

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338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248, 1255, 1276, 1363, 1366, 1374, and 1375 of this title, and repealed former sections 333, 336, and 337 of this title.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

paragraph (1) as of the beginning of the day after the acquisition date.

(b) Basis of assets after deemed purchase

(1) In general

For purposes of subsection (a), the assets of the target corporation shall be treated as purchased for an amount equal to the sum of—

(A) the grossed-up basis of the purchasing corporation's recently purchased stock, and

(B) the basis of the purchasing corporation's nonrecently purchased stock.

(2) Adjustment for liabilities and other relevant items

The amount described in paragraph (1) shall be adjusted under regulations prescribed by the Secretary for liabilities of the target corporation and other relevant items.

(3) Election to step-up the basis of certain target stock

(A) In general

Under regulations prescribed by the Secretary, the basis of the purchasing corporation's nonrecently purchased stock shall be the basis amount determined under subparagraph (B) of this paragraph if the purchasing corporation makes an election to recognize gain as if such stock were sold on the acquisition date for an amount equal to the basis amount determined under subparagraph (B).

(B) Determination of basis amount

For purposes of subparagraph (A), the basis amount determined under this subparagraph shall be an amount equal to the grossed-up basis determined under subparagraph (A) of paragraph (1) multiplied by a fraction—

(i) the numerator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

(ii) the denominator of which is 100 percent minus the percentage referred to in clause (i).

(4) Grossed-up basis

For purposes of paragraph (1), the grossed-up basis shall be an amount equal to the basis of the corporation's recently purchased stock, multiplied by a fraction—

(A) the numerator of which is 100 percent, minus the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

(B) the denominator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's recently purchased stock.

(5) Allocation among assets

The amount determined under paragraphs (1) and (2) shall be allocated among the assets of the target corporation under regulations prescribed by the Secretary.

(6) Definitions of recently purchased stock and nonrecently purchased stock

For purposes of this subsection—

(A) Recently purchased stock

The term “recently purchased stock” means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which was purchased by such corporation during the 12-month acquisition period.

(B) Nonrecently purchased stock

The term “nonrecently purchased stock” means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which is not recently purchased stock.

[(c) Repealed. Pub. L. 99-514, title VI, § 631(b)(2), Oct. 22, 1986, 100 Stat. 2272]

(d) Purchasing corporation; target corporation; qualified stock purchase

For purposes of this section—

(1) Purchasing corporation

The term “purchasing corporation” means any corporation which makes a qualified stock purchase of stock of another corporation.

(2) Target corporation

The term “target corporation” means any corporation the stock of which is acquired by another corporation in a qualified stock purchase.

(3) Qualified stock purchase

The term “qualified stock purchase” means any transaction or series of transactions in which stock (meeting the requirements of section 1504(a)(2)) of 1 corporation is acquired by another corporation by purchase during the 12-month acquisition period.

(e) Deemed election where purchasing corporation acquires asset of target corporation

(1) In general

A purchasing corporation shall be treated as having made an election under this section with respect to any target corporation if, at any time during the consistency period, it acquires any asset of the target corporation (or a target affiliate).

(2) Exceptions

Paragraph (1) shall not apply with respect to any acquisition by the purchasing corporation if—

(A) such acquisition is pursuant to a sale by the target corporation (or the target affiliate) in the ordinary course of its trade or business,

(B) the basis of the property acquired is determined wholly by reference to the adjusted basis of such property in the hands of the person from whom acquired,

(C) such acquisition was before September 1, 1982, or

(D) such acquisition is described in regulations prescribed by the Secretary and meets such conditions as such regulations may provide.

(3) Anti-avoidance rule

Whenever necessary to carry out the purpose of this subsection and subsection (f), the Sec-

retary may treat stock acquisitions which are pursuant to a plan and which meet the requirements of section 1504(a)(2) as qualified stock purchases.

(f) Consistency required for all stock acquisitions from same affiliated group

If a purchasing corporation makes qualified stock purchases with respect to the target corporation and 1 or more target affiliates during any consistency period, then (except as otherwise provided in subsection (e))—

(1) any election under this section with respect to the first such purchase shall apply to each other such purchase, and

(2) no election may be made under this section with respect to the second or subsequent such purchase if such an election was not made with respect to the first such purchase.

