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(b) Transferee corporation. Except as provided in paragraph (c) of this section, every transferee corporation must include a statement entitled, “STATEMENT PURSUANT TO § 1.354–3(b) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A TRANSFEREE CORPORATION,” on or with its income tax return for the taxable year of the exchange. If the transferee corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and taxpayer identification number (if any) of every significant transferor;
(2) The date(s) of the transfer(s) of assets;
(3) The aggregate fair market value and basis, determined immediately before the exchange, of all of the property received in the exchange; and
(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the section 351 exchange.

(c) Exception for certain transferee corporations. The transferee corporation is not required to file a statement under paragraph (b) of this section if all of the information that would be included in the statement described in paragraph (b) of this section is included in any statement(s) described in paragraph (a) of this section that is attached to the same return for the same section 351 exchange.

(d) Definitions. For purposes of this section:

(1) Significant transferor means a person that transferred property to a corporation and received stock of the transferee corporation in an exchange described in section 351 if, immediately after the exchange, such person—
(i) Owned at least five percent (by vote or value) of the total outstanding stock of the transferee corporation if the stock owned by such person is not publicly traded,
(ii) Owned at least one percent (by vote or value) of the total outstanding stock of the transferee corporation if the stock owned by such person is publicly traded.

(e) Substantiation information. Under §1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all transferred property, and relevant facts regarding any liabilities assumed or extinguished as part of such exchange.

(f) Effective/applicability date. This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.351–3 as contained in 26 CFR part 1 in effect on April 1, 2006.

[T.D. 9329, 72 FR 32798, June 14, 2007]
to him. The exchanges to which section 354 applies must be pursuant to a plan of reorganization as provided in section 368(a) and the stock and securities surrendered as well as the stock and securities received must be those of a corporation which is a party to the reorganization. Section 354 does not apply to exchanges pursuant to a reorganization described in section 368(a)(1)(D) unless the transferor corporation—
   (1) Transfers all or substantially all of its assets to a single corporation, and
   (2) Distributes all of its remaining properties (if any) and the stock, securities and other properties received in the exchange to its shareholders or security holders in pursuance of the plan of reorganization. The fact that properties retained by the transferor corporation, or received in exchange for the properties transferred in the reorganization, are used to satisfy existing liabilities not represented by securities and which were incurred in the ordinary course of business before the reorganization does not prevent the application of section 354 to an exchange pursuant to a plan of reorganization defined in section 368(a)(1)(D).

(b) Except as provided in section 354 (c) and (d), section 354 is not applicable to an exchange of stock or securities if a greater principal amount of securities is received than the principal amount of the securities surrendered or if securities are received and the recipient surrenders no securities. See, however, section 356 and regulations pertaining to such section.

(c) An exchange of stock or securities shall be subject to section 354(a)(1) even though—
   (1) Such exchange is not pursuant to a plan of reorganization described in section 368(a), and
   (2) The principal amount of the securities received exceeds the principal amount of the securities surrendered or if securities are received and no securities are surrendered.

Example 1. Pursuant to a reorganization under section 368(a) to which Corporations T and W are parties, A, a shareholder in Corporation T, surrenders all his common stock in Corporation T in exchange for common stock of Corporation W. No gain or loss is recognized to A.

Example 2. Pursuant to a reorganization under section 368(a) to which Corporations X and Y (which are not railroad corporations) are parties, B, a shareholder in Corporation X, surrenders all his stock in X for stock and securities in Y. Section 354 does not apply to this exchange. See, however, section 356.

Example 3. C, a shareholder in Corporation Z (which is not a railroad corporation), surrenders all his stock in Corporation Z in exchange for securities in Corporation Z. Whether or not this exchange is in connection with a recapitalization under section 368(a)(1)(E), section 354 does not apply. See, however, section 302.

Example 4. The facts are the same as in Example 3 of this paragraph (d), except that C receives solely rights to acquire stock in Corporation Z. Section 354 does not apply.

(e) Except as provided in §1.356–6, for purposes of this section and section 356(d)(2)(B), a right to acquire stock has no principal amount. For this purpose, rights to acquire stock has the same meaning as it does under sections 305 and 317(a). Other Internal Revenue Code provisions governing the treatment of rights to acquire stock may also apply to certain exchanges occurring in connection with a reorganization. See, for example, sections 83 and 421 through 424 and the regulations thereunder. This paragraph (e) applies to exchanges occurring on or after March 9, 1998.

(f) See §1.356–7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)).
§ 1.355–0

In order to facilitate the use of §§1.355–1 through 1.355–7, this section lists the major paragraphs in those sections as follows:

§ 1.355–1 DISTRIBUTION OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION.

(a) Effective date of certain sections.
(b) Application of section.

§ 1.355–2 LIMITATIONS.

(a) Property distributed.
(b) Independent business purpose.
(1) Independent business purpose requirement.
(2) Corporate business purpose.
(3) Business purpose for distribution.
(4) Business purpose as evidence of non-device.
(b) Examples.
(c) Continuity of interest requirement.
(1) Requirement.
(2) Examples.
(d) Device for distribution of earnings and profits.
(1) In general.
(2) Device factors.
(3) In general.
(4) Pro rata distribution.
(ii) Subsequent sale or exchange of stock.
(A) In general.
(B) Sale or exchange negotiated or agreed upon before the distribution.
(C) Sale or exchange not negotiated or agreed upon before the distribution.
(D) Negotiated or agreed upon before the distribution.
(E) Exchange in pursuance of a plan of reorganization.
(iv) Nature and use of assets.
(A) In general.
(B) Assets not used in a trade or business meeting the requirement of section 355(b).
(C) Related function.
(D) Nondevice factors.
(1) In general.
(2) Corporate business purpose.
(iii) Distributing corporation publicly traded and widely held.
(iv) Distribution to domestic corporate shareholders.
(2) Examples.
(3) Transactions ordinarily not considered as a device.
(i) In general.
(ii) Absence of earnings and profits.
(iii) Section 303(a) transactions.
(iv) Section 302(a) transactions.
(v) Examples.
(e) Stock and securities distributed.
(1) In general.
(2) Additional rules.
(f) Principal amount of securities.
(1) Securities received.
(2) Only stock received.
(g) Significant distributee.
(h) Active conduct of a trade or business.

§ 1.355–3 ACTIVE CONDUCT OF A TRADE OR BUSINESS.

(a) General requirements.
(b) Application of section 355.
(c) Examples.
(b) Active conduct of a trade or business defined.
(1) In general.
(2) Active conduct or a trade or business immediately after distribution.
(i) In general.
(ii) Trade or business.
(iii) Active conduct.
(iv) Limitations.
(3) Active conduct for five-year period preceding distribution.
(1) General rules.
(2) Example.
(3) Gain or loss recognized in certain transactions.
(iv) Affiliated group.
(c) Examples.

§ 1.355–4 NON PRO RATA DISTRIBUTIONS, ETC.

§ 1.355–5 Records to be kept and information to be filed.
(1) In general.
(2) Special rule when an asset transfer precedes a stock distribution.
(b) Significant distributee.
(c) Definitions.
(1) Significant distributee.
(2) Publicly traded stock.
(d) Substantiation information.
(e) Effective/applicability date.