

(2) Meaning of terms

For purposes of paragraph (1), the terms “qualified stock purchase” and “acquisition date” have the same respective meanings as when used in section 338.

(c) Power of Secretary to allow deduction, etc., in part

In any case to which subsection (a) or (b) applies the Secretary is authorized—

(1) to allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(2) to distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(3) to exercise his powers in part under paragraph (1) and in part under paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 80; Pub. L. 88-272, title II, § 235(c)(2), Feb. 26, 1964, 78 Stat. 126; Pub. L. 94-455, title XIX, §§ 1901(a)(38), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1771, 1834; Pub. L. 98-369, div. A, title VII, § 712(k)(8)(A), (B), July 18, 1984, 98 Stat. 952; Pub. L. 113-295, div. A, title II, § 221(a)(45), Dec. 19, 2014, 128 Stat. 4045.)

Editorial Notes**AMENDMENTS**

2014—Subsec. (a). Pub. L. 113-295 struck out “or acquired on or after October 8, 1940,” after “persons acquire,” in par. (1) and after “corporation acquires,” in par. (2).

1984—Subsecs. (b), (c). Pub. L. 98-369 added subsec. (b), redesignated former subsec. (b) as (c) and inserted reference to subsec. (b).

1976—Subsecs. (a), (b). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (c). Pub. L. 94-455, § 1901(a)(38), struck out subsec. (c) relating to presumptions in the case of disproportionate purchase price.

1964—Subsec. (a). Pub. L. 88-272 substituted “the Secretary or his delegate may disallow such deduction, credit, or other allowance” for “such deduction, credit or other allowance shall not be allowed”.

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

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title VII, § 712(k)(8)(C), July 18, 1984, 98 Stat. 952, provided that: “The amendments made by this paragraph [amending this section] shall apply to liquidations after October 20, 1983, in taxable years ending after such date.”

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88-272, title II, § 235(d), Feb. 26, 1964, 78 Stat. 127, provided that: “The amendments made by sub-

sections (a) and (c) [enacting sections 1561 to 1563 of this title and amending this section and sections 441 and 802 of this title] shall apply with respect to taxable years ending after December 31, 1963. The amendment made by subsection (b) [amending section 1551 of this title] shall apply with respect to transfers made after June 12, 1963.”

§ 269A. Personal service corporations formed or availed of to avoid or evade income tax**(a) General rule**

If—

(1) substantially all of the services of a personal service corporation are performed for (or on behalf of) 1 other corporation, partnership, or other entity, and

(2) the principal purpose for forming, or availing of, such personal service corporation is the avoidance or evasion of Federal income tax by reducing the income of, or securing the benefit of any expense, deduction, credit, exclusion, or other allowance for, any employee-owner which would not otherwise be available,

then the Secretary may allocate all income, deductions, credits, exclusions, and other allowances between such personal service corporation and its employee-owners, if such allocation is necessary to prevent avoidance or evasion of Federal income tax or clearly to reflect the income of the personal service corporation or any of its employee-owners.

(b) Definitions

For purposes of this section—

(1) Personal service corporation

The term “personal service corporation” means a corporation the principal activity of which is the performance of personal services and such services are substantially performed by employee-owners.

(2) Employee-owner

The term “employee-owner” means any employee who owns, on any day during the taxable year, more than 10 percent of the outstanding stock of the personal service corporation. For purposes of the preceding sentence, section 318 shall apply, except that “5 percent” shall be substituted for “50 percent” in section 318(a)(2)(C).

(3) Related persons

All related persons (within the meaning of section 144(a)(3)) shall be treated as 1 entity.

(Added Pub. L. 97-248, title II, § 250(a), Sept. 3, 1982, 96 Stat. 528; amended Pub. L. 99-514, title XIII, § 1301(j)(4), Oct. 22, 1986, 100 Stat. 2657.)

