

Pub. L. 97-248, set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1042(e) of Pub. L. 94-455, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) The amendments made by this section (other than by subsection (d)) [amending this section and sections 751 and 1248 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date. The amendments made by subsection (d) [enacting section 7477 of this title and amending sections 7476 and 7482 of this title] shall apply with respect to pleadings filed with the Tax Court after the date of the enactment of this Act [Oct. 4, 1976] but only with respect to transfers beginning after October 9, 1975.

“(2) In the case of any exchange described in section 367 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on December 31, 1974) in any taxable year beginning after December 31, 1962, and before the date of the enactment of this Act [Oct. 4, 1976], which does not involve the transfer of property to or from a United States person, a taxpayer shall have for purposes of such section until 183 days after the date of the enactment of this Act [Oct. 4, 1976] to file a request with the Secretary of the Treasury or his delegate seeking to establish to the satisfaction of the Secretary of the Treasury or his delegate that such exchange was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes and that for purposes of such section a foreign corporation is to be treated as a foreign corporation.”

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(c) of Pub. L. 91-681, 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 section 1492 of this title] shall apply to transfers made after December 31, 1967; except that sections 367(d) and 1492 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) shall apply only with respect to transfers made after December 31, 1970.”

APPLICABILITY OF SUBSECTION (e)(2)

Section 1006(e)(13)(C) of Pub. L. 100-647 provided that: “Section 367(e)(2) of the 1986 Code (as amended by the Reform Act [Pub. L. 99-514]) shall not apply in the case of any corporation completely liquidated before June 10, 1987, into a corporation organized in a country which has an income tax treaty with the United States.”

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.

§ 368. Definitions relating to corporate reorganizations

(a) Reorganization

(1) In general

For purposes of parts I and II and this part, the term “reorganization” means—

- (A) a statutory merger or consolidation;
- (B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is

in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other shall be disregarded;

(D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356;

(E) a recapitalization;

(F) a mere change in identity, form, or place of organization of one corporation, however effected; or

(G) a transfer by a corporation of all or part of its assets to another corporation in a title 11 or similar case; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356.

(2) Special rules relating to paragraph (1)

(A) Reorganizations described in both paragraph (1)(C) and paragraph (1)(D)

If a transaction is described in both paragraph (1)(C) and paragraph (1)(D), then, for purposes of this subchapter (other than for purposes of subparagraph (C)), such transaction shall be treated as described only in paragraph (1)(D).

(B) Additional consideration in certain paragraph (1)(C) cases

If—

(i) one corporation acquires substantially all of the properties of another corporation,

(ii) the acquisition would qualify under paragraph (1)(C) but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and

(iii) the acquiring corporation acquires, solely for voting stock described in paragraph (1)(C), property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation,

then such acquisition shall (subject to subparagraph (A) of this paragraph) be treated

as qualifying under paragraph (1)(C). Solely for the purpose of determining whether clause (iii) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation shall be treated as money paid for the property.

(C) Transfers of assets or stock to subsidiaries in certain paragraph (1)(A), (1)(B), (1)(C), and (1)(G) cases

A transaction otherwise qualifying under paragraph (1)(A), (1)(B), or (1)(C) shall not be disqualified by reason of the fact that part or all of the assets or stock which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets or stock. A similar rule shall apply to a transaction otherwise qualifying under paragraph (1)(G) where the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets.

(D) Use of stock of controlling corporation in paragraph (1)(A) and (1)(G) cases

The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subparagraph as “controlling corporation”) which is in control of the acquiring corporation, of substantially all of the properties of another corporation shall not disqualify a transaction under paragraph (1)(A) or (1)(G) if—

(i) no stock of the acquiring corporation is used in the transaction, and

(ii) in the case of a transaction under paragraph (1)(A), such transaction would have qualified under paragraph (1)(A) had the merger been into the controlling corporation.

(E) Statutory merger using voting stock of corporation controlling merged corporation

A transaction otherwise qualifying under paragraph (1)(A) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subparagraph as the “controlling corporation”) which before the merger was in control of the merged corporation is used in the transaction, if—

(i) after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and

(ii) in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

(F) Certain transactions involving 2 or more investment companies

(i) If immediately before a transaction described in paragraph (1) (other than subparagraph (E) thereof), 2 or more parties to the transaction were investment companies, then the transaction shall not be considered to be a reorganization with respect

to any such investment company (and its shareholders and security holders) unless it was a regulated investment company, a real estate investment trust, or a corporation which meets the requirements of clause (ii).

