A section 336(e) election with respect to Target Subsidiary is also made.

(ii) *Determination of ADADP*. The ADADP on the deemed asset disposition of Target Subsidiary is determined as follows. The grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of Target Subsidiary is $2,750, ($2,500 ADADP allocable to Asset 2, the 100 shares of the stock of Target Subsidiary owned by Target, divided by .909, the percentage of Target Subsidiary stock by value, determined on the disposition date, attributable to the recently disposed stock ($2,750 (100 shares of the stock of Target Subsidiary deemed disposed in the qualified stock disposition × $27.50, the value of a share of Target Subsidiary stock on the disposition date) divided by $3,025 (110, the total number of shares of Target Subsidiary stock × $27.50, the value of a share of Target Subsidiary stock on the disposition date)), minus $0, Seller's selling costs in connection with the deemed sale of the 100 shares of Target Subsidiary stock). The $2,750 grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of Target Subsidiary is then added to the liabilities of Old Target Subsidiary, $0, to arrive at the ADADP of Target Subsidiary, $2,750.

(iii) *Allocation of ADADP*. Because Assets 4 and 5 are each assets of the same class, and the total fair market value of Assets 4 and 5 exceeds the $2,750 ADADP of Target Subsidiary, the $2,750 ADADP is allocated to Assets 4 and 5 in proportion to their respective fair market values. Accordingly, $909 is allocated to Asset 4 ($2,750 × ($1,000/($1,000 + $2,025))) and $1,841 is allocated to Asset 5 ($2,750 × ($2,025/($1,000 + $2,025))).

Example 3. (i) Seller owns all 100 of the outstanding shares of the common stock of Target, the only class of Target stock outstanding. On January 1 of Year 1, Seller sells 10 shares of Target stock to A for $6,000 ($600 per share). On August 1 of Year 1, Seller distributes the remaining 90 shares of Target stock to its unrelated shareholders in a transaction described in section 355(d)(2) or (e)(2). The value of Target stock on August 1 is $560 per share. Target has two assets, Asset 1, which is stock in trade of Target, a Class IV asset, with a basis of $15,000 and a value of $50,000, and Asset 2, which is stock in a publicly traded, unrelated corporation, a Class II asset, with a basis of $38,000 and a value of $16,000. Target has no liabilities other than any liabilities for Federal tax on account of the deemed asset disposition. Assume Target's Federal tax rate for any gain or income on the deemed asset disposition is 34 percent. Seller had no selling costs in connection with its sale of the 10 shares of Target stock. A section 336(e) election is made.

(ii) Because at least 80 percent of Target stock was disposed of (within the meaning of § 1.336–1(b)(5)) by Seller during the 12-month disposition period, a qualified stock disposition occurred. August 1 of Year 1 is the disposition date. Accordingly, pursuant to the section 336(e) election, for Federal income tax purposes, Target is treated as if, on August 1, it sold all of its assets to an unrelated person in exchange for the ADADP.

(iii) Under these facts, although a portion of the qualified stock disposition was the result of a stock distribution, because the grossed-up amount realized on the disposition of recently disposed stock of Target, $56,400 (($6,000 + ($560 × 90))/1) exceeds Target's total basis in its assets, none of the losses realized on the deemed asset disposition are disallowed under § 1.336–2(b)(2)(i)(B)(*2*). Because the grossed-up amount realized on the disposition of recently disposed stock of Target exceeds the value of Asset 2, the ADADP allocated to Asset 2 equals the value of Asset 2, $16,000, and Target realizes a $22,000 loss on the deemed disposition of Asset 2. None of this loss is disallowed under section 1091. See § 1.336–2(b)(2)(ii)(C). Accordingly, Target recognizes a $22,000 loss on the deemed disposition of Asset 2.

(iv) The ADADP allocated to Asset 1 is determined as follows (for purposes of this *Example 3*, TotADADP is the total ADADP for the deemed asset disposition, A1ADADP is the tentative amount of the total ADADP allocated to Asset 1, A2ADADP is the amount of the total ADADP allocated to Asset 2, G is the grossed-up amount realized on the disposition of recently disposed stock of Target, L is Target's liabilities other than Target's tax liability for the deemed disposition tax consequences, T_R is the applicable tax rate, and B1 is the adjusted basis of Asset 1 and B2 is the adjusted basis of Asset 2):

TotADADP = G + L + (T_R × (TotADADP − B1 − B2))
A1ADADP = TotADADP − A2ADADP
A2ADADP = $16,000
A1ADADP = TotADADP − $16,000
G = ($6,000 + ($560 × 90))/1
G = $56,400
TotADADP = $56,400 + 0 + (.34 × (TotADADP − $15,000 − $38,000))
TotADADP = $56,400 + .34TotADADP − $18,020
.66TotADADP = $38,380
TotADADP = $58,152
A1ADADP = $42,152

(v) Because A1ADADP, $42,152, does not exceed the value of Asset 1, $50,000, the entire A1ADADP is allocated to Asset 1. Old Target thus realizes and recognizes a gain of $27,152 on the deemed disposition of Asset 1 ($42,152 − $15,000).