(g) Election

(1) When made

Except as otherwise provided in regulations, an election under this section shall be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(2) Manner

An election by the purchasing corporation under this section shall be made in such manner as the Secretary shall by regulations prescribe.

(3) Election irrevocable

An election by a purchasing corporation under this section, once made, shall be irrevocable.

(h) Definitions and special rules

For purposes of this section—

(1) 12-month acquisition period

The term “12-month acquisition period” means the 12-month period beginning with the date of the first acquisition by purchase of stock included in a qualified stock purchase (or, if any of such stock was acquired in an acquisition which is a purchase by reason of subparagraph (C) of paragraph (3), the date on which the acquiring corporation is first considered under section 318(a) (other than paragraph (4) thereof) as owning stock owned by the corporation from which such acquisition was made).

(2) Acquisition date

The term “acquisition date” means, with respect to any corporation, the first day on which there is a qualified stock purchase with respect to the stock of such corporation.

(3) Purchase

(A) In general

The term “purchase” means any acquisition of stock, but only if—

(i) the basis of the stock in the hands of the purchasing corporation is not determined (I) in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or (II) under section 1014(a) (relating to property acquired from a decedent),

(ii) the stock is not acquired in an exchange to which section 351, 354, 355, or 356 applies and is not acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction, and

(iii) the stock is not acquired from a person the ownership of whose stock would, under section 318(a) (other than paragraph (4) thereof), be attributed to the person acquiring such stock.

(B) Deemed purchase under subsection (a)

The term “purchase” includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined under regulations prescribed by the Secretary.

(C) Certain stock acquisitions from related corporations

(i) In general

Clause (iii) of subparagraph (A) shall not apply to an acquisition of stock from a related corporation if at least 50 percent in value of the stock of such related corporation was acquired by purchase (within the meaning of subparagraphs (A) and (B)).

(ii) Certain distributions

Clause (i) of subparagraph (A) shall not apply to an acquisition of stock described in clause (i) of this subparagraph if the corporation acquiring such stock—

(I) made a qualified stock purchase of stock of the related corporation, and

(II) made an election under this section (or is treated under subsection (e) as having made such an election) with respect to such qualified stock purchase.

(iii) Related corporation defined

For purposes of this subparagraph, a corporation is a related corporation if stock owned by such corporation is treated (under section 318(a) other than paragraph (4) thereof) as owned by the corporation acquiring the stock.

(4) Consistency period

(A) In general

Except as provided in subparagraph (B), the term “consistency period” means the period consisting of—

(i) the 1-year period before the beginning of the 12-month acquisition period for the target corporation,

(ii) such acquisition period (up to and including the acquisition date), and

(iii) the 1-year period beginning on the day after the acquisition date.

(B) Extension where there is plan

The period referred to in subparagraph (A) shall also include any period during which the Secretary determines that there was in effect a plan to make a qualified stock purchase plus 1 or more other qualified stock purchases (or asset acquisitions described in subsection (e)) with respect to the target corporation or any target affiliate.

(5) Affiliated group

The term “affiliated group” has the meaning given to such term by section 1504(a) (determined without regard to the exceptions contained in section 1504(b)).

(6) Target affiliate**(A) In general**

A corporation shall be treated as a target affiliate of the target corporation if each of such corporations was, at any time during so much of the consistency period as ends on the acquisition date of the target corporation, a member of an affiliated group which had the same common parent.

(B) Certain foreign corporations, etc.

Except as otherwise provided in regulations (and subject to such conditions as may be provided in regulations)—

(i) the term “target affiliate” does not include a foreign corporation or a DISC, and

(ii) stock held by a target affiliate in a foreign corporation or a domestic corporation which is a DISC or described in section 1248(e) shall be excluded from the operation of this section.

[(7) Repealed. Pub. L. 100-647, title I, § 1006(e)(20), Nov. 10, 1988, 102 Stat. 3403]**(8) Acquisitions by affiliated group treated as made by 1 corporation**

Except as provided in regulations prescribed by the Secretary, stock and asset acquisitions made by members of the same affiliated group shall be treated as made by 1 corporation.

(9) Target not treated as member of affiliated group

Except as otherwise provided in paragraph (10) or in regulations prescribed under this paragraph, the target corporation shall not be treated as a member of an affiliated group with respect to the sale described in subsection (a)(1).