(ii) A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer. For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust.

(iii) For purposes of this subparagraph the term “investment company” means a regulated investment company, a real estate investment trust, or a corporation 50 percent or more of the value of whose total assets are stock and securities and 80 percent or more of the value of whose total assets are assets held for investment. In making the 50-percent and 80-percent determinations under the preceding sentence, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary’s assets, and a corporation shall be considered a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock outstanding.

(iv) For purposes of this subparagraph, in determining total assets there shall be excluded cash and cash items (including receivables). Government securities, and, under regulations prescribed by the Secretary, assets acquired (through incurring indebtedness or otherwise) for purposes of meeting the requirements of clause (ii) or ceasing to be an investment company.

(v) This subparagraph shall not apply if the stock of each investment company is owned substantially by the same persons in the same proportions.

(vi) If an investment company which does not meet the requirements of clause (ii) acquires assets of another corporation, clause (i) shall be applied to such investment company and its shareholders and security holders as though its assets had been acquired by such other corporation. If such investment company acquires stock of another corporation in a reorganization described in section 368(a)(1)(B), clause (i) shall be applied to the shareholders of such investment company as though they had exchanged with such other corporation all

of their stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange. For purposes of section 1001, the deemed acquisition or exchange referred to in the two preceding sentences shall be treated as a sale or exchange of property by the corporation and by the shareholders and security holders to which clause (i) is applied.

(vii) For purposes of clauses (ii) and (iii), the term “securities” includes obligations of State and local governments, commodity futures contracts, shares of regulated investment companies and real estate investment trusts, and other investments constituting a security within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a-2(36)).¹

[(viii) Repealed. Pub. L. 98-369, div. A, title I, §174(b)(5)(D), July 18, 1984, 98 Stat. 707]

(G) Distribution requirement for paragraph (1)(C)

(i) In general

A transaction shall fail to meet the requirements of paragraph (1)(C) unless the acquired corporation distributes the stock, securities, and other properties it receives, as well as its other properties, in pursuance of the plan of reorganization. For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to the plan of reorganization, any distribution to its creditors in connection with such liquidation shall be treated as pursuant to the plan of reorganization.

(ii) Exception

The Secretary may waive the application of clause (i) to any transaction subject to any conditions the Secretary may prescribe.

(H) Special rules for determining whether certain transactions are qualified under paragraph (1)(D)

For purposes of determining whether a transaction qualifies under paragraph (1)(D)—

(i) in the case of a transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, the term “control” has the meaning given such term by section 304(c), and

(ii) in the case of a transaction with respect to which the requirements of section 355 (or so much of section 356 as relates to section 355) are met, 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.

¹ So in original. A reference to 15 U.S.C. 80a-2(a)(36) was probably intended.

(3) Additional rules relating to title 11 and similar cases

(A) Title 11 or similar case defined

For purposes of this part, the term “title 11 or similar case” means—

- (i) a case under title 11 of the United States Code, or
- (ii) a receivership, foreclosure, or similar proceeding in a Federal or State court.

(B) Transfer of assets in a title 11 or similar case

In applying paragraph (1)(G), a transfer of the assets of a corporation shall be treated as made in a title 11 or similar case if and only if—

- (i) any party to the reorganization is under the jurisdiction of the court in such case, and
- (ii) the transfer is pursuant to a plan of reorganization approved by the court.

(C) Reorganizations qualifying under paragraph (1)(G) and another provision

If a transaction would (but for this subparagraph) qualify both—

- (i) under subparagraph (G) of paragraph (1), and
- (ii) under any other subparagraph of paragraph (1) or under section 332 or 351,

then, for purposes of this subchapter (other than section 357(c)(1)), such transaction shall be treated as qualifying only under subparagraph (G) of paragraph (1).

(D) Agency receivership proceedings which involve financial institutions

For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court.

