(b) Agreement requirements

In order to meet the requirements of this subsection, an agreement shall—

(1) provide for the return to the transferor of securities identical to the securities transferred;

(2) require that payments shall be made to the transferor of amounts equivalent to all interest, dividends, and other distributions which the owner of the securities is entitled to receive during the period beginning with the transfer of the securities by the transferor and ending with the transfer of identical securities back to the transferor;

(3) not reduce the risk of loss or opportunity for gain of the transferor of the securities in the securities transferred; and

(4) meet such other requirements as the Secretary may by regulation prescribe.

(c) Basis

Property acquired by a taxpayer described in subsection (a), in a transaction described in that subsection, shall have the same basis as the property transferred by that taxpayer.

(Added Pub. L. 95–345, §2(d)(1), Aug. 15, 1978, 92 Stat. 482.)

PRIOR PROVISIONS

A prior section 1058 was renumbered section 1062 of this title.

EFFECTIVE DATE

Section applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in this section, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as an Effective Date of 1978 Amendment note under section 509 of this title.

§ 1059. Corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends

(a) General rule

If any corporation receives any extraordinary dividend with respect to any share of stock and such corporation has not held such stock for more than 2 years before the dividend announcement date—

(1) Reduction in basis

The basis of such corporation in such stock shall be reduced (but not below zero) by the nontaxed portion of such dividends.

(2) Amounts in excess of basis

If the nontaxed portion of such dividends exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock for the taxable year in which the extraordinary dividend is received.

(b) Nontaxed portion

For purposes of this section—

(1) In general

The nontaxed portion of any dividend is the excess (if any) of—

(A) the amount of such dividend, over

(B) the taxable portion of such dividend.

(2) Taxable portion

The taxable portion of any dividend is—

(A) the portion of such dividend includible in gross income, reduced by

(B) the amount of any deduction allowable with respect to such dividend under section 243[1] 245, or 245A.

(c) Extraordinary dividend defined

For purposes of this section—

(1) In general

The term ''extraordinary dividend'' means any dividend with respect to a share of stock if the amount of such dividend equals or exceeds the threshold percentage of the taxpayer's adjusted basis in such share of stock.

(2) Threshold percentage

The term ''threshold percentage'' means—

(A) 5 percent in the case of stock which is preferred as to dividends, and

(B) 10 percent in the case of any other stock.

(3) Aggregation of dividends

(A) Aggregation within 85-day period

All dividends—

(i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and

(ii) which have ex-dividend dates within the same period of 85 consecutive days,

shall be treated as 1 dividend.

(B) Aggregation within 1 year where dividends exceed 20 percent of adjusted basis

All dividends—

(i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and

(ii) which have ex-dividend dates during the same period of 365 consecutive days,

shall be treated as extraordinary dividends if the aggregate of such dividends exceeds 20 percent of the taxpayer's adjusted basis in such stock (determined without regard to this section).

(C) Substituted basis transactions

In the case of any stock, a person is described in this subparagraph if—

(i) the basis of such stock in the hands of such person is determined in whole or in part by reference to the basis of such stock in the hands of the taxpayer, or

(ii) the basis of such stock in the hands of the taxpayer is determined in whole or in part by reference to the basis of such stock in the hands of such person.

(4) Fair market value determination

If the taxpayer establishes to the satisfaction of the Secretary the fair market value of any share of stock as of the day before the ex-dividend date, the taxpayer may elect to apply paragraphs (1) and (3) by substituting such value for the taxpayer's adjusted basis.

(d) Special rules

For purposes of this section—

[1] So in original. Probably should be followed by a comma.

(1) Time for reduction

Any reduction in basis under subsection (a)(1) shall be treated as occurring at the beginning of the ex-dividend date of the extraordinary dividend to which the reduction relates.

(2) Distributions in kind

To the extent any dividend consists of property other than cash, the amount of such dividend shall be treated as the fair market value of such property (as of the date of the distribution) reduced as provided in section 301(b)(2).

(3) Determination of holding period

For purposes of determining the holding period of stock under subsection (a), rules similar to the rules of paragraphs (3) and (4) of section 246(c) shall apply; except that ''2 years'' shall be substituted for the number of days specified in subparagraph (B)[2] of section 246(c)(3).

(4) Ex-dividend date

The term ''ex-dividend date'' means the date on which the share of stock becomes ex-dividend.

