. (c)(15). Pub. L. 88–272, §225(i)(3), substituted ''subsections (b)(7) and (c) of section 545, relating to deductions with respect to payment of certain indebtedness'' for ''section 545(b)(7), relating to a deduction for payment of certain indebtedness incurred before Jan. 1, 1934''.

Subsec. (c)(19). Pub. L. 88–272, §209(d)(2), permitted deductions for contributions made in the taxable year and in 4 prior taxable years, instead of one prior taxable year, and provided that each taxable year beginning on or before the distribution or transfer date shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

1962—Subsec. (c)(23). Pub. L. 87–834 added par. (23).

1959—Subsec. (c)(22). Pub. L. 86–69, §3(c)(1), added par. (22).

Subsec. (d). Pub. L. 86–69, §3(c)(2), added subsec. (d).

1958—Subsec. (c)(21). Pub. L. 85–866 added par. (21).

1956—Subsec. (c)(20). Act Jan. 28, 1956 added par. (20).

1955—Subsec. (c)(7). Act June 15, 1955, repealed par. (7) which related to carryover of prepaid income.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(6) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

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 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dispositions in taxable years beginning after Dec. 31, 1987,

with special rules for nondealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(F) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 411(b)(2)(C)(iii) of Pub. L. 99–514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99–514, set out as a note under section 263 of this title.

Amendment by section 701(e)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1812(a)(3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 211(b)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(11) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 208 of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 221(b)(1)(B) of Pub. L. 97–34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97–34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(1)(B) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceeding commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceeding 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.

For effective date of amendment by Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

Amendment by Pub. L. 96–223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as an Effective Date note under section 40 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 51 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(e) of Pub. L. 94–455, see section 1608(a) of Pub. L. 94–455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(54), (b)(16), (17), (21)(B), (33)(N) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 601(f) of Pub. L. 92–178 provided that: ''The amendments made by this section [enacting sections 40, 50A, and 50B of this title and amending this section and sections 56, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 504(c)(2) of Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91–172, set out as a note under section 243 of this title.

Amendment by section 512(c) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

Amendment by section 521(f) of Pub. L. 91–172 applicable with respect to taxable years ending after July 24, 1969, see section 521(g) of Pub. L. 91–172, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–240 applicable to taxable years beginning after Dec. 31, 1966, see section 5(e) of Pub. L. 90–240, set out as a note under section 832 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 225(i)(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272 set out as a note under section 316 of this title.

Amendment by section 209(d)(2) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, with respect to contributions paid or treated as paid under section 170(a)(2) of this title, in taxable years beginning after Dec. 31, 1961, see section 209(f)(2) of Pub. L. 88–272, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 4 of Pub. L. 86–69 provided that: ''Except as otherwise provided in this Act, the amendments made by this Act [amending this section, part I (§801 et seq.) of subchapter L, and sections 841, 842, 891, 1016, 1201, 1232, 1504, 4371, and 6501 of this title] shall apply only with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–866, see section 29(d) of Pub. L. 85–866, set out as a note under section 481 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act Jan. 28, 1956, provided that: ''The amendments made by the first section of this Act [amending this section] shall reply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act June 15, 1955, provided that: ''The amendments made by this Act [amending this section and repealing sections 452 and 462 of this title] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 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.

Section 4 of act June 15, 1955, as amended by act Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, provided:

''(a) FILING OF STATEMENT.—If—

''(1) the amount of any tax required to be paid for any taxable year ending on or before the date of the enactment of this Act [June 15, 1955] is increased by reason of the enactment of this Act [amending this section and repealing sections 452 and 462], and

''(2) the last date prescribed for payment of such tax (or any installment thereof) is before December 15, 1955, then the taxpayer shall, on or before December 15, 1955, file a statement which shows the increase in the amount of such tax required to be paid by reason of the enactment of this Act.

''(b) FORM AND EFFECT OF STATEMENT.—

''(1) FORM OF STATEMENT, ETC.—The statement required by subsection (a) shall be filed at the place fixed for filing the return. Such statement shall be in such form, and shall include such information necessary or appropriate to show the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act, as the Secretary of the Treasury or his delegate shall by regulations prescribe.

''(2) TREATMENT AS AMOUNT SHOWN ON RETURN.—The amount shown on a statement filed under subsection (a) as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act shall, for all purposes of the internal revenue laws, be treated as tax shown on the return. Notwithstanding the preceding sentence, that portion of the amount of increase in tax for any taxable year which is attributable to a decrease (by reason of the enactment of this Act) in the net operating loss for a succeeding taxable year shall not be treated as tax shown on the return.

''(3) WAIVER OF INTEREST IN CASE OF PAYMENT ON OR BEFORE DECEMBER 15, 1955.—If the taxpayer, on or before December 15, 1955, files the statement referred to in subsection (a) and pays in full that portion of the amount shown thereon for which the last date prescribed for payment is before December 15, 1955, then for purposes of computing interest (other than interest on overpayments) such portion shall be treated as having been paid on the last date prescribed for payment. This paragraph shall not apply if the amount shown on the statement as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act is greater than the actual increase unless the taxpayer establishes, to the satisfaction of the Secretary of the Treasury or his delegate, that his computation of the greater amount was based upon a reasonable interpretation and application of sections 452 and 462 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [sections 452 and 462 of this title], as those sections existed before the enactment of this Act.

''(c) SPECIAL RULES.—

''(1) INTEREST FOR PERIOD BEFORE ENACTMENT.—Interest shall not be imposed on the amount of any increase in tax resulting from the enactment of this Act for any period before the day after the date of the enactment of this Act [June 15, 1955].

''(2) ESTIMATED TAX.—Any addition to the tax under section 294(d) of the Internal Revenue Code of 1939 [section 294(d) of former Title 26, Internal Revenue Code], shall be computed as if this Act had not been enacted. In the case of any installment for which the last date prescribed for payment is before December 15, 1955, any addition to the tax under section 6654 of the Internal Revenue Code of 1986 [section 6654 of this title], shall be computed as if this Act had not been enacted.

''(3) TREATMENT OF CERTAIN PAYMENTS WHICH TAXPAYER IS REQUIRED TO MAKE.—If—

''(A) the taxpayer is required to make a payment (or an additional payment) to another person by reason of the enactment of this Act, and

''(B) the Internal Revenue Code of 1986 [this title] prescribes a period, which expires after the close of the taxable year, within which the taxpayer must make such payment (or additional payment) if the amount thereof is to be taken into account (as a deduction or otherwise) in computing taxable income for such taxable year,

then, subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, if such payment (or additional payment) is made on or before December 15, 1955, it shall be treated as having been made within the period prescribed by such Code.

''(4) TREATMENT OF CERTAIN DIVIDENDS.—Subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, for purposes of section 561(a)(1) of the Internal Revenue Code of 1986 [section 561(a)(1) of this title], dividends paid after the 15th day of the third month following the close of the taxable year and on or before December 15, 1955, may be treated as having been paid on the last day of the taxable year, but only to the extent (A) that such dividends are attributable to an increase in taxable income for the taxable year resulting from the enactment of this Act, and (B) elected by the taxpayer.

''(5) DETERMINATION OF DATE PRESCRIBED.—For purposes of this section, the determination of the last date prescribed for payment or for filing a return shall be made without regard to any extension of time therefor and without regard to any provision of this section.

''(6) REGULATIONS.—For requirement that the Secretary of the Treasury or his delegate shall prescribe all rules and regulations as may be necessary by reason of the enactment of this Act, see section 7805(a) of the Internal Revenue Code of 1986 [section 7805(a) of this title].''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(1) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provi-

sion that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 382. Limitation on net operating loss carryforwards and certain built-in losses following ownership change

(a) General rule

The amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the section 382 limitation for such year.

(b) Section 382 limitation

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the section 382 limitation for any post-change year is an amount equal to—

(A) the value of the old loss corporation, multiplied by

(B) the long-term tax-exempt rate.

(2) Carryforward of unused limitation

If the section 382 limitation for any post-change year exceeds the taxable income of the new loss corporation for such year which was offset by pre-change losses, the section 382 limitation for the next post-change year shall be increased by the amount of such excess.

(3) Special rule for post-change year which includes change date

In the case of any post-change year which includes the change date—

(A) Limitation does not apply to taxable income before change

Subsection (a) shall not apply to the portion of the taxable income for such year which is allocable to the period in such year on or before the change date. Except as provided in subsection (h)(5) and in regulations, taxable income shall be allocated ratably to each day in the year.

(B) Limitation for period after change

For purposes of applying the limitation of subsection (a) to the remainder of the taxable income for such year, the section 382 limitation shall be an amount which bears the same ratio to such limitation (determined without regard to this paragraph) as—

(i) the number of days in such year after the change date, bears to

(ii) the total number of days in such year.

(c) Carryforwards disallowed if continuity of business requirements not met

(1) In general

Except as provided in paragraph (2), if the new loss corporation does not continue the business enterprise of the old loss corporation at all times during the 2-year period beginning on the change date, the section 382 limitation for any post-change year shall be zero.

(2) Exception for certain gains

The section 382 limitation for any post-change year shall not be less than the sum of—

(A) any increase in such limitation under—

(i) subsection (h)(1)(A) for recognized built-in gains for such year, and

(ii) subsection (h)(1)(C) for gain recognized by reason of an election under section 338, plus

(B) any increase in such limitation under subsection (b)(2) for amounts described in subparagraph (A) which are carried forward to such year.

(d) Pre-change loss and post-change year

For purposes of this section—

(1) Pre-change loss

The term ''pre-change loss'' means—

(A) any net operating loss carryforward of the old loss corporation to the taxable year ending with the ownership change or in which the change date occurs, and

(B) the net operating loss of the old loss corporation for the taxable year in which the ownership change occurs to the extent such loss is allocable to the period in such year on or before the change date.

