

1962—Subsec. (b)(7). Pub. L. 87-834 added par. (7).
 1960—Subsec. (b)(6). Pub. L. 86-779 added par. (6).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1142(f) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and sections 901 and 6038 of this title] shall apply to annual accounting periods beginning after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to any ownership change after Dec. 31, 1986, except as otherwise provided, see section 621(f) of Pub. L. 99-514, as amended, set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 712(k)(5)(E) of Pub. L. 98-369 not applicable to any qualified stock purchase where the acquisition date is before Sept. 1, 1982, see section 712(k)(9)(A) of Pub. L. 98-369, set out as a note under section 338 of this title.

Amendment by section 712(k)(5)(E) 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.

Amendment by section 721(j) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97-248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 4(c) of Pub. L. 88-554, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section and sections 304, 382, 856, 958, and 6038 of this title] shall take effect on the date of the enactment of this Act. [Aug. 31, 1964], except that, for purposes of sections 302 and 304 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], such amendments shall not apply with respect to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before the date of the enactment of this Act.”

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86-779, set out as an Effective Date note under section 856 of this title.

PART II—CORPORATE LIQUIDATIONS

Subpart

- A. Effects on recipients.
- B. Effects on corporation.
- [C. Repealed.]
- D. Definition and special rule.

AMENDMENT OF ANALYSIS

For termination of amendment by Pub. L. 108-27, see section 303 of Pub. L. 108-27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

AMENDMENTS

2003—Pub. L. 108-27, title III, §§302(e)(4)(B)(iii), 303, May 28, 2003, 117 Stat. 764, temporarily struck out item for subpart C “Collapsible corporations”.

1982—Pub. L. 97-248, title II, §222(e)(8)(B), Sept. 3, 1982, 96 Stat. 481, inserted “and special rule” in item for subpart D.

1976—Pub. L. 94-455, title XIX, §1901(b)(12)(B), Oct. 4, 1976, 90 Stat. 1795, struck out in table of subparts for part II of subchapter C of chapter 1 in subpart (C) “; foreign personal holding companies” after “corporations”.

SUBPART A—EFFECTS ON RECIPIENTS

- Sec. 331. Gain or loss to shareholder in corporate liquidations.¹
- 332. Complete liquidations of subsidiaries.
- [333. Repealed.]
- 334. Basis of property received in liquidations.

AMENDMENTS

1986—Pub. L. 99-514, title VI, §631(e)(16), Oct. 22, 1986, 100 Stat. 2275, struck out item 333 “Election as to recognition of gain in certain liquidations”.

§331. Gain or loss to shareholders in corporate liquidations

(a) Distributions in complete liquidation treated as exchanges

Amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

(b) Nonapplication of section 301

Section 301 (relating to effects on shareholder of distributions of property) shall not apply to any distribution of property (other than a distribution referred to in paragraph (2)(B) of section 316(b)) in complete liquidation.

(c) Cross reference

For general rule for determination of the amount of gain or loss recognized, see section 1001.

(Aug. 16, 1954, ch. 736, 68A Stat. 101; Pub. L. 88-272, title II, §225(f)(2), Feb. 26, 1964, 78 Stat. 88; Pub. L. 94-455, title XIX, §1901(b)(28)(A), Oct. 4, 1976, 90 Stat. 1799; Pub. L. 97-248, title II, §222(a), (e)(1)(B), Sept. 3, 1982, 96 Stat. 478, 480.)

AMENDMENTS

1982—Subsec. (a). Pub. L. 97-248, §222(a), substituted provisions that amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock for provisions that, in complete liquidations, amounts distributed shall be treated as in full payment in exchange for the stock, while amounts distributed in partial liquidation shall be treated as in part or full payment in exchange for the stock.

Subsec. (b). Pub. L. 97-248, §222(e)(1)(B), struck out “partial or” before “complete liquidation”.

1976—Subsec. (c). Pub. L. 94-455 substituted “reference” for “references” in heading and struck out cross reference relating to general rule for determination of the amount of gain or loss to the distributee and substituted “section 1001” for “section 1002”.

1964—Subsec. (b). Pub. L. 88-272 inserted “(other than a distribution referred to in paragraph (2)(B) of section 316(b))”.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to distributions after Aug. 31, 1982, with exceptions for certain

¹ So in original. Does not conform to section catchline.

partial liquidations, see section 222(f) of Pub. L. 97-248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to distribution made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(7) of Pub. L. 88-272, set out as a note under section 316 of this title.

LIQUIDATIONS BEFORE JANUARY 1, 1966

Section 225(h) of Pub. L. 88-272 provided that in the case of corporations referred to in former subsec. (g)(3) of this section the amendments made by section 225 of Pub. L. 88-272 do not apply if there is a complete liquidation of such corporation and if the distribution of all the property under such liquidation occurs before Jan. 1, 1966, except for certain liquidations to which section 332 of this title applies.

§ 332. Complete liquidations of subsidiaries

(a) General rule

No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(b) Liquidations to which section applies

For purposes of this section, a distribution shall be considered to be in complete liquidation only if—

(1) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) meeting the requirements of section 1504(a)(2); and either

(2) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(3) such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within 3 years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year, the Secretary

may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such 3-year period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, the assessment and collection of all income taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this subsection shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for purposes of this subsection a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (A) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, on an exchange described in section 361, and (B) the complete cancellation or redemption under the plan, as a result of exchanges described in section 354, of the shares not owned by the taxpayer.

