

(B) the fair market value of such other assets (determined without regard to section 7701(g)).

### (3) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and section 362(d). The Secretary may also prescribe regulations which provide that the manner in which a liability is treated as assumed under this subsection is applied, where appropriate, elsewhere in this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 116; June 29, 1956, ch. 463, § 2, 70 Stat. 403; Pub. L. 95-600, title III, § 365(a), Nov. 6, 1978, 92 Stat. 2854; Pub. L. 96-222, title I, § 103(a)(12), Apr. 1, 1980, 94 Stat. 213; Pub. L. 96-589, § 4(h)(2), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 101-508, title XI, § 11801(c)(8)(F), Nov. 5, 1990, 104 Stat. 1388-524; Pub. L. 106-36, title III, § 3001(a)(1), (b)(1), (d)(2)-(5), June 25, 1999, 113 Stat. 181-184; Pub. L. 106-554, § 1(a)(7) [title III, § 309(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-638; Pub. L. 108-357, title VIII, § 898(b), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109-135, title IV, § 403(jj)(2), Dec. 21, 2005, 119 Stat. 2632.)

### Editorial Notes

#### AMENDMENTS

2005—Subsec. (d)(1). Pub. L. 109-135 inserted “section 361(b)(3),” after “section 358(h).”

2004—Subsec. (c)(1)(B). Pub. L. 108-357 inserted “with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355” after “section 368(a)(1)(D).”

2000—Subsec. (d)(1). Pub. L. 106-554 inserted “section 358(h),” after “section 358(d),” in introductory provisions.

1999—Subsec. (a). Pub. L. 106-36, § 3001(d)(2), struck out “or acquisition” after “assumption” in concluding provisions.

Subsec. (a)(2). Pub. L. 106-36, § 3001(a)(1), struck out “, or acquires from the taxpayer property subject to a liability” before comma at end.

Subsec. (b). Pub. L. 106-36, § 3001(d)(2), (3), struck out “or acquisition” after “assumption” wherever appearing and struck out “or acquired” after “liability assumed” in concluding provisions of par. (1).

Subsec. (c)(1). Pub. L. 106-36, § 3001(d)(4), struck out “, plus the amount of the liabilities to which the property is subject,” after “liabilities assumed” in concluding provisions.

Subsec. (c)(3)(A). Pub. L. 106-36, § 3001(d)(5), struck out “or to which the property transferred is subject” after “liabilities assumed” in concluding provisions.

Subsec. (d). Pub. L. 106-36, § 3001(b)(1), added subsec. (d).

1990—Subsecs. (a), (b)(1). Pub. L. 101-508, § 11801(c)(8)(F)(i), substituted “351 or 361” for “351, 361, 371, or 374” wherever appearing.

Subsec. (c)(2). Pub. L. 101-508, § 11801(c)(8)(F)(ii), inserted “or” at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “to which section 371 or 374 applies, or”.

1980—Subsec. (c)(2)(C). Pub. L. 96-589 added subpar. (C).

Subsec. (c)(3)(A). Pub. L. 96-222 struck out requirement that only taxpayers who compute taxable income under the cash receipts and disbursements method of accounting are eligible to exclude certain liabilities in determining the amount of gain realized on a transfer to a controlled corporation and the requirement that the excluded liability must be an account payable.

1978—Subsec. (c)(3). Pub. L. 95-600 added par. (3).

1956—Subsec. (a). Act June 29, 1956, § 2(1), substituted “371, or 374” for “or 371” in two places.

Subsec. (b). Act June 29, 1956, § 2(1), substituted “371, or 374” for “or 371”.

Subsec. (c)(2)(B). Act June 29, 1956, § 2(2), substituted “371 or 374” for “371”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, § 898(c), Oct. 22, 2004, 118 Stat. 1649, provided that: “The amendments made by this section [amending this section and section 361 of this title] shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act [Oct. 22, 2004].”

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 applicable to assumptions of liability after Oct. 18, 1999, see section 1(a)(7) [title III, § 309(d)] of Pub. L. 106-554, set out as a note under section 358 of this title.

#### 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 1980 AMENDMENTS

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.

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title III, § 365(c), Nov. 6, 1978, 92 Stat. 2855, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 358 of this title] shall apply to transfers occurring on or after the date of the enactment of this Act [Nov. 6, 1978].”

#### SAVINGS PROVISION

For provisions that nothing in amendment 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.

### § 358. Basis to distributees

#### (a) General rule

In the case of an exchange to which section 351, 354, 355, 356, or 361 applies—

##### (1) Nonrecognition property

The basis of the property permitted to be received under such section without the recogni-

tion of gain or loss shall be the same as that of the property exchanged—

(A) decreased by—

(i) the fair market value of any other property (except money) received by the taxpayer,

(ii) the amount of any money received by the taxpayer, and

(iii) the amount of loss to the taxpayer which was recognized on such exchange, and

(B) increased by—

(i) the amount which was treated as a dividend, and

(ii) the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

**(2) Other property**

The basis of any other property (except money) received by the taxpayer shall be its fair market value.