Except as provided in subsection (h)(5) and in regulations, the net operating loss shall, for purposes of subparagraph (B), be allocated ratably to each day in the year.

(2) Post-change year

The term ''post-change year'' means any taxable year ending after the change date.

(e) Value of old loss corporation

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the value of the old loss corporation is the value of the stock of such corporation (including any stock described in section 1504(a)(4)) immediately before the ownership change.

(2) Special rule in the case of redemption or other corporate contraction

If a redemption or other corporate contraction occurs in connection with an ownership change, the value under paragraph (1) shall be determined after taking such redemption or other corporate contraction into account.

(3) Treatment of foreign corporations

Except as otherwise provided in regulations, in determining the value of any old loss corporation which is a foreign corporation, there shall be taken into account only items treated as connected with the conduct of a trade or business in the United States.

(f) Long-term tax-exempt rate

For purposes of this section—

(1) In general

The long-term tax-exempt rate shall be the highest of the adjusted Federal long-term

rates in effect for any month in the 3-calendar-month period ending with the calendar month in which the change date occurs.

(2) Adjusted Federal long-term rate

For purposes of paragraph (1), the term ''adjusted Federal long-term rate'' means the Federal long-term rate determined under section 1274(d), except that—

(A) paragraphs (2) and (3) thereof shall not apply, and

(B) such rate shall be properly adjusted for differences between rates on long-term taxable and tax-exempt obligations.

(g) Ownership change

For purposes of this section—

(1) In general

There is an ownership change if, immediately after any owner shift involving a 5-percent shareholder or any equity structure shift—

(A) the percentage of the stock of the loss corporation owned by 1 or more 5-percent shareholders has increased by more than 50 percentage points, over

(B) the lowest percentage of stock of the loss corporation (or any predecessor corporation) owned by such shareholders at any time during the testing period.

(2) Owner shift involving 5-percent shareholder

There is an owner shift involving a 5-percent shareholder if—

(A) there is any change in the respective ownership of stock of a corporation, and

(B) such change affects the percentage of stock of such corporation owned by any person who is a 5-percent shareholder before or after such change.

(3) Equity structure shift defined

(A) In general

The term ''equity structure shift'' means any reorganization (within the meaning of section 368). Such term shall not include—

(i) any reorganization described in subparagraph (D) or (G) of section 368(a)(1) unless the requirements of section 354(b)(1) are met, and

(ii) any reorganization described in subparagraph (F) of section 368(a)(1).

(B) Taxable reorganization-type transactions, etc.

To the extent provided in regulations, the term ''equity structure shift'' includes taxable reorganization-type transactions, public offerings, and similar transactions.

(4) Special rules for application of subsection

(A) Treatment of less than 5-percent shareholders

Except as provided in subparagraphs (B)(i) and (C), in determining whether an ownership change has occurred, all stock owned by shareholders of a corporation who are not 5-percent shareholders of such corporation shall be treated as stock owned by 1 5-percent shareholder of such corporation.

(B) Coordination with equity structure shifts

For purposes of determining whether an equity structure shift (or subsequent transaction) is an ownership change—

(i) Less than 5-percent shareholders

Subparagraph (A) shall be applied separately with respect to each group of shareholders (immediately before such equity structure shift) of each corporation which was a party to the reorganization involved in such equity structure shift.

(ii) Acquisitions of stock

Unless a different proportion is established, acquisitions of stock after such equity structure shift shall be treated as being made proportionately from all shareholders immediately before such acquisition.

(C) Coordination with other owner shifts

Except as provided in regulations, rules similar to the rules of subparagraph (B) shall apply in determining whether there has been an owner shift involving a 5-percent shareholder and whether such shift (or subsequent transaction) results in an ownership change.

(D) Treatment of worthless stock

If any stock held by a 50-percent shareholder is treated by such shareholder as becoming worthless during any taxable year of such shareholder and such stock is held by such shareholder as of the close of such taxable year, for purposes of determining whether an ownership change occurs after the close of such taxable year, such shareholder—

(i) shall be treated as having acquired such stock on the 1st day of his 1st succeeding taxable year, and

(ii) shall not be treated as having owned such stock during any prior period.

For purposes of the preceding sentence, the term ''50-percent shareholder'' means any person owning 50 percent or more of the stock of the corporation at any time during the 3-year period ending on the last day of the taxable year with respect to which the stock was so treated.

(h) Special rules for built-in gains and losses and section 338 gains

For purposes of this section—

(1) In general

(A) Net unrealized built-in gain

(i) In general

If the old loss corporation has a net unrealized built-in gain, the section 382 limitation for any recognition period taxable year shall be increased by the recognized built-in gains for such taxable year.

(ii) Limitation

The increase under clause (i) for any recognition period taxable year shall not exceed—

(I) the net unrealized built-in gain, reduced by

(II) recognized built-in gains for prior years ending in the recognition period.

(B) Net unrealized built-in loss

(i) In general

If the old loss corporation has a net unrealized built-in loss, the recognized built-in loss for any recognition period taxable year shall be subject to limitation under this section in the same manner as if such loss were a pre-change loss.

(ii) Limitation

Clause (i) shall apply to recognized built-in losses for any recognition period taxable year only to the extent such losses do not exceed—

(I) the net unrealized built-in loss, reduced by

(II) recognized built-in losses for prior taxable years ending in the recognition period.

(C) Special rules for certain section 338 gains

If an election under section 338 is made in connection with an ownership change and the net unrealized built-in gain is zero by reason of paragraph (3)(B), then, with respect to such change, the section 382 limitation for the post-change year in which gain is recognized by reason of such election shall be increased by the lesser of—

(i) the recognized built-in gains by reason of such election, or

(ii) the net unrealized built-in gain (determined without regard to paragraph (3)(B)).

(2) Recognized built-in gain and loss

(A) Recognized built-in gain

The term ''recognized built-in gain'' means any gain recognized during the recognition period on the disposition of any asset to the extent the new loss corporation establishes that—

(i) such asset was held by the old loss corporation immediately before the change date, and

(ii) such gain does not exceed the excess of—

(I) the fair market value of such asset on the change date, over

(II) the adjusted basis of such asset on such date.

(B) Recognized built-in loss

The term ''recognized built-in loss'' means any loss recognized during the recognition period on the disposition of any asset except to the extent the new loss corporation establishes that—

(i) such asset was not held by the old loss corporation immediately before the change date, or

(ii) such loss exceeds the excess of—

(I) the adjusted basis of such asset on the change date, over

(II) the fair market value of such asset on such date.

Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii).

(3) Net unrealized built-in gain and loss defined

(A) Net unrealized built-in gain and loss

(i) In general

The terms ''net unrealized built-in gain'' and ''net unrealized built-in loss'' mean, with respect to any old loss corporation, the amount by which—

(I) the fair market value of the assets of such corporation immediately before an ownership change is more or less, respectively, than

(II) the aggregate adjusted basis of such assets at such time.

(ii) Special rule for redemptions or other corporate contractions

If a redemption or other corporate contraction occurs in connection with an ownership change, to the extent provided in regulations, determinations under clause (i) shall be made after taking such redemption or other corporate contraction into account.

(B) Threshold requirement

(i) In general

If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than the lesser of—

(I) 15 percent of the amount determined for purposes of subparagraph (A)(i)(I), or

(II) $10,000,000,

the net unrealized built-in gain or net unrealized built-in loss shall be zero.

(ii) Cash and cash items not taken into account

In computing any net unrealized built-in gain or net unrealized built-in loss under clause (i), except as provided in regulations, there shall not be taken into account—

(I) any cash or cash item, or

(II) any marketable security which has a value which does not substantially differ from adjusted basis.

(4) Disallowed loss allowed as a carryforward

If a deduction for any portion of a recognized built-in loss is disallowed for any post-change year, such portion—

(A) shall be carried forward to subsequent taxable years under rules similar to the rules for the carrying forward of net operating losses (or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses), but

(B) shall be subject to limitation under this section in the same manner as a pre-change loss.

(5) Special rules for post-change year which includes change date

For purposes of subsection (b)(3)—

(A) in applying subparagraph (A) thereof, taxable income shall be computed without regard to recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as pre-change losses), and gain described in paragraph (1)(C), for the year, and

(B) in applying subparagraph (B) thereof, the section 382 limitation shall be computed without regard to recognized built-in gains, and gain described in paragraph (1)(C), for the year.

(6) Treatment of certain built-in items

(A) Income items

Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the change date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

(B) Deduction items

Any amount which is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the change date shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

(C) Adjustments

The amount of the net unrealized built-in gain or loss shall be properly adjusted for amounts which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period.

(7) Recognition period, etc.

(A) Recognition period

The term ''recognition period'' means, with respect to any ownership change, the 5-year period beginning on the change date.

(B) Recognition period taxable year

The term ''recognition period taxable year'' means any taxable year any portion of which is in the recognition period.

(8) Determination of fair market value in certain cases

If 80 percent or more in value of the stock of a corporation is acquired in 1 transaction (or in a series of related transactions during any 12-month period), for purposes of determining the net unrealized built-in loss, the fair market value of the assets of such corporation shall not exceed the grossed up amount paid for such stock properly adjusted for indebtedness of the corporation and other relevant items.

(9) Tax-free exchanges or transfers

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection where property held on the change date was acquired (or is subsequently transferred) in a transaction where gain or loss is not recognized (in whole or in part).

(i) Testing period

For purposes of this section—

(1) 3-year period

Except as otherwise provided in this section, the testing period is the 3-year period ending on the day of any owner shift involving a 5-percent shareholder or equity structure shift.

(2) Shorter period where there has been recent ownership change

If there has been an ownership change under this section, the testing period for determining whether a 2nd ownership change has occurred shall not begin before the 1st day following the change date for such earlier ownership change.

