

## EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, §701(j)(2), Nov. 6, 1978, 92 Stat. 2906, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraph (1) [amending this section] shall apply as if included in section 368(a)(2)(F) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 2131(a) of the Tax Reform Act of 1976 [Pub. L. 94-455, title XX, §2131(a), Oct. 4, 1976, 90 Stat. 1922].

“(B) Clause (viii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to losses sustained after September 26, 1977.

“(C) Clause (vii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to transfers made after September 26, 1977.”

## EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XXI, §2131(f)(1), (2), Oct. 4, 1976, 90 Stat. 1924, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.

“(2) The amendment made by subsection (a) shall not apply to transfers made in accordance with a ruling issued by the Internal Revenue Service before February 18, 1976, holding that a proposed transaction would be a reorganization described in paragraph (1) of section 368(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].”

For effective date of amendment by section 806(f)(1) of Pub. L. 94-455, see section 806(g)(2), (3) of Pub. L. 94-455, formerly set out as a note under section 382 of this title.

## EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91-693, §1(c), Jan. 12, 1971, 84 Stat. 2077, provided that: “The amendments made by this section [amending this section] shall apply to statutory mergers occurring after December 31, 1970.”

## EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-621, §1(c), Oct. 22, 1968, 82 Stat. 1311, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply to statutory mergers occurring after the date of the enactment of this Act [Oct. 22, 1968].”

## EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88-272, title II, §218(c), Feb. 26, 1964, 78 Stat. 57, provided that: “The amendments made by this section [amending this section] shall apply with respect to transactions after December 31, 1963, in taxable years ending after such date.”

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

## [PART IV—REPEALED]

**[§§ 370 to 372. Repealed. Pub. L. 101-508, title XI, §11801(a)(19), Nov. 5, 1990, 104 Stat. 1388-521]**

Section 370, added Pub. L. 96-589, §4(f), Dec. 24, 1980, 94 Stat. 3404, related to termination of part.

Section 371, acts Aug. 16, 1954, ch. 736, 68A Stat. 121; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1901(a)(50), 90 Stat. 1773, related to reorganization in certain receiver-ship and bankruptcy proceedings.

Section 372, acts Aug. 16, 1954, ch. 736, 68A Stat. 122; Sept. 2, 1958, Pub. L. 85-866, title I, §95(a), 72 Stat. 1671; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§1901(a)(51), (b)(14)(A), 1906(b)(13)(A), 90 Stat. 1773, 1795, 1834, related to basis in connection with certain receivership and bankruptcy proceedings.

## SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

**[§373. Repealed. Pub. L. 94-455, title XIX, §1901(a)(52), Oct. 4, 1976, 90 Stat. 1773]**

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 123; June 29, 1956, ch. 463, §3, 70 Stat. 403, related to loss not recognized in certain railroad reorganizations.

## 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.

**[§374. Repealed. Pub. L. 101-508, title XI, §11801(a)(19), Nov. 5, 1990, 104 Stat. 1388-521]**

Section, added June 29, 1956, ch. 463, §1, 70 Stat. 402; amended Mar. 31, 1976, Pub. L. 94-253, §1(a), (d), 90 Stat. 295, 296; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1901(a)(53), (b)(10)(A), (14)(B), (C), 90 Stat. 1773, 1795, 1796; Nov. 6, 1978, Pub. L. 95-600, title III, §369(a), 92 Stat. 2857; Apr. 1, 1980, Pub. L. 96-222, title I, §103(a)(14), 94 Stat. 214; Oct. 22, 1986, Pub. L. 99-514, title XVIII, §1899A(9), 100 Stat. 2958, related to nonrecognition of gain or loss in certain railroad reorganizations.

## SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

## PART V—CARRYOVERS

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| Sec.<br>381.<br>382.<br>383.<br>384. | Carryovers in certain corporate acquisitions.<br>Limitation on net operating loss carryforwards and certain built-in losses following ownership change.<br>Special limitations on certain excess credits, etc.<br>Limitation on use of preacquisition losses to offset built-in gains. |
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## AMENDMENTS

1987—Pub. L. 100-203, title X, §10226(b), Dec. 22, 1987, 101 Stat. 1330-415, added item 384.

1986—Pub. L. 99-514, title VI, §621(c)(2), Oct. 22, 1986, 100 Stat. 2266, substituted “Limitation on net operating loss carryforwards and certain built-in losses following ownership change” for “Special limitations on net operating loss carryovers” in item 382 and “Special limitations on certain excess credits, etc.” for “Special

limitations on unused business credits, research credits, foreign taxes, and capital losses" in item 383.

1984—Pub. L. 98-369, div. A, title IV, § 474(r)(12)(C), July 18, 1984, 98 Stat. 842, substituted "unused business credits, research credits, foreign taxes, and capital losses" for "carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses" in item 383.

1981—Pub. L. 97-34, title II, § 221(b)(1)(E), title III, § 331(d)(1)(E), Aug. 13, 1981, 95 Stat. 246, 295, inserted references to alcohol fuel credits, research credits, and employee stock ownership credits in item 383. For applicability of amendment by section 221(b)(1)(E) to amounts paid or incurred after June 30, 1981, and before Jan. 1, 1986, see section 221(d) of Pub. L. 97-34, set out as an Effective Date note under section 30 of this title.

1977—Pub. L. 95-30, title II, § 202(d)(3)(D), May 23, 1977, 91 Stat. 148, inserted "new employee credits," after "work incentive program credits," in item 383.

1971—Pub. L. 92-178, title III, § 302(b), Dec. 10, 1971, 85 Stat. 521, added item 383.

### **§ 381. Carryovers in certain corporate acquisitions**

#### **(a) General rule**

In the case of the acquisition of assets of a corporation by another corporation—

(1) in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies; or

(2) in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c). For purposes of the preceding sentence, a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

#### **(b) Operating rules**

Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368(a)(1)—

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

(3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss or a net capital loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

#### **(c) Items of the distributor or transferor corporation**

The items referred to in subsection (a) are:

##### **(1) Net operating loss carryovers**

The net operating loss carryovers determined under section 172, subject to the following conditions and limitations:

(A) the taxable year of the acquiring corporation to which the net operating loss carryovers of the distributor or transferor corporation are first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) In determining the net operating loss deduction, the portion of such deduction attributable to the net operating loss carryovers of the distributor or transferor corporation to the first taxable year of the acquiring corporation ending after the date of distribution or transfer shall be limited to an amount which bears the same ratio to the taxable income (determined without regard to a net operating loss deduction) of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For the purpose of determining the amount of the net operating loss carryovers under section 172(b)(2), a net operating loss for a taxable year (hereinafter in this subparagraph referred to as the "loss year") of a distributor or transferor corporation which ends on or before the end of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. For the same purpose, the taxable income for a "prior taxable year" (as the term is used in section 172(b)(2)) shall be computed as provided in such section; except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation—

(i) such taxable year shall (for the purpose of this subparagraph only) be considered to be 2 taxable years (hereinafter in this subparagraph referred to as the "pre-acquisition part year" and the "post-acquisition part year");

(ii) the pre-acquisition part year shall begin on the same day as such taxable year begins and shall end on the date of distribution or transfer;

(iii) the post-acquisition part year shall begin on the day following the date of distribution or transfer and shall end on the same day as the end of such taxable year;

(iv) the taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)(A) but without a net operating loss deduction) shall be divided between the pre-acquisition part year and the post-acquisition part year in proportion to the number of days in each;

(v) the net operating loss deduction for the pre-acquisition part year shall be determined as provided in section 172(b)(2)(B), but without regard to a net operating loss year of the distributor or transferor corporation; and