(5) Dividend announcement date

The term ''dividend announcement date'' means, with respect to any dividend, the date on which the corporation declares, announces, or agrees to the amount or payment of such dividend, whichever is the earliest.

(6) Exception where stock held during entire existence of corporation

(A) In general

Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

(i) such stock was held by the taxpayer during the entire period such corporation was in existence, and

(ii) except as provided in regulations, no earnings and profits of such corporation were attributable to transfers of property from (or earnings and profits of) a corporation which is not a qualified corporation.

(B) Qualified corporation

For purposes of subparagraph (A), the term ''qualified corporation'' means any corporation (including a predecessor corporation)—

(i) with respect to which the taxpayer holds directly or indirectly during the entire period of such corporation's existence at least the same ownership interest as the taxpayer holds in the corporation distributing the extraordinary dividend, and

(ii) which has no earnings and profits—

(I) which were earned by, or

(II) which are attributable to gain on property which accrued during a period the corporation holding the property was,

a corporation not described in clause (i).

(C) Application of paragraph

This paragraph shall not apply to any extraordinary dividend to the extent such application is inconsistent with the purposes of this section.

(e) Special rules for certain distributions

(1) Treatment of partial liquidations and certain redemptions

Except as otherwise provided in regulations—

(A) Redemptions

In the case of any redemption of stock—

(i) which is part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation,

(ii) which is not pro rata as to all shareholders, or

(iii) which would not have been treated (in whole or in part) as a dividend if—

(I) any options had not been taken into account under section 318(a)(4), or

(II) section 304(a) had not applied,

any amount treated as a dividend with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock. In the case of a redemption described in clause (iii), only the basis in the stock redeemed shall be taken into account under subsection (a).

(B) Reorganizations, etc.

An exchange described in section 356 which is treated as a dividend shall be treated as a redemption of stock for purposes of applying subparagraph (A).

(2) Qualifying dividends

(A) In general

Except as provided in regulations, the term ''extraordinary dividend'' does not include any qualifying dividend (within the meaning of section 243).

(B) Exception

Subparagraph (A) shall not apply to any portion of a dividend which is attributable to earnings and profits which—

(i) were earned by a corporation during a period it was not a member of the affiliated group, or

(ii) are attributable to gain on property which accrued during a period the corporation holding the property was not a member of the affiliated group.

(3) Qualified preferred dividends

(A) In general

In the case of 1 or more qualified preferred dividends with respect to any share of stock—

(i) this section shall not apply to such dividends if the taxpayer holds such stock for more than 5 years, and

(ii) if the taxpayer disposes of such stock before it has been held for more than 5 years, the aggregate reduction under subsection (a)(1) with respect to such dividends shall not be greater than the excess (if any) of—

(I) the qualified preferred dividends paid with respect to such stock during

[2] See References in Text note below.

the period the taxpayer held such stock, over

(II) the qualified preferred dividends which would have been paid during such period on the basis of the stated rate of return.

(B) Rate of return

For purposes of this paragraph—

(i) Actual rate of return

The actual rate of return shall be the rate of return for the period for which the taxpayer held the stock, determined—

(I) by only taking into account dividends during such period, and

(II) by using the lesser of the adjusted basis of the taxpayer in such stock or the liquidation preference of such stock.

(ii) Stated rate of return

The stated rate of return shall be the annual rate of the qualified preferred dividend payable with respect to any share of stock (expressed as a percentage of the amount described in clause (i)(II)).

(C) Definitions and special rules

For purposes of this paragraph—

(i) Qualified preferred dividend

The term ''qualified preferred dividend'' means any fixed dividend payable with respect to any share of stock which—

(I) provides for fixed preferred dividends payable not less frequently than annually, and

(II) is not in arrears as to dividends at the time the taxpayer acquires the stock.

Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent.

(ii) Holding period

In determining the holding period for purposes of subparagraph (A)(ii), subsection (d)(3) shall be applied by substituting ''5 years'' for ''2 years''.

(f) Treatment of dividends on certain preferred stock

(1) In general

Any dividend with respect to disqualified preferred stock shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held the stock.