Editorial Notes**AMENDMENTS**

1986—Subsec. (b)(3). Pub. L. 99-514 substituted “section 144(a)(3)” for “section 103(b)(6)(C)”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE

Pub. L. 97-248, title II, § 250(c), Sept. 3, 1982, 96 Stat. 529, provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1982.”

§ 269B. Stapled entities

(a) General rule

Except as otherwise provided by regulations, for purposes of this title—

(1) if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation shall be treated as a domestic corporation.

(2) in applying section 1563, stock in a second corporation which constitutes a stapled interest with respect to stock of a first corporation shall be treated as owned by such first corporation, and

(3) in applying subchapter M for purposes of determining whether any stapled entity is a regulated investment company or a real estate investment trust, all entities which are stapled entities with respect to each other shall be treated as 1 entity.

(b) Secretary to prescribe regulations

The Secretary shall prescribe such regulations as may be necessary to prevent avoidance or evasion of Federal income tax through the use of stapled entities. Such regulations may include (but shall not be limited to) regulations providing the extent to which 1 of such entities shall be treated as owning the other entity (to the extent of the stapled interest) and regulations providing that any tax imposed on the foreign corporation referred to in subsection (a)(1) may, if not paid by such corporation, be collected from the domestic corporation referred to in such subsection or the shareholders of such foreign corporation.

(c) Definitions

For purposes of this section—

(1) Entity

The term “entity” means any corporation, partnership, trust, association, estate, or other form of carrying on a business or activity.

(2) Stapled entities

The term “stapled entities” means any group of 2 or more entities if more than 50 percent in value of the beneficial ownership in each of such entities consists of stapled interests.

(3) Stapled interests

Two or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of 1 of such interests the other such interests are also transferred or required to be transferred.

(d) Special rule for treaties

Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

(e) Subsection (a)(1) not to apply in certain cases

(1) In general

Subsection (a)(1) shall not apply if it is established to the satisfaction of the Secretary that the domestic corporation and the foreign corporation referred to in such subsection are foreign owned.

(2) Foreign owned

For purposes of paragraph (1), a corporation is foreign owned if less than 50 percent of—

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, and

(B) the total value of the stock of the corporation,

is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

(Added Pub. L. 98-369, div. A, title I, § 136(a), July 18, 1984, 98 Stat. 669; amended Pub. L. 99-514, title XVIII, § 1810(j), Oct. 22, 1986, 100 Stat. 2829.)

Editorial Notes

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-514, § 1810(j)(1), inserted “and regulations providing that any tax imposed on the foreign corporation referred to in subsection (a)(1) may, if not paid by such corporation, be collected from the domestic corporation referred to in such subsection or the shareholders of such foreign corporation”.

Subsec. (e). Pub. L. 99-514, § 1810(j)(2), added subsec. (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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.

EFFECTIVE DATE

Pub. L. 98-369, div. A, title I, § 136(c), July 18, 1984, 98 Stat. 670, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section] shall take effect on the date of the enactment of this Act [July 18, 1984].

“(2) INTERESTS STAPLED AS OF JUNE 30, 1983.—Except as otherwise provided in this subsection, in the case of any interests which on June 30, 1983, were stapled interests (as defined in section 269B(c)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section)), the amendments made by this section shall take effect on January 1, 1985 (January 1, 1987, in the case of stapled interests in a foreign corporation).

“(3) CERTAIN STAPLED ENTITIES WHICH INCLUDE REAL ESTATE INVESTMENT TRUST.—Paragraph (3) of section 269B(a) of such Code shall not apply in determining the application of the provisions of part II of subchapter M of chapter 1 of such Code to any real estate investment trust which is part of a group of stapled entities if—

“(A) all members of such group were stapled entities as of June 30, 1983, and

“(B) as of June 30, 1983, such group included one or more real estate investment trusts.

“(4) CERTAIN STAPLED ENTITIES WHICH INCLUDE PUERTO RICAN CORPORATIONS.—