(c) Deductible liquidating distributions of regulated investment companies and real estate investment trusts

If a corporation receives a distribution from a regulated investment company or a real estate investment trust which is considered under subsection (b) as being in complete liquidation of such company or trust, then, notwithstanding any other provision of this chapter, such corporation shall recognize and treat as a dividend from such company or trust an amount equal to the deduction for dividends paid allowable to such company or trust by reason of such distribution.

(d) Recognition of gain on liquidation of certain holding companies

(1) In general

In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

(A) subsection (a) and section 331 shall not apply to such distribution, and

(B) such distribution shall be treated as a distribution of property to which section 301 applies.

(2) Applicable holding company

For purposes of this subsection:

(A) In general

The term “applicable holding company” means any domestic corporation—

(i) which is a common parent of an affiliated group,

(ii) stock of which is directly owned by the distributee foreign corporation,

(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

(B) Affiliated group

For purposes of this subsection, the term “affiliated group” has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) of section 1504(b)).

(3) Coordination with subpart F

If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

(4) Regulations

The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.

(Aug. 16, 1954, ch. 736, 68A Stat. 102; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-514, title VI, §631(e)(2), title XVIII, §1804(e)(6)(A), Oct. 22, 1986, 100 Stat. 2273, 2803; Pub. L. 105-277, div. J, title III, §3001(a), (b)(1), Oct. 21, 1998, 112 Stat. 2681-904; Pub. L. 108-357, title VIII, §893(a), Oct. 22, 2004, 118 Stat. 1646; Pub. L. 109-135, title IV, §412(v), Dec. 21, 2005, 119 Stat. 2638.)

AMENDMENTS

2005—Subsec. (d)(1)(B). Pub. L. 109-135 substituted “distribution of property to which section 301 applies” for “distribution to which section 301 applies”.

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

1998—Subsec. (b). Pub. L. 105-277, §3001(b)(1), substituted “this section” for “subsection (a)” in introductory provisions.

Subsec. (c). Pub. L. 105-277, §3001(a), added subsec. (c).

1986—Subsec. (b)(1). Pub. L. 99-514, §1804(e)(6)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of 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); and either”.

Subsec. (c). Pub. L. 99-514, §631(e)(2), struck out subsec. (c) containing special rule for indebtedness of subsidiary to parent in relation to complete liquidations of subsidiaries.

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §893(b), Oct. 22, 2004, 118 Stat. 1647, provided that: “The amendment made by this section [amending this section] shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. J, title III, §3001(c), Oct. 21, 1998, 112 Stat. 2681-904, provided that: “The amendments

made by this section [amending this section and section 334 of this title] shall apply to distributions after May 21, 1998.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(2) 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.

Section 1804(e)(6)(B) of Pub. L. 99-514 provided that:

“(i) IN GENERAL.—Except as provided in clause (iii), the amendment made by subparagraph (A) [amending this section] shall apply with respect to plans of complete liquidation adopted after March 28, 1985.

“(ii) CERTAIN DISTRIBUTIONS MADE AFTER DECEMBER 31, 1984.—Except as provided in clause (iii), the amendment made by subparagraph (A) shall also apply with respect to plans of complete liquidations adopted on or before March 28, 1985, pursuant to which any distribution is made in a taxable year beginning after December 31, 1984 (December 31, 1983, in the case of an affiliated group to which an election under section 60(b)(7) of the Tax Reform Act of 1984 [Pub. L. 98-369, set out as a note under section 1504 of this title] applies), but only if the liquidating corporation and any corporation which receives a distribution in complete liquidation of such corporation are members of an affiliated group of corporations filing a consolidated return for the taxable year which includes the date of the distribution.

“(iii) TRANSITIONAL RULE FOR AFFILIATED GROUPS.—The amendment made by subparagraph (A) shall not apply with respect to plans of complete liquidation if the liquidating corporation is a member of an affiliated group of corporations under section 60(b) (2), (5), (6), or (8) of the Tax Reform Act of 1984 [Pub. L. 98-369, set out as a note under section 1504 of this title], for all taxable years which include the date of any distribution pursuant to such plan.”

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

[§ 333. Repealed. Pub. L. 99-514, title VI, § 631(e)(3), Oct. 22, 1986, 100 Stat. 2273]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 103; Feb. 26, 1964, Pub. L. 88-272, title II, §225(g), 78 Stat. 89; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§1901(a)(44), 1906(b)(13)(A), 1951(b)(6)(A), 90 Stat. 1772, 1834, 1838, related to election as to recognition of gain in certain liquidations.

EFFECTIVE DATE OF REPEAL

Repeal 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.

§ 334. Basis of property received in liquidations**(a) General rule**

If property is received in a distribution in complete liquidation, and if gain or loss is recognized on receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution.

(b) Liquidation of subsidiary**(1) In general**

If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in the hands of such distributee—

(A) the basis of such property shall be the fair market value of the property at the time of the distribution in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, and

(B) the basis of any property described in section 362(e)(1)(B) shall be the fair market value of the property at the time of the distribution in any case in which such distributee's aggregate adjusted basis of such property would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.

(2) Corporate distributee

For purposes of this subsection, the term "corporate distributee" means only the corporation which meets the stock ownership requirements specified in section 332(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 104; Pub. L. 89-809, title II, §202(a), (b), Nov. 13, 1966, 80 Stat. 1576; Pub. L. 94-455, title XIX, §§1901(a)(45), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1772, 1834; Pub. L. 97-248, title II, §§222(e)(1)(C), 224(b), Sept. 3, 1982, 96 Stat. 480, 488; Pub. L. 99-514, title VI, §631(e)(4), Oct. 22, 1986, 100 Stat. 2273; Pub. L. 100-647, title I, §1006(e)(6), Nov. 10, 1988, 102 Stat. 3401; Pub. L. 105-277, div. J, title III, §3001(b)(2), Oct. 21, 1998, 112 Stat. 2681-904; Pub. L. 108-357, title VIII, §836(b), Oct. 22, 2004, 118 Stat. 1595; Pub. L. 109-135, title IV, §403(dd)(1), Dec. 21, 2005, 119 Stat. 2630.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109-135 substituted "except that, in the hands of such distributee—" for "except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—" in introductory provisions, added subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

"(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

"(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation."

