

“(II) clause (i) shall be applied by substituting for ‘October 1, 1982’ the date which is 90 days after the date on which such regulatory body approves a public offer to acquire stock in such corporation.

“(iv) SPECIAL RULE WHERE ONE-THIRD OF SHARES ACQUIRED DURING MARCH AND APRIL 1982.—If—

“(I) one-third or more of the shares of a corporation were acquired by another corporation during March and April 1982, and

“(II) during March or April 1982, the acquiring corporation filed with the Federal Trade Commission notification of its intent to acquire control of the acquired corporation,

subclause (II) of clause (i) shall not apply with respect to distributions made by the acquired corporation.

“(E) INSURANCE COMPANIES.—The amendments made by this section shall not apply to distributions made by an insurance company pursuant to a plan of partial liquidation adopted before October 1, 1982, where control was acquired by the distributee or its parent after December 31, 1980, and before July 23, 1982, and the conduct of the insurance business by the distributee is conditioned on approval by a State regulatory authority.

For purposes of this paragraph, the term ‘control’ has the meaning given to such term by section 368(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], except that in applying such section both direct and indirect ownership of stock shall be taken into account.

“(3) APPROVAL OF PLAN BY BOARD OF DIRECTORS.—For purposes of—

“(A) paragraph (2), and

“(B) applying section 346(a)(2) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) [Sept. 3, 1982] to distributions to which (but for paragraph (2)) the amendments made by this section would apply, a plan of liquidation shall be treated as adopted when approved by the corporation’s board of directors.

“(4) COORDINATION WITH AMENDMENTS MADE BY SECTION 224.—For purposes of section 338(e)(2)(C) of the Internal Revenue Code of 1986 (as added by section 224), any property acquired in a distribution to which the amendments made by this section do not apply by reason of paragraph (2) shall be treated as acquired before September 1, 1982.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to stock which is issued after Dec. 31, 1980, except as otherwise provided, see section 7(d)(2), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

SAVINGS PROVISIONS

Applicability of subsec. (b)(1) to the determination of gross investment income under sections 4940 and 4948(a) of this title, see section 101(l)(8) of Pub. L. 91-172, set out as a note under section 4940 of this title.

§ 303. Distributions in redemption of stock to pay death taxes

(a) In general

A distribution of property to a shareholder by a corporation in redemption of part or all of the stock of such corporation which (for Federal estate tax purposes) is included in determining the gross estate of a decedent, to the extent that the amount of such distribution does not exceed the sum of—

- (1) the estate, inheritance, legacy, and succession taxes (including any interest collected as a part of such taxes) imposed because of such decedent’s death, and
- (2) the amount of funeral and administration expenses allowable as deductions to the estate

under section 2053 (or under section 2106 in the case of the estate of a decedent nonresident, not a citizen of the United States),

shall be treated as a distribution in full payment in exchange for the stock so redeemed.

(b) Limitations on application of subsection (a)

(1) Period for distribution

Subsection (a) shall apply only to amounts distributed after the death of the decedent and—

(A) within the period of limitations provided in section 6501(a) for the assessment of the Federal estate tax (determined without the application of any provision other than section 6501(a)), or within 90 days after the expiration of such period,

(B) if a petition for redetermination of a deficiency in such estate tax has been filed with the Tax Court within the time prescribed in section 6213, at any time before the expiration of 60 days after the decision of the Tax Court becomes final, or

(C) if an election has been made under section 6166 and if the time prescribed by this subparagraph expires at a later date than the time prescribed by subparagraph (B) of this paragraph, within the time determined under section 6166 for the payment of the installments.

(2) Relationship of stock to decedent’s estate

(A) In general

Subsection (a) shall apply to a distribution by a corporation only if the value (for Federal estate tax purposes) of all of the stock of such corporation which is included in determining the value of the decedent’s gross estate exceeds 35 percent of the excess of—

- (i) the value of the gross estate of such decedent, over
- (ii) the sum of the amounts allowable as a deduction under section 2053 or 2054.

(B) Special rule for stock of two or more corporations

For purposes of subparagraph (A), stock of 2 or more corporations, with respect to each of which there is included in determining the value of the decedent’s gross estate 20 percent or more in value of the outstanding stock, shall be treated as the stock of a single corporation. For purposes of the 20-percent requirement of the preceding sentence, stock which, at the decedent’s death, represents the surviving spouse’s interest in property held by the decedent and the surviving spouse as community property or as joint tenants, tenants by the entirety, or tenants in common shall be treated as having been included in determining the value of the decedent’s gross estate.