**(b) Allocation of basis**

**(1) In general**

Under regulations prescribed by the Secretary, the basis determined under subsection (a)(1) shall be allocated among the properties permitted to be received without the recognition of gain or loss.

**(2) Special rule for section 355**

In the case of an exchange to which section 355 (or so much of section 356 as relates to section 355) applies, then in making the allocation under paragraph (1) of this subsection, there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing corporation which are retained, and the allocation of basis shall be made among all such properties.

**(c) Section 355 transactions which are not exchanges**

For purposes of this section, a distribution to which section 355 (or so much of section 356 as relates to section 355) applies shall be treated as an exchange, and for such purposes the stock and securities of the distributing corporation which are retained shall be treated as surrendered, and received back, in the exchange.

**(d) Assumption of liability**

**(1) In general**

Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer, such assumption shall, for purposes of this section, be treated as money received by the taxpayer on the exchange.

**(2) Exception**

Paragraph (1) shall not apply to the amount of any liability excluded under section 357(c)(3).

**(e) Exception**

This section shall not apply to property acquired by a corporation by the exchange of its

stock or securities (or the stock or securities of a corporation which is in control of the acquiring corporation) as consideration in whole or in part for the transfer of the property to it.

**(f) Definition of nonrecognition property in case of section 361 exchange**

For purposes of this section, the property permitted to be received under section 361 without the recognition of gain or loss shall be treated as consisting only of stock or securities in another corporation a party to the reorganization.

**(g) Adjustments in intragroup transactions involving section 355**

In the case of a distribution to which section 355 (or so much of section 356 as relates to section 355) applies and which involves the distribution of stock from 1 member of an affiliated group (as defined in section 1504(a) without regard to subsection (b) thereof) to another member of such group, the Secretary may, notwithstanding any other provision of this section, provide adjustments to the adjusted basis of any stock which—

(1) is in a corporation which is a member of such group, and

(2) is held by another member of such group, to appropriately reflect the proper treatment of such distribution.

**(h) Special rules for assumption of liabilities to which subsection (d) does not apply**

**(1) In general**

If, after application of the other provisions of this section to an exchange or series of exchanges, the basis of property to which subsection (a)(1) applies exceeds the fair market value of such property, then such basis shall be reduced (but not below such fair market value) by the amount (determined as of the date of the exchange) of any liability—

(A) which is assumed by another person as part of the exchange, and

(B) with respect to which subsection (d)(1) does not apply to the assumption.

**(2) Exceptions**

Except as provided by the Secretary, paragraph (1) shall not apply to any liability if—

(A) the trade or business with which the liability is associated is transferred to the person assuming the liability as part of the exchange, or

(B) substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange.

**(3) Liability**

For purposes of this subsection, the term “liability” shall include any fixed or contingent obligation to make payment, without regard to whether the obligation is otherwise taken into account for purposes of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 117; Pub. L. 85-866, title I, §21(a), Sept. 2, 1958, 72 Stat. 1620; Pub. L. 90-621, §2(a), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94-253, §1(b), Mar. 31, 1976, 90 Stat. 296; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title III,

§ 365(b), Nov. 6, 1978, 92 Stat. 2855; Pub. L. 100-647, title I, § 1018(d)(5)(B), Nov. 10, 1988, 102 Stat. 3580; Pub. L. 101-508, title XI, § 11801(c)(8)(G), Nov. 5, 1990, 104 Stat. 1388-524; Pub. L. 105-34, title X, § 1012(b)(2), Aug. 5, 1997, 111 Stat. 916; Pub. L. 106-36, title III, § 3001(a)(2), (d)(6), June 25, 1999, 113 Stat. 182, 184; Pub. L. 106-554, § 1(a)(7) [title III, § 309(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-638; Pub. L. 107-147, title IV, § 412(c), Mar. 9, 2002, 116 Stat. 53.)

### Editorial Notes

#### AMENDMENTS

2002—Subsec. (h)(1)(A). Pub. L. 107-147 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “which is assumed in exchange for such property, and”.

2000—Subsec. (h). Pub. L. 106-554 added subsec. (h).

1999—Subsec. (d)(1). Pub. L. 106-36 struck out “or acquired from the taxpayer property subject to a liability” after “liability of the taxpayer” and “or acquisition (in the amount of the liability)” after “such assumption”.

1997—Subsec. (g). Pub. L. 105-34 added subsec. (g).

1990—Subsec. (a). Pub. L. 101-508, § 11801(c)(8)(G)(i), substituted “or 361” for “361, 371(b), or 374”.

Subsec. (b)(3). Pub. L. 101-508, § 11801(c)(8)(G)(ii), struck out par. (3) “Certain exchanges involving Con-Rail” which read as follows: “To the extent provided in regulations prescribed by the Secretary in the case of an exchange to which section 354(d) (or so much of section 356 as relates to section 354(d)) or section 374(c) applies, for purposes of allocating basis under paragraph (1), stock of the Consolidated Rail Corporation and the certificate of value of the United States Railway Association which relates to such stock shall, so long as they are held by the same person, be treated as one property.”

1988—Subsec. (f). Pub. L. 100-647 added subsec. (f