2004—Subsec. (b)(1). Pub. L. 108-357 reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution."

1998—Subsec. (b)(1). Pub. L. 105-277 substituted "section 332" for "section 332(a)".

1988—Subsec. (b). Pub. L. 100-647 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"(1) DISTRIBUTION IN COMPLETE LIQUIDATION.—If property is received by a corporation in a distribution in a complete liquidation to which section 332(a) applies, the basis of the property in the hands of the distributee shall be the same as it would be in the hands of the transferor.

"(2) TRANSFERS TO WHICH SECTION 332(C) APPLIES.—If property is received by a corporation in a transfer to which section 332(c) applies, the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor.

"(3) DISTRIBUTEES DEFINED.—For purposes of this subsection, the term 'distributee' means only the corporation which meets the 80-percent stock ownership requirements specified in section 332(b)."

1986—Subsec. (a). Pub. L. 99-514, §631(e)(4)(A), struck out "(other than a distribution to which section 333 applies)" after "liquidation".

Subsec. (c). Pub. L. 99-514, §631(e)(4)(B), struck out subsec. (c) relating to property received in liquidation under section 333.

1982—Subsec. (a). Pub. L. 97-248, §222(e)(1)(C), struck out "partial or" before "complete liquidation".

Subsec. (b). Pub. L. 97-248, §224(b), struck out heading to par. (1) "In general", redesignated first sentence as par. (1) with heading "Distribution in complete liquidation", in par. (1) as so redesignated substituted reference to section 332(a) for reference to section 332(b) relating to a distribution in complete liquidation, struck out reference to par. (2) as an exception to the determination of basis, redesignated second sentence as par. (2) with heading "Transfers to which section 332(c) applies", in par. (2) as so redesignated struck out reference to par. (2) as an exception to the determination of basis, struck out par. (2) which had provided that if property was received by a corporation in a distribution in complete liquidation of another corporation and if the distribution was pursuant to a plan of liquidation adopted not more than 2 years after the date of the transaction described below, or in the case of a series of transactions, the date of the last such transaction, and stock of the distributing corporation possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which was limited and preferred as to dividends), was acquired by the distributee by purchase (as defined in par. (3)) during a 12-month period beginning with the earlier of the date of the first acquisition by purchase of such stock, or if any of such stock was acquired in an acquisition which is a purchase within the meaning of second sentence of par. (3), the date on which the distributee was first considered under section 318(a) as owning stock owned by the corporation from which such acquisition was made, then the basis of the property in the hands of the distributee would be the adjusted basis of the stock with respect to which the distribution was made, and under regulations prescribed by the Secretary, proper adjustment in the adjusted basis of any stock would be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of

liquidation, for any money received, for any liabilities assumed or subject to which the property was received, and for other items, and struck out par. (3) which provided that “purchase” meant any acquisition of stock, but only if the basis of the stock in the hands of the distributee was not determined in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or under section 1014(a) of this title the stock was not acquired in an exchange to which section 351 of this title applies, and the stock was not acquired from a person the ownership of whose stock would, under section 318(a) of this title, be attributed to the person acquiring such stock, but that “purchase” also meant an acquisition of stock from a corporation when ownership of such stock would be attributed under section 318(a) to the person acquiring such stock, if the stock of such corporation by reason of which such ownership would be attributed was acquired by purchase, and redesignated par. (4) as (3).

1976—Subsec. (b)(2). Pub. L. 94-455, §§1901(a)(45), 1906(b)(13)(A), struck out in subpar. (A) provision relating to distributions made pursuant to a plan of liquidation adopted on or before June 22, 1954, and in provisions following subpar. (B)(ii) “or his delegate” after “Secretary”.

1966—Subsec. (b)(2)(B). Pub. L. 89-809, §202(b), inserted provisions for the determination of the date on which to commence the running of the 12-month period during which the distributee must have acquired the stock by purchase by adding clauses (i) and (ii).

Subsec. (b)(3). Pub. L. 89-809, §202(a), inserted provision that, for purposes of par. (2)(B), “purchase” also means an acquisition of stock from a corporation when ownership of such stock would be attributed under section 318(a) to the person acquiring such stock, if the stock of such corporation by reason of which such ownership would be attributed was acquired by purchase.

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)(2), Oct. 22, 2004, 118 Stat. 1596, provided that: “The amendment made by subsection (b) [amending this section] shall apply to liquidations after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 applicable to distributions after May 21, 1998, see section 3001(c) of Pub. L. 105-277, set out as a note under section 332 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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 1986 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 222(e)(1)(C) of Pub. L. 97-248 applicable to distributions after Aug. 31, 1982, with ex-

ceptions for certain partial liquidations, see section 222(f) of Pub. L. 97-248, set out as a note under section 302 of this title.

Amendment by section 224(b) of Pub. L. 97-248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97-248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(45) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 202(d) of Pub. L. 89-809 provided that: “The amendment made by subsection (a) [amending this section] shall apply only with respect to acquisitions of stock after December 31, 1965. The amendment made by subsections (b) and (c) [amending this section and section 453 of this title] shall apply only with respect to distributions made after the date of the enactment of this Act [Nov. 13, 1966].”