(10) Elective recognition of gain or loss by target corporation, together with nonrecognition of gain or loss on stock sold by selling consolidated group**(A) In general**

Under regulations prescribed by the Secretary, an election may be made under which if—

(i) the target corporation was, before the transaction, a member of the selling consolidated group, and

(ii) the target corporation recognizes gain or loss with respect to the transaction as if it sold all of its assets in a single transaction,

then the target corporation shall be treated as a member of the selling consolidated group with respect to such sale, and (to the extent provided in regulations) no gain or loss will be recognized on stock sold or exchanged in the transaction by members of the selling consolidated group.

(B) Selling consolidated group

For purposes of subparagraph (A), the term “selling consolidated group” means any

group of corporations which (for the taxable period which includes the transaction)—

- (i) includes the target corporation, and
- (ii) files a consolidated return.

To the extent provided in regulations, such term also includes any affiliated group of corporations which includes the target corporation (whether or not such group files a consolidated return).

(C) Information required to be furnished to the Secretary

Under regulations, where an election is made under subparagraph (A), the purchasing corporation and the common parent of the selling consolidated group shall, at such times and in such manner as may be provided in regulations, furnish to the Secretary the following information:

(i) The amount allocated under subsection (b)(5) to goodwill or going concern value.

(ii) Any modification of the amount described in clause (i).

(iii) Any other information as the Secretary deems necessary to carry out the provisions of this paragraph.

(11) Elective formula for determining fair market value

For purposes of subsection (a)(1), fair market value may be determined on the basis of a formula provided in regulations prescribed by the Secretary which takes into account liabilities and other relevant items.

[(12) Repealed. Pub. L. 99-514, title VI, § 631(e)(5), Oct. 22, 1986, 100 Stat. 2273]**(13) Tax on deemed sale not taken into account for estimated tax purposes**

For purposes of section 6655, tax attributable to the sale described in subsection (a)(1) shall not be taken into account. The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).

[(14) Repealed. Pub. L. 108-27, title III, § 302(e)(4)(B)(i), May 28, 2003, 117 Stat. 763]**(15) Combined deemed sale return**

Under regulations prescribed by the Secretary, a combined deemed sale return may be filed by all target corporations acquired by a purchasing corporation on the same acquisition date if such target corporations were members of the same selling consolidated group (as defined in subparagraph (B) of paragraph (10)).

(16) Coordination with foreign tax credit provisions

Except as provided in regulations, this section shall not apply for purposes of determining the source or character of any item for purposes of subpart A of part III of subchapter N of this chapter (relating to foreign tax credit). The preceding sentence shall not apply to any gain to the extent such gain is includible in gross income as a dividend under section 1248 (determined without regard to any deemed sale under this section by a foreign corporation).

(i) Regulations

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

(1) regulations to ensure that the purpose of this section to require consistency of treatment of stock and asset sales and purchases may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations) and

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

(Added Pub. L. 97-248, title II, §224(a), Sept. 3, 1982, 96 Stat. 485; amended Pub. L. 97-448, title III, §306(a)(8)(A)(i), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 98-369, div. A, title VII, §712(k)(1)-(5)(D), (6), (7), July 18, 1984, 98 Stat. 948-952; Pub. L. 99-514, title VI, §631(b), (e)(5), title XII, §1275(c)(6), title XVIII, §§1804(e)(8)(A), 1899A(7), Oct. 22, 1986, 100 Stat. 2272, 2273, 2599, 2804, 2958; Pub. L. 100-647, title I, §§1006(e)(20), 1012(bb)(5)(A), 1018(d)(9), Nov. 10, 1988, 102 Stat. 3403, 3535, 3581; Pub. L. 101-508, title XI, §11323(c)(1), Nov. 5, 1990, 104 Stat. 1388-465; Pub. L. 108-27, title III, §302(e)(4)(B)(i), May 28, 2003, 117 Stat. 763; Pub. L. 108-357, title VIII, §839(a), Oct. 22, 2004, 118 Stat. 1597; Pub. L. 115-141, div. U, title IV, §401(a)(64), (d)(1)(D)(vii), Mar. 23, 2018, 132 Stat. 1187, 1207.)

Editorial Notes**PRIOR PROVISIONS**

A prior section 338, act Aug. 16, 1954, ch. 736, 68A Stat. 107, made reference to a special rule relating to the effect on earnings and profits of certain distributions in partial liquidation in section 312(e), prior to repeal by Pub. L. 97-248, §222(e)(4).

