correct errors in appraisement, classification, or any element entering into a liquidation or reliquidation) or reliquidation under 19 U.S.C. section 1520(c)(1) (to correct a clerical error, mistake of fact, or other inadvertence within one year of a liquidation or reliquidation) will be taken into account in the same manner as, and take the place of, the original liquidation in determining customs value.

(e) **Drawbacks.** For purposes of this section, a drawback, that is, a refund or remission (in whole or in part) of a customs duty because of a particular use made (or to be made) of the property on which the duty was assessed or collected, shall not affect the determination of the customs value of the property.

(f) **Effective date.** Property imported by a taxpayer is subject to section 1059A and this section if the entry documentation required to be filed to obtain the release of the property from the custody of the United States Customs Service was filed after March 18, 1986. Section 1059A and this section will not apply to imported property where (1) the entry documentation is filed prior to September 3, 1987; and (2) the importation was liquidated under the circumstances described in paragraph (c)(9) of this section.

[T.D. 8260, 54 FR 37311, Sept. 8, 1989]

§ 1.1060–1 **Special allocation rules for certain asset acquisitions.**

(a) **Scope—(1) In general.** This section prescribes rules relating to the requirements of section 1060, which, in the case of an applicable asset acquisition, requires the transferor (the seller) and the transferee (the purchaser) each to allocate the consideration paid or received in the transaction among the assets transferred in the same manner as amounts are allocated under section 338(b)(5) (relating to the allocation of adjusted grossed-up basis among the assets of the target corporation when a section 338 election is made). In the case of an applicable asset acquisition described in paragraph (b)(1) of this section, sellers and purchasers must allocate the consideration under the residual method as described in §§1.338–6 and 1.338–7 in order to determine, respectively, the amount realized from, and the basis in, each of the transferred assets. For rules relating to distributions of partnership property or transfers of partnership interests which are subject to section 1060(d), see §1.755–2T.

(2) **Effective dates—(i) In general.** The provisions of this section apply to any asset acquisition occurring after March 15, 2001. However, paragraphs (b)(9) and (c)(5) of this section apply only to applicable asset acquisitions occurring on or after April 10, 2006. A purchaser or a seller may make an irrevocable election to apply the rules in §§1.338–11 (including the applicable provisions in §§1.197–2(g)(5), 1.381(c)(22)–1, 846 and 1060) to an applicable asset acquisition occurring before April 10, 2006. Paragraph (a)(2)(ii) of this section describes the time and manner of the election for the purchaser and paragraph (a)(3)(ii) of this section prescribes the time and manner of the election for the seller. The seller may make the election to apply the regulations retroactively without regard to whether the purchaser also makes the election. For rules applicable to asset acquisitions on or before March 15, 2001, see §1.1060–1T in effect before March 16, 2001 (see 26 CFR part 1 revised April 1, 2000).

(ii) **Time and manner of making the election for the purchaser.** The purchaser may make an election described in this paragraph (a)(2) by attaching a statement to its original or amended income tax return for the taxable year that includes the applicable asset sale. The statement must be entitled “Election to Retroactively Apply the Rules in §1.338–11 (Including the Applicable Provisions in §§1.197–2(g)(5), 1.381(c)(22)–1, 846 and 1060) to an Applicable Asset Acquisition Completed Before April 10, 2006” and must include the following information—

(A) The name and E.I.N. for the purchaser; and

(B) The following declaration (or a substantially similar declaration): The purchaser has amended its income tax returns for the taxable year that includes the applicable asset acquisition and for all affected subsequent years to reflect the rules in §1.338–11 (Including the Applicable Provisions in §§1.197–2(g)(5), 1.381(c)(22)–1, 846 and 1060).
(iii) Time and manner of making the election for the seller. The seller may make an election described in this paragraph (a)(2) by attaching a statement to its original or amended income tax return for the taxable year that includes the applicable asset sale. The statement must be entitled “Election to retroactively apply the rules in § 1.338–11 (including the applicable provisions in §§1.197–2(g)(5), 1.381(c)(22)–1, 846 and 1060) to an applicable asset acquisition completed before April 10, 2006,” and must include the following information—

(A) The name and E.I.N. for the seller; and

(B) The following declaration (or a substantially similar declaration): The seller has amended its income tax return for the taxable year that includes the applicable asset acquisition and for all affected subsequent years to reflect the rules in § 1.338–11 (including the applicable provisions in §§1.197–2(g)(5), 1.381(c)(22)–1, 846 and 1060).