ADJUSTMENT FOR LIABILITY TO BASIS OF PROPERTY DISTRIBUTED IN COMPLETE LIQUIDATION OF CORPORATION PRIOR TO JULY 1, 1957; DEDUCTION FOR UNCOMPENSATED LIABILITY

Pub. L. 93-497, §3, Oct. 29, 1974, 88 Stat. 1534, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) Notwithstanding the provisions of section 334 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to basis of property received in liquidations), no adjustment to the basis of any property distributed in complete liquidation of a corporation prior to July 1, 1957, shall be made for any liability if—

“(1) the distributor and distributee did not consider the liability relevant to the value of the stock with respect to which the distribution was made,

“(2) the distributor and distributee reasonably relied upon a decision of a United States district court specifically adjudicating the amount of the liability and its affirmation by the appropriate United States court of appeals, and

“(3) the amount of liability so adjudicated was not greater than would be compensated for by insurance. The provisions of this section apply without regard to whether such decision was subsequently reversed or modified by that United States court of appeals following distribution of such property in complete liquidation.

“(b) To the extent that the liability described in subsection (a) is not compensated for by insurance or otherwise, the amount thereof shall be allowed as a deduction under the appropriate provision of the Internal Revenue Code of 1986 for the taxable year in which payment thereof was made and shall be effective in determining income tax liabilities of all taxable years prior thereto.”

SUBPART B—EFFECTS ON CORPORATION

- | | |
|------|--|
| Sec. | |
| 336. | Gain or loss recognized on property distributed in complete liquidation. |
| 337. | Nonrecognition for property distributed to parent in complete liquidation of subsidiary. |
| 338. | Certain stock purchases treated as asset acquisitions. |

AMENDMENTS

1986—Pub. L. 99-514, title VI, §631(e)(17), Oct. 22, 1986, 100 Stat. 2275, substituted “Gain or loss recognized on

property distributed in complete liquidation” for “General rule” in item 336 and “Nonrecognition for property distributed to parent in complete liquidation of subsidiary” for “Gain or loss on sales or exchanges in connection with certain liquidations” in item 337.

1982—Pub. L. 97-248, title II, §224(c)(9), Sept. 3, 1982, 96 Stat. 489, substituted “Certain stock purchases treated as asset acquisitions” for “Effect on earnings and profits” in item 338.

§ 336. Gain or loss recognized on property distributed in complete liquidation

(a) General rule

Except as otherwise provided in this section or section 337, gain or loss shall be recognized to a liquidating corporation on the distribution of property in complete liquidation as if such property were sold to the distributee at its fair market value.

(b) Treatment of liabilities

If any property distributed in the liquidation is subject to a liability or the shareholder assumes a liability of the liquidating corporation in connection with the distribution, for purposes of subsection (a) and section 337, the fair market value of such property shall be treated as not less than the amount of such liability.

(c) Exception for liquidations which are part of a reorganization

For provision providing that this subpart does not apply to distributions in pursuance of a plan of reorganization, see section 361(c)(4).

(d) Limitations on recognition of loss

(1) No loss recognized in certain distributions to related persons

(A) In general

No loss shall be recognized to a liquidating corporation on the distribution of any property to a related person (within the meaning of section 267) if—

- (i) such distribution is not pro rata, or
- (ii) such property is disqualified property.

(B) Disqualified property

For purposes of subparagraph (A), the term “disqualified property” means any property which is acquired by the liquidating corporation in a transaction to which section 351 applied, or as a contribution to capital, during the 5-year period ending on the date of the distribution. Such term includes any property if the adjusted basis of such property is determined (in whole or in part) by reference to the adjusted basis of property described in the preceding sentence.

(2) Special rule for certain property acquired in certain carryover basis transactions

(A) In general

For purposes of determining the amount of loss recognized by any liquidating corporation on any sale, exchange, or distribution of property described in subparagraph (B), the adjusted basis of such property shall be reduced (but not below zero) by the excess (if any) of—

- (i) the adjusted basis of such property immediately after its acquisition by such corporation, over

- (ii) the fair market value of such property as of such time.

(B) Description of property

(i) In general

For purposes of subparagraph (A), property is described in this subparagraph if—

(I) such property is acquired by the liquidating corporation in a transaction to which section 351 applied or as a contribution to capital, and

(II) the acquisition of such property by the liquidating corporation was part of a plan a principal purpose of which was to recognize loss by the liquidating corporation with respect to such property in connection with the liquidation.

Other property shall be treated as so described if the adjusted basis of such other property is determined (in whole or in part) by reference to the adjusted basis of property described in the preceding sentence.

(ii) Certain acquisitions treated as part of plan

For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidated corporation after the date 2 years before the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as acquired as part of a plan described in clause (i)(II).

(C) Recapture in lieu of disallowance

The Secretary may prescribe regulations under which, in lieu of disallowing a loss under subparagraph (A) for a prior taxable year, the gross income of the liquidating corporation for the taxable year in which the plan of complete liquidation is adopted shall be increased by the amount of the disallowed loss.

(3) Special rule in case of liquidation to which section 332 applies

In the case of any liquidation to which section 332 applies, no loss shall be recognized to the liquidating corporation on any distribution in such liquidation. The preceding sentence shall apply to any distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution.