AMENDMENTS

2018—Subsec. (h)(3)(A)(iii). Pub. L. 115-141, §401(a)(64), substituted “paragraph” for “paragaraph”.

Subsec. (h)(6)(B)(i). Pub. L. 115-141, §401(d)(1)(D)(vii), substituted “or a DISC” for “, a DISC, or a corporation to which an election under section 936 applies”.

2004—Subsec. (h)(13). Pub. L. 108-357 inserted at end “The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).”

2003—Subsec. (h)(14). Pub. L. 108-27 struck out heading and text of par. (14). Text read as follows: “For purposes of determining whether section 341 applies to a disposition within 1 year after the acquisition date of stock by a shareholder (other than the acquiring corporation) who held stock in the target corporation on the acquisition date, section 341 shall be applied without regard to this section.”

1990—Subsec. (h)(10)(C). Pub. L. 101-508 added subpar. (C).

1988—Subsec. (e)(3). Pub. L. 100-647, §1018(d)(9), substituted “which meet the requirements of section 1504(a)(2)” for “which meet the 80 percent requirements of subparagraphs (A) and (B) of subsection (d)(3)”.

Subsec. (h)(7). Pub. L. 100-647, §1006(e)(20), struck out par. (7) which read as follows: “ADDITIONAL PERCENTAGE MUST BE ATTRIBUTABLE TO PURCHASE, ETC.—For purposes of subsection (c)(1), any increase in the maximum percentage of stock taken into account over the percentage of stock (by value) of the target corporation held by the purchasing corporation on the acquisition date shall be taken into account only to the extent such increase is attributable to—

“(A) purchase, or

“(B) a redemption of stock of the target corporation—

“(i) to which section 302(a) applies, or

“(ii) in the case of a shareholder who is not a corporation, to which section 301 applies.”

Subsec. (h)(16). Pub. L. 100-647, §1012(bb)(5)(A), added par. (16).

1986—Subsec. (a)(1). Pub. L. 99-514, §631(b)(1), struck out “to which section 337 applies” after “in a single transaction”.

Subsec. (c). Pub. L. 99-514, §631(b)(2), struck out subsec. (c) relating to special rules for coordination with section 337 where purchasing corporation holds less than 100 percent of stock, and in case of certain redemptions where an election is made under this section.

Subsec. (d)(3). Pub. L. 99-514, §1804(e)(8)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The term ‘qualified stock purchase’ means any transaction or series of transactions in which stock of 1 corporation possessing—

“(A) at least 80 percent of total combined voting power of all classes of stock entitled to vote, and

“(B) at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), is acquired by another corporation by purchase during the 12-month acquisition period.”

Subsec. (h)(3)(C)(i). Pub. L. 99-514, §1899A(7), substituted “subparagraphs” for “subparagraph”.

Subsec. (h)(6)(B)(i). Pub. L. 99-514, §1275(c)(6), struck out “a corporation described in section 934(b),” after “DISC.”

Subsec. (h)(10)(B). Pub. L. 99-514, §631(b)(3), inserted provision that to the extent provided in regulations, term “selling consolidated group” also includes any affiliated group of corporations which includes the target corporation (whether or not such group files a consolidated return).

Subsec. (h)(12). Pub. L. 99-514, §631(e)(5), struck out par. (12) relating to applicability of section 337 where target had adopted plan for complete liquidation.

1984—Subsec. (a)(1). Pub. L. 98-369, §712(k)(1)(A), inserted “at fair market value” after “acquisition date”.

Subsec. (b). Pub. L. 98-369, §712(k)(1)(B), substituted “Basis of assets after deemed purchase” for “Price at which deemed sale made” in heading.

Subsec. (b)(1). Pub. L. 98-369, §712(k)(1)(B), amended par. (1) generally, substituting “as purchased for an amount equal to the sum of” for “as sold (and purchased) at an amount equal to” in introductory text, “purchasing corporation’s recently purchased stock, and” for “purchasing corporation’s stock in the target corporation on the acquisition date” in subpar. (A), and “the basis of the purchasing corporation’s nonrecently purchased stock” in subpar. (B) in lieu of provision relating to adjustment for liabilities and other relevant items, now covered in par. (2).