(E) Application of paragraph (2)(E)(ii)

In the case of a title 11 or similar case, the requirement of clause (ii) of paragraph (2)(E) shall be treated as met if—

- (i) no former shareholder of the surviving corporation received any consideration for his stock, and
- (ii) the former creditors of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, debt of the surviving corporation which had a fair market value equal to 80 percent or more of the total fair market value of the debt of the surviving corporation.

(b) Party to a reorganization

For purposes of this part, the term “a party to a reorganization” includes—

- (1) a corporation resulting from a reorganization, and
- (2) both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

In the case of a reorganization qualifying under paragraph (1)(B) or (1)(C) of subsection (a), if the stock exchanged for the stock or properties is

stock of a corporation which is in control of the acquiring corporation, the term “a party to a reorganization” includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under paragraph (1)(A), (1)(B), or (1)(C), or (1)(G) of subsection (a) by reason of paragraph (2)(C) of subsection (a), the term “a party to a reorganization” includes the corporation controlling the corporation to which the acquired assets or stock are transferred. In the case of a reorganization qualifying under paragraph (1)(A) or (1)(G) of subsection (a) by reason of paragraph (2)(D) of that subsection, the term “a party to a reorganization” includes the controlling corporation referred to in such paragraph (2)(D). In the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E), the term “party to a reorganization” includes the controlling corporation referred to in subsection (a)(2)(E).

(c) Control defined

For purposes of part I (other than section 304), part II, this part, and part V, the term “control” means the ownership of stock 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 of the corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 120; Pub. L. 88-272, title II, §218(a), (b), Feb. 26, 1964, 78 Stat. 57; Pub. L. 90-621, §1(a), (b), Oct. 22, 1968, 82 Stat. 1310, 1311; Pub. L. 91-693, §1(a), (b), Jan. 12, 1971, 84 Stat. 2077; Pub. L. 94-455, title VIII, §806(f)(1), title XXI, §2131(a), Oct. 4, 1976, 90 Stat. 1605, 1922; Pub. L. 95-600, title VII, §701(j)(1), Nov. 6, 1978, 92 Stat. 2905; Pub. L. 96-589, §4(a)-(d), (h)(3), (4), Dec. 24, 1980, 94 Stat. 3401-3403, 3405; Pub. L. 97-34, title II, §241, Aug. 13, 1981, 95 Stat. 254; Pub. L. 97-248, title II, §225(a), Sept. 3, 1982, 96 Stat. 490; Pub. L. 97-448, title III, §304(b), (c), Jan. 12, 1983, 96 Stat. 2398; Pub. L. 98-369, div. A, title I, §§63(a), 64(a), 174(b)(5)(D), July 18, 1984, 98 Stat. 583, 584, 707; Pub. L. 99-514, title VI, §621(e)(1), title IX, §904(a), title XVIII, §§1804(g)(2), (h), 1879(l)(1), Oct. 22, 1986, 100 Stat. 2266, 2385, 2806, 2909; Pub. L. 100-647, title I, §1018(q)(5), title IV, §4012(b)(1)(A), Nov. 10, 1988, 102 Stat. 3586, 3656; Pub. L. 101-73, title XIV, §1401(a)(1), (b)(1), Aug. 9, 1989, 103 Stat. 548, 549; Pub. L. 105-34, title X, §1012(c)(2), Aug. 5, 1997, 111 Stat. 917; Pub. L. 105-206, title VI, §6010(c)(3)(B), July 22, 1998, 112 Stat. 813; Pub. L. 105-277, div. J, title IV, §4003(f)(2), Oct. 21, 1998, 112 Stat. 2681-910; Pub. L. 106-36, title III, §3001(a)(3), June 25, 1999, 113 Stat. 182.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(2)(F)(vii), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

AMENDMENTS

1999—Subsec. (a)(1)(C). Pub. L. 106-36, §3001(a)(3)(A), struck out “, or the fact that property acquired is subject to a liability,” before “shall be disregarded”.

Subsec. (a)(2)(B). Pub. L. 106-36, §3001(a)(3)(B), which directed amendment of concluding provisions by strik-

ing out “, and the amount of any liability to which any property acquired from the acquiring corporation is subject,” was executed by striking out “, and the amount of any liability to which any property acquired by the acquiring corporation is subject,” after “acquiring corporation”, to reflect the probable intent of Congress.