(3) Shorter period where all losses arise after 3-year period begins

The testing period shall not begin before the earlier of the 1st day of the 1st taxable year from which there is a carryforward of a loss or of an excess credit to the 1st post-change year or the taxable year in which the transaction being tested occurs. Except as provided in regulations, this paragraph shall not apply to any loss corporation which has a net unrealized built-in loss (determined after application of subsection (h)(3)(B)).

(j) Change date

For purposes of this section, the change date is—

(1) in the case where the last component of an ownership change is an owner shift involving a 5-percent shareholder, the date on which such shift occurs, and

(2) in the case where the last component of an ownership change is an equity structure shift, the date of the reorganization.

(k) Definitions and special rules

For purposes of this section—

(1) Loss corporation

The term ''loss corporation'' means a corporation entitled to use a net operating loss carryover or having a net operating loss for the taxable year in which the ownership change occurs. Except to the extent provided in regulations, such term includes any corporation with a net unrealized built-in loss.

(2) Old loss corporation

The term ''old loss corporation'' means any corporation—

(A) with respect to which there is an ownership change, and

(B) which (before the ownership change) was a loss corporation.

(3) New loss corporation

The term ''new loss corporation'' means a corporation which (after an ownership change) is a loss corporation. Nothing in this section shall be treated as implying that the same corporation may not be both the old loss corporation and the new loss corporation.

(4) Taxable income

Taxable income shall be computed with the modifications set forth in section 172(d).

(5) Value

The term ''value'' means fair market value.

(6) Rules relating to stock

(A) Preferred stock

Except as provided in regulations and subsection (e), the term ''stock'' means stock other than stock described in section 1504(a)(4).

(B) Treatment of certain rights, etc.

The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

(ii) to treat stock as not stock.

(C) Determinations on basis of value

Determinations of the percentage of stock of any corporation held by any person shall be made on the basis of value.

(7) 5-percent shareholder

The term ''5-percent shareholder'' means any person holding 5 percent or more of the stock of the corporation at any time during the testing period.

(*l*) Certain additional operating rules

For purposes of this section—

(1) Certain capital contributions not taken into account

(A) In general

Any capital contribution received by an old loss corporation as part of a plan a principal purpose of which is to avoid or increase any limitation under this section shall not be taken into account for purposes of this section.

(B) Certain contributions treated as part of plan

For purposes of subparagraph (A), any capital contribution made during the 2-year period ending on the change date shall, except as provided in regulations, be treated as part of a plan described in subparagraph (A).

(2) Ordering rules for application of section

(A) Coordination with section 172(b) carryover rules

In the case of any pre-change loss for any taxable year (hereinafter in this subparagraph referred to as the ''loss year'') subject to limitation under this section, for purposes of determining under the 2nd sentence of section 172(b)(2) the amount of such loss which may be carried to any taxable year, taxable income for any taxable year shall be treated as not greater than—

(i) the section 382 limitation for such taxable year, reduced by

(ii) the unused pre-change losses for taxable years preceding the loss year.

Similar rules shall apply in the case of any credit or loss subject to limitation under section 383.

(B) Ordering rule for losses carried from same taxable year

In any case in which—

(i) a pre-change loss of a loss corporation for any taxable year is subject to a section 382 limitation, and

(ii) a net operating loss of such corporation from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset first by the loss subject to such limitation.

(3) Operating rules relating to ownership of stock

(A) Constructive ownership

Section 318 (relating to constructive ownership of stock) shall apply in determining ownership of stock, except that—

(i) paragraphs (1) and (5)(B) of section 318(a) shall not apply and an individual and all members of his family described in paragraph (1) of section 318(a) shall be treated as 1 individual for purposes of applying this section,

(ii) paragraph (2) of section 318(a) shall be applied—

(I) without regard to the 50-percent limitation contained in subparagraph (C) thereof, and

(II) except as provided in regulations, by treating stock attributed thereunder as no longer being held by the entity from which attributed,

(iii) paragraph (3) of section 318(a) shall be applied only to the extent provided in regulations,

(iv) except to the extent provided in regulations, an option to acquire stock shall be treated as exercised if such exercise results in an ownership change, and

(v) in attributing stock from an entity under paragraph (2) of section 318(a), there shall not be taken into account—

(I) in the case of attribution from a corporation, stock which is not treated as stock for purposes of this section, or

(II) in the case of attribution from another entity, an interest in such entity similar to stock described in subclause (I).

A rule similar to the rule of clause (iv) shall apply in the case of any contingent purchase, warrant, convertible debt, put, stock subject to a risk of forfeiture, contract to acquire stock, or similar interests.

(B) Stock acquired by reason of death, gift, divorce, separation, etc.

If—

(i) the basis of any stock in the hands of any person is determined—

(I) under section 1014 (relating to property acquired from a decedent),

(II) section 1015 (relating to property acquired by a gift or transfer in trust), or

(III) section 1041(b)(2) (relating to transfers of property between spouses or incident to divorce),

(ii) stock is received by any person in satisfaction of a right to receive a pecuniary bequest, or

(iii) stock is acquired by a person pursuant to any divorce or separation instrument (within the meaning of section 71(b)(2)),

such person shall be treated as owning such stock during the period such stock was owned by the person from whom it was acquired.

(C) Certain changes in percentage ownership which are attributable to fluctuations in value not taken into account

Except as provided in regulations, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

(4) Reduction in value where substantial nonbusiness assets

(A) In general

If, immediately after an ownership change, the new loss corporation has substantial nonbusiness assets, the value of the old loss corporation shall be reduced by the excess (if any) of—

(i) the fair market value of the nonbusiness assets of the old loss corporation, over

(ii) the nonbusiness asset share of indebtedness for which such corporation is liable.

(B) Corporation having substantial nonbusiness assets

For purposes of subparagraph (A)—

(i) In general

The old loss corporation shall be treated as having substantial nonbusiness assets if at least ⅓ of the value of the total assets of such corporation consists of nonbusiness assets.

(ii) Exception for certain investment entities

A regulated investment company to which part I of subchapter M applies, a real estate investment trust to which part II of subchapter M applies, or a REMIC to which part IV of subchapter M applies, shall not be treated as a new loss corporation having substantial nonbusiness assets.

(C) Nonbusiness assets

For purposes of this paragraph, the term ''nonbusiness assets'' means assets held for investment.

(D) Nonbusiness asset share

For purposes of this paragraph, the nonbusiness asset share of the indebtedness of the corporation is an amount which bears the same ratio to such indebtedness as—

(i) the fair market value of the nonbusiness assets of the corporation, bears to

(ii) the fair market value of all assets of such corporation.

(E) Treatment of subsidiaries

For purposes of this paragraph, 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. For purposes of the preceding sentence, a corporation shall be treated as a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, and 50 percent or more of the total value of shares of all classes of stock.

(5) Title 11 or similar case

(A) In general

Subsection (a) shall not apply to any ownership change if—

(i) the old loss corporation is (immediately before such ownership change) under the jurisdiction of the court in a title 11 or similar case, and

(ii) the shareholders and creditors of the old loss corporation (determined immediately before such ownership change) own (after such ownership change and as a result of being shareholders or creditors immediately before such change) stock of the new loss corporation (or stock of a controlling corporation if also in bankruptcy) which meets the requirements of section 1504(a)(2) (determined by substituting ''50 percent'' for ''80 percent'' each place it appears).

(B) Reduction for interest payments to creditors becoming shareholders

In any case to which subparagraph (A) applies, the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed as if no deduction was allowable under this chapter for the interest paid or accrued by the old loss corporation on indebtedness which was converted into stock pursuant to title 11 or similar case during—

(i) any taxable year ending during the 3-year period preceding the taxable year in which the ownership change occurs, and

(ii) the period of the taxable year in which the ownership change occurs on or before the change date.

(C) Coordination with section 108

In applying section 108(e)(8) to any case to which subparagraph (A) applies, there shall not be taken into account any indebtedness for interest described in subparagraph (B).

(D) Section 382 limitation zero if another change within 2 years

If, during the 2-year period immediately following an ownership change to which this paragraph applies, an ownership change of the new loss corporation occurs, this paragraph shall not apply and the section 382 limitation with respect to the 2nd ownership change for any post-change year ending after the change date of the 2nd ownership change shall be zero.

(E) Only certain stock taken into account

For purposes of subparagraph (A)(ii), stock transferred to a creditor shall be taken into account only to the extent such stock is transferred in satisfaction of indebtedness and only if such indebtedness—

(i) was held by the creditor at least 18 months before the date of the filing of the title 11 or similar case, or

(ii) arose in the ordinary course of the trade or business of the old loss corporation and is held by the person who at all times held the beneficial interest in such indebtedness.

(F) Special rule for certain financial institutions

(i) In general

In the case of any ownership change to which this subparagraph applies, this paragraph shall be applied—

(I) by substituting ''1504(a)(2)(B)'' for ''1504(a)(2)'' and ''20 percent'' for ''50 percent'' in subparagraph (A)(ii), and

(II) without regard to subparagraphs (B) and (C).

(ii) Special rule for depositors

For purposes of applying this paragraph to an ownership change to which this subparagraph applies—

(I) a depositor in the old loss corporation shall be treated as a stockholder in such loss corporation immediately before the change,

(II) deposits which, after the change, become deposits of the new loss corporation shall be treated as stock of the new loss corporation, and

(III) the fair market value of the outstanding stock of the new loss corporation shall include the amount of deposits in the new loss corporation immediately after the change.

(iii) Changes to which subparagraph applies

This subparagraph shall apply to—

(I) an equity structure shift which is a reorganization described in section 368(a)(3)(D)(ii)[1] (as modified by section 368(a)(3)(D)(iv)),[1] or

(II) any other equity structure shift (or transaction to which section 351 applies) which occurs as an integral part of a transaction involving a change to which subclause (I) applies.