Subsec. (b)(2). Pub. L. 98-369, §712(k)(1)(B), amended par. (2) generally, incorporating former par. (1)(B) provision, inserting heading “Adjustment for liabilities and other relevant items” and substituting “adjusted under regulations” for “properly adjusted under regulations”. Former par. (2) redesignated (4).

Subsec. (b)(3). Pub. L. 98-369, §712(k)(1)(B), added par. (3). Former par. (3) redesignated (5).

Subsec. (b)(4). Pub. L. 98-369, §712(k)(1)(B), redesignated former par. (2) as (4), substituted in introductory text “corporation’s recently purchased stock,” for “purchasing corporation’s stock in the target corporation on the acquisition date”, inserted in subpar. (A) “minus the percentage of stock (by value) in the target corporation attributable to the purchasing corporation’s nonrecently purchased stock”, and substituted in subpar. (B) “in the target corporation attributable to the purchasing corporation’s recently purchased stock” for “of the target corporation held by the purchasing corporation on the acquisition date”.

Subsec. (b)(5). Pub. L. 98-369, §712(k)(1)(B), redesignated former par. (3) as (5) and inserted reference to par. (2).

Subsec. (b)(6). Pub. L. 98-369, §712(k)(1)(B), added par. (6).

Subsec. (c)(1). Pub. L. 98-369, §712(k)(2), inserted in last sentence “and section 333 does not apply to such liquidation”.

Subsec. (e)(2). Pub. L. 98-369, §712(k)(3), substituted “wholly” for “(in whole or in part)” in subpar. (B), struck out subpar. (D) providing for nonapplication of par. (1) to any acquisition by the purchasing corporation if, to the extent provided in regulations, the property acquired is located outside the United States, redesignated subpar. (E) as (D), and, in subpar. (D) as redesignated, inserted “and meets such conditions as such regulations may provide”.

Subsec. (g)(1). Pub. L. 98-369, §712(k)(4), substituted “the 15th day of the 9th month beginning after the month in which the acquisition date occurs” for “75 days after the acquisition date”.

Subsec. (h)(1). Pub. L. 98-369, §712(k)(5)(C), included within 12-month acquisition period the period beginning with the date on which the acquiring corporation is first considered as owning stock owned by corporation from which acquisition was made.

Subsec. (h)(3)(A)(i). Pub. L. 98-369, §712(k)(5)(D), included references to sections 354, 355, and 356 and in defining “purchase” provided that the stock not be acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction.

Subsec. (h)(3)(B). Pub. L. 98-369, §712(k)(5)(A), substituted in heading “under subsection (a)” for “of stock of subsidiaries” and in text “The term ‘purchase’ includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined under regulations prescribed by the Secretary” for “If stock in a corporation is acquired by purchase (within the meaning of subparagraph (A)) and, as a result of such acquisition, the corporation making such purchase is treated (by reason of section 318(a)) as owning stock in a 3rd corporation, the corporation making such purchase shall be treated as having purchased such stock in such 3rd corporation. The corporation making such purchase shall be treated as purchasing stock in the 3rd corporation by reason of the preceding sentence on the first day on which the purchasing corporation is considered under section 318(a) as owning such stock”.

Subsec. (h)(3)(C). Pub. L. 98-369, §712(k)(5)(B), added subpar. (C).

Subsec. (h)(7). Pub. L. 98-369, §712(k)(6)(A), added par. (7) and struck out former par. (7) which had provided that acquisitions by purchasing corporation include acquisitions by corporations affiliated with purchasing corporation. See subsec. (h)(8).

Subsec. (h)(8). Pub. L. 98-369, §712(k)(6)(A), added par. (8) incorporating former par. (7) provision stating that “Except as otherwise provided in regulations, an acquisition of stock or assets by any member of an affiliated group which includes a purchasing corporation shall be treated as made by the purchasing corporation.” Former par. (8) redesignated (9).

Subsec. (h)(9). Pub. L. 98-369, §712(k)(6)(A), (B), redesignated former par. (8) as (9) and substituted therein “paragraph (10)” for “paragraph (9)”. Former par. (9) redesignated (10).

Subsec. (h)(10). Pub. L. 98-369, §712(k)(6)(A), redesignated former par. (9) as (10).