1998—Subsec. (a)(2)(H)(ii). Pub. L. 105-277 inserted “, or the fact that the corporation whose stock was distributed issues additional stock,” after “dispose of part or all of the distributed stock”.

Pub. L. 105-206 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “in the case of a transaction with respect to which the requirements of section 355 are met, the shareholders described in paragraph (1)(D) shall be treated as having control of the corporation to which the assets are transferred if such shareholders own (immediately after the distribution) stock possessing—

“(I) more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

“(II) more than 50 percent of the total value of shares of all classes of stock of such corporation.”

1997—Subsec. (a)(2)(H). Pub. L. 105-34 amended heading and text of subpar. (H) generally. Prior to amendment, text read as follows: “In the case of any transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction qualifies under subparagraph (D) of paragraph (1), the term ‘control’ has the meaning given to such term by section 304(c).”

1989—Subsec. (a)(3)(D). Pub. L. 101-73, §1401(b)(1), repealed amendment made by Pub. L. 99-514, §904(a), see 1986 Amendment note below.

Pub. L. 101-73, §1401(a)(1), inserted “receivership” in heading and amended text generally, changing the structure of the subparagraph from one consisting of five clauses designated (i) to (v) to one consisting of a single undesignated subparagraph.

1988—Subsec. (a)(2)(F)(ii). Pub. L. 100-647, §1018(q)(5), struck out “(other than stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause (ii))” after “any one issuer” and after “or fewer issuers” and inserted at end “For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust.”

Subsec. (a)(3)(D)(iv), (v). Pub. L. 100-647, §4012(b)(1)(A), amended subpar. (D), as in effect before the amendment made by section 904(a) of Pub. L. 99-514, by adding cls. (iv) and (v).

1986—Subsec. (a)(2)(A). Pub. L. 99-514, §1804(h)(3), inserted “(other than for purposes of subparagraph (C))” after “subchapter”.

Subsec. (a)(2)(F)(ii). Pub. L. 99-514, §1879(l)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer.”

Subsec. (a)(2)(G)(i). Pub. L. 99-514, §1804(g)(2), inserted “For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to the plan of reorganization, any distribution to its creditors in connection with such liquidation shall be treated as pursuant to the plan of reorganization.”

Subsec. (a)(2)(H). Pub. L. 99-514, §1804(h)(2), added subpar. (H).

Subsec. (a)(3)(D). Pub. L. 99-514, §904(a), (c)(1), as amended by Pub. L. 100-647, §4012(a)(1), which (applica-

ble to acquisitions after Dec. 31, 1989, in taxable years ending after such date) directed amendment of subpar. (D) to read “(D) AGENCY RECEIVERSHIP PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court.”, was repealed by Pub. L. 101-73, §1401(b)(1), (c)(4), eff. Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendments made by such section had not been enacted.

Subsec. (c). Pub. L. 99-514, §1804(h)(1), in amending subsec. (c) generally, struck out par. (1) designation and struck out par. (2) defining term “control” as having meaning given to such term by section 304(c) in case of any transaction with respect to which requirements of subpars. (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction is described in subpar. (D) of subsec. (a)(1).

Pub. L. 99-514, §621(e)(1), repealed amendment by Pub. L. 94-455, §806(f)(1). See 1976 Amendment note below.

1984—Subsec. (a)(2)(F)(viii). Pub. L. 98-369, §174(b)(5)(D), struck out cl. (viii) which provided that in applying paragraph (3) of section 267(b) in respect of any transaction to which this subparagraph applies, the reference to a personal holding company in such paragraph (3) be treated as including a reference to an investment company and the determination of whether a corporation is an investment company be made as of the time immediately before the transaction instead of with respect to the taxable year referred to in such paragraph (3).

Subsec. (a)(2)(G). Pub. L. 98-369, §63(a), added subpar. (G).

Subsec. (c). Pub. L. 98-369, §64(a), designated existing provisions as par. (1) and added par. (2).

1983—Subsec. (a)(2)(C). Pub. L. 97-448, §304(b), struck out “or stock” after “acquisition of the assets”.

