

(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**

Pub. L. 102-486, title XIX, §1936(b), Oct. 24, 1992, 106 Stat. 3032, 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**

Pub. L. 101-239, title VII, §7208(a)(2), Dec. 19, 1989, 103 Stat. 2337, 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**[PART VII—REPEALED]**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 Repealed.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.<sup>1</sup>

**AMENDMENTS**

2006—Pub. L. 109-280, title I, §113(a)(2), Aug. 17, 2006, 120 Stat. 852, added item for part III.

1964—Pub. L. 88-272, title II, §221(d)(1), Feb. 26, 1964, 78 Stat. 75, substituted “Certain stock options” for “Miscellaneous provisions” in heading to part II.

**PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.**

**Subpart**

- A. General rule.
- B. Special rules.
- C. Insolvent plans.
- D. Treatment of welfare benefit funds.
- E. Treatment of transfers to retiree health accounts.<sup>1</sup>

**AMENDMENTS**

2014—Pub. L. 113-235, div. O, title I, §108(b)(3)(D), Dec. 16, 2014, 128 Stat. 2789, which directed amendment of the table of subparts for part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 by striking the heading and inserting “INSOLVENT PLANS” without specifying the subpart, was executed to the heading for subpart C by substituting “Insolvent plans” for “Special rules for multiemployer plans”, to reflect the probable intent of Congress.

1984—Pub. L. 98-369, div. A, title V, §511(d), July 18, 1984, 98 Stat. 862, added heading for subpart D.

1980—Pub. L. 96-364, title II, §202(b), Sept. 26, 1980, 94 Stat. 1285, added heading for subpart C.

**SUBPART A—GENERAL RULE**

**Sec.**

- 401. Qualified pension, profit-sharing, and stock bonus plans.
- 402. Taxability of beneficiary of employees' trust.
- 402A. Optional treatment of elective deferrals as Roth contributions.
- 403. Taxation of employee annuities.

<sup>1</sup> Period editorially supplied.

<sup>1</sup> Editorially supplied. Subpart E of part I added by Pub. L. 101-508 without corresponding amendment of part analysis.