(e) Certain stock sales and distributions may be treated as asset transfers

Under regulations prescribed by the Secretary, if—

- (1) a corporation owns stock in another corporation meeting the requirements of section 1504(a)(2), and
- (2) such corporation sells, exchanges, or distributes all of such stock,

an election may be made to treat such sale, exchange, or distribution as a disposition of all of the assets of such other corporation, and no gain or loss shall be recognized on the sale, exchange, or distribution of such stock.

(Added Pub. L. 99-514, title VI, §631(a), Oct. 22, 1986, 100 Stat. 2269; amended Pub. L. 100-647, title

I, §§1006(e)(1)–(3), (21)(A), 1018(d)(5)(D), Nov. 10, 1988, 102 Stat. 3400, 3403, 3580.)

PRIOR PROVISIONS

A prior section 336, acts Aug. 16, 1954, ch. 736, 68A Stat. 106; Apr. 2, 1980, Pub. L. 96–223, title IV, §403(b)(1), 94 Stat. 304; Oct. 19, 1980, Pub. L. 96–471, §2(b)(1), (c)(1), 94 Stat. 2253, 2254; Sept. 3, 1982, Pub. L. 97–248, title II, §222(b), (e)(1)(D), 224(c)(4), 96 Stat. 478, 480, 489, related to distributions of property in liquidation, prior to repeal by Pub. L. 99–514, §631(a).

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647, §1006(e)(21)(A), substituted “liabilities” for “liabilities in excess of basis” in heading.

Subsec. (c). Pub. L. 100–647, §1018(d)(5)(D), substituted “liquidations which are part of a reorganization” for “certain liquidations to which part III applies” in heading and amended text generally. Prior to amendment, text read as follows: “This section shall not apply with respect to any distribution of property to the extent there is nonrecognition of gain or loss with respect to such property to the recipient under part III.”

Subsec. (d)(2)(B)(ii). Pub. L. 100–647, §1006(e)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidating corporation during the 2-year period ending on the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as part of a plan described in clause (i)(II).”

Subsec. (d)(3). Pub. L. 100–647, §1006(e)(2), inserted at end “The preceding sentence shall apply to any distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution.”

Subsec. (e). Pub. L. 100–647, §1006(e)(3), substituted “an election may be made” for “such corporation may elect” in concluding provisions.

EFFECTIVE DATE OF 1988 AMENDMENT

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

Section 633 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1006(g), Nov. 10, 1988, 102 Stat. 3407, provided that:

“(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle D (§§631–634) of title VI of Pub. L. 99–514, enacting this section and section 337 of this title, amending 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 repealing former sections 333, 336, and 337 of this title] shall apply to—

“(1) 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 January 1, 1987,

“(2) any transaction described in section 338 of the Internal Revenue Code of 1986 for which the acquisition date occurs after December 31, 1986, and

“(3) any distribution (not in complete liquidation) made after December 31, 1986.

“(b) BUILT-IN GAINS OF S CORPORATIONS.—

“(1) IN GENERAL.—The amendments made by section 632 (other than subsection (b) thereof) [amending sections 26, 1366, 1374, and 1375 of this title] shall apply to taxable years beginning after December 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after December 31, 1986.

“(2) APPLICATION OF PRIOR LAW.—In the case of any taxable year of an S corporation which begins after

December 31, 1986, and to which the amendments made by section 632 (other than subsection (b) thereof) do not apply, paragraph (1) of section 1374(b) of the Internal Revenue Code of 1954 (as in effect on the date before the date of the enactment of this Act [Oct. 22, 1986]) shall be applied as if it read as follows:

“(1) an amount equal to 34 percent of the amount by which the net capital gain of the corporation for the taxable year exceeds \$25,000, or”[.]

“(c) EXCEPTION FOR CERTAIN PLANS OF LIQUIDATION AND BINDING CONTRACTS.—

“(1) IN GENERAL.—The amendments made by this subtitle shall not apply to—

“(A) any distribution or sale or exchange made pursuant to a plan of liquidation adopted before August 1, 1986, if the liquidating corporation is completely liquidated before January 1, 1988,

“(B) any distribution or sale or exchange made by any corporation if more than 50 percent of the voting stock (by value) of such corporation is acquired on or after August 1, 1986, pursuant to a written binding contract in effect before such date and if such corporation is completely liquidated before January 1, 1988,

“(C) any distribution or sale or exchange made by any corporation if substantially all of the assets of such corporation are sold on or after August 1, 1986, pursuant to 1 or more written binding contracts in effect before such date and if such corporation is completely liquidated before January 1, 1988, or

“(D) any transaction described in section 338 of the Internal Revenue Code of 1986 with respect to any target corporation if a qualified stock purchase of such target corporation is made on or after August 1, 1986, pursuant to a written binding contract in effect before such date and the acquisition date (within the meaning of such section 338) is before January 1, 1988.

“(2) SPECIAL RULE FOR CERTAIN ACTIONS TAKEN BEFORE NOVEMBER 20, 1985.—For purposes of paragraph (1), transactions shall be treated as pursuant to a plan of liquidation adopted before August 1, 1986, if—

“(A) before November 20, 1985—

“(i) the board of directors of the liquidating corporation adopted a resolution to solicit shareholder approval for a transaction of a kind described in section 336 or 337, or

“(ii) the shareholders or board of directors have approved such a transaction,

“(B) before November 20, 1985—

“(i) there has been an offer to purchase a majority of the voting stock of the liquidating corporation, or

“(ii) the board of directors of the liquidating corporation has adopted a resolution approving an acquisition or recommending the approval of an acquisition to the shareholders, or

“(C) before November 20, 1985, a ruling request was submitted to the Secretary of the Treasury or his delegate with respect to a transaction of a kind described in section 336 or 337 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this subtitle).