Subsec. (a)(3)(B)(i). Pub. L. 97-448, §304(c), substituted “any party to the reorganization” for “such corporation”.

1982—Subsec. (a)(1)(F). Pub. L. 97-248 inserted “of one corporation” after “place of organization”.

1981—Subsec. (a)(3)(D). Pub. L. 97-34 substituted “Agency proceedings” for “Agency receivership proceedings” in heading, incorporated existing provisions in text designated cl. (i), inserted in cl. (i)(II) definition for term “title 11 or similar case”, and added cls. (ii) and (iii).

1980—Subsec. (a)(1)(G). Pub. L. 96-589, §4(a), (h)(3), added subpar. (G).

Subsec. (a)(2)(C). Pub. L. 96-589, §4(c), inserted provision that a similar rule would apply to a transaction otherwise qualifying under par. (1)(G), where the requirements of subpars. (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets or stock.

Subsec. (a)(2)(D). Pub. L. 96-589, §4(d), among other changes, inserted reference to par. (1)(G).

Subsec. (a)(3). Pub. L. 96-589, §4(b), added par. (3).

Subsec. (b). Pub. L. 96-589, §4(h)(4), substituted “paragraph 1(A), 1(B), 1(C), or 1(G) of subsection (a) by reason of paragraph 2(C)” and “paragraph 1(A) or 1(G) of subsection (a) by reason of paragraph 2(D)” for “paragraph 1(A), 1(B), or 1(C) of subsection (a) by reason of paragraph 2(C)” and “paragraph 1(A) of subsection (a) by reason of paragraph 2(D)”, respectively.

1978—Subsec. (a)(2)(F). Pub. L. 95-600 substituted in cl. (iii), first sentence, “50 percent or more” and “80 percent or more” for “more than 50 percent” and “more than 80 percent”; substituted in cl. (vi), first sentence, “does not meet the requirements” for “is not diversified within the meaning”; struck from cl. (vi), second sentence, “(hereafter referred to as the ‘actual acquisition’)” after “section 368(a)(1)(B)” and “and security holders” after “the shareholders” and substituted “stock in such company for stock having a fair market value equal to the fair market value of their

stock of such investment company immediately after the exchange” for “stock in such investment company for a percentage of the value of the total outstanding stock of the other corporation equal to the percentage of the value of the total outstanding stock of such investment company which such shareholders own immediately after the actual acquisition”; and added cls. (vii) and (viii).

1976—Subsec. (a)(2)(F). Pub. L. 94-455, §2131(a), added subpar. (F).

Subsec. (c). Pub. L. 94-455, §806(f)(1), which substituted “this part, and Part V,” for “and this part,” was repealed by Pub. L. 99-514, §621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

1971—Subsec. (a)(2)(E). Pub. L. 91-693, §1(a), added subpar. (E).

Subsec. (b). Pub. L. 91-693, §1(b), defined “party to a reorganization” in the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E).

1968—Subsec. (a)(2)(D). Pub. L. 90-621, §1(a), added subpar. (D).

Subsec. (b). Pub. L. 90-621, §1(b), inserted reference to the inclusion of the controlling corporation in term “a party to a reorganization” in reorganizations qualifying under paragraph 1(A) of subsection (a) by reason of paragraph 2(D) of subsection (a).

1964—Subsec. (a). Pub. L. 88-272, §218(a), (b)(1), inserted “(or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation)” in par. (1)(B), and in par. (2)(C), inserted references to par. (1)(B), and substituted “assets or stock” for “assets” wherever appearing.

Subsec. (b). Pub. L. 88-272, §218(b)(2), inserted references to par. (1)(B) wherever appearing.

EFFECTIVE DATE OF 1999 AMENDMENT

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

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 4003(f) of Pub. L. 105-277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable, with certain exceptions, to transfers after Aug. 5, 1997, see section 1012(d) of Pub. L. 105-34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Repeal of amendment by section 904(a) of Pub. L. 99-514 effective Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendment had not been enacted, see section 1401(b)(1) of Pub. L. 101-73, set out as a Repeal of Provisions Relating to Repeal of Special Reorganization Rules for Financial Institutions note set out under section 597 of this title, and section 1401(c)(4) of Pub. L. 101-73, set out as Effective Date of 1989 Amendment note under section 597 of this title.

