

sidiary” 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

Pub. L. 99-514, title VI, § 633, Oct. 22, 1986, 100 Stat. 2277, 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 corporation 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