Subsec. (h)(11) to (15). Pub. L. 98-369, §712(k)(6)(C), added pars. (11) to (15).

Subsec. (i). Pub. L. 98-369, §712(k)(7), provided in introductory text that the regulations be appropriate to carry out the purposes of this section; designated existing provisions as par. (1) and substituted therein “treatment of stock and asset sales and purchases” for “treatment of stock and asset purchases with respect to a target corporation and its target affiliates (whether by treating all of them as stock purchases or as asset purchases)” before “may not be circumvented”, and added par. (2).

1983—Subsec. (h)(8), (9). Pub. L. 97-448 added pars. (8) and (9).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §839(b), Oct. 22, 2004, 118 Stat. 1597, provided that: “The amendment made by subsection (a) [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108-27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11323(d), Nov. 5, 1990, 104 Stat. 1388-465, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1060 and 6724 of this title] shall apply to acquisitions after October 9, 1990.

“(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition.”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1012(bb)(5)(B), Nov. 10, 1988, 102 Stat. 3535, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to qualified stock purchases (as defined in section 338(d)(3) of the 1986 Code) after March 31, 1988, except that, in the case of an election under section 338(h)(10) of the 1986 Code, such amendment shall apply to qualified stock purchases (as so defined) after June 10, 1987.”

Amendment by sections 1006(e)(20) and 1018(d)(9) of 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

Amendment by section 631(b), (e)(5) of Pub. L. 99-514 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 an Effective Date note under section 336 of this title.

Amendment by section 1275(c)(6) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

Pub. L. 99-514, title XVIII, §1804(e)(8)(B), Oct. 22, 1986, 100 Stat. 2804, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply in cases where the 12-month acquisition period (as defined in section 338(h)(1) of the Internal Revenue Code of 1954 [now 1986] begins after December 31, 1985.”

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title VII, §712(k)(9), July 18, 1984, 98 Stat. 952, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) IN GENERAL.—The amendments made by this subsection [amending this section and sections 269 and

318 of this title] shall not apply to any qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) where the acquisition date (as defined in section 338(h)(2) of such Code) is before September 1, 1982.

“(B) EXTENSION OF TIME FOR MAKING ELECTION.—In the case of any qualified stock purchase described in subparagraph (A), the time for making an election under section 338 of such Code shall not expire before the close of the 60th day after the date of the enactment of this Act [July 18, 1984].”

Amendment by section 712(k) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 311(d) of Pub. L. 97-448, set out as a note under section 31 of this title.

EFFECTIVE DATE

Pub. L. 97-248, title II, §224(d), Sept. 3, 1982, 96 Stat. 489, as amended by Pub. L. 97-448, title III, §306(a)(8)(B), Jan. 12, 1983, 96 Stat. 2403; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 168, 318, 334, 336, 337, 381, and 617 of this title] shall apply to any target corporation (within the meaning of section 338 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by this section) with respect to which the acquisition date (within the meaning of such section) occurs after August 31, 1982.

“(2) CERTAIN ACQUISITIONS BEFORE SEPTEMBER 1, 1982.—If—

“(A) an acquisition date (within the meaning of section 338 of such Code without regard to paragraph (5) of this subsection) occurred after August 31, 1980, and before September 1, 1982,

“(B) the target corporation (within the meaning of section 338 of such Code) is not liquidated before September 1, 1982, and

“(C) the purchasing corporation (within the meaning of section 338 of such Code) makes, not later than November 15, 1982, an election under section 338 of such Code,

then the amendments made by this section shall apply to the acquisition of such target corporation.

“(3) CERTAIN ACQUISITIONS OF FINANCIAL INSTITUTIONS.—In any case in which—

“(A) there is, on July 22, 1982, a binding contract to acquire control (within the meaning of section 368(c) of such Code) of any financial institution,

“(B) the approval of one or more regulatory authorities is required in order to complete such acquisition, and

“(C) within 90 days after the date of the final approval of the last such regulatory authority granting final approval, a plan of complete liquidation of such financial institution is adopted,

then the purchasing corporation may elect not to have the amendments made by this section apply to the acquisition pursuant to such contract.

“(4) EXTENSION OF TIME FOR MAKING ELECTIONS; REVOCATION OF ELECTIONS.—

“(A) EXTENSION.—The time for making an election under section 338 of such Code shall not expire before the close of February 28, 1983.

