

of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset.

Paragraph (3) causes any net operating loss of a debtor that is an individual or corporation to be reduced by any discharge of indebtedness except as provided in paragraphs (2) or (4). If a deduction is disallowed under paragraph (2), then no double counting occurs. Thus, paragraph (3) will reflect the reduction of losses by liabilities that have been forgiven, including deductible liabilities or nondeductible liabilities such as repayment of principal on borrowed funds.

Paragraph (4) specifically excludes two kinds of indebtedness from reduction of net operating losses under paragraph (3) or from reduction of basis under paragraph (5). Subparagraph (A) excludes items of a deductible nature that were not deducted or that could not be deducted such as gambling losses or liabilities for interest owed to a relative of the debtor. Subparagraph (B) excludes indebtedness of a debtor that is an individual or corporation that resulted in deductions which did not offset income and that did not contribute to an unexpired net operating loss or loss carryover. In these situations, the debtor has derived no tax benefit so there is no need to incur an offsetting reduction.

Paragraph (5) provides a two-point test for reduction of basis. The paragraph replaces sections 270, 396, and 522 of the Bankruptcy Act [sections 670, 796, and 922 of former title 11]. Subparagraph (A) sets out the maximum amount by which basis may be reduced—the total indebtedness forgiven less adjustments made under paragraphs (2) and (3). This avoids double counting. If a deduction is disallowed under paragraph (2) or a carryover is reduced under paragraph (3) then the tax benefit is neutralized, and there is no need to reduce basis. Subparagraph (B) reduces basis to the extent the debtor's total basis of assets before the discharge exceeds total preexisting liabilities still remaining after discharge of indebtedness. This is a "basis solvency" limitation which differs from the usual test of solvency because it measures against the remaining liabilities the benefit aspect of assets, their basis, rather than their value. Paragraph (5) applies so that any transferee of the debtor's property who is required to use the debtor's basis takes the debtor's basis reduced by the lesser of (A) and (B). Thus, basis will be reduced, but never below a level equal to undischarged liabilities.

Paragraph (6) specifies that basis need not be reduced under paragraph (5) to the extent the debtor treats discharged indebtedness as taxable income. This permits the debtor to elect whether to recognize income, which may be advantageous if the debtor anticipates subsequent net operating losses, rather than to reduce basis.

Paragraph (7) establishes two rules excluding from the category of discharged indebtedness certain indebtedness that is exchanged for an equity security issued under a plan or that is forgiven as a contribution to capital by an equity security holder. Subparagraph (A) creates the first exclusion to the extent indebtedness consisting of items not of a deductible nature is exchanged for an equity security, other than the interests of a limited partner in a limited partnership, issued by the debtor or is forgiven as a contribution to capital by an equity security holder. Subparagraph (B) excludes indebtedness consisting of items of a deductible nature, if the exchange of stock for debts has the same effect as a cash payment equal to the value of the equity security, in the amount of the fair market value of the equity security or, if less, the extent to which such exchange has such effect. The two provisions treat the debtor as if it had originally issued stock instead of debt. Subparagraph (B) rectifies the inequity under current law between a cash basis and accrual basis debtor concerning the issuance of stock in exchange for previous services rendered that were of a greater value than the stock. Subparagraph (B) also changes current law by taxing forgiveness of indebtedness to the extent that stock is exchanged for the accrued interest component of a security, because the recipient of such stock would not be regarded as having received money under the *Carman* doctrine.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2005—Pub. L. 109-8 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (j) relating to special tax provisions.

1994—Subsec. (a). Pub. L. 103-394, §504(d)(4)(A), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)".

Subsec. (g)(1)(C). Pub. L. 103-394, §501(d)(4)(B), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954 (26 U.S.C. 371)".

1986—Subsec. (b)(1). Pub. L. 99-554, §257(g)(1), inserted reference to chapter 12.

Subsec. (g)(1)(C). Pub. L. 99-554, §257(g)(2), inserted reference to chapter 12.

Subsec. (i)(1). Pub. L. 99-554, §257(g)(3), inserted reference to chapter 12.

Subsec. (j)(7). Pub. L. 99-554, §283(c), substituted "owed" for "owned".