Section 1401(c)(1) of Pub. L. 101-73 provided that: “The amendment made by subsection (a)(1) [amending this section] shall apply to acquisitions on or after May 10, 1989.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(q)(5) 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.

Section 4012(b)(1)(C)(i) of Pub. L. 100-647 provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Nov. 10, 1988] and before January 1, 1990."

EFFECTIVE DATE OF 1986 AMENDMENT

Repeal of amendment by section 806(f)(1) of Pub. L. 94-455 effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99-514, set out as a note under section 382 of this title.

Section 904(c)(1) of Pub. L. 99-514, as amended by Pub. L. 100-647, title IV, §4012(a)(1), Nov. 10, 1988, 102 Stat. 3656, which provided that the amendments made by subsection (a), amending this section, were to apply to acquisitions after Dec. 31, 1989, in taxable years ending after such date, was repealed by Pub. L. 101-73, title XIV, §1401(b)(1), Aug. 9, 1989, 103 Stat. 549.

Amendment by section 1804(g)(2) of Pub. L. 99-514 applicable to plans of reorganizations adopted after Oct. 22, 1986, see section 1804(g)(4) of Pub. L. 99-514, set out as a note under section 361 of this title.

Amendment by section 1804(h) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Section 1879(l)(2) of Pub. L. 99-514 provided that: "The amendment made by this subsection [amending this section] shall apply as if included in section 2131 of the Tax Reform Act of 1976 [Pub. L. 94-455]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 63(a) of Pub. L. 98-369 applicable to transactions pursuant to plans adopted after July 18, 1984, see section 63(c) of Pub. L. 98-369, set out as a note under section 312 of this title.

Section 64(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 174(b)(5)(D) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98-369, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 311(b)(2) of Pub. L. 97-448 provided that: "The amendment made by subsection (b) of section 304 [amending this section] shall take effect as if included in the amendments made by section 4 of such Act [Pub. L. 96-589, the Bankruptcy Tax Act of 1980, see 1980 Amendment notes above]."

EFFECTIVE DATE OF 1982 AMENDMENT

Section 225(b) of Pub. L. 97-248 provided that: "(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to transactions occurring after August 31, 1982.

"(2) PLANS ADOPTED ON OR BEFORE AUGUST 31, 1982.—The amendment made by subsection (a) shall not apply with respect to plans of reorganization adopted on or before August 31, 1982, but only if the transaction occurs before January 1, 1983."

EFFECTIVE DATE OF 1981 AMENDMENT

Section 246(a) of Pub. L. 97-34 provided that: "The amendment made by sections 241 and 242 [amending this section and section 382 of this title] shall apply to any transfer made on or after January 1, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to bankruptcy cases or similar judicial proceedings commencing

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

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(j)(2) of Pub. L. 95-600, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraph (1) [amending this section] shall apply as if included in section 368(a)(2)(F) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 2131(a) of the Tax Reform Act of 1976 [Pub. L. 94-455, title XX, §2131(a), Oct. 4, 1976, 90 Stat. 1922].

"(B) Clause (viii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to losses sustained after September 26, 1977.

"(C) Clause (vii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to transfers made after September 26, 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2131(f)(1), (2) of Pub. L. 94-455, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.

"(2) The amendment made by subsection (a) shall not apply to transfers made in accordance with a ruling issued by the Internal Revenue Service before February 18, 1976, holding that a proposed transaction would be a reorganization described in paragraph (1) of section 368(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

For effective date of amendment by section 806(f)(1) of Pub. L. 94-455, see section 806(g)(2), (3) of Pub. L. 94-455, formerly set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(c) of Pub. L. 91-693 provided that: "The amendments made by this section [amending this section] shall apply to statutory mergers occurring after December 31, 1970."

EFFECTIVE DATE OF 1968 AMENDMENT

Section 1(c) of Pub. L. 90-621 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to statutory mergers occurring after the date of the enactment of this Act [Oct. 22, 1968]."

EFFECTIVE DATE OF 1964 AMENDMENT

Section 218(c) of Pub. L. 88-272 provided that: "The amendments made by this section [amending this section] shall apply with respect to transactions after December 31, 1963, in taxable years ending after such date."

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.