This subparagraph shall not apply to any equity structure shift or transaction occurring on or after May 10, 1989.

(G) Title 11 or similar case

For purposes of this paragraph, the term ''title 11 or similar case'' has the meaning given such term by section 368(a)(3)(A).

(H) Election not to have paragraph apply

A new loss corporation may elect, subject to such terms and conditions as the Secretary may prescribe, not to have the provisions of this paragraph apply.

(6) Special rule for insolvency transactions

If paragraph (5) does not apply to any reorganization described in subparagraph (G) of section 368(a)(1) or any exchange of debt for stock in a title 11 or similar case (as defined in section 368(a)(3)(A)), the value under subsection (e) shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction.

(7) Coordination with alternative minimum tax

The Secretary shall by regulation provide for the application of this section to the alternative tax net operating loss deduction under section 56(d).

(8) Predecessor and successor entities

Except as provided in regulations, any entity and any predecessor or successor entities of such entity shall be treated as 1 entity.

(m) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section and section 383, including (but not limited to) regulations—

(1) providing for the application of this section and section 383 where an ownership change with respect to the old loss corporation is followed by an ownership change with respect to the new loss corporation, and

(2) providing for the application of this section and section 383 in the case of a short taxable year,

(3) providing for such adjustments to the application of this section and section 383 as is necessary to prevent the avoidance of the purposes of this section and section 383, including the avoidance of such purposes through the use of related persons, pass-thru entities, or other intermediaries,

(4) providing for the application of subsection (g)(4) where there is only 1 corporation involved, and

(5) providing, in the case of any group of corporations described in section 1563(a) (determined by substituting ''50 percent'' for ''80 percent'' each place it appears and determined without regard to paragraph (4) thereof), appropriate adjustments to value, built-in gain or loss, and other items so that items are not omitted or taken into account more than once.

(n) Special rule for certain ownership changes

(1) In general

The limitation contained in subsection (a) shall not apply in the case of an ownership change which is pursuant to a restructuring plan of a taxpayer which—

(A) is required under a loan agreement or a commitment for a line of credit entered into with the Department of the Treasury under the Emergency Economic Stabilization Act of 2008, and

(B) is intended to result in a rationalization of the costs, capitalization, and capacity with respect to the manufacturing workforce of, and suppliers to, the taxpayer and its subsidiaries.

(2) Subsequent acquisitions

Paragraph (1) shall not apply in the case of any subsequent ownership change unless such ownership change is described in such paragraph.

(3) Limitation based on control in corporation

(A) In general

Paragraph (1) shall not apply in the case of any ownership change if, immediately after

[1] See References in Text note below.

such ownership change, any person (other than a voluntary employees' beneficiary association under section 501(c)(9)) owns stock of the new loss corporation possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or of the total value of the stock of such corporation.

(B) Treatment of related persons

(i) In general

Related persons shall be treated as a single person for purposes of this paragraph.

(ii) Related persons

For purposes of clause (i), a person shall be treated as related to another person if—

(I) such person bears a relationship to such other person described in section 267(b) or 707(b), or

(II) such persons are members of a group of persons acting in concert.

(Aug. 16, 1954, ch. 736, 68A Stat. 129; Pub. L. 88–554, §4(b)(3), Aug. 31, 1964, 78 Stat. 763; Pub. L. 94–455, title VIII, §806(e), Oct. 4, 1976, 90 Stat. 1599; Pub. L. 96–589, §2(d), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 97–34, title II, §242, Aug. 13, 1981, 95 Stat. 255; Pub. L. 98–369, div. A, title I, §62(b)(1), July 18, 1984, 98 Stat. 583; Pub. L. 99–514, title VI, §621(a), (e)(1), Oct. 22, 1986, 100 Stat. 2254, 2266; Pub. L. 100–203, title X, §10225(a), (b), Dec. 22, 1987, 101 Stat. 1330–413; Pub. L. 100–647, title I, §1006(d)(1)(A)–(C), (2)–(10), (17)(A), (18)–(28)(A), (29), (t)(22)(A), title IV, §4012(a)(3), (b)(1)(B), title V, §5077(a), Nov. 10, 1988, 102 Stat. 3395–3400, 3426, 3656, 3657, 3683; Pub. L. 101–73, title XIV, §1401(a)(2), Aug. 9, 1989, 103 Stat. 548; Pub. L. 101–239, title VII, §§7205(a), 7304(d)(1), 7811(c)(5)(A), 7815(h), 7841(d)(11), Dec. 19, 1989, 103 Stat. 2335, 2354, 2407, 2420, 2428; Pub. L. 103–66, title XIII, §13226(a)(2)(A), Aug. 10, 1993, 107 Stat. 487; Pub. L. 104–188, title I, §1621(b)(3), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108–357, title VIII, §835(b)(2), Oct. 22, 2004, 118 Stat. 1593; Pub. L. 111–5, div. B, title I, §1262(a), Feb. 17, 2009, 123 Stat. 343.)

REFERENCES IN TEXT

Section 368(a)(3)(D), referred to in subsec. (*l*)(5)(F)(iii)(I), was amended generally by Pub. L. 99–514, title IX, §904(a), Oct. 22, 1986, 100 Stat. 2385, and, as so amended, does not contain a cl. (ii) or (iv).

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (n)(1)(A), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2009—Subsec. (n). Pub. L. 111–5 added subsec. (n).

2004—Subsec. (*l*)(4)(B)(ii). Pub. L. 108–357 substituted ''or a REMIC to which part IV of subchapter M applies,'' for ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,''.

1996—Subsec. (*l*)(4)(B)(ii). Pub. L. 104–188 substituted ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies'' for ''or a REMIC to which part IV of subchapter M applies''.

1993—Subsec. (*l*)(5)(C). Pub. L. 103–66 amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—In any case to which subparagraph (A) applies, 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been applied to reduce tax attributes under section 108(b) shall be so applied.

''(ii) CLARIFICATION WITH SUBPARAGRAPH (B).—In applying clause (i), there shall not be taken into account any indebtedness for interest described in subparagraph (B).''

1989—Subsec. (h)(3)(B)(i). Pub. L. 101–239, §7205(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than 25 percent of the amount determined for purposes of subparagraph (A)(i)(I), the net unrealized built-in gain or net unrealized built-in loss shall be zero.''

Subsec. (h)(6)(B). Pub. L. 101–239, §7811(c)(5)(A)(i), inserted ''(determined without regard to any carryover)'' after ''during the recognition period''.

Subsec. (h)(6)(C). Pub. L. 101–239, §7811(c)(5)(A)(ii), substituted ''which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period'' for ''treated as recognized built-in gains or losses under this paragraph''.

Subsec. (*l*)(3)(B)(i)(III). Pub. L. 101–239, §7841(d)(11), substituted ''incident to divorce),'' for ''incident to divorce,''.

Subsec. (*l*)(3)(C). Pub. L. 101–239, §7304(d)(1), redesignated subpar. (D) as (C) and struck out former subpar. (C) which related to special rule for employee stock ownership plans.

Subsec. (*l*)(3)(C)(ii). Pub. L. 101–239, §7815(h), substituted ''For purposes of subclause (III),'' for ''for purposes of subclause (III),'' in concluding provisions.

Subsec. (*l*)(3)(D). Pub. L. 101–239, §7304(d)(1), redesignated subpar. (D) as (C).

Subsec. (*l*)(5)(F). Pub. L. 101–73 substituted ''on or after May 10, 1989'' for ''after December 31, 1989'' in last sentence.

1988—Subsec. (e)(2). Pub. L. 100–647, §1006(d)(1)(A), inserted ''or other corporate contraction'' after ''redemption'' in heading and in two places in text.

Subsec. (e)(3). Pub. L. 100–647, §1006(d)(17)(A), added par. (3).

Subsec. (g)(1)(A). Pub. L. 100–647, §1006(d)(21)(A), struck out ''new'' after ''stock of the''.

Subsec. (g)(1)(B). Pub. L. 100–647, §1006(d)(21)(B), struck out ''old'' after ''stock of the''.

Subsec. (g)(4)(C). Pub. L. 100–647, §1006(d)(2), inserted ''rules similar to'' after ''provided in regulations,''.

Subsec. (h)(1)(C). Pub. L. 100–647, §1006(d)(3)(A), substituted ''Special rules for certain section 338 gains'' for ''Section 338 gain'' in heading and amended text generally. Prior to amendment, text read as follows: ''The section 382 limitation for any taxable year in which gain is recognized by reason of an election under section 338 shall be increased by the excess of—

''(i) the amount of such gain, over

''(ii) the portion of such gain taken into account in computing recognized built-in gains for such taxable year.''

Subsec. (h)(3)(A)(ii). Pub. L. 100–647, §1006(d)(28)(A), inserted ''to the extent provided in regulations,'' after ''an ownership change,''.

Pub. L. 100–647, §1006(d)(1)(B), inserted ''or other corporate contractions'' after ''redemptions'' in heading and ''or other corporate contraction'' after ''redemption'' in two places in text.

Subsec. (h)(3)(B)(ii). Pub. L. 100–647, §1006(d)(26), inserted ''except as provided in regulations,'' after ''under clause (i),''.

Subsec. (h)(4). Pub. L. 100–647, §1006(d)(20), substituted ''allowed as a carryforward'' for ''treated as a net operating loss'' in heading and inserted ''(or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying

forward of net capital losses)'' after ''net operating losses'' in subpar. (A).

Subsec. (h)(5)(A). Pub. L. 100–647, §1006(d)(3)(B), substituted ''recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as pre-change losses)'' for ''recognized built-in gains and losses''.

Subsec. (h)(6). Pub. L. 100–647, §1006(d)(22), substituted ''Treatment of certain built-in items'' for ''Secretary may treat certain deductions as built-in losses'' in heading and amended text generally. Prior to amendment, text read as follows: ''The Secretary may by regulation treat amounts which accrue on or before the change date but which are allowable as a deduction after such date as recognized built-in losses.''