1984—Subsec. (c)(2). Pub. L. 98-353 substituted "corporation" for "operation".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 257 of Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 283 of Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99-554.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 347. Unclaimed property

(a) Ninety days after the final distribution under section 726, 1226, or 1326 of this title in a case under chapter 7, 12, or 13 of this title, as the case may be, the trustee shall stop payment on any check remaining unpaid, and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28.

(b) Any security, money, or other property remaining unclaimed at the expiration of the time allowed in a case under chapter 9, 11, or 12 of this title for the presentation of a security or the performance of any other act as a condition to participation in the distribution under any plan confirmed under section 943(b), 1129, 1173, or 1225 of this title, as the case may be, becomes the property of the debtor or of the entity ac-

quiring the assets of the debtor under the plan, as the case may be.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2568; Pub. L. 99-554, title II, §257(h), Oct. 27, 1986, 100 Stat. 3114.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 347(a) of the House amendment adopts a comparable provision contained in the Senate amendment instructing the trustee to stop payment on any check remaining unpaid more than 90 days after the final distribution in a case under Chapter 7 or 13. Technical changes are made in section 347(b) to cover distributions in a railroad reorganization.

SENATE REPORT NO. 95-989

Section 347 is derived from Bankruptcy Act §66 [section 106 of former title 11]. Subsection (a) requires the trustee to stop payment on any distribution check that is unpaid 90 days after the final distribution in a case under chapter 7 or 13. The unclaimed funds, and any other property of the estate are paid into the court and disposed of under chapter 129 [§2041 et seq.] of title 28, which requires the clerk of court to hold the funds for their owner for 5 years, after which they escheat to the Treasury.

Subsection (b) specifies that any property remaining unclaimed at the expiration of the time allowed in a chapter 9 or 11 case for presentation (exchange) of securities or the performance of any other act as a condition to participation in the plan reverts to the debtor or the entity acquiring the assets of the debtor under the plan. Conditions to participation under a plan include such acts as cashing a check, surrendering securities for cancellation, and so on. Similar provisions are found in sections 96(d) and 205 of current law [sections 416(d) and 605 of former title 11].

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-554, §257(h)(1), inserted references to section 1226 and chapter 12 of this title.

Subsec. (b). Pub. L. 99-554, §257(h)(2), inserted references to chapter 12 and section 1225 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 348. Effect of conversion

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

(b) Unless the court for cause orders otherwise, in sections 701(a), 727(a)(10), 727(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1201(a), 1221, 1228(a), 1301(a), and 1305(a) of this title, “the order for relief under this chapter” in a chapter to which a case has been converted under section 706, 1112, 1208, or 1307 of this title means the conversion of such case to such chapter.

(c) Sections 342 and 365(d) of this title apply in a case that has been converted under section 706, 1112, 1208, or 1307 of this title, as if the conversion order were the order for relief.

(d) A claim against the estate or the debtor that arises after the order for relief but before

conversion in a case that is converted under section 1112, 1208, or 1307 of this title, other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

(e) Conversion of a case under section 706, 1112, 1208, or 1307 of this title terminates the service of any trustee or examiner that is serving in the case before such conversion.

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan; and

(C) with respect to cases converted from chapter 13—

(i) the claim of any creditor holding security as of the date of the filing of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2568; Pub. L. 99-554, title II, §257(i), Oct. 27, 1986, 100 Stat. 3115; Pub. L. 103-394, title III, §311, title V, §501(d)(5), Oct. 22, 1994, 108 Stat. 4138, 4144; Pub. L. 109-8, title III, §309(a), title XII, §1207, Apr. 20, 2005, 119 Stat. 82, 194; Pub. L. 111-327, §2(a)(11), Dec. 22, 2010, 124 Stat. 3558.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment adopts section 348(b) of the Senate amendment with slight modifications, as more accurately reflecting sections to which this particular effect of conversion should apply.

Section 348(e) of the House amendment is a stylistic revision of similar provisions contained in H.R. 8200 as passed by the House and in the Senate amendment. Termination of services is expanded to cover any examiner serving in the case before conversion, as done in H.R. 8200 as passed by the House.