(3) Outline of topics. In order to facilitate the use of this section, this paragraph (a)(3) lists the major paragraphs in this section as follows:

(a) Scope.
   (1) In general.
   (2) Effective date.
   (3) Outline of topics.
(b) Applicable asset acquisition.
   (1) In general.
   (2) Assets constituting a trade or business.
      (i) In general.
      (ii) Goodwill or going concern value.
      (iii) Factors indicating goodwill or going concern value.
   (3) Examples.
   (4) Asymmetrical transfers of assets.
   (5) Related transactions.
   (6) More than a single trade or business.
   (7) Covenant entered into by the seller.
   (8) Partial non-recognition exchanges.
   (9) Insurance business.
(c) Allocation of consideration among assets under the residual method.
   (1) Consideration.
   (2) Allocation of consideration among assets.
   (3) Certain costs.
   (4) Effect of agreement between parties.
   (5) Insurance business.
   (d) Examples.
   (e) Reporting requirements.
      (1) Applicable asset acquisitions.
         (i) In general.
         (ii) Time and manner of reporting.
            (A) In general.
            (B) Additional reporting requirement.
relevant in determining whether goodwill or going concern value could attach to a group of assets. Factors to be considered include—

(A) The presence of any intangible assets (whether or not those assets are section 197 intangibles), provided, however, that the transfer of such an asset in the absence of other assets will not be a trade or business for purposes of section 1060;

(B) The existence of an excess of the total consideration over the aggregate book value of the tangible and intangible assets purchased (other than goodwill and going concern value) as shown in the financial accounting books and records of the purchaser; and

(C) Related transactions, including lease agreements, licenses, or other similar agreements between the purchaser and seller (or managers, directors, owners, or employees of the seller) in connection with the transfer.

(3) Examples. The following examples illustrate paragraphs (b)(1) and (2) of this section:

Example 1. S is a high grade machine shop that manufactures microwave connectors in limited quantities. It is a successful company with a reputation within the industry and among its customers for manufacturing unique, high quality products. Its tangible assets consist primarily of ordinary machinery for working metal and plating. It has no secret formulas or patented drawings of value. P is a company that designs, manufactures, and markets electronic components. It wants to establish an immediate presence in the microwave industry, an area in which it previously has not been engaged. P is acquiring assets of a number of smaller companies and hopes that these assets will collectively allow it to offer a broad product mix. P acquires the assets of S in order to augment its product mix and to promote its presence in the microwave industry. P will not use the assets acquired from S to manufacture microwave connectors. The assets transferred are assets that constitute a trade or business in the hands of the seller. Thus, P's purchase of S's assets is an applicable asset acquisition. The fact that P will not use the assets acquired from S to continue the business of S does not affect this conclusion.

Example 2. S, a sole proprietor who operates a car wash, both leases the building housing the car wash and sells all of the car wash equipment to P. S's use of the building and the car wash equipment constitute a trade or business. P begins operating a car wash in the building it leases from S. Because the assets transferred together with the asset leased are assets which constitute a trade or business, P's purchase of S's assets is an applicable asset acquisition.

Example 3. S, a corporation, owns a retail store business in State X and conducts activities in connection with that business enterprise that meet the active trade or business requirement of section 355. P is a minority shareholder of S. S distributes to P all the assets of S used in S's retail business in State X in complete redemption of P's stock in S held by P. The distribution of S's assets in redemption of P's stock is treated as a sale or exchange under sections 302(b)(3), and P's basis in the assets distributed to it is determined wholly by reference to the consideration paid, the S stock. Thus, S's distribution of assets constituting a trade or business to P is an applicable asset acquisition.

