

(C) Election to apply limitation to transferor's stock basis**(i) In general**

If the transferor and transferee of a transaction described in subparagraph (A) both elect the application of this subparagraph—

(I) subparagraph (A) shall not apply, and

(II) the transferor's basis in the stock received for property to which subparagraph (A) does not apply by reason of the election shall not exceed its fair market value immediately after the transfer.

(ii) Election

Any election under clause (i) shall be made at such time and in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.

(Aug. 16, 1954, ch. 736, 68A Stat. 118; Pub. L. 90-621, §2(b), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94-455, title XIX, §1906(b)(13)(A), title XXI, §2120(b), Oct. 4, 1976, 90 Stat. 1834, 1913; Pub. L. 99-514, title VIII, §824(b), Oct. 22, 1986, 100 Stat. 2374; Pub. L. 106-36, title III, §3001(b)(2), June 25, 1999, 113 Stat. 182; Pub. L. 108-357, title VIII, §836(a), Oct. 22, 2004, 118 Stat. 1594; Pub. L. 109-135, title IV, §403(dd)(2), Dec. 21, 2005, 119 Stat. 2631; Pub. L. 113-295, div. A, title II, §221(a)(51), Dec. 19, 2014, 128 Stat. 4045; Pub. L. 115-141, div. U, title IV, §401(a)(67), Mar. 23, 2018, 132 Stat. 1187.)

Editorial Notes**AMENDMENTS**

2018—Subsec. (a). Pub. L. 115-141 struck out comma after “acquired” in introductory provisions.

2014—Subsec. (a). Pub. L. 113-295 struck out “on or after June 22, 1954” after “If property was acquired” in introductory provisions.

Subsec. (c)(1)(A), (2)(A). Pub. L. 113-295 struck out “, on or after June 22, 1954,” after “by a corporation”.

2005—Subsec. (e)(2)(C)(ii). Pub. L. 109-135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “An election under clause (i) shall be included with the return of tax for the taxable year in which the transaction occurred, shall be in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.”

2004—Subsec. (e). Pub. L. 108-357 added subsec. (e).

1999—Subsec. (d). Pub. L. 106-36 added subsec. (d).

1986—Subsec. (c)(3). Pub. L. 99-514 struck out par. (3) relating to exceptions for contributions in aid of construction.

1976—Subsec. (c)(2)(B). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c)(3). Pub. L. 94-455, §2120(b), added par. (3).

1968—Subsec. (b). Pub. L. 90-621 substituted the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) for the issuance of stock or securities of the transferee as the transaction rendering the subsection applicable.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2014 AMENDMENT**

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 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of

2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §836(c)(1), Oct. 22, 2004, 118 Stat. 1596, provided that: “The amendment made by subsection (a) [amending this section] shall apply to transactions after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106-36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to amounts received after Dec. 31, 1986, in taxable years ending after such date, with certain exceptions and qualifications, see section 824(c) of Pub. L. 99-514, set out as a note under section 118 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2120(b) of Pub. L. 94-455 applicable to contributions made after Jan. 31, 1976, see section 2120(c) of Pub. L. 94-455, set out as a note under section 118 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-621 applicable only in respect of plans of reorganization adopted after Oct. 22, 1968, see section 2(c) of Pub. L. 90-621, set out as a note under section 358 of this title.

[§ 363. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(49), Oct. 4, 1976, 90 Stat. 1773]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 119, related to cross reference for rules relating to effect on earnings and profits of transactions to which this part applies.

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—SPECIAL RULE; DEFINITIONS

Sec.

367. Foreign corporations.

368. Definitions relating to corporate reorganizations.

§ 367. Foreign corporations**(a) Transfers of property from the United States****(1) General rule**

If, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation.

(2) Exception for certain stock or securities

Except to the extent provided in regulations, paragraph (1) shall not apply to the transfer of stock or securities of a foreign corporation which is a party to the exchange or a party to the reorganization.