For purposes of the preceding sentence, any action taken by the board of directors or shareholders of a corporation with respect to any subsidiary of such corporation shall be treated as taken by the board of directors or shareholders of such subsidiary.

“(d) TRANSITIONAL RULE FOR CERTAIN SMALL CORPORATIONS.—

“(1) IN GENERAL.—In the case of the complete liquidation before January 1, 1989, of a qualified corporation, the amendments made by this subtitle shall not apply to the applicable percentage of each gain or loss which (but for this paragraph) would be recognized by the liquidating corporation by reason of the amendments made by this subtitle. Section 333 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) shall continue to apply to any complete liquidation described in the preceding sentence.

“(2) PARAGRAPH (1) NOT TO APPLY TO CERTAIN ITEMS.—Paragraph (1) shall not apply to—

“(A) any gain or loss which is an ordinary gain or loss (determined without regard to section 1239 of the Internal Revenue Code of 1986),

“(B) any gain or loss on a capital asset held for not more than 6 months, and

“(C) any gain on an asset acquired by the qualified corporation if—

“(i) the basis of such asset in the hands of the qualified corporation is determined (in whole or in part) by reference to the basis of such asset in the hands of the person from whom acquired, and

“(ii) a principal purpose for the transfer of such asset to the qualified corporation was to secure the benefits of this subsection.

“(3) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term ‘applicable percentage’ means—

“(A) 100 percent if the applicable value of the qualified corporation is less than \$5,000,000, or

“(B) 100 percent reduced by an amount which bears the same ratio to 100 percent as—

“(i) the excess of the applicable value of the corporation over \$5,000,000, bears to

“(ii) \$5,000,000.

“(4) APPLICABLE VALUE.—For purposes of this subsection, the applicable value is the fair market value of all of the stock of the corporation on the date of the adoption of the plan of complete liquidation (or if greater, on August 1, 1986).

“(5) QUALIFIED CORPORATION.—For purposes of this subsection, the term ‘qualified corporation’ means any corporation if—

“(A) on August 1, 1986, and at all times thereafter before the corporation is completely liquidated, more than 50 percent (by value) of the stock in such corporation is held by a qualified group, and

“(B) the applicable value of such corporation does not exceed \$10,000,000.

“(6) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) QUALIFIED GROUP.—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘qualified group’ means any group of 10 or fewer qualified persons who at all times during the 5-year period ending on the date of the adoption of the plan of complete liquidation (or, if shorter, the period during which the corporation or any predecessor was in existence) owned (or was treated as owning under the rules of subparagraph (C)) more than 50 percent (by value) of the stock in such corporation.

“(ii) 5-YEAR OWNERSHIP REQUIREMENT NOT TO APPLY IN CERTAIN CASES.—In the case of—

“(I) any complete liquidation pursuant to a plan of liquidation adopted before March 31, 1988,

“(II) any distribution not in liquidation made before March 31, 1988,

“(III) an election to be an S corporation filed before March 31, 1988, or

“(IV) a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before March 31, 1988,

the term ‘qualified group’ means any group of 10 or fewer qualified persons.

“(B) QUALIFIED PERSON.—The term ‘qualified person’ means—

“(i) an individual,

“(ii) an estate, or

“(iii) any trust described in clause (ii) or clause (iii) of section 1361(c)(2)(A) of the Internal Revenue Code of 1986.

“(C) ATTRIBUTION RULES.—

“(i) IN GENERAL.—Any stock owned by a corporation, trust (other than a trust referred to in subparagraph (B)(iii)[)], or partnership shall be treated as owned proportionately by its shareholders, beneficiaries, or partners, and shall not

be treated as owned by such corporation, trust, or partnership. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

“(ii) FAMILY MEMBERS.—Stock owned (or treated as owned) by members of the same family (within the meaning of section 318(a)(1) of the Internal Revenue Code of 1986) shall be treated as owned by 1 person, and shall be treated as owned by such 1 person for any period during which it was owned (or treated as owned) by any such member.

“(iii) TREATMENT OF CERTAIN TRUSTS.—Stock owned (or treated as owned) by the estate of any decedent or by any trust referred to in subparagraph (B)(iii) with respect to such decedent shall be treated as owned by 1 person and shall be treated as owned by such 1 person for the period during which it was owned (or treated as owned) by such estate or any such trust or by the decedent.

“(D) SPECIAL HOLDING PERIOD RULES.—Any property acquired by reason of the death of an individual shall be treated as owned at all times during which such property was owned (or treated as owned) by the decedent.

“(E) CONTROLLED GROUP OF CORPORATIONS.—All members of the same controlled group (as defined in section 267(f)(1) of such Code) shall be treated as 1 corporation for purposes of determining whether any of such corporations met the requirement of paragraph (5)(B) and for purposes of determining the applicable percentage with respect to any of such corporations. For purposes of the preceding sentence, an S corporation shall not be treated as a member of a controlled group unless such corporation was a C corporation for its taxable year which includes August 1, 1986, or it was not described for such taxable year in paragraph (1) or (2) of section 1374(c) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]).

“(7) SECTION 338 TRANSACTIONS.—The provisions of this subsection shall also apply in the case of a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before January 1, 1989.

“(8) APPLICATION OF SECTION 1374.—Rules similar to the rules of this subsection shall apply for purposes of applying section 1374 of the Internal Revenue Code of 1986 (as amended by section 632) in the case of a qualified corporation which makes an election to be an S corporation under section 1362 of such Code before January 1, 1989, without regard to whether such corporation is completely liquidated.