(2) Disqualified preferred stock

For purposes of this subsection, the term ''disqualified preferred stock'' means any stock which is preferred as to dividends if—

(A) when issued, such stock has a dividend rate which declines (or can reasonably be expected to decline) in the future,

(B) the issue price of such stock exceeds its liquidation rights or its stated redemption price, or

(C) such stock is otherwise structured—

(i) to avoid the other provisions of this section, and

(ii) to enable corporate shareholders to reduce tax through a combination of dividend received deductions and loss on the disposition of the stock.

(g) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations—

(1) providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions, in the case of stock held by pass-thru entities, and in the case of consolidated groups, and

(2) providing that the rules of subsection (f) shall apply in the case of stock which is not preferred as to dividends in cases where stock is structured to avoid the purposes of this section.

(Added Pub. L. 98–369, div. A, title I, §53(a), July 18, 1984, 98 Stat. 565; amended Pub. L. 99–514, title VI, §614(a)–(e), Oct. 22, 1986, 100 Stat. 2251–2253; Pub. L. 100–647, title I, §1006(c), Nov. 10, 1988, 102 Stat. 3393; Pub. L. 101–239, title VII, §7206(a), Dec. 19, 1989, 103 Stat. 2336; Pub. L. 105–34, title X, §§1011(a)–(c), 1013(b), title XVI, §1604(d)(1), Aug. 5, 1997, 111 Stat. 912, 913, 918, 1098; Pub. L. 105–206, title VI, §6010(b), July 22, 1998, 112 Stat. 813; Pub. L. 113–295, div. A, title II, §221(a)(41)(G), Dec. 19, 2014, 128 Stat. 4044; Pub. L. 115–97, title I, §14101(c)(2), Dec. 22, 2017, 131 Stat. 2191.)

REFERENCES IN TEXT

Section 246(c)(3) of this title, referred to in subsec. (d)(3), was amended by Pub. L. 105–34, title X, §1015(b)(2), Aug. 5, 1997, 111 Stat. 922, by striking out subpar. (B) and redesignating subpar. (C) as (B).

PRIOR PROVISIONS

A prior section 1059 was renumbered section 1062 of this title.

AMENDMENTS

2017—Subsec. (b)(2)(B). Pub. L. 115–97 substituted ''245, or 245A'' for ''or 245''.

2014—Subsec. (b)(2)(B). Pub. L. 113–295 struck out '', 244,'' after ''243''.

1998—Subsec. (g)(1). Pub. L. 105–206 substituted '', in the case of stock held by pass-thru entities, and in the case of consolidated groups'' for ''and in the case of stock held by pass-thru entities''.

1997—Subsec. (a)(2). Pub. L. 105–34, §1011(a), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In addition to any gain recognized under this chapter, there shall be treated as gain from the sale or exchange of any stock for the taxable year in which the sale or disposition of such stock occurs an amount equal to the aggregate nontaxed portions of any extraordinary dividends with respect to such stock which did not reduce the basis of such stock by reason of the limitation on reducing basis below zero.''

Subsec. (d)(1). Pub. L. 105–34, §1011(c), amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in subparagraph (B), any reduction in basis under subsection (a)(1) shall occur immediately before any sale or disposition of the stock.

''(B) SPECIAL RULE FOR COMPUTING EXTRAORDINARY DIVIDEND.—In determining a taxpayer's adjusted basis for purposes of subsection (c)(1), any reduction in basis under subsection (a)(1) by reason of a prior distribution

which was an extraordinary dividend shall be treated as occurring at the beginning of the ex-dividend date for such distribution.''

Subsec. (d)(3). Pub. L. 105–34, §1604(d)(1), substituted ''subsection (a)'' for ''subsection (a)(2)''.

Subsec. (e)(1). Pub. L. 105–34, §1011(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''Except as otherwise provided in regulations, in the case of any redemption of stock which is—

''(A) part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation, or

''(B) not pro rata as to all shareholders,

any amount treated as a dividend under section 301 with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock.''

Subsec. (e)(1)(A)(iii). Pub. L. 105–34, §1013(b), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''which would not have been treated (in whole or in part) as a dividend if any options had not been taken into account under section 318(a)(4).''

1989—Subsecs. (f), (g). Pub. L. 101–239 added subsecs. (f) and (g) and struck out former subsec. (f) which read as follows: ''REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions and in the case of stock held by pass-thru entities.''

1988—Subsec. (d)(5). Pub. L. 100–647, §1006(c)(2), inserted ''amount or'' after ''agrees to the''.