Example 4. S is a manufacturing company with an internal financial bookkeeping department. P is in the business of providing a financial bookkeeping service on a contract basis. As part of an agreement for P to begin providing financial bookkeeping services to S, P agrees to buy all of the assets associated with S's internal bookkeeping operations and provide employment to any of S's bookkeeping department employees who choose to accept a position with P. In addition to selling P the assets associated with its bookkeeping operation, S will enter into a long term contract with P for bookkeeping services. Because assets transferred from S to P, along with the related contract for bookkeeping services, are a trade or business in the hands of P, the sale of the bookkeeping assets from S to P is an applicable asset acquisition.

(4) Asymmetrical transfers of assets. A purchaser is subject to section 1060 if—

(i) Under general principles of tax law, the seller is not treated as transferring the same assets as the purchaser is treated as acquiring:

(ii) The assets acquired by the purchaser constitute a trade or business; and

(iii) Except as provided in paragraph (b)(8) of this section, the purchaser's basis in the transferred assets is determined wholly by reference to the purchaser's consideration.

(5) Related transactions. Whether the assets transferred constitute a trade or business is determined by aggregating all transfers from the seller to the purchaser in a series of related transactions. Except as provided in paragraph (b)(8) of this section, all assets
transferred from the seller to the pur-
chaser in a series of related trans-
actions are included in the group of as-
sets among which the consideration paid or received in such series is allo-
cated under the residual method. The principles of §1.338–1(c) are also applied
in determining which assets are in-
cluded in the group of assets among
which the consideration paid or re-
ceived is allocated under the residual
method.

(6) More than a single trade or business.
If the assets transferred from a seller
to a purchaser include more than one
trade or business, then, in applying
this section, all of the assets trans-
ferred (whether or not transferred in
one transaction or a series of related
transactions and whether or not part of
a trade or business) are treated as a
single trade or business.

(7) Covenant entered into by the seller.
If, in connection with an applicable
asset acquisition, the seller enters into
a covenant (e.g., a covenant not to
compete) with the purchaser, that cov-
enant is treated as an asset transferred
as part of a trade or business.

(8) Partial non-recognition exchanges.
A transfer may constitute an applica-
ble asset acquisition notwithstanding
the fact that no gain or loss is recog-
nized with respect to a portion of the
assets transferred. All of the assets trans-
ferred, including the non-
recognition assets, are taken into ac-
count in determining whether the
group of assets constitutes a trade or
business. The allocation of consider-
ation under paragraph (c) of this sec-
tion is done without taking into ac-
count either the non-recognition assets
or the amount of money or other prop-
erty that is treated as transferred in
exchange for the non-recognition as-
sets (together, the non-recognition ex-
change property). The basis in and gain
or loss recognized with respect to the
non-recognition exchange property are
determined under such rules as would
otherwise apply to an exchange of such
property. The amount of the money
and other property treated as ex-
changed for non-recognition assets is
the amount by which the fair market
total of the non-recognition assets
transferred by the other (to the
extent of the money and the fair
market value of property transferred in
the exchange). The money and other
property that are treated as trans-
ferred in exchange for the non-recogni-
tion assets (and which are not included
among the assets to which section 1060
applies) are considered to come from
the following assets in the following
order: first from Class I assets, then
from Class II assets, then from Class III
assets, then from Class IV assets, then
from Class V assets, then from Class VI
assets, and then from Class VII assets.
For this purpose, liabilities assumed
(or to which a non-recognition ex-
change property is subject) are treated
as Class I assets. See Example 1 in para-
graph (d) of this section for an example
of the application of section 1060 to a
single transaction which is, in part, a
non-recognition exchange.

(9) Insurance business. The mere rein-
surance of insurance contracts by an
insurance company is not an applicable
asset acquisition, even if it enables the
reinsurer to establish a customer rela-
tionship with the owners of the rein-
sured contracts. However, a transfer of
an insurance business is an applicable
asset acquisition if the purchaser ac-
quires significant business assets, in
addition to insurance contracts, to
which goodwill and going concern
value could attach. For rules regarding
the treatment of an applicable asset
acquisition of an insurance business,
see paragraph (c)(5) of this section.