[PART IV—REPEALED]

[§§ 370 to 372. Repealed. Pub. L. 101-508, title XI, § 11801(a)(19), Nov. 5, 1990, 104 Stat. 1388-521]

Section 370, added Pub. L. 96-589, §4(f), Dec. 24, 1980, 94 Stat. 3404, related to termination of part.

Section 371, acts Aug. 16, 1954, ch. 736, 68A Stat. 121; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1901(a)(50), 90 Stat. 1773, related to reorganization in certain receivership and bankruptcy proceedings.

Section 372, acts Aug. 16, 1954, ch. 736, 68A Stat. 122; Sept. 2, 1958, Pub. L. 85-866, title I, §95(a), 72 Stat. 1671; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§1901(a)(51), (b)(14)(A), 1906(b)(13)(A), 90 Stat. 1773, 1795, 1834, related to basis in connection with certain receivership and bankruptcy proceedings.

SAVINGS PROVISION

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

[§ 373. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(52), Oct. 4, 1976, 90 Stat. 1773]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 123; June 29, 1956, ch. 463, §3, 70 Stat. 403, related to loss not recognized in certain railroad reorganizations.

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.

[§ 374. Repealed. Pub. L. 101-508, title XI, § 11801(a)(19), Nov. 5, 1990, 104 Stat. 1388-521]

Section, added June 29, 1956, ch. 463, §1, 70 Stat. 402; amended Mar. 31, 1976, Pub. L. 94-253, §1(a), (d), 90 Stat. 295, 296; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1901(a)(53), (b)(10)(A), (14)(B), (C), 90 Stat. 1773, 1795, 1796; Nov. 6, 1978, Pub. L. 95-600, title III, §369(a), 92 Stat. 2857; Apr. 1, 1980, Pub. L. 96-222, title I, §103(a)(14), 94 Stat. 214; Oct. 22, 1986, Pub. L. 99-514, title XVIII, §1899A(9), 100 Stat. 2958, related to nonrecognition of gain or loss in certain railroad reorganizations.

SAVINGS PROVISION

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

PART V—CARRYOVERS

Sec.	
381.	Carryovers in certain corporate acquisitions.
382.	Limitation on net operating loss carryforwards and certain built-in losses following ownership change.
383.	Special limitations on certain excess credits, etc.
384.	Limitation on use of preacquisition losses to offset built-in gains.

AMENDMENTS

1987—Pub. L. 100-203, title X, §10226(b), Dec. 22, 1987, 101 Stat. 1330-415, added item 384.

1986—Pub. L. 99-514, title VI, §621(c)(2), Oct. 22, 1986, 100 Stat. 2266, substituted “Limitation on net operating loss carryforwards and certain built-in losses following ownership change” for “Special limitations on net operating loss carryovers” in item 382 and “Special limitations on certain excess credits, etc.” for “Special limitations on unused business credits, research credits, foreign taxes, and capital losses” in item 383.

1984—Pub. L. 98-369, div. A, title IV, §474(r)(12)(C), July 18, 1984, 98 Stat. 842, substituted “unused business credits, research credits, foreign taxes, and capital losses” for “carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses” in item 383.

1981—Pub. L. 97-34, title II, §221(b)(1)(E), title III, §331(d)(1)(E), Aug. 13, 1981, 95 Stat. 246, 295, inserted references to alcohol fuel credits, research credits, and employee stock ownership credits in item 383. For applicability of amendment by section 221(b)(1)(E) to amounts paid or incurred after June 30, 1981, and before Jan. 1, 1986, see section 221(d) of Pub. L. 97-34, set out as an Effective Date note under section 30 of this title.

1977—Pub. L. 95-30, title II, §202(d)(3)(D), May 23, 1977, 91 Stat. 148, inserted “new employee credits,” after “work incentive program credits,” in item 383.

1971—Pub. L. 92-178, title III, §302(b), Dec. 10, 1971, 85 Stat. 521, added item 383.

§ 381. Carryovers in certain corporate acquisitions**(a) General rule**

In the case of the acquisition of assets of a corporation by another corporation—

(1) in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies; or

(2) in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c). For purposes of the preceding sentence, a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

(b) Operating rules

Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368(a)(1)—

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.