

### § 354. Exchanges of stock and securities in certain reorganizations

#### (a) General rule

##### (1) In general

No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

##### (2) Limitation

###### (A) Excess principal amount

Paragraph (1) shall not apply if—

(i) the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or

(ii) any such securities are received and no such securities are surrendered.

###### (B) Property attributable to accrued interest

Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock (including nonqualified preferred stock, as defined in section 351(g)(2)), securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.

###### (C) Nonqualified preferred stock

###### (i) In general

Nonqualified preferred stock (as defined in section 351(g)(2)) received in exchange for stock other than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.

###### (ii) Recapitalizations of family-owned corporations

###### (I) In general

Clause (i) shall not apply in the case of a recapitalization under section 368(a)(1)(E) of a family-owned corporation.

###### (II) Family-owned corporation

For purposes of this clause, except as provided in regulations, the term "family-owned corporation" means any corporation which is described in clause (i) of section 447(d)(2)(C)<sup>1</sup> throughout the 8-year period beginning on the date which is 5 years before the date of the recapitalization. For purposes of the preceding sentence, stock shall not be treated as owned by a family member during any period described in section 355(d)(6)(B).

###### (III) Extension of statute of limitations

The statutory period for the assessment of any deficiency attributable to a corporation failing to be a family-owned corporation shall not expire before the expiration of 3 years after the date the Secretary is notified by the corporation (in such manner as the Secretary may prescribe) of such failure, and such defi-

ciency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

##### (3) Cross references

(A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including nonqualified preferred stock and an excess principal amount of securities received over securities surrendered, but not including property to which paragraph (2)(B) applies), see section 356.

(B) For treatment of accrued interest in the case of an exchange described in paragraph (2)(B), see section 61.

##### (b) Exception

###### (1) In general

Subsection (a) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of subparagraph (D) or (G) of section 368(a)(1), unless—

(A) the corporation to which the assets are transferred acquires substantially all of the assets of the transferor of such assets; and

(B) the stock, securities, and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization.

###### (2) Cross reference

For special rules for certain exchanges in pursuance of plans of reorganization within the meaning of subparagraph (D) or (G) of section 368(a)(1), see section 355.

##### (c) Certain railroad reorganizations

Notwithstanding any other provision of this subchapter, subsection (a)(1) (and so much of section 356 as relates to this section) shall apply with respect to a plan of reorganization (whether or not a reorganization within the meaning of section 368(a)) for a railroad confirmed under section 1173 of title 11 of the United States Code, as being in the public interest.

(Aug. 16, 1954, ch. 736, 68A Stat. 112; Pub. L. 94-253, §1(c), Mar. 31, 1976, 90 Stat. 296; Pub. L. 95-473, §2(a)(2)(F), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 96-589, §§4(e)(1), (h)(1), 6(i)(2), Dec. 24, 1980, 94 Stat. 3403, 3404, 3410; Pub. L. 101-508, title XI, §11801(c)(8)(D), Nov. 5, 1990, 104 Stat. 1388-524; Pub. L. 104-88, title III, §304(c), Dec. 29, 1995, 109 Stat. 944; Pub. L. 105-34, title X, §1014(b), (e)(1), (2), Aug. 5, 1997, 111 Stat. 920, 921; Pub. L. 105-206, title VI, §6010(e)(2), July 22, 1998, 112 Stat. 814.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 447(d), referred to in subsec. (a)(2)(C)(ii)(II), was repealed and provisions not relating to family-owned corporations were redesignated as section 447(d) by Pub. L. 115-97, title I, §13102(a)(5)(C), Dec. 22, 2017, 131 Stat. 2103.

##### AMENDMENTS

1998—Subsec. (a)(2)(C)(ii)(III). Pub. L. 105-206 added subcl. (III).

1997—Subsec. (a)(2)(B). Pub. L. 105-34, §1014(e)(1), inserted "(including nonqualified preferred stock, as defined in section 351(g)(2))" after "stock".

<sup>1</sup> See References in Text note below.