“(B) REVOCATION.—Any election made under section 338 of such Code may be revoked by the purchasing corporation if revoked before March 1, 1983.

“(5) RULES FOR ACQUISITIONS DESCRIBED IN PARAGRAPH (2).—

“(A) IN GENERAL.—For purposes of applying section 338 of such Code with respect to any acquisition described in paragraph (2)—

“(i) the date selected under subparagraph (B) of this paragraph shall be treated as the acquisition date,

“(ii) a rule similar to the last sentence of section 334(b)(2) of such Code (as in effect on August 31, 1982) shall apply, and

“(iii) subsections (e), (f), and (i) of such section 338, and paragraphs (4), (6), (8), and (9) of subsection (h) of such section 338, shall not apply.

“(B) SELECTION OF ACQUISITION DATE BY PURCHASING CORPORATION.—The purchasing corporation may select any date for purposes of subparagraph (A)(i) if such date—

“(i) is after the later of June 30, 1982, or the acquisition date (within the meaning of section 338 of such Code without regard to this paragraph), and

“(ii) is on or before the date on which the election described in paragraph (2)(C) is made.”

SAVINGS PROVISION

For provisions that nothing in amendment by section 401(d)(1)(D)(vii) of Pub. L. 115-141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115-141, set out as a note under section 23 of this title.

TREATMENT OF CERTAIN CORPORATION ORGANIZED ON FEBRUARY 22, 1983

Pub. L. 99-514, title XVIII, §1804(e)(9), Oct. 22, 1986, 100 Stat. 2804, provided that: “In the case of a Rhode Island corporation which was organized on February 22, 1983, and which on February 25, 1983—

“(A) purchased the stock of another corporation,

“(B) filed an election under section 338(g) of the Internal Revenue Code of 1986 with respect to such purchase, and

“(C) merged into the acquired corporation, such purchase of stock shall be considered as made by the acquiring corporation, such election shall be valid, and the acquiring corporation shall be considered a purchasing corporation for purposes of section 338 of such Code without regard to the duration of the existence of the acquiring corporation.”

SPECIAL RULES FOR DEEMED PURCHASES UNDER PRIOR LAW

Pub. L. 98-369, div. A, title VII, §712(k)(10), July 18, 1984, 98 Stat. 953, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “If, before October 20, 1983, a corporation was treated as making a qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), but would not be so treated under the amendments made by paragraphs (5) and (6) [amending subsection (h) and section 318(b)(4) of this title] of this subsection, the amendments made by such paragraphs shall not apply to such purchase unless such corporation elects (at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to have the amendments made by such paragraphs apply.”

EXCEPTION FOR STOCK PURCHASES IN CONTEMPLATION OF TARGET CORPORATION AS MEMBER OF AFFILIATED GROUP

Pub. L. 97-448, title III, §306(a)(8)(A)(ii), Jan. 12, 1983, 96 Stat. 2402, as amended by Pub. L. 98-369, div. A, title VII, §722(a)(3), July 18, 1984, 98 Stat. 973; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “If—

“(I) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after September 1, 1982, and on or before the date of the enactment of this Act [Jan. 12, 1983], and

“(II) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect

to the deemed sale under section 338 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the target corporation would be treated as a member of the affiliated group which includes the selling corporation, then the amendment made by clause (i) [amending subsec. (h)] shall not apply to such qualified stock purchase.”

[SUBPART C—REPEALED]