“(9) APPLICATION TO NONLIQUIDATING DISTRIBUTIONS.—The provisions of this subsection shall also apply in the case of any distribution (not in complete liquidation) made by a qualified corporation before January 1, 1989, without regard to whether such corporation is completely liquidated.

“(e) COMPLETE LIQUIDATION DEFINED.—For purposes of this section, a corporation shall be treated as completely liquidated if all of the assets of such corporation are distributed in complete liquidation, less assets retained to meet claims.

“(f) OTHER TRANSITIONAL RULES.—

“(1) The amendments made by this subtitle shall not apply to any liquidation of a corporation incorporated under the laws of Pennsylvania on August 3, 1970, if—

“(A) the board of directors of such corporation approved a plan of liquidation before January 1, 1986,

“(B) an agreement for the sale of a material portion of the assets of such corporation was signed on May 9, 1986 (whether or not the assets are sold in accordance with such agreement), and

“(C) the corporation is completely liquidated on or before December 31, 1988.

“(2) The amendments made by this subtitle shall not apply to any liquidation (or deemed liquidation under section 338 of the Internal Revenue Code of 1986) of a diversified financial services corporation incorporated under the laws of Delaware on May 9, 1929 (or any direct or indirect subsidiary of such corporation), pursuant to a binding written contract entered into on or before December 31, 1986; but only if the liquidation is completed (or in the case of a section 338 election, the acquisition date occurs) before January 1, 1988.

“(3) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange—

“(A) of the assets owned (directly or indirectly) by a testamentary trust established under the will of a decedent dying on June 15, 1956, or its beneficiaries,

“(B) made pursuant to a court order in an action filed on January 18, 1984, if such order—

“(i) is issued after July 31, 1986, and

“(ii) directs the disposition of the assets of such trust and the division of the trust corpus into 3 separate sub-trusts.

For purposes of the preceding sentence, an election under section 338(g) of the Internal Revenue Code of 1986 (or an election under section 338(h)(10) of such Code qualifying as a section 337 liquidation pursuant to regulations prescribed by the Secretary under section 1.338(h)(10)–1T(j)) made in connection with a sale or exchange pursuant to a court order described in subparagraph (B) shall be treated as a sale of [or] exchange.

“(4)(A) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange—

“(i) if—

“(I) an option agreement to sell substantially all of the assets of a selling corporation organized under the laws of Massachusetts on October 20, 1976, is executed before August 1, 1986, the corporation adopts (by approval of its shareholders) a conditional plan of liquidation before August 1, 1986 to become effective upon the exercise of such option agreement (or modification thereto), and the assets are sold pursuant to the exercise of the option (as originally executed or subsequently modified provided that the purchase price is not thereby increased), or

“(II) in the event that the optionee does not acquire substantially all the assets of the corporation, the optionor corporation sells substantially all its assets to another purchaser at a purchase price not greater than that contemplated by such option agreement pursuant to an effective plan of liquidation, and

“(ii) the complete liquidation of the corporation occurs within 12 months of the time the plan of liquidation becomes effective, but in no event later than December 31, 1989.

“(B) For purposes of subparagraph (A), a distribution, or sale, or exchange, of a distributee corporation (within the meaning of section 337(c)(3) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of subparagraph (A) if its subsidiary satisfies the requirements of subparagraph (A).

“(C) For purposes of section 56 of the Internal Revenue Code of 1986 (as amended by this Act), any gain or loss not recognized by reason of this paragraph shall not be taken into account in determining the adjusted net book income of the corporation.

“(5) In the case of a corporation incorporated under the laws of Wisconsin on April 3, 1948—

“(A) a voting trust established not later than December 31, 1987, shall qualify as a trust permitted as a shareholder of an S corporation and shall be treated as only 1 shareholder if the holders of beneficial interests in such voting trust are—

“(i) employees or retirees of such corporation, or

“(ii) in the case of stock or voting trust certificates acquired from an employee or retiree of such corporation, the spouse, child, or estate of such employee or retiree or a trust created by such employee or retiree which is described in section 1361(c)(2) of the Internal Revenue Code of 1986 (or treated as described in such section by reason of section 1361(d) of such Code), and

“(B) the amendment made by section 632 (other than subsection (b) thereof) shall not apply to such corporation if it elects to be an S corporation before January 1, 1989.

“(6) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated on January 26, 1982, under the laws of the State of Alabama with a principal place of business in Colbert County, Alabama, but only if such corporation is completely liquidated on or before December 31, 1987.

“(7) The amendments made by this subtitle shall not apply to the acquisition by a Delaware bank holding company of all of the assets of an Iowa bank holding company pursuant to a written contract dated December 9, 1981.

“(8) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated under the laws of Delaware on January 20, 1984, if more than 40 percent of the stock of such corporation was acquired by purchase on June 11, 1986, and there was a tender offer with respect to all additional outstanding shares of such corporation on July 29, 1986, but only if the corporation is completely liquidated on or before December 31, 1987.

“(g) TREATMENT OF CERTAIN DISTRIBUTIONS IN RESPONSE TO HOSTILE TENDER OFFER.—

“(1) IN GENERAL.—No gain or loss shall be recognized under the Internal Revenue Code of 1986 to a corporation (hereinafter in this subsection referred to as ‘parent’) on a qualified distribution.

