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 transferee, 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
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ably intended.

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

(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 309(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.

(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 322 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 subsection (1)(A), (1)(B), or (1)(C) 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 subsection (1)(A) or (1)(C) 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.

to acquisitions after Dec. 31, 1989, in taxable years ending after such date) directed amendment of subpar. (D).

(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 351 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, § 1040(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 365(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 term of subpar. (A).


Subsec. (c). Pub. L. 98–396, § 364(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''.


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)(3). 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)(G) 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 365(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 clss. (vii) and (viii).


Subsec. (c). Pub. L. 94–455, § 306(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.


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).


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.


Effective Date of 1999 Amendment


Effective Date of 1998 Amendments


Effective Date of 1997 Amendment


Effective Date of 1989 Amendments


Section 1461(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(a)(5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Taxpayer Relief 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)(ii) 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**


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. 3665, 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. 101–91, 103 Stat. 349.


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 1780(h)(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]."


**Effective Date of 1983 Amendment**

Section 311(b)(2) of Pub. L. 97–448 provided that: "The amendments made by subsection (b) of section 310 [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:

"(2) PLANS ADOPTED ON OR BEFORE AUGUST 31, 1982.—The amendment made by subsection (a) [amending this section] shall 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. 2050, 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. 222]."

"(B) 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 losses sustained after September 26, 1977."

**Effective Date of 1976 Amendment**


"(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 808(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.
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.

Amendments


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.


§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) of 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 transferee 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 transferee 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 transferee corporation ceases all operations, other than liquidating activities, after such date.