(c) Allocation of consideration among
assets under the residual method—

(1) Consideration. The seller’s consider-
ation is the amount, in the aggregate,
realized from selling the assets in the
applicable asset acquisition under sec-
tion 1001(b). The purchaser’s consider-
ation is the amount, in the aggregate,
of its cost of purchasing the assets in
the applicable asset acquisition that is
properly taken into account in basis.

(2) Allocation of consideration among
assets. For purposes of determining the
seller’s amount realized for each of the
assets sold in an applicable asset acquisi-
tion, the seller allocates consider-
tation to all the assets sold by using the
residual method under §§1.338–6 and
1.338–7, substituting consideration for
ADSP. For purposes of determining the
200

purchaser’s basis in each of the assets purchased in an applicable asset acquisition, the purchaser allocates consideration to all the assets purchased by using the residual method under §§1.338–6 and 1.338–7, substituting consideration for AGUB. In allocating consideration, the rules set forth in paragraphs (c)(3) and (4) of this section apply in addition to the rules in §§1.338–6 and 1.338–7.

(3) Certain costs. The seller and purchaser each adjusts the amount allocated to an individual asset to take into account the specific identifiable costs incurred in transferring that asset in connection with the applicable asset acquisition (e.g., real estate transfer costs or security interest perfection costs). Costs so allocated increase, or decrease, as appropriate, the total consideration that is allocated under the residual method. No adjustment is made to the amount allocated to an individual asset for general costs associated with the applicable asset acquisition as a whole or with groups of assets included therein (e.g., non-specific appraisal fees or accounting fees). These latter amounts are taken into account only indirectly through their effect on the total consideration to be allocated. If an election described in §1.338–6(c)(5) is made with respect to this paragraph (c)(3) shall be made as if such election had not been made. The preceding sentence applies to applicable asset acquisitions occurring on or after September 11, 2007. For applicable asset acquisitions occurring before September 11, 2007, and on or after September 15, 2004, see §1.1060–1T as contained in 26 CFR Part 1 in effect on April 1, 2007.

(4) Effect of agreement between parties. If, in connection with an applicable asset acquisition, the seller and purchaser agree in writing as to the allocation of any amount of consideration to, or to the fair market value of, any of the assets, such agreement is binding on them to the extent provided in this paragraph (c)(4). Nothing in this paragraph (c)(4) restricts the Commissioner’s authority to challenge the allocations or values arrived at in an allocation agreement. This paragraph (c)(4) does not apply if the parties are able to refute the allocation or valuation under the standards set forth in Commissioner v. Danielson, 378 F.2d 771 (3d Cir.), cert. denied, 389 U.S. 858 (1967) (a party wishing to challenge the tax consequences of an agreement as construed by the Commissioner must offer proof that, in an action between the parties to the agreement, would be admissible to alter that construction or show its unenforceability because of mistake, undue influence, fraud, duress, etc.).

(5) Insurance business. If the trade or business transferred is an insurance business, the rules of this paragraph (c) are modified by the principles of §1.338–11(a) through (d). However, in transactions governed by section 1060, such principles apply even if the transfer of the trade or business is effected in whole or in part through indemnity reinsurance rather than assumption reinsurance, and, for the insurer or reinsurer, an insurance contract (including an annuity or reinsurance contract) is a Class VI asset regardless of whether it is a section 197 intangible. In addition, the principles of §1.338–11(f) through (h) apply if the transfer occurs in connection with the complete liquidation of the transferor.

(d) Examples. The following examples illustrate this section:

Example 1. (i) On January 1, 2001, A transfers assets X, Y, and Z to B in exchange for assets D, E, and F plus $1,000 cash.