[T.D. 9619, 78 FR 28474, May 15, 2013]

§ 1.336–4 Adjusted grossed-up basis.

(a) *Scope*. Except as provided in paragraphs (b) and (c) of this section or as the context otherwise requires, the

principles of paragraphs (b) through (g) of §1.338–5 apply in determining the adjusted grossed-up basis (AGUB) for target and the consequences of a gain recognition election. AGUB is the amount for which new target is deemed to have purchased all of its assets in the deemed purchase under §1.336–2(b)(1)(ii) or the amount for which old target is deemed to have purchased all of its assets in the deemed purchase under §1.336–2(b)(2)(ii). AGUB is allocated among target's assets in accordance with §1.338–6 to determine the price at which the assets are deemed to have been purchased. If a subsequent increase or decrease with respect to an element of AGUB is required under general principles of tax law, redetermined AGUB is allocated among target's assets in accordance with §1.338–7.

(b) *Modifications to the principles in §1.338–5*. Solely for purposes of applying §§1.336–1 through 1.336–4, the principles of §1.338–5 are modified as follows—

(1) *Purchasing corporation; purchaser*. Any reference to the *purchasing corporation* shall be treated as a reference to a purchaser, as defined in §1.336–1(b)(2).

(2) *Acquisition date; disposition date*. Any reference to the *acquisition date* shall be treated as a reference to the disposition date, as defined in §1.336–1(b)(8).

(3) *Section 338 election; section 338(h)(10) election; section 336(e) election*. Any reference to a *section 338 election* or a *section 338(h)(10) election* shall be treated as a reference to a section 336(e) election, as defined in §1.336–1(b)(11).

(4) *New target; old target*. In the case of a disposition described in section 355(d)(2) or (e)(2), any reference to *new target* shall be treated as a reference to *old target* in its capacity as the purchaser of assets pursuant to the section 336(e) election.

(5) *Recently purchased stock; recently disposed stock*. Any reference to *recently purchased stock* shall be treated as a reference to recently disposed stock, as defined in §1.336–1(b)(17). In the case of a distribution of stock, for purposes of determining the purchaser's grossed-up basis of recently disposed stock, the purchaser's basis in recently disposed stock shall be deemed to be such stock's fair market value on the date it was acquired.

(6) *Nonrecently purchased stock; nonrecently disposed stock*. Any reference to *nonrecently purchased stock* shall be treated as a reference to nonrecently disposed stock, as defined in §1.336–1(b)(18).

(c) *Gain recognition election*—(1) *In general*. Any holder of nonrecently disposed stock of target may make a gain recognition election. The gain recognition election is irrevocable. Each owner of nonrecently disposed stock determines its basis amount, and therefore the gain recognized pursuant to the gain recognition election, by applying §§1.338–5(c) and 1.338–5(d)(3)(ii) by reference to its own recently disposed stock and nonrecently disposed stock, and not by reference to all recently disposed stock and nonrecently disposed stock.

(2) *80-percent purchaser*. If a section 336(e) election is made for target, any 80-percent purchaser and all persons related to the 80-percent purchaser are automatically deemed to have made a gain recognition election for its nonrecently disposed target stock.

(3) *Non-80-percent purchaser*. If not automatically deemed made under paragraph (c)(2) of this section, a gain recognition election is made by a non-80-percent purchaser providing, on or before the due date for filing the section 336(e) election statement by the appropriate party, a gain recognition election statement, as described in paragraph (c)(4) of this section, to the appropriate party. If seller and target are members of the same consolidated group, seller is the appropriate party and the common parent of the consolidated group must retain the gain recognition election statement. If seller and target are members of the same affiliated group but do not join in the filing of a consolidated Federal income tax return, or if target is an S corporation, target is the appropriate party and target must retain the gain recognition election statement. If a non-80-percent purchaser makes a gain recognition election, all related persons to the non-80-percent purchaser must also make a gain recognition election. Otherwise, the gain recognition election

for the non-80-percent purchaser will have no effect.

