

ant 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 cor-

poration 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 shall be treated as a distribution to such distributee in such liquidation.

##### (2) Treatment of tax-exempt distributee

###### (A) In general

Except as provided in subparagraph (B), paragraph (1) and subsection (a) shall not apply where the 80-percent distributee is an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

###### (B) Exception where property will be used in unrelated business

###### (i) In general

Subparagraph (A) shall not apply to any distribution of property to an organization described in section 511(a)(2) if, immediately after such distribution, such organization uses such property in an activity the income from which is subject to tax under section 511(a).

###### (ii) Later disposition or change in use

If any property to which clause (i) applied is disposed of by the organization ac-

quiring such property, notwithstanding any other provision of law, any gain (not in excess of the amount not recognized by reason of clause (i)) shall be included in such organization's unrelated business taxable income. For purposes of the preceding sentence, if such property ceases to be used in an activity referred to in clause (i), such organization shall be treated as having disposed of such property on the date of such cessation.

**(c) 80-percent distributee**

For purposes of this section, the term "80-percent distributee" means only the corporation which meets the 80-percent stock ownership requirements specified in section 332(b). For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation.

**(d) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of the amendments made by subtitle D of title VI of the Tax Reform Act of 1986, including—

(1) regulations to ensure that such purposes may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations and part III of this subchapter) or through the use of a regulated investment company, real estate investment trust, or tax-exempt entity, and

(2) regulations providing for appropriate coordination of the provisions of this section with the provisions of this title relating to taxation of foreign corporations and their shareholders.

(Added Pub. L. 99-514, title VI, §631(a), Oct. 22, 1986, 100 Stat. 2271; amended Pub. L. 100-203, title X, §10223(a), Dec. 22, 1987, 101 Stat. 1330-411; Pub. L. 100-647, title I, §1006(e)(4), (5)(A), Nov. 10, 1988, 102 Stat. 3400.)

**Editorial Notes**

REFERENCES IN TEXT

The Tax Reform Act of 1986, referred to in subsec. (d), is Pub. L. 99-514, Oct. 22, 1986, 100 Stat. 2085, as amended. Subtitle D (§§631-634) of title VI of the Tax Reform Act of 1986 enacted sections 336 and 337 of this title, amended 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 repealed former sections 333, 336, and 337 of this title. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 337, acts Aug. 16, 1954, ch. 736, 68A Stat. 106; Sept. 2, 1958, Pub. L. 85-866, title I, §19, 72 Stat. 1615; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§1901(a)(46), 1906(b)(13)(A), title XXI, §2118(a), 90 Stat. 1772, 1834, 1912; Nov. 6, 1978, Pub. L. 95-600, title VII, §701(i)(1), 92 Stat. 2904; Nov. 10, 1978, Pub. L. 95-628, §4(a), 92 Stat. 3628; Apr. 2, 1980, Pub. L. 96-223, title IV, §403(b)(2)(A), 94 Stat. 304; Oct. 19, 1980, Pub. L. 96-471, §2(c)(2), 94 Stat. 2254; Dec. 24, 1980, Pub. L. 96-589, §5(c), 94 Stat. 3405; Sept. 3, 1982, Pub. L. 97-248, title II, §224(c)(5), (6), 96 Stat. 489; Oct. 22, 1986, Pub. L. 99-514, title XVIII, §1804(e)(7)(A), 100 Stat. 2803, related to gain or loss on sales or exchanges in connection with certain liquidations, prior to repeal by Pub. L. 99-514, §631(a).

AMENDMENTS

1988—Subsec. (b)(2)(B)(i). Pub. L. 100-647, §1006(e)(4)(A), (B), substituted "described in section 511(a)(2)" for "described in section 511(a)(2) or 511(b)(2)" and "in an activity the income from which is subject to tax under section 511(a)" for "in an unrelated trade or business (as defined in section 513)".

Subsec. (b)(2)(B)(ii). Pub. L. 100-647, §1006(e)(4)(C), substituted "an activity referred to in clause (i)" for "an unrelated trade or business of such organization".

Subsec. (d). Pub. L. 100-647, §1006(e)(5)(A), in introductory provisions, substituted "amendments made by subtitle D of title VI of the Tax Reform Act of 1986" for "amendments made to this subpart by the Tax Reform Act of 1986", and in par. (1), substituted "this subchapter) or through the use of a regulated investment company, real estate investment trust, or tax-exempt entity" for "this subchapter)".

1987—Subsec. (c). Pub. L. 100-203 inserted at end "For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation."

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1006(e)(5)(B), Nov. 10, 1988, 102 Stat. 3401, provided that: "The amendment made by subparagraph (A)(ii) [amending this section] shall not apply to any reorganization if before June 10, 1987—

"(i) the board of directors of a party to the reorganization adopted a resolution to solicit shareholder approval for the transaction, or

"(ii) the shareholders or the board of directors of a party to the reorganization approved the transaction."

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 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to distributions or transfers after Dec. 15, 1987, with exceptions for certain distributee corporations and distributions covered by prior transition rule, see section 10223(d) of Pub. L. 100-203, set out as a note under section 304 of this title.

EFFECTIVE DATE

Section applicable to 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 Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99-514, set out as a note under section 336 of this title.

**§ 338. Certain stock purchases treated as asset acquisitions**

**(a) General rule**

For purposes of this subtitle, if a purchasing corporation makes an election under this section (or is treated under subsection (e) as having made such an election), then, in the case of any qualified stock purchase, the target corporation—

(1) shall be treated as having sold all of its assets at the close of the acquisition date at fair market value in a single transaction, and

(2) shall be treated as a new corporation which purchased all of the assets referred to in