(ii) Assume the exchange of assets constitutes an exchange of like-kind property to which section 1031 applies. Assume also that goodwill or going concern value could under any circumstances attach to each of the DEF and XYZ groups of assets and, therefore, each group constitutes a trade or business under section 1060.

(iii) Assume the fair market values of the assets and the amount of money transferred are as follows:

<table>
<thead>
<tr>
<th>Asset</th>
<th>Fair market value</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>$400</td>
</tr>
<tr>
<td>Y</td>
<td>400</td>
</tr>
<tr>
<td>Z</td>
<td>200</td>
</tr>
</tbody>
</table>

200
(iv) Under paragraph (b)(8) of this section, for purposes of allocating consideration under paragraph (c) of this section, the like-kind assets exchanged and any money or other property that are treated as transferred in exchange for the like-kind property are excluded from the application of section 1060.

(v) Since assets X, Y, and Z are like-kind property, they are excluded from the application of the section 1060 allocation rules.

(vi) Since assets D, E, and F are like-kind property, they are excluded from the application of the section 1060 allocation rules. Thus, the allocation rules of section 1060 do not apply in determining B's gain or loss with respect to the disposition of assets D, E, and F, and the allocation rules of section 1060 and paragraph (c) of this section are not applied to determine A's bases of assets D, E, and F. In addition, $800 of the $1,000 cash B gave to A for A's like-kind assets (X, Y, and Z) is treated as transferred in exchange for the like-kind property in order to equalize the fair market values of the like-kind assets. Therefore, $200 of the cash is excluded from the application of the section 1060 allocation rules.

(vii) $100 of the cash is allocated under section 1060 and paragraph (c) of this section.

(viii) A received $100 that must be allocated under section 1060 and paragraph (c) of this section. Since A transferred no Class I, II, III, IV, V, or VI assets to which section 1060 applies, in determining its amount realized for the part of the exchange to which section 1061 does not apply, the $100 is allocated to Class VII assets (goodwill and going concern value).

(ix) B gave A $100 that must be allocated under section 1060 and paragraph (c) of this section. Since B received from A no Class I, II, III, IV, V, or VI assets to which section 1060 applies, the $100 consideration is allocated by B to Class VII assets (goodwill and going concern value).

Example 2. (i) On January 1, 2001, S, a sole proprietor, sells to P, a corporation, a group of assets that constitutes a trade or business under paragraph (b)(2) of this section. S, who plans to retire immediately, also executes in P's favor a covenant not to compete. P pays S $2,000 in cash and assumes $1,000 in liabilities. Thus, the total consideration is $4,000.

(ii) On the purchase date, P and S also execute a separate agreement that states that the fair market values of the Class II, Class III, Class V, and Class VI assets sold to P are as follows:

<table>
<thead>
<tr>
<th>Class</th>
<th>Asset</th>
<th>Fair market value</th>
</tr>
</thead>
<tbody>
<tr>
<td>II</td>
<td>Actively traded securities</td>
<td>$500</td>
</tr>
<tr>
<td>III</td>
<td>Accounts receivable</td>
<td>$200</td>
</tr>
<tr>
<td>V</td>
<td>Furniture and fixtures</td>
<td>$800</td>
</tr>
<tr>
<td>VI</td>
<td>Covenant not to compete</td>
<td>$900</td>
</tr>
</tbody>
</table>

(iii) P and S each allocate the consideration in the transaction among the assets transferred under paragraph (c) of this section in accordance with the agreed upon fair market values of the assets, so that $500 is allocated to Class II assets, $200 is allocated to the Class III asset, $2,200 is allocated to Class V assets, $900 is allocated to Class VI assets, and $200 ($4,000 total consideration less $3,800 allocated to assets in Classes II, III, V, and VI) is allocated to the Class VII assets (goodwill and going concern value).

(iv) In connection with the examination of P's return, the Commissioner, in determining the fair market values of the assets transferred, may disregard the parties' agreement. Assume that the Commissioner correctly determines that the fair market value of the covenant not to compete was $500. Since the allocation of consideration among Class II, III, V, and VI assets results in allocation up to the fair market value limitation, the $600 of unallocated consideration resulting from the Commissioner's redetermination of the value of the covenant not to compete is allocated to Class VII assets (goodwill and going concern value).