Pub. L. 100–647, §1006(c)(1), redesignated par. (6) as (5) and struck out former par. (5) which related to extension to certain property distributions.

Subsec. (d)(6). Pub. L. 100–647, §1006(c)(3), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

''(A) such stock was held by the taxpayer during the entire period such corporation (and any precedessor [sic] corporation) was in existence,

''(B) except as provided in regulations, the only earnings and profits of such corporation were earnings and profits accumulated by such corporation (or any predecessor corporation) during such period, and

''(C) the application of this paragraph to such dividend is not inconsistent with the purposes of this section.''

Pub. L. 100–647, §1006(c)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (d)(7). Pub. L. 100–647, §1006(c)(1), redesignated par. (7) as (6).

Subsec. (e)(1). Pub. L. 100–647, §1006(c)(4), substituted ''to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock'' for ''for purposes of this section (without regard to the holding period of the stock)''.

Subsec. (e)(2). Pub. L. 100–647, §1006(c)(5), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Except as provided in regulations, the term 'extraordinary dividend' shall not include any qualifying dividend (within the meaning of section 243(b)(1)).''

Subsec. (e)(3)(A). Pub. L. 100–647, §1006(c)(6), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''A qualified preferred dividend shall be treated as an extraordinary dividend—

''(i) only if the actual rate of return of the taxpayer on the stock with respect to which such dividend was paid exceeds 15 percent, or

''(ii) if clause (i) does not apply, and the taxpayer disposes of such stock before the taxpayer has held such stock for more than 5 years, only to the extent the actual rate of return exceeds the stated rate of return.''

Subsec. (e)(3)(B). Pub. L. 100–647, §1006(c)(8)(A), which directed the amendment of subpar. (B) ''by striking out 'subparagraph (A)' and the material preceding clause (i) and inserting in lieu thereof 'this paragraph' '', was executed by striking out ''subparagraph (A)'' in the material preceding clause (i) and inserting in lieu thereof ''this paragraph'', to reflect the probable intent of Congress.

Subsec. (e)(3)(B)(ii). Pub. L. 100–647, §1006(c)(8)(B), substituted ''clause (i)(II)'' for ''subparagraph (B)(i)(II)''.

Subsec. (e)(3)(C)(i). Pub. L. 100–647, §1006(c)(7), inserted ''fixed'' before ''dividend payable'' in introductory provisions and inserted at end ''Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent.''

Subsec. (f). Pub. L. 100–647, §1006(c)(9), inserted ''and in the case of stock held by pass-thru entities'' after ''other similar transactions''.

1986—Subsec. (a). Pub. L. 99–514, §614(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''If any corporation—

''(1) receives an extraordinary dividend with respect to any share of stock, and

''(2) sells or otherwise disposes of such stock before such stock has been held for more than 1 year,

the basis of such corporation in such stock shall be reduced by the nontaxed portion of such dividend. If the nontaxed portion of such dividend exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock.''

Subsec. (c)(1). Pub. L. 99–514, §614(c)(2), struck out ''(determined without regard to this section)'' after ''such share of stock''.

Subsec. (c)(4). Pub. L. 99–514, §614(b), added par. (4).

Subsec. (d)(1). Pub. L. 99–514, §614(c)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Any reduction in basis under subsection (a) by reason of any distribution which is an extraordinary dividend shall occur at the beginning of the ex-dividend date for such distribution.''

Subsec. (d)(3). Pub. L. 99–514, §614(a)(3), substituted ''2 years'' for ''1 year''.

Subsec. (d)(6). Pub. L. 99–514, §614(a)(2), added par. (6).

Subsec. (d)(7). Pub. L. 99–514, §614(d), added par. (7).

Subsecs. (e), (f). Pub. L. 99–514, §614(e), added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to distributions made after Dec. 31, 2017, see section 14101(f) of Pub. L. 115–97, set out as an Effective Date note under section 245A of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 not applicable to preferred stock issued before Oct. 1, 1942 (determined in the same manner as under section 247 of this title as in effect before its repeal by Pub. L. 113–295), see section 221(a)(41)(K) of Pub. L. 113–295, set out as a note under section 172 of this title.

Except as otherwise provided in section 221(a) of Pub. L. 113–295, amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1011(d), Aug. 5, 1997, 111 Stat. 913, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to distributions after May 3, 1995.