Subsec. (h)(9). Pub. L. 100–647, §1006(d)(23), substituted ''was acquired (or is subsequently transferred)'' for ''is transferred''.

Subsec. (i)(3). Pub. L. 100–647, §1006(d)(4), inserted ''the earlier of'' after ''not begin before'' and ''or the taxable year in which the transaction being tested occurs'' after ''1st post-change year''.

Subsec. (k)(1). Pub. L. 100–647, §1006(d)(5)(A), inserted ''or having a net operating loss for the taxable year in which the ownership change occurs'' after ''operating loss carryover''.

Subsec. (k)(2). Pub. L. 100–647, §1006(d)(5)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'old loss corporation' means any corporation with respect to which there is an ownership change—

''(A) which (before the ownership change) was a loss corporation, or

''(B) with respect to which there is a pre-change loss described in subsection (d)(1)(B).''

Subsec. (*l*)(3)(A)(iv), (v). Pub. L. 100–647, §1006(d)(6), added cls. (iv) and (v) and struck out former cl. (iv) which read as follows: ''except to the extent provided in regulations, paragraph (4) of section 318(a) shall apply to an option if such application results in an ownership change.''

Subsec. (*l*)(3)(C)(ii). Pub. L. 100–647, §5077(a), added subcl. (III) and concluding provisions.

Subsec. (*l*)(4)(B)(ii). Pub. L. 100–647, §1006(t)(22)(A), substituted ''REMIC'' for ''real estate mortgage pool''.

Subsec. (*l*)(5)(A)(ii). Pub. L. 100–647, §1006(d)(25), substituted ''stock of a controlling corporation'' for ''stock of controlling corporation''.

Pub. L. 100–647, §1006(d)(7), substituted ''after such ownership change and as a result of being shareholders or creditors immediately before such change'' for ''immediately after such ownership change''.

Subsec. (*l*)(5)(B). Pub. L. 100–647, §1006(d)(27), substituted ''the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed'' for ''the net operating loss deduction under section 172(a) for any post-change year shall be determined''.

Subsec. (*l*)(5)(C). Pub. L. 100–647, §1006(d)(18), substituted ''tax attributes'' for ''carryforwards'' in heading and amended text generally. Prior to amendment, text read as follows: ''In any case to which subparagraph (A) applies, the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed as if 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been includible in gross income for any taxable year had been so included.''

Subsec. (*l*)(5)(E). Pub. L. 100–647, §1006(d)(19), substituted ''taken into account'' for ''of creditors taken into account'' in heading and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''For purposes of subparagraph (A)(ii), stock transferred to a creditor in satisfaction of indebtedness shall be taken into account only if such indebtedness—''.

Subsec. (*l*)(5)(F). Pub. L. 100–647, §4012(a)(3), substituted ''1989'' for ''1988'' in last sentence.

Subsec. (*l*)(5)(F)(i)(I). Pub. L. 100–647, §1006(d)(8)(A), inserted ''`1504(a)(2)(B)' for `1504(a)(2)' and'' after ''by substituting''.

Subsec. (*l*)(5)(F)(ii)(III). Pub. L. 100–647, §1006(d)(8)(B), substituted ''the amount of deposits in the new loss corporation immediately after the change'' for ''deposits described in subclause (II)''.

Subsec. (*l*)(5)(F)(iii)(I). Pub. L. 100–647, §4012(b)(1)(B), inserted ''(as modified by section 368(a)(3)(D)(iv))'' after ''section 368(a)(3)(D)(ii)''.

Pub. L. 100–647, §1006(d)(29), which directed amendment of subcl. (I) by substituting ''section 368(a)(3)(D)(ii)'' for ''section 368(a)(D)(ii)'', could not be executed because ''section 368(a)(3)(D)(ii)'' appeared and ''section 368(a)(D)(ii)'' did not appear.

Subsec. (*l*)(6). Pub. L. 100–647, §1006(d)(9), substituted ''shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction'' for ''shall be the value of the new loss corporation immediately after the ownership change''.

Subsec. (*l*)(8). Pub. L. 100–647, §1006(d)(10), added par. (8).

Subsec. (m)(4). Pub. L. 100–647, §1006(d)(1)(C), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''providing for the treatment of corporate contractions as redemptions for purposes of subsections (e)(2) and (h)(3)(A), and''.

Subsec. (m)(5). Pub. L. 100–647, §1006(d)(24), added par. (5).

Pub. L. 100–647, §1006(d)(1)(C), redesignated former par. (5) as (4).

1987—Subsec. (g)(4)(D). Pub. L. 100–203, §10225(a), added subpar. (D).

Subsec. (h)(2)(B). Pub. L. 100–203, §10225(b), inserted at end ''Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii).''

1986—Pub. L. 99–514, §621(a), in amending section generally, in subsec. (a), substituted provisions setting forth general rule that amount of taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed section 382 limitation for such year for provisions relating to change in ownership of corporation and change in its business, description of persons owning corporation, attribution of ownership, and definition of ''purchase'', in subsec. (b), substituted provisions relating to section 382 limitation for provisions relating to change in ownership as result of reorganization, in subsec. (c), substituted provisions relating to disallowance of carryforwards if continuity of business requirements are not met for provisions defining stock as all shares except nonvoting stock which is limited and preferred as to dividends, and added subsecs. (d) to (m).

Pub. L. 99–514, §621(e)(1), repealed amendment by Pub. L. 94–455, §806(e). See 1976 Amendment note below.

1984—Subsec. (b)(1). Pub. L. 98–369, in section as amended by Pub. L. 94–455, substituted ''subparagraph (A), (B), (C), or (F) of section 368(a)(1) or subparagraph (D) or (G) of section 368(a)(1) (but only if the requirements of section 354(b)(1) are met)'' for ''section 368(a)(1)(A), (B), (C), (D) (but only if the requirements of section 354(b)(1) are met, or (F)''.

1981—Subsec. (b)(7). Pub. L. 97–34 designated existing provisions as subpar. (A) and added subpar. (B).

1980—Subsec. (b)(7). Pub. L. 96–589 added par. (7).

1976—Pub. L. 94–455, §806(e), which amended section generally, substituting provisions relating to special limitations on net operating loss carryovers based on continuity of trade or business conducted, for provisions relating to special limitations on net operating loss carryovers based on continuity of ownership, was repealed by Pub. L. 99–514, §621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

1964—Subsec. (a)(3). Pub. L. 88–554 inserted reference to section 318(a)(3)(C) of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1262(b), Feb. 17, 2009, 123 Stat. 344, provided that: ''The amendment made by this section [amending this section] shall apply to ownership changes after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock transferred after Dec. 31, 1994, in satisfaction of any indebtedness, except that such amendment inapplicable to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case filed on or before Dec. 31, 1993, see section 13226(a)(3) of Pub. L. 103–66, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 7205(a) of Pub. L. 101–239 applicable, except as otherwise provided, to ownership changes and acquisitions after Oct. 2, 1989, in taxable years ending after such date, see section 7205(c) of Pub. L. 101–239, set out as a note under section 56 of this title.

Section 7304(d)(2) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply to acquisitions of employer securities after July 12, 1989, except that such amendments shall not apply to acquisitions after July 12, 1989, pursuant to a written binding contract in effect on July 12, 1989, and at all times thereafter before such acquisition.''

Amendment by sections 7811(c)(5)(A) and 7815(h) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 1401(c)(2) of Pub. L. 101–73 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall apply to transactions on or after May 10, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(d)(1)(D) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to ownership changes after June 10, 1987.''

Section 1006(d)(17)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to any ownership change after June 10, 1987. For purposes of the preceding sentence, any equity structure shift pursuant to a plan of reorganization adopted on or before June 10, 1987, shall be treated as occurring when such plan was adopted.''

Section 1006(d)(28)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply in the case of ownership changes on or after June 21, 1988.''

Amendment by section 1006(d)(2)–(10), (18)–(27), (29), (t)(22)(A) 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)(ii) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (B) [amending this section] shall apply to any ownership change occurring after the date of the enactment of this Act [Nov. 10, 1988] and before January 1, 1990.''

Section 5077(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to acquisition after December 31, 1988.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to acquisitions after December 31, 1988, pursuant to a binding written contract entered into on or before October 21, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10225(c) of Pub. L. 100–203 provided that:

''(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply in the case of stock treated as becoming worthless in taxable years beginning after December 31, 1987.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply in the case of ownership changes (as defined in section 382 of the Internal Revenue Code of 1986 as amended by subsection (a)) after December 15, 1987; except that such amendment shall not apply in the case of any ownership change pursuant to a binding written contract which was in effect on December 15, 1987, and at all times thereafter before such ownership change.''

EFFECTIVE DATE OF 1986 AMENDMENT; SAVINGS PROVISIONS

Section 621(f) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1006(d)(11)–(16), title VI, §6277(a), (b), Nov. 10, 1988, 102 Stat. 3397, 3398, 3753, 3754, provided that:

''(1) AMENDMENTS MADE BY SUBSECTIONS (a), (b), AND (c).—

''(A) IN GENERAL.—

''(i) CHANGES AFTER 1986.—The amendments made by subsections (a), (b), and (c) [amending this section and sections 318 and 383 of this title] shall apply to any ownership change after December 31, 1986.

''(ii) PLANS OF REORGANIZATION ADOPTED BEFORE 1987.—For purposes of clause (i), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

''(B) TERMINATION OF OLD SECTION 382.—Except in a case described in any of the following paragraphs—

''(i) section 382(a) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subsection (a) and the amendments made by section 806 of the Tax Reform Act of 1976 [section 806 of Pub. L. 94–455]) shall not apply to any increase in percentage points occurring after December 31, 1988, and

''(ii) section 382(b) of such Code (as so in effect) shall not apply to any reorganization occurring pursuant to a plan of reorganization adopted after December 31, 1986.