“(2) QUALIFIED DISTRIBUTION DEFINED.—For purposes of paragraph (1)—

“(A) IN GENERAL.—The term ‘qualified distribution’ means a distribution—

“(i) by parent of all of the stock of a qualified subsidiary in exchange for stock of parent which was acquired for purposes of such exchange pursuant to a tender offer dated February 16, 1982, and

“(ii) pursuant to a contract dated February 13, 1982, and

“(iii) which was made not more than 60 days after the board of directors of parent recommended rejection of an unsolicited tender offer to obtain control of parent.

“(B) QUALIFIED SUBSIDIARY.—The term ‘qualified subsidiary’ means a corporation created or organized under the laws of Delaware on September 7, 1976, all of the stock of which was owned by parent immediately before the qualified distribution.”

§ 337. Nonrecognition for property distributed to parent in complete liquidation of subsidiary

(a) In general

No gain or loss shall be recognized to the liquidating corporation on the distribution to the 80-percent distributee of any property in a complete liquidation to which section 332 applies.

(b) Treatment of indebtedness of subsidiary, etc.

(1) Indebtedness of subsidiary to parent

If—

(A) a corporation is liquidated in a liquidation to which section 332 applies, and

(B) on the date of the adoption of the plan of liquidation, such corporation was indebted to the 80-percent distributee,

for purposes of this section and section 336, any transfer of property to the 80-percent dis-

tributee in satisfaction of such indebtedness shall be treated as a distribution to such distributee in such liquidation.

(2) Treatment of tax-exempt distributee

(A) In general

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

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

(i) In general

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

(ii) Later disposition or change in use

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

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."

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(e)(5)(B) of Pub. L. 100-647 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 cor-

poration 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 Secretary 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 paragraph¹ (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.

¹ So in original.

(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, a DISC, or a corporation to which an election under section 936 applies, 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 quali-

fied 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.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108-27, see Effective and Termination Dates of 2003 Amendment note below.

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

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, §§302(e)(4)(B)(i), 303, temporarily 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.” See Effective and Termination Dates of 2003 Amendment note below.

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).

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 AND TERMINATION DATES 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 a note under section 1 of this title.

Amendment by Pub. L. 108-27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108-27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11323(d) of Pub. L. 101-508 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

Section 1012(bb)(5)(B) of Pub. L. 100-647 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.

Section 1804(e)(8)(B) of Pub. L. 99-514 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

Section 712(k)(9) of Pub. L. 98-369, 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

Section 224(d) of Pub. L. 97-248, 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."

TREATMENT OF CERTAIN CORPORATION ORGANIZED ON FEBRUARY 22, 1983

Section 1804(e)(9) of Pub. L. 99-514 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

Section 712(k)(10) of Pub. L. 98-369, 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 subsec. (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

Section 306(a)(8)(A)(ii) of Pub. L. 97-448, 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), (1), 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.

TERMINATION OF REPEAL

For termination of repeal by section 303 of Pub. L. 108-27, see Effective and Termination Dates of Repeal note below.

EFFECTIVE AND TERMINATION DATES 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.

Repeal terminated for taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if section had never been repealed, see section 303 of Pub. L. 108-27, as amended, 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.

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.

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.)

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 subsecs. (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 for provision that a distribution was to be treated as in partial liquidation if the distribution was 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97-248, set out as a note under section 302 of this title.

PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

Subpart

- A. Corporate organizations.
- B. Effects on shareholders and security holders.
- C. Effects on corporations.¹
- D. Special rule; definitions.

SUBPART A—CORPORATE ORGANIZATIONS

Sec.

- 351. Transfer to corporation controlled by transferor.

§ 351. Transfer to corporation controlled by transferor

(a) General rule

No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange such person or persons are in control (as defined in section 368(c)) of the corporation.

(b) Receipt of property

If subsection (a) would apply to an exchange but for the fact that there is received, in addition to the stock permitted to be received under subsection (a), other property or money, then—

- (1) gain (if any) to such recipient shall be recognized, but not in excess of—
 - (A) the amount of money received, plus
 - (B) the fair market value of such other property received; and
- (2) no loss to such recipient shall be recognized.

¹ So in original. Does not conform to subpart heading.

(c) Special rules where distribution to shareholders

(1) In general

In determining control for purposes of this section, the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account.

(2) Special rule for section 355

If the requirements of section 355 (or so much of section 356 as relates to section 355) are met with respect to a distribution described in paragraph (1), then, solely for purposes of determining the tax treatment of the transfers of property to the controlled corporation by the distributing corporation, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock, or the fact that the corporation whose stock was distributed issues additional stock, shall not be taken into account in determining control for purposes of this section.

(d) Services, certain indebtedness, and accrued interest not treated as property

For purposes of this section, stock issued for—

- (1) services,
- (2) indebtedness of the transferee corporation which is not evidenced by a security, or
- (3) interest on indebtedness of the transferee corporation which accrued on or after the beginning of the transferor's holding period for the debt,

shall not be considered as issued in return for property.

(e) Exceptions

This section shall not apply to—

(1) Transfer of property to an investment company

A transfer of property to an investment company. For purposes of the preceding sentence, the determination of whether a company is an investment company shall be made—

- (A) by taking into account all stock and securities held by the company, and
- (B) by treating as stock and securities—
 - (i) money,
 - (ii) stocks and other equity interests in a corporation, evidences of indebtedness, options, forward or futures contracts, notional principal contracts and derivatives,
 - (iii) any foreign currency,
 - (iv) any interest in a real estate investment trust, a common trust fund, a regulated investment company, a publicly-traded partnership (as defined in section 7704(b)) or any other equity interest (other than in a corporation) which pursuant to its terms or any other arrangement is readily convertible into, or exchangeable for, any asset described in any preceding clause, this clause or clause (v) or (viii),
 - (v) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal, unless such