Subsec. (a)(2)(C). Pub. L. 105-34, §1014(b), added subpar. (C).

Subsec. (a)(3)(A). Pub. L. 105-34, §1014(e)(2), inserted “nonqualified preferred stock and” after “subsection (including)”.

1995—Subsec. (c). Pub. L. 104-88 struck out “or approved by the Interstate Commerce Commission under subchapter IV of chapter 113 of title 49,” after “Code.”.

1990—Subsec. (d). Pub. L. 101-508 struck out subsec. (d) “Exchanges under the final system plan for ConRail” which read as follows: “No gain or loss shall be recognized if stock or securities in a corporation are, in pursuance of an exchange to which paragraph (1) or (2) of section 374(c) applies, exchanged solely for stock of the Consolidated Rail Corporation, securities of such Corporation, certificates of value of the United States Railway Association, or any combination thereof.”

1980—Subsec. (a)(2). Pub. L. 96-589, §4(e)(1), redesignated existing pars. (A) and (B) as par. (A)(i), (ii), and added par. (B).

Subsec. (a)(3). Pub. L. 96-589, §4(e)(1), designated existing provisions as subpar. (A), inserted provisions excluding property to which paragraph (2)(B) applies, and added subpar. (B).

Subsec. (b). Pub. L. 96-589, §4(h)(1), substituted “subparagraph (D) or (G) of section 368(a)(1)” for “section 368(a)(1)(D)”, wherever appearing.

Subsec. (c). Pub. L. 96-589, §6(i)(2), substituted “confirmed under section 1173 of title 11 of the United States Code, or approved by the Interstate Commerce Commission” for “approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act, or”.

1978—Subsec. (c). Pub. L. 95-473 substituted “subchapter IV of chapter 113 of title 49” for “section 20b of the Interstate Commerce Act”.

1976—Subsec. (d). Pub. L. 94-253 added subsec. (d).

#### Statutory Notes and Related Subsidiaries

##### 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

Amendment by Pub. L. 105-34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105-34, set out as a note under section 351 of this title.

##### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

##### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 4(e)(1) of Pub. L. 96-589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, and to exchanges which occur after Dec. 31, 1980, and which do not occur in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11, Bankruptcy, commenced on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases, proceedings or exchanges commencing after Sept. 30, 1979, see section 7(c), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

Amendment by section 4(h)(1) of Pub. L. 96-589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

Amendment by section 6(i)(2) of Pub. L. 96-589 effective Oct. 1, 1979, but not applicable to any proceeding under Title 11 commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as a note under section 108 of this title.

##### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-253, §2, Mar. 31, 1976, 90 Stat. 297, provided that: “The amendments made by section 1 [amending this section and sections 356, 358, and 374 of this title] shall apply to taxable years ending after March 31, 1976.”

##### SAVINGS PROVISION

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

##### ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS

United States Railway Association abolished effective Apr. 1, 1987, all powers, duties, rights, and obligations of Association relating to Consolidated Rail Corporation under Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) transferred to Secretary of Transportation on Jan. 1, 1987, and any securities of Corporation held by Association transferred to Secretary of Transportation on Oct. 21, 1986, see section 1341 of Title 45, Railroads.

### § 355. Distribution of stock and securities of a controlled corporation

#### (a) Effect on distributees

##### (1) General rule

If—

(A) a corporation (referred to in this section as the “distributing corporation”)—

- (i) distributes to a shareholder, with respect to its stock, or
- (ii) distributes to a security holder, in exchange for its securities,

solely stock or securities of a corporation (referred to in this section as “controlled corporation”) which it controls immediately before the distribution,

(B) the transaction was not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or more of such corporations are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such distribution) shall not be construed to mean that the transaction was used principally as such a device),

(C) the requirements of subsection (b) (relating to active businesses) are satisfied, and (D) as part of the distribution, the distributing corporation distributes—

- (i) all of the stock and securities in the controlled corporation held by it immediately before the distribution, or
- (ii) an amount of stock in the controlled corporation constituting control within the meaning of section 368(c), and it is es-