(3) Relationship of shareholder to estate tax

Subsection (a) shall apply to a distribution by a corporation only to the extent that the interest of the shareholder is reduced directly (or through a binding obligation to contribute) by any payment of an amount described in paragraph (1) or (2) of subsection (a).

(4) Additional requirements for distributions made more than 4 years after decedent's death

In the case of amounts distributed more than 4 years after the date of the decedent's death, subsection (a) shall apply to a distribution by a corporation only to the extent of the lesser of—

(A) the aggregate of the amounts referred to in paragraph (1) or (2) of subsection (a) which remained unpaid immediately before the distribution, or

(B) the aggregate of the amounts referred to in paragraph (1) or (2) of subsection (a) which are paid during the 1-year period beginning on the date of such distribution.

(c) Stock with substituted basis

If—

(1) a shareholder owns stock of a corporation (referred to in this subsection as "new stock") the basis of which is determined by reference to the basis of stock of a corporation (referred to in this subsection as "old stock"),

(2) the old stock was included (for Federal estate tax purposes) in determining the gross estate of a decedent, and

(3) subsection (a) would apply to a distribution of property to such shareholder in redemption of the old stock,

then, subject to the limitation specified in subsection (b), subsection (a) shall apply in respect of a distribution in redemption of the new stock.

(d) Special rules for generation-skipping transfers

Where stock in a corporation is the subject of a generation-skipping transfer (within the meaning of section 2611(a)) occurring at the same time as and as a result of the death of an individual—

(1) the stock shall be deemed to be included in the gross estate of such individual;

(2) taxes of the kind referred to in subsection (a)(1) which are imposed because of the generation-skipping transfer shall be treated as imposed because of such individual's death (and for this purpose the tax imposed by section 2601 shall be treated as an estate tax);

(3) the period of distribution shall be measured from the date of the generation-skipping transfer; and

(4) the relationship of stock to the decedent's estate shall be measured with reference solely to the amount of the generation-skipping transfer.

(Aug. 16, 1954, ch. 736, 68A Stat. 88; Pub. L. 94-455, title XX, §§ 2004(e), 2006(b)(4), Oct. 4, 1976, 90 Stat. 1871, 1889; Pub. L. 97-34, title IV, § 422(b), (e)(1), Aug. 13, 1981, 95 Stat. 314, 316; Pub. L. 99-514, title XIV, § 1432(b), Oct. 22, 1986, 100 Stat. 2730.)

Editorial Notes

AMENDMENTS

1986—Subsec. (d). Pub. L. 99-514 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Under regulations prescribed by the Secretary, where stock in a corporation is subject to tax under section 2601 as a result of a generation-skipping transfer (within the meaning of section 2611(a)), which oc-

curs at or after the death of the deemed transferor (within the meaning of section 2612)—

"(1) the stock shall be deemed to be included in the gross estate of the deemed transferor;

"(2) taxes of the kind referred to in subsection (a)(1) which are imposed because of the generation-skipping transfer shall be treated as imposed because of the deemed transferor's death (and for this purpose the tax imposed by section 2601 shall be treated as an estate tax);

"(3) the period of distribution shall be measured from the date of the generation-skipping transfer; and

"(4) the relationship of stock to the decedent's estate shall be measured with reference solely to the amount of the generation-skipping transfer."

1981—Subsec. (b)(1)(C). Pub. L. 97-34, § 422(e)(1), struck out "or 6166A" after "section 6166" in two places.

Subsec. (b)(2)(A). Pub. L. 97-34, § 422(b)(1), substituted "35" for "50" before percent.

Subsec. (b)(2)(B). Pub. L. 97-34, § 422(b)(2), in heading, substituted "stock in 2" for "stock of two", in first sentence, struck out "the 50 percent requirement" before "of subparagraph (A)" and substituted "2" for "two" and "20 percent or more in value" for "more than 75 percent in value", and, in last sentence, substituted "For purposes of the 20-percent requirement" for "For the purpose of the 75 percent requirement" and, in determining value of decedent's gross estate, treated the estate as including stock which at decedent's death represented surviving spouse's interest in property held by the decedent and surviving spouse either as joint tenants, tenants by the entirety, or tenants in common.

1976—Subsec. (b)(1)(C). Pub. L. 94-455, § 2004(e)(1), added subpar. (C).

Subsec. (b)(2)(A). Pub. L. 94-455, § 2004(e)(2)(A), substituted provisions limiting the applicability of subsec. (a) to corporate distributions in which the value of the corporate stock included in decedent's gross estate exceeds 50 percent of the gross estate over deductions allowed under sections 2053 and 2054 for provisions limiting the applicability of subsec. (a) to corporate distributions in which the value of the corporate stock included in decedent's gross estate is either more than 35 percent of the gross estate or 50 percent of the taxable estate.