(4) *Gain recognition election statement.* A gain recognition election statement must include the following declarations (or substantially similar declarations):

(i) [Insert name, address, and taxpayer identifying number of person for whom gain recognition election is actually being made] has elected to recognize gain under § 1.336–4(c) with respect to [his, hers, or its] nonrecently disposed stock.

(ii) [Insert name of person for whom gain recognition election is actually being made] agrees to report any gain under the gain recognition election on [his, hers, or its] Federal income tax return (including an amended return, if necessary) for the taxable year that includes the disposition date of [insert name and employer identification number of target].

(d) *Examples.* The following examples illustrate the provisions of this section.

Example 1. On January 1 of Year 1, Seller owns 85 shares of Target stock, A owns 8 shares, B owns 4 shares, and C owns the remaining 3 shares. Each of A's 8 shares, B's 4 shares, and C's 3 shares have a $5 basis. Assume that Target has no liabilities. On July 1 of Year 2, Seller sells 70 shares of Target stock to A for $10 per share. On September 1 of Year 2, Seller sells 5 shares of Target stock to B and 5 shares of Target stock to C for $14 per share. A section 336(e) election is made. A does not make a gain recognition election. A incurs $25 of acquisition costs and B and C each incur $10 of acquisition costs in connection with their respective Year 2 purchases. These costs are capitalized in the basis of Target stock. September 1 of Year 2 is the disposition date. Because A owns at least 10 percent of Target stock on September 1, the disposition date, and A's original 8 shares of Target stock owned on January 1 of Year 1 were not disposed of in the qualified stock disposition, A's original 8 shares of Target stock are nonrecently disposed stock. Although B's original 4 shares and C's original 3 shares were not disposed of in the qualified stock disposition, because neither B nor C owns, with the application of section 318(a), other than section 318(a)(4), at least 10 percent of the total voting power or value of Target stock on the disposition date, their original shares are not nonrecently disposed stock. The grossed-up basis of recently disposed Target stock is $1,011, determined as follows: The purchasers' (A, B, and C) aggregate basis in the recently disposed target stock, determined without regard to acquisition costs, is $840 ((70 × $10) + (5 × $14) + (5 × $14)). This amount is multiplied by a fraction, the numerator of which is 100 minus 8, the percentage of Target stock that is nonrecently disposed stock, and the denominator of which is 80, the percentage of Target stock attributable to recently disposed stock ($840 × 92/80 = $966). This amount is then increased by the $45 of acquisition costs incurred by A, B, and C to arrive at the $1,011 grossed-up basis of recently disposed Target stock ($966 + $45 = $1,011). New Target's AGUB is $1,051, the sum of $1,011, the grossed-up basis of recently disposed Target stock and $40 (8 × $5), A's basis in his nonrecently disposed Target stock.

Example 2. The facts are the same as in *Example 1* except that A makes a gain recognition election. Pursuant to the gain recognition election, A is treated as if he sold on September 1 of Year 2, the disposition date, his 8 shares of nonrecently disposed Target stock for the basis amount, and A's basis in nonrecently disposed target stock immediately after the deemed sale is the basis amount. A's basis amount equals his basis in his recently disposed Target stock without regard to acquisition costs, $700 (70 × $10), multiplied by a fraction, the numerator of which is 100 minus 8, the percentage of Target stock, by value, determined on the disposition date, which is A's nonrecently disposed Target stock, and the denominator of which is 70, the percentage of Target stock, by value, determined on the disposition date, which is A's recently disposed stock, which is then multiplied by a fraction, the numerator of which is 8, the percentage of Target stock, by value, determined on the disposition date, attributable to A's nonrecently disposed Target stock and the denominator of which is 100 minus the numerator amount. Accordingly, A's basis amount is $80 ($700 × 92/70 × 8/92). A therefore recognizes gain of $40 under the gain recognition election ($80 basis amount minus A's $40 basis in his nonrecently disposed stock prior to the gain recognition election). New Target's AGUB is $1,091, the sum of $1,011, the grossed-up basis of all recently disposed Target stock and $80, A's basis in his nonrecently disposed Target stock pursuant to the gain recognition election.