[§ 341. Repealed. Pub. L. 108-27, title III, § 302(e)(4)(A), May 28, 2003, 117 Stat. 763]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 107; Pub. L. 85-866, title I, § 20(a), Sept. 2, 1958, 72 Stat. 1615; Pub. L. 87-834, § 13(f)(4), Oct. 16, 1962, 76 Stat. 1035; Pub. L. 88-272, title II, § 231(b)(4), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88-484, § 1(a), Aug. 22, 1964, 78 Stat. 596; Pub. L. 89-570, § 1(b)(4), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91-172, title II, § 211(b)(4), title V, § 514(b)(1), Dec. 30, 1969, 83 Stat. 570, 643; Pub. L. 94-455, title II, § 205(c)(2), title XIV, § 1402(b)(1)(B), (2), title XIX, §§ 1901(b)(3)(A), (D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1731, 1732, 1792, 1793, 1834; Pub. L. 97-34, title V, § 505(c)(2), Aug. 13, 1981, 95 Stat. 332; Pub. L. 97-248, title II, § 222(e)(5), Sept. 3, 1982, 96 Stat. 480; Pub. L. 98-369, div. A, title I, §§ 43(c)(1), 65(a)-(c), 135(a), title IV, § 492(b)(2), title X, § 1001(b)(2), (e), July 18, 1984, 98 Stat. 558, 584, 669, 854, 1011, 1012; Pub. L. 99-514, title VI, § 631(e)(6), title XVIII, §§ 1804(i)(1), 1899A(8), Oct. 22, 1986, 100 Stat. 2273, 2807, 2958; Pub. L. 100-647, title I, § 1006(e)(18), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 104-188, title I, § 1702(h)(7), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 106-170, title V, § 532(c)(2)(D), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 107-147, title IV, § 417(24)(B)(i), Mar. 9, 2002, 116 Stat. 57, related to collapsible corporations.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108-27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

[§ 342. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(47), Oct. 4, 1976, 90 Stat. 1772]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 110, related to liquidation of certain foreign personal holding companies.

Statutory Notes and Related Subsidiaries

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.

SUBPART D—DEFINITION AND SPECIAL RULE

Sec.
346. Definition and special rule.

Editorial Notes

AMENDMENTS

1982—Pub. L. 97-248, title II, § 222(e)(8)(A), Sept. 3, 1982, 96 Stat. 481, inserted “and Special Rule” in subpart heading, and substituted “Definition and special rule” for “Partial liquidation defined” in item 346.

§ 346. Definition and special rule

(a) Complete liquidation

For purposes of this subchapter, a distribution shall be treated as in complete liquidation of a

corporation if the distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan.

(b) Transactions which might reach same result as partial liquidations

The Secretary shall prescribe such regulations as may be necessary to ensure that the purposes of subsections (a) and (b) of section 222 of the Tax Equity and Fiscal Responsibility Act of 1982 (which repeal the special tax treatment for partial liquidations) may not be circumvented through the use of section 355, 351, or any other provision of law or regulations (including the consolidated return regulations).

(Aug. 16, 1954, ch. 736, 68A Stat. 110; Pub. L. 97-248, title II, § 222(d), Sept. 3, 1982, 96 Stat. 479; Pub. L. 99-514, title VI, § 631(e)(7), Oct. 22, 1986, 100 Stat. 2273.)

Editorial Notes

REFERENCES IN TEXT

Subsections (a) and (b) of section 222 of the Tax Equity and Fiscal Responsibility Act of 1982, referred to in subsec. (b), are subsections (a) and (b) of Pub. L. 97-248, title II, § 222, Sept. 3, 1982, 96 Stat. 478, which amended sections 331(a) and 336(a) of this title.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-514 struck out “337,” after “351.”

1982—Subsec. (a). Pub. L. 97-248 substituted provision that a distribution shall be treated as in complete liquidation if the distribution is one of a series in redemption of all the stock pursuant to a plan, or the distribution was not essentially equivalent to a dividend, was in redemption of part of the stock pursuant to a plan, and occurred within the taxable year or the next taxable year of the plan being adopted, including but not limited to a distribution which met the requirements of former subsec. (b) of this section, and that for the purposes of sections 562(b) and 6043 of this title, a partial liquidation included a redemption of stock to which section 302 of this title applied.

Subsec. (b). Pub. L. 97-248 added subsec. (b) and struck out former subsec. (b) which provided that a distribution was to be treated as in partial liquidation of a corporation if the distribution was attributable to the cessation of a business which had been carried on for the previous 5-year period and had not been acquired by the corporation in a transaction involving recognition of gain or loss during that time, and if the distributing corporation was actively involved in a trade or business immediately after the distribution under the terms described above for the business being liquidated, and that compliance with the above requirements would be determined without regard to whether or not the distribution was pro rata with respect to all the shareholders of the corporation.

Subsec. (c). Pub. L. 97-248 struck out subsec. (c) which provided that the fact that, with respect to a shareholder, a distribution qualified under section 302(a) by reason of section 302(b) would not be taken into account in determining whether the distribution, with respect to such shareholder, was also a distribution in partial liquidation of the corporation.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to any distribution in complete liquidation, and any sale or ex-