Subsec. (b)(2)(B). Pub. L. 94-455, § 2004(e)(2)(B), substituted "the 50 percent requirement" for "the 35 percent and 50 percent requirements".

Subsec. (b)(3), (4). Pub. L. 94-455, § 2004(e)(3), added pars. (3) and (4).

Subsec. (c). Pub. L. 94-455, § 2004(e)(4), substituted "limitation specified in subsection (b)" for "limitation specified in subsection (b)(1)".

Subsec. (d). Pub. L. 94-455, § 2006(b)(4), added subsec. (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f) of Pub. L. 97-34, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2004(e)(1)-(4) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94-455, set out as an Effective Date note under section 6166 of this title.

For effective date of amendment by section 2006(b)(4) of Pub. L. 94-455, see section 2006(c) of Pub. L. 94-455, set out as an Effective Date note under section 2601 of this title.

§ 304. Redemption through use of related corporations

(a) Treatment of certain stock purchases

(1) Acquisition by related corporation (other than subsidiary)

For purposes of sections 302 and 303, if—

(A) one or more persons are in control of each of two corporations, and

(B) in return for property, one of the corporations acquires stock in the other corporation from the person (or persons) so in control,

then (unless paragraph (2) applies) such property shall be treated as a distribution in redemption of the stock of the corporation acquiring such stock. To the extent that such distribution is treated as a distribution to which section 301 applies, the transferor and the acquiring corporation shall be treated in the same manner as if the transferor had transferred the stock so acquired to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and then the acquiring corporation had redeemed the stock it was treated as issuing in such transaction.

(2) Acquisition by subsidiary

For purposes of sections 302 and 303, if—

(A) in return for property, one corporation acquires from a shareholder of another corporation stock in such other corporation, and

(B) the issuing corporation controls the acquiring corporation,

then such property shall be treated as a distribution in redemption of the stock of the issuing corporation.

(b) Special rules for application of subsection (a)

(1) Rules for determinations under section 302(b)

In the case of any acquisition of stock to which subsection (a) of this section applies, determinations as to whether the acquisition is, by reason of section 302(b), to be treated as a distribution in part or full payment in exchange for the stock shall be made by reference to the stock of the issuing corporation. In applying section 318(a) (relating to constructive ownership of stock) with respect to section 302(b) for purposes of this paragraph, sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein.

(2) Amount constituting dividend

In the case of any acquisition of stock to which subsection (a) applies, the determination of the amount which is a dividend (and the source thereof) shall be made as if the property were distributed—

(A) by the acquiring corporation to the extent of its earnings and profits, and

(B) then by the issuing corporation to the extent of its earnings and profits.

(3) Coordination with section 351

(A) Property treated as received in redemption

Except as otherwise provided in this paragraph, subsection (a) (and not section 351 and not so much of sections 357 and 358 as relates to section 351) shall apply to any property received in a distribution described in subsection (a).

(B) Certain assumptions of liability, etc.

(i) In general

In the case of an acquisition described in section 351, subsection (a) shall not apply to any liability—

(I) assumed by the acquiring corporation, or

(II) to which the stock is subject,

if such liability was incurred by the transferor to acquire the stock. For purposes of the preceding sentence, the term “stock” means stock referred to in paragraph (1)(B) or (2)(A) of subsection (a).

(ii) Extension of obligations, etc.

For purposes of clause (i), an extension, renewal, or refinancing of a liability which meets the requirements of clause (i) shall be treated as meeting such requirements.

(iii) Clause (i) does not apply to stock acquired from related person except where complete termination

Clause (i) shall apply only to stock acquired by the transferor from a person—

(I) none of whose stock is attributable to the transferor under section 318(a) (other than paragraph (4) thereof), or

(II) who satisfies rules similar to the rules of section 302(c)(2) with respect to both the acquiring and the issuing corporations (determined as if such person were a distributee of each such corporation).

(C) Distributions incident to formation of bank holding companies

If—

(i) pursuant to a plan, control of a bank is acquired and within 2 years after the date on which such control is acquired, stock constituting control of such bank is transferred to a BHC in connection with its formation,

(ii) incident to the formation of the BHC there is a distribution of property described in subsection (a), and

(iii) the shareholders of the BHC who receive distributions of such property do not have control of such BHC,

then, subsection (a) shall not apply to any securities received by a qualified minority shareholder incident to the formation of such BHC. For purposes of this subparagraph, any assumption of (or acquisition of stock subject to) a liability under subparagraph (B) shall not be treated as a distribution of property.

(D) Definitions

For purposes of subparagraph (C) and this subparagraph—