''(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution made pursuant to the terms of—

''(A) a written binding contract in effect on May 3, 1995, and at all times thereafter before such distribution, or

''(B) a tender offer outstanding on May 3, 1995.

''(3) CERTAIN DIVIDENDS NOT PURSUANT TO CERTAIN REDEMPTIONS.—In determining whether the amendment made by subsection (a) applies to any extraordinary dividend other than a dividend treated as an extraordinary dividend under section 1059(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act), paragraphs (1) and (2) shall be applied by substituting 'September 13, 1995' for 'May 3, 1995'.''

Amendment by section 1013(b) of Pub. L. 105–34 applicable to distributions and acquisitions after June 8, 1997, with certain exceptions, see section 1013(d) of Pub. L. 105–34, set out as a note under section 304 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7206(b), Dec. 19, 1989, 103 Stat. 2337, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to stock issued after July 10, 1989, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendment made by subsection (a) shall not apply to any stock issued pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the stock is issued.''

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 OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §614(f), Oct. 22, 1986, 100 Stat. 2254, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to dividends declared after July 18, 1986, in taxable years ending after such date.

''(2) AGGREGATION.—For purposes of section 1059(c)(3) of the Internal Revenue Code of 1986, dividends declared after July 18, 1986, shall not be aggregated with dividends declared on or before July 18, 1986.

''(3) REDEMPTIONS.—Section 1059(e)(1) of the Internal Revenue Code of 1986 (as added by subsection (e)) shall apply to dividends declared after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.''

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §53(e), July 18, 1984, 98 Stat. 568, as amended by Pub. L. 99–514, §2, title XVIII, §1804(b)(2), Oct. 22, 1986, 100 Stat. 2095, 2798, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and amending sections 246, 1016, and 7701 of this title] shall apply to distributions after March 1, 1984, in taxable years ending after such date.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 246 of this title] shall apply to stock acquired after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(3) RELATED PERSON PROVISIONS.—

''(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the amendment made by subsection (c) [amending section 7701 of this title] shall take effect on July 18, 1984.

''(B) SPECIAL RULE FOR PURPOSES OF SECTION 265(2).—The amendment made by subsection (c) insofar as it relates to section 265(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to—

''(i) term loans made after July 18, 1984, and

''(ii) demand loans outstanding after July 18, 1984 (other than any loan outstanding on July 18, 1984, and repaid before September 18, 1984).

''(C) TREATMENT OF RENEGOTIATIONS, ETC.—For purposes of this paragraph, any loan renegotiated, extended, or revised after July 18, 1984, shall be treated as a loan made after such date.

''(D) DEFINITION OF TERM AND DEMAND LOANS.—For purposes of this paragraph, the terms 'demand loan' and 'term loan' have the respective meanings given such terms by paragraphs (5) and (6) of section 7872(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], except that the second sentence of such paragraph (5) shall not apply.''

§ 1059A. Limitation on taxpayer's basis or inventory cost in property imported from related persons

(a) In general

If any property is imported into the United States in a transaction (directly or indirectly) between related persons (within the meaning of section 482), the amount of any costs—

(1) which are taken into account in computing the basis or inventory cost of such property by the purchaser, and

(2) which are also taken into account in computing the customs value of such property,

shall not, for purposes of computing such basis or inventory cost for purposes of this chapter, be greater than the amount of such costs taken into account in computing such customs value.

(b) Customs value; import

For purposes of this section—

(1) Customs value

The term ''customs value'' means the value taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property.

(2) Import

Except as provided in regulations, the term ''import'' means the entering, or withdrawal from warehouse, for consumption.

(Added Pub. L. 99–514, title XII, §1248(a), Oct. 22, 1986, 100 Stat. 2584.)

EFFECTIVE DATE

Pub. L. 99–514, title XII, §1248(c), Oct. 22, 1986, 100 Stat. 2584, provided that: ''The amendments made by this section [enacting this section] shall apply to transactions entered into after March 18, 1986.''

§ 1060. Special allocation rules for certain asset acquisitions

(a) General rule

In the case of any applicable asset acquisition, for purposes of determining both—

(1) the transferee's basis in such assets, and

(2) the gain or loss of the transferor with respect to such acquisition,

the consideration received for such assets shall be allocated among such assets acquired in such acquisition in the same manner as amounts are allocated to assets under section 338(b)(5). If in