In no event shall sections 382(a) and (b) of such Code (as so in effect) apply to any ownership change described in subparagraph (A).

''(C) COORDINATION WITH SECTION 382(i).—For purposes of section 382(i) of the Internal Revenue Code of 1986 (as added by this section), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

''(2) FOR AMENDMENTS TO TAX REFORM ACT OF 1976.—

''(A) IN GENERAL.—The repeals made by subsection (e)(1) [repealing amendments by Pub. L. 94–455, §806(e), (f), amending this section and sections 108, 368, and 383 of this title] and the amendment made by subsection (e)(2) [repealing section 806(g)(2), (3) of Pub. L. 94–455, formerly set out as an Effective Date of 1976 Amendment note below] shall take effect on January 1, 1986.

''(B) ELECTION TO HAVE AMENDMENTS APPLY.—

''(i) If a taxpayer described in clause (ii) elects to have the provisions of this subparagraph apply, the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 [amending this section and sections 108, 368, and 383 of this title] shall apply to the reorganization described in clause (ii).

''(ii) A taxpayer is described in this clause if the taxpayer filed a title 11 or similar case on December 8, 1981, filed a plan of reorganization on February 5, 1986, filed an amended plan on March 14, 1986, and received court approval for the amended plan and disclosure statement on April 16, 1986.

''(C) APPLICATION OF OLD RULES TO CERTAIN DEBT.—In the case of debt of a corporation incorporated in Colorado on November 8, 1924, and reincorporated in Delaware in 1987, with headquarters in Denver, Colorado—

''(i) the amendments made by subsections (a), (b), and (c) shall not apply to any debt restructuring of such debt which was approved by the debtor's Board of Directors and the lenders in 1986, and

''(ii) the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 shall not apply to such debt restructuring, except that the amendment treated as part of such subsections under section 59(b) of the Tax Reform Act of 1984 (relating to qualified workouts) shall apply to such debt restructuring.

''(D) SPECIAL RULE FOR OIL AND GAS WELL DRILLING BUSINESS.—In the case of a Texas corporation incorporated on July 23, 1935, in applying section 382 of the Internal Revenue Code of 1986 (as in effect before and after the amendments made by subsections (a), (b), and (c)) to a loan restructuring agreement during 1985, section 382(a)(5)(C) of the Internal Revenue Code of 1954 (as added by the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976) shall be applied as if it were in effect with respect to such restructuring. For purposes of the preceding sentence, in applying section 382 (as so in effect), if a person has a warrant to acquire stock, such stock shall be considered as owned by such person.

''(3) TESTING PERIOD.—For purposes of determining whether there is an ownership change, the testing period shall not begin before the later of—

''(A) May 6, 1986, or

''(B) in the case of an ownership change which occurs after May 5, 1986, and to which the amendments made by subsections (a), (b), and (c) do not apply, the first day following the date on which such ownership change occurs.

''(4) SPECIAL TRANSITION RULES.—The amendments made by subsections (a), (b), and (c) shall not apply to any—

''(A) stock-for-debt exchanges and stock sales made pursuant to a plan of reorganization with respect to a petition for reorganization filed by a corporation under chapter 11 of title 11, United States Code, on August 26, 1982, and which filed with a United States district court a first amended and related plan of reorganization before March 1, 1986, or

''(B) ownership change of a Delaware corporation incorporated in August 1983, which may result from the exercise of put or call option under an agreement entered into on September 14, 1983, but only with respect to taxable years beginning after 1991 regardless of when such ownership change takes place.

Any regulations prescribed under section 382 of the Internal Revenue Code of 1986 (as added by subsection (a)) which have the effect of treating a group of shareholders as a separate 5-percent shareholder by reason of a public offering shall not apply to any public offering before January 1, 1989, for the benefit of institutions described in section 591 of such Code. Unless the corporation otherwise elects, an underwriter of any offering of stock in a corporation before September 19, 1986 (January 1, 1989, in the case of an offering for the benefit of an institution described in the preceding sentence), shall not be treated as acquiring any stock of such corporation by reason of a firm commitment underwriting to the extent the stock is disposed of pursuant to the offering (but in no event later than 60 days after the initial offering).

''(5) BANKRUPTCY PROCEEDINGS.—Unless the taxpayer elects not to have the provisions of this paragraph apply, in the case of a reorganization described in subparagraph (G) of section 368(a)(1) of the Internal Revenue Code of 1986 or an exchange of debt for stock in a title 11 or similar case, as defined in section 368(a)(3) of such Code, the amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from such a reorganization or proceeding if a petition in such case was filed with the court before August 14, 1986. The determination as to whether an ownership change has occurred during the period beginning January 1, 1987, and ending on the final settlement of any reorganization or proceeding described in the preceding sentence shall be redetermined as of the time of such final settlement.

''(6) CERTAIN PLANS.—The amendments made by subsections (a), (b), and (c) shall not apply to any ownership change with respect to—

''(A) the acquisition of a corporation the stock of which is acquired pursuant to a plan of divestiture which identified such corporation and its assets, and was agreed to by the board of directors of such corporation's parent corporation on May 17, 1985,

''(B) a merger which occurs pursuant to a merger agreement (entered into before September 24, 1985) and an application for approval by the Federal Home Loan Bank Board was filed on October 4, 1985,

''(C) a reorganization involving a party to a reorganization of a group of corporations engaged in enhanced oil recovery operations in California, merged in furtherance of a plan of reorganization adopted by a board of directors vote on September 24, 1985, and a Delaware corporation whose principal oil and gas producing fields are located in California, or

''(D) the conversion of a mutual savings and loan association holding a Federal charter dated March 22, 1985, to a stock savings and loan association pursuant to the rules and regulations of the Federal Home Loan Bank Board.

''(7) OWNERSHIP CHANGE OF REGULATED AIR CARRIER.—The amendments made by subsections (a), (b), and (c) shall not apply to an ownership change of a regulated air carrier if—

''(A) on July 16, 1986, at least 40 percent of the outstanding common stock (excluding all preferred stock, whether or not convertible) of such carrier had been acquired by a parent corporation incorporated in March 1980 under the laws of Delaware, and

''(B) the acquisition (by or for such parent corporation) or retirement of the remaining common stock of such carrier is completed before the later of March 31, 1987, or 90 days after the requisite governmental approvals are finally granted,

but only if the ownership change occurs on or before the later of March 31, 1987, or such 90th day. The aggregate reduction in tax for any taxable year by reason of this paragraph shall not exceed $10,000,000. The testing period for determining whether a subsequent ownership change has occurred shall not begin before the 1st day following an ownership change to which this paragraph applies.

''(8) The amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from the conversion of a Minnesota mutual savings bank holding a Federal charter dated December 31, 1985, to a stock savings bank pursuant to the rules and regulations of the Federal Home Loan Bank Board, and from the issuance of stock pursuant to that conversion to a holding company incorporated in Delaware on February 21, 1984. For purposes of determining whether any ownership change occurs with respect to the holding company or any subsidiary thereof (whether resulting from the transaction described in the preceding sen-

tence or otherwise), any issuance of stock made by such holding company in connection with the transaction described in the preceding sentence shall not be taken into account.

''(9) DEFINITIONS.—Except as otherwise provided, terms used in this subsection shall have the same meaning as when used in section 382 of the Internal Revenue Code of 1986 (as amended by this section).''

[Section 6277(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending section 621(f) of Pub. L. 99–514, set out above] shall take effect as if included in section 621(f)(5) of the Tax Reform Act of 1986 [Pub. L. 99–514].'']

EFFECTIVE DATE OF 1984 AMENDMENT

Section 62(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 4 of the Bankruptcy Tax Act of 1980 [Pub. L. 96–589].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to any transfer made on or after Jan. 1, 1981, see section 246(a) of Pub. L. 97–34, set out as a note under section 368 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2(d) of Pub. L. 96–589 provided that the amendment made by section 2(b) of Pub. L. 96–589 is to subsec. (b) as in effect before its amendment by section 806 of the Tax Reform Act of 1976, Pub. L. 94–455.

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 806(g)(2), (3) of Pub. L. 94–455, as amended by Pub. L. 95–600, title III, § 368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95–615, § 8, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96–167, § 9(e), Dec. 29, 1979, 93 Stat. 1279; Pub. L. 97–119, title I, § 111, Dec. 29, 1981, 95 Stat. 1640; Pub. L. 98–369, div. A, title I, § 62(a), July 18, 1984, 98 Stat. 583, which provided an effective date for the amendments made by section 806(e), (f) of Pub. L. 94–455 for purposes of applying sections 382(a) and 383 (as it relates to section 382(a)) of this title, was repealed by Pub. L. 99–514, title VI, § 621(e)(2), (f)(2), Oct. 22, 1986, 100 Stat. 2266, eff. Jan. 1, 1986.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendment shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

DELAY IN EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 95–600, title III, § 368, Nov. 6, 1978, 92 Stat. 2857, provided for delaying the effective date established by section 806(g)(2), (3) of Pub. L. 94–455, formerly set out above, by substituting ''1980'' for ''1978'', with certain elections.

CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

Pub. L. 111–5, div. B, title I, § 1261, Feb. 17, 2009, 123 Stat. 342, provided that:

''(a) FINDINGS.—Congress finds as follows:

''(1) The delegation of authority to the Secretary of the Treasury under section 382(m) of the Internal Revenue Code of 1986 does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

''(2) Internal Revenue Service Notice 2008–83 is inconsistent with the congressional intent in enacting such section 382(m).

''(3) The legal authority to prescribe Internal Revenue Service Notice 2008–83 is doubtful.