Example 3. (i) The facts are the same as in *Example 3* of § 1.336–3(g), that is, Seller owns all 100 of the outstanding shares of the common stock of Target, the only class of Target stock outstanding. On January 1 of Year 1, Seller sells 10 shares of Target stock to A for $6,000 ($600 per share). On August 1 of Year 1, Seller distributes the remaining 90 shares of Target stock to its unrelated shareholders in a transaction described in section 355(d)(2) or (e)(2). The value of Target stock on August 1 is $560 per share. Target has two assets, Asset 1, which is stock in trade of Target, a

Class IV asset, with a basis of $15,000 and a value of $50,000, and Asset 2, which is stock in a publicly traded, unrelated corporation, a Class II asset, with a basis of $38,000 and a value of $16,000. Target has no liabilities other than any liabilities for Federal tax on account of the deemed asset disposition. Assume Target's Federal tax rate for any gain or income on the deemed asset disposition is 34 percent. Seller had no selling costs in connection with its sale of the 10 shares of Target stock. A section 336(e) election is made. In addition, A incurred $100 of acquisition costs with respect to the purchase of the 10 shares of Target stock. Target's AGUB in the assets deemed acquired pursuant to §1.336–2(b)(2)(ii)(B) is determined as follows (for purposes of this *Example 3*, GRD is the grossed-up basis of recently disposed stock, BND is the basis in nonrecently disposed stock, TotL is Target's total liabilities, including Target's tax liability, and X is the A's total acquisition costs):

AGUB = GRD + BND + TotL

GRD = ($6,000 + ($560 × 90)) × ((100 − 0)/100) + X

GRD = ($6,000 + $50,400) × (100/100) + $100

GRD = $56,500

BND = $0

TotL = .34 × ($27,152 (Target's gain recognized on deemed disposition of Asset 1) − $22,000 (Target's loss recognized on deemed disposition of Asset 2)) (see *Example 3* of §1.336–3(g) for determination of Target's gain and loss recognized on deemed disposition of Assets 1 and 2)

TotL = $1,752

AGUB = $56,500 + $0 + $1,752

AGUB = $58,252

(ii) The AGUB allocated to Asset 2 is $16,000, the value of Asset 2. Because the excess of the total AGUB, $58,252, over the portion of the AGUB allocated to Asset 2, $16,000, does not exceed the value of Asset 1, the AGUB allocated to Asset 1 is such excess, $42,252.

[T.D. 9619, 78 FR 28474, May 15, 2013]

§ 1.336–5 Effective/applicability date.

The provisions of §§1.336–1 through 1.336–4 apply to any qualified stock disposition for which the disposition date is on or after May 15, 2013.

[T.D. 9619, 78 FR 28474, May 15, 2013]

EFFECTS ON CORPORATION

§ 1.337(d)–1 Transitional loss limitation rule.

(a) *Loss limitation rule for transitional subsidiary*—(1) *General rule*. No deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a transitional subsidiary. However, for transactions involving loss shares of subsidiary stock occurring on or after September 17, 2008, see §1.1502–36. Further, this section does not apply to a transaction that is subject to §1.1502–36.

(2) *Allowable loss*—(i) *In general*. Paragraph (a)(1) of this section does not apply to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain by any transitional subsidiary on the disposition of an asset (including stock and securities) after January 6, 1987.

(ii) *Statement of allowable loss*. Paragraph (a)(2)(i) of this section applies only if a separate statement entitled ''Allowable Loss Under §1.337(d)–1(a)'' is filed with the taxpayer's return for the year of the stock disposition. If the separate statement is required to be filed with a return the due date (including extensions) of which is before January 16, 1991, or with a return due (including extensions) after January 15, 1991 but filed before that date, the statement may be filed with an amended return for the year of the disposition or with the taxpayer's first subsequent return the due date (including extensions) of which is after January 15, 1991.

(iii) *Contents of statement*. The statement required under paragraph (a)(2)(ii) of this section must contain—

(A) The name and employer identification number (E.I.N.) of the transitional subsidiary.

(B) The basis of the stock of the transitional subsidiary immediately before the disposition.

(C) The amount realized on the disposition.

(D) The amount of the deduction not disallowed under paragraph (a)(1) of this section by reason of this paragraph (a)(2).

(E) The amount of loss disallowed under paragraph (a)(1) of this section.

(3) *Coordination with loss deferral and other disallowance rules*. (i) For purposes of this section, the rules of §1.1502–20(a)(3) apply, with appropriate adjustments to reflect differences between the approach of this section and that of §1.1502–20.

(ii) *Other loss deferral rules*. If paragraph (a)(1) of this section applies to a