(e) Reporting requirements—(1) Applicable asset acquisitions—(i) In general. Unless otherwise excluded from this requirement by the Commissioner, the seller and the purchaser in an applicable asset acquisition each must report information concerning the amount of consideration in the transaction and its allocation among the assets transferred. They also must report information concerning subsequent adjustments to consideration.
§ 1.1071–1

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(i) Time and manner of reporting—(A) In general. The seller and the purchaser each must file asset acquisition statements on Form 8594, “Asset Allocation Statement,” with their income tax returns or returns of income for the taxable year that includes the first date assets are sold pursuant to an applicable asset acquisition. This reporting requirement applies to all asset acquisitions described in this section. For reporting requirements relating to asset acquisitions occurring before March 16, 2001, as described in paragraph (a)(2) of this section, see the temporary regulations under section 1060 in effect prior to March 16, 2001 (see 26 CFR part 1 revised April 1, 2000).

(B) Additional reporting requirement. When an increase or decrease in consideration is taken into account after the close of the first taxable year that includes the first date assets are sold in an applicable asset acquisition, the seller and the purchaser each must file a supplemental asset acquisition statement on Form 8594 with the income tax return or return of income for the taxable year in which the increase (or decrease) is properly taken into account.

(C) Election described in §1.338–6(c)(5)—

(1) Availability. The election described in §1.338–6(c)(5) is available in respect of an applicable asset acquisition provided that the requirements of that section are satisfied. Such election may be made by the seller, regardless of whether the purchaser also makes the election, and may be made by the purchaser, regardless of whether the seller also makes the election.

(2) Time and manner of making election. The election described in §1.338–6(c)(5) is made by taking a position on a timely filed original tax return for the taxable year of the applicable asset acquisition that is consistent with having made the election.

(3) Irrevocability of election. The election described in §1.338–6(c)(5) is irrevocable.

(4) Effective/applicability date. This paragraph (e)(1)(ii)(C) applies to applicable asset acquisitions occurring on or after September 11, 2007. For applicable asset acquisitions occurring before September 11, 2007 and on or after September 15, 2004, see §1.1060–1T as contained in 26 CFR Part 1 in effect on April 1, 2007. For applicable asset acquisitions occurring before September 15, 2004, see §§1.338–6 and 1.1060–1 as contained in 26 CFR Part 1 in effect on April 1, 2004.

(2) Transfers of interests in partnerships. For reporting requirements relating to the transfer of a partnership interest, see §1.755–1(d).


CHANGES TO EFFECTUATE F.C.C. POLICY

§ 1.1071–1 Gain from sale or exchange to effectuate policies of Federal Communications Commission.

(a)(1) At the election of the taxpayer, section 1071 postpones the recognition of the gain upon the sale or exchange of property if the Federal Communications Commission grants the taxpayer a certificate with respect to the ownership and control of radio broadcasting stations which is in accordance with subparagraph (2) of this paragraph. Any taxpayer desiring to obtain the benefits of section 1071 shall file such certificate with the Commissioner of Internal Revenue, or the district director for the internal revenue district in which the income tax return of the taxpayer is required to be filed.

(2)(i) In the case of a sale or exchange before January 1, 1958, the certificate from the Federal Communications Commission must clearly identify the property and show that the sale or exchange is necessary or appropriate to effectuate the policies of such Commission with respect to the ownership and control of radio broadcasting stations.

(ii) In the case of a sale or exchange after December 31, 1957, the certificate from the Federal Communications Commission must clearly identify the property and show that the sale or exchange is necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, such Commission with respect to the ownership and control of radio broadcasting stations.

(iii) In the case of a sale or exchange after December 31, 1957, the certificate from the Federal Communications Commission must clearly identify the property and show that the sale or exchange is necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, such Commission with respect to the ownership and control of radio broadcasting stations.

(3) The certificate shall be accompanied by a detailed statement showing