''(4) However, as taxpayers should generally be able to rely on guidance issued by the Secretary of the Treasury legislation is necessary to clarify the force and effect of Internal Revenue Service Notice 2008–83 and restore the proper application under the Internal Revenue Code of 1986 of the limitation on built-in losses following an ownership change of a bank.

''(b) DETERMINATION OF FORCE AND EFFECT OF INTERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPTING BANKS FROM LIMITATION ON CERTAIN BUILT–IN LOSSES FOLLOWING OWNERSHIP CHANGE.—

''(1) IN GENERAL.—Internal Revenue Service Notice 2008–83—

''(A) shall be deemed to have the force and effect of law with respect to any ownership change (as defined in section 382(g) of the Internal Revenue Code of 1986) occurring on or before January 16, 2009, and

''(B) shall have no force or effect with respect to any ownership change after such date.

''(2) BINDING CONTRACTS.—Notwithstanding paragraph (1), Internal Revenue Service Notice 2008–83 shall have the force and effect of law with respect to any ownership change (as so defined) which occurs after January 16, 2009, if such change—

''(A) is pursuant to a written binding contract entered into on or before such date, or

''(B) is pursuant to a written agreement entered into on or before such date and such agreement was described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required by reason of such ownership change.''

REPORT ON DEPRECIATION AND BUILT-IN DEDUCTIONS; REPORT ON BANKRUPTCY WORKOUTS

Section 621(d) of Pub. L. 99–514 directed Secretary of the Treasury or his delegate to, not later than Jan. 1, 1989, conduct a study and report to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate with respect to treatment of depreciation, amortization, depletion, and other built-in deductions for purposes of sections 382 and 383 of this title, and, not later than Jan. 1, 1988, conduct a study and report to committees referred to above with respect to treatment of informal bankruptcy workouts for purposes of sections 108 and 382 of this title, prior to repeal by Pub. L. 101–508, title XI, § 11832(3), Nov. 5, 1990, 104 Stat. 1388–559.

§ 383. Special limitations on certain excess credits, etc.

(a) Excess credits

(1) In general

Under regulations, if an ownership change occurs with respect to a corporation, the amount of any excess credit for any taxable year which may be used in any post-change year shall be limited to an amount determined on the basis of the tax liability which is attributable to so much of the taxable income as does not exceed the section 382 limitation for such post-change year to the extent available after the application of section 382 and subsections (b) and (c) of this section.

(2) Excess credit

For purposes of paragraph (1), the term ''excess credit'' means—

(A) any unused general business credit of the corporation under section 39, and

(B) any unused minimum tax credit of the corporation under section 53.

(b) Limitation on net capital loss

If an ownership change occurs with respect to a corporation, the amount of any net capital loss under section 1212 for any taxable year before the 1st post-change year which may be used in any post-change year shall be limited under regulations which shall be based on the principles applicable under section 382. Such regulations shall provide that any such net capital loss used in a post-change year shall reduce the section 382 limitation which is applied to prechange losses under section 382 for such year.

(c) Foreign tax credits

If an ownership change occurs with respect to a corporation, the amount of any excess foreign taxes under section 904(c) for any taxable year before the 1st post-change taxable year shall be limited under regulations which shall be consistent with purposes of this section and section 382.

(d) Pro ration rules for year which includes change

For purposes of this section, rules similar to the rules of subsections (b)(3) and (d)(1)(B) of section 382 shall apply.

(e) Definitions

Terms used in this section shall have the same respective meanings as when used in section 382, except that appropriate adjustments shall be made to take into account that the limitations of this section apply to credits and net capital losses.

(Added Pub. L. 92–178, title III, § 302(a), Dec. 10, 1971, 85 Stat. 521; amended Pub. L. 94–455, title VIII, § 806(f)(2), title X, § 1031(b)(5), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1605, 1623, 1834; Pub. L. 95–30, title II, § 202(d)(3)(B), (C), May 23, 1977, 91 Stat. 148; Pub. L. 96–222, title I, § 103(a)(6)(G)(xiii), Apr. 1, 1980, 94 Stat. 211; Pub. L. 96–223, title II, § 232(b)(2)(C), (D), Apr. 2, 1980, 94 Stat. 276; Pub. L. 97–34, title II, § 221(b)(1)(C), (D), title III, § 331(d)(1)(C), (D), Aug. 13, 1981, 95 Stat. 246, 294; Pub. L. 98–369, div. A, title IV, § 474(r)(12)(A), (B), July 18, 1984, 98 Stat. 841; Pub. L. 99–514, title VI, § 621(b), (e)(1), Oct. 22, 1986, 100 Stat. 2265, 2266.)

AMENDMENTS

1986—Pub. L. 99–514, § 621(b), amended section generally. Prior to amendment, section read as follows: ''If—

''(1) the ownership and business of a corporation are changed in the manner described in section 382(a)(1), or

''(2) in the case of a reorganization specified in paragraph (2) of section 381(a), there is a change in ownership described in section 382(b)(1)(B),

then the limitations provided in section 382 in such cases with respect to the carryover of net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary, with respect to any unused business credit of the corporation which can otherwise be carried forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212.''

Pub. L. 99–514, § 621(e)(1), repealed amendment by Pub. L. 94–455, § 806(f)(2). See 1976 Amendment note below.

1984—Pub. L. 98–369, § 474(r)(12)(A)(ii), in catchline of section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, substituted ''Special limitations on unused business credits, research credits, foreign taxes, and capital losses'' for ''Special limitations on carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses''.

Pub. L. 98–369, § 474(r)(12)(B)(ii), in catchline of section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(b) of this title, substituted ''business credits, research credits'' for ''investment credits, work incentive program credits''.

Pub. L. 98–369, § 474(r)(12)(B)(ii), in catchline of section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, substituted ''business credits'' for ''investment credits'' and struck out references to work incentive program credits, new employee credits, alcohol fuel credits, and employee stock ownership credits.

Pub. L. 98–369, § 474(r)(12)(A)(i), in section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, substituted ''with respect to any unused business credit of the corporation which can otherwise be carried forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212'' for ''with respect to any unused investment credit of the corporation which can otherwise be carried forward under section 46(b), to any unused work incentive program credit of the corporation which can otherwise be carried forward under section 50A(b), to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(b), to any unused credit of the corporation which could otherwise be carried forward under section 44E(e)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44F(g)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44G(b)(2), to any excess foreign taxes of the corporation which can otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212''.

Pub. L. 98–369, § 474(r)(12)(B)(i), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(b) of this title, substituted ''with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212'' for ''with respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212''.

Pub. L. 98–369, § 474(r)(12)(B)(i), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, substituted ''with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212'' for ''with re-

spect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any unused new employee credit of the corporation under section 53(b), to any unused credit of the corporation under section 44E(e)(2), to any unused credit of the corporation under section 44F(g)(2), to any unused credit of the corporation under section 44G(b)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212''.

1981—Pub. L. 97–34, §331(d)(1)(C)(ii), (D)(ii), in catchlines of sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94–455, §806(f)(2), inserted reference to employee stock ownership credits.

Pub. L. 97–34, §331(d)(1)(D)(i), in section 383, as in effect prior to amendment by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted ''to any unused credit of the corporation which could otherwise be carried forward under section 44G(b)(2),''.

Pub. L. 97–34, §331(d)(1)(C)(i), in section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted ''to any unused credit of the corporation under section 44G(b)(2),''.

Pub. L. 97–34, §221(b)(1)(C)(ii), (D)(ii), in catchlines of sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94–455, §806(f)(2), inserted reference to research credits.

Pub. L. 97–34, §221(b)(1)(D)(i), in section 383, as in effect prior to amendment by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted ''to any unused credit of the corporation which could otherwise be carried forward under section 44F(g)(2),'' after ''section 44E(e)(2),''.

Pub. L. 97–34, §221(b)(1)(C)(i), in section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted ''to any unused credit of the corporation under section 44F(g)(2),'' after ''section 44E(e)(2),''.

1980—Pub. L. 96–223, §232(b)(2)(D), in section 383, as in effect prior to amendment by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted reference to unused alcohol fuel credits in section catchline and reference to any unused credit of the corporation which could otherwise be carried forward under section 44E(e)(2) in text.

Pub. L. 96–223, §232(b)(2)(C), in section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted reference to unused alcohol fuel credits in section catchline and reference to any unused credit of the corporation under section 44E(e)(2) in text.

Pub. L. 96–222, in sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94–455, §806(f)(2), substituted ''section 53(b)'' for ''section 53(c)''.

1977—Pub. L. 95–30, §202(d)(3)(C), in section 383, as in effect prior to amendment by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted ''to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(c)'' in text and ''new employee credits,'' in catchline.

Pub. L. 95–30, §202(d)(3)(B), in section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted ''to any unused new employee credit of the corporation under section 53(c)'' in text and ''new employee credits,'' in section catchline.

1976—Pub. L. 94–455, §§1031(b)(5), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'', and substituted ''section 904(c)'' for ''section 904(d)'', respectively, in section 383 set out first.

Pub. L. 94–455, §806(f)(2), which substituted, in sections 383 as related to section 382(a) and (b) of this title, provisions that the net operating loss limitations in section 382 shall apply to unused investment credits under section 46(b), to unused work incentive program credits under section 50A(b), to excess foreign taxes under section 904(d) and to net capital losses under section 1212 for provisions that the net operating loss carryover limitations in section 382 shall apply, in the case of ownership changes described in section 382(a)(1) or reorganizations specified in section 381(a)(2) resulting in ownership changes described in section 382(b)(1)(B), to unused investment credits under section 46(b), to unused work incentive program credits under section 50A(B), to excess foreign taxes under section 904(c), and to net capital losses under section 1212, was repealed by Pub. L. 99–514, §621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 621(b) of Pub. L. 99–514 applicable to any ownership change after Dec. 31, 1986, except as otherwise provided, see section 621(f) of Pub. L. 99–514, as amended, set out as a note under section 382 of this title.

