

1999, 113 Stat. 182; Pub. L. 108-357, title VIII, § 836(a), Oct. 22, 2004, 118 Stat. 1594; Pub. L. 109-135, title IV, § 403(dd)(2), Dec. 21, 2005, 119 Stat. 2631.)

AMENDMENTS

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

2004—Subsec. (e). Pub. L. 108-357 added subsec. (e).

1999—Subsec. (d). Pub. L. 106-36 added subsec. (d).

1986—Subsec. (c)(3). Pub. L. 99-514 struck out par. (3) relating to exceptions for contributions in aid of construction.

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

Subsec. (c)(3). Pub. L. 94-455, § 2120(b), added par. (3).

1968—Subsec. (b). Pub. L. 90-621 substituted the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) for the issuance of stock or securities of the transferee as the transaction rendering the subsection applicable.

EFFECTIVE DATE OF 2005 AMENDMENT

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

EFFECTIVE DATE OF 2004 AMENDMENT

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

EFFECTIVE DATE OF 1999 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1968 AMENDMENT

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

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

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

EFFECTIVE DATE OF REPEAL

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

SUBPART D—SPECIAL RULE; DEFINITIONS

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| 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