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.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 221(b)(1)(C), (D) of Pub. L. 97–34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97–34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(1)(C), (D) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as an Effective Date note under section 40 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, Nov. 6, 1978, 92 Stat. 2763, 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 1976 AMENDMENT

For effective date of amendment by section 1031(b)(5) of Pub. L. 94–455, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

For purposes of applying this section (as it relates to section 382(a) of this title) as amended by section 806(e), (f) of Pub. L. 94–455, the amendments made by section 806(e), (f) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1985, with specified provisions for determining the beginning of the taxable years specified in section 382(a)(1)(B)(ii) of this title, and this section (as it relates to section 382(b) of this title) as amended by section 806(e), (f) of Pub. L. 94–455 to apply (and such sections as in effect prior to such amendment not to apply) to reorganizations pursuant to a plan of reorganization adopted by one or more of the parties thereto on or after Jan. 1, 1986, see section 806(g)(2), (3) of Pub. L. 94–455, as amended, formerly set out as a note under section 382 of this title.

EFFECTIVE DATE

Section 302(c) of Pub. L. 92–178 provided that: ''The amendments made by this section [enacting this section] shall be applicable only with respect to reorganizations and other changes in ownership occurring after the date of enactment of this Act [Dec. 10, 1971] pursuant to a plan of reorganization or contract entered into on or after September 29, 1971.''

DELAY IN EFFECTIVE DATE OF 1976 AMENDMENT

For election by taxpayer for application of prior law with respect to any acquisition or reorganization occurring before the end of the taxpayer's first taxable year beginning after June 30, 1978, see section 368 of Pub. L. 95–600, set out as a Delay in Effective Date of 1976 Amendment note under section 382 of this title.

§ 384. Limitation on use of preacquisition losses to offset built-in gains

(a) General rule

If—

(1)(A) a corporation acquires directly (or through 1 or more other corporations) control of another corporation, or

(B) the assets of a corporation are acquired by another corporation in a reorganization described in subparagraph (A), (C), or (D) of section 368(a)(1), and

(2) either of such corporations is a gain corporation,

income for any recognition period taxable year (to the extent attributable to recognized built-in gains) shall not be offset by any preacquisition loss (other than a preacquisition loss of the gain corporation).

(b) Exception where corporations under common control

(1) In general

Subsection (a) shall not apply to the preacquisition loss of any corporation if such corporation and the gain corporation were members of the same controlled group at all times during the 5-year period ending on the acquisition date.

(2) Controlled group

For purposes of this subsection, the term ''controlled group'' means a controlled group of corporations (as defined in section 1563(a)); except that—

(A) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears,

(B) the ownership requirements of section 1563(a) must be met both with respect to voting power and value, and

(C) the determination shall be made without regard to subsection (a)(4) of section 1563.

(3) Shorter period where corporations not in existence for 5 years

If either of the corporations referred to in paragraph (1) was not in existence throughout the 5-year period referred to in paragraph (1), the period during which such corporation was in existence (or if both, the shorter of such periods) shall be substituted for such 5-year period.

(c) Definitions

For purposes of this section—

(1) Recognized built-in gain

(A) In general

The term ''recognized built-in gain'' means any gain recognized during the recognition period on the disposition of any asset except to the extent the gain corporation (or, in any case described in subsection (a)(1)(B), the acquiring corporation) establishes that—

(i) such asset was not held by the gain corporation on the acquisition date, or

(ii) such gain exceeds the excess (if any) of—

(I) the fair market value of such asset on the acquisition date, over

(II) the adjusted basis of such asset on such date.

(B) Treatment of certain income items

Any item of income which is properly taken into account for any recognition period taxable year but which is attributable to periods before the acquisition date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account and shall be taken into account in determining the amount of the net unrealized built-in gain.

(C) Limitation

The amount of the recognized built-in gains for any recognition period taxable year shall not exceed—

(i) the net unrealized built-in gain, reduced by

(ii) the recognized built-in gains for prior years ending in the recognition period which (but for this section) would have been offset by preacquisition losses.

(2) Acquisition date

The term ''acquisition date'' means—

(A) in any case described in subsection (a)(1)(A), the date on which the acquisition of control occurs, or

(B) in any case described in subsection (a)(1)(B), the date of the transfer in the reorganization.

(3) Preacquisition loss

(A) In general

The term ''preacquisition loss'' means—

(i) any net operating loss carryforward to the taxable year in which the acquisition date occurs, and

(ii) any net operating loss for the taxable year in which the acquisition date occurs to the extent such loss is allocable to the period in such year on or before the acquisition date.

Except as provided in regulations, the net operating loss shall, for purposes of clause (ii), be allocated ratably to each day in the year.

(B) Treatment of recognized built-in loss

In the case of a corporation with a net unrealized built-in loss, the term ''preacquisition loss'' includes any recognized built-in loss.

(4) Gain corporation

The term ''gain corporation'' means any corporation with a net unrealized built-in gain.

(5) Control

The term ''control'' means ownership of stock in a corporation which meets the requirements of section 1504(a)(2).

(6) Treatment of members of same group

Except as provided in regulations and except for purposes of subsection (b), all corporations

which are members of the same affiliated group immediately before the acquisition date shall be treated as 1 corporation. To the extent provided in regulations, section 1504 shall be applied without regard to subsection (b) thereof for purposes of the preceding sentence.

(7) Treatment of predecessors and successors

Any reference in this section to a corporation shall include a reference to any predecessor or successor thereof.

(8) Other definitions

Except as provided in regulations, the terms ''net unrealized built-in gain'', ''net unrealized built-in loss'', ''recognized built-in loss'', ''recognition period'', and ''recognition period taxable year'', have the same respective meanings as when used in section 382(h), except that the acquisition date shall be taken into account in lieu of the change date.

(d) Limitation also to apply to excess credits or net capital losses

Rules similar to the rules of subsection (a) shall also apply in the case of any excess credit (as defined in section 383(a)(2)) or net capital loss.

(e) Ordering rules for net operating losses, etc.

(1) Carryover rules

If any preacquisition loss may not offset a recognized built-in gain by reason of this section, such gain shall not be taken into account in determining under section 172(b)(2) the amount of such loss which may be carried to other taxable years. A similar rule shall apply in the case of any excess credit or net capital loss limited by reason of subsection (d).

(2) Ordering rule for losses carried from same taxable year

In any case in which—

(A) a preacquisition loss for any taxable year is subject to limitation under subsection (a), and

(B) a net operating loss from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset 1st by the loss subject to such limitation.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to ensure that the purposes of this section may not be circumvented through—

(1) the use of any provision of law or regulations (including subchapter K of this chapter), or

(2) contributions of property to a corporation.

(Added Pub. L. 100–203, title X, §10226(a), Dec. 22, 1987, 101 Stat. 1330–414; amended Pub. L. 100–647, title II, §2004(m)(1)–(4), Nov. 10, 1988, 102 Stat. 3606, 3607; Pub. L. 101–239, title VII, §7812(c)(1), Dec. 19, 1989, 103 Stat. 2412.)

AMENDMENTS

1989—Subsec. (e)(1). Pub. L. 101–239 substituted ''built-in gain'' for ''build-in gain''.

1988—Subsec. (a). Pub. L. 100–647, §2004(m)(1)(A), amended subsec. (a) generally, making changes in substance and structure.

Subsec. (b). Pub. L. 100–647, §2004(m)(3), substituted ''corporations under common control'' for ''50 percent of gain corporation held'' in heading and amended text generally. Prior to amendment, text read as follows: ''Subsection (a) shall not apply if more than 50 percent of the stock (by vote and value) of the gain corporation was held throughout the 5-year period ending on the acquisition date—

''(1) in any case described in subsection (a)(1), by members of the affiliated group referred to in subsection (a)(1), or

''(2) in any case described in subsection (a)(2), by the acquiring corporation or members of such acquiring corporation's affiliated group.

For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account.''

Subsec. (c)(1)(A). Pub. L. 100–647, §2004(m)(1)(D), substituted ''subsection (a)(1)(B)'' for ''subsection (a)(2)''.

Subsec. (c)(2). Pub. L. 100–647, §2004(m)(1)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'acquisition date' means the date on which the gain corporation becomes a member of the affiliated group or, in any case described in subsection (a)(2), the date of the distribution or transfer in the liquidation or reorganization.''

Subsec. (c)(4) to (8). Pub. L. 100–647, §2004(m)(1)(B), redesignated par. (4) as (8) and added pars. (4) to (7).

Subsecs. (e), (f). Pub. L. 100–647, §2004(m)(2), (4), substituted ''a corporation'' for ''the gain corporation'' in subsec. (e)(2), redesignated subsec. (e) as (f), and added subsec. (e).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the 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

Section 10226(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting this section] shall apply in cases where the acquisition date (as defined in section 384(c)(2) of the Internal Revenue Code of 1986 as added by this section) is after December 15, 1987; except that such amendments shall not apply in the case of any transaction pursuant to—

''(1) a binding written contract in effect on or before December 15, 1987, or

''(2) a letter of intent or agreement of merger signed on or before December 15, 1987.''

ELECTION TO HAVE AMENDMENTS BY PUB. L. 100–647 NOT APPLY

Section 2004(m)(5) of Pub. L. 100–647 provided that: ''In any case where the acquisition date (as defined in section 384(c)(2) of the 1986 Code as amended by this subsection) is before March 31, 1988, the acquiring corporation may elect to have the amendments made by this subsection not apply. Such an election shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe and shall be made not later than the later of the due date (including extensions) for filing the return for the taxable year of the acquiring corporation in which the acquisition date occurs or the date 120 days after the date of the enactment of this Act [Nov. 10, 1989]. Such an election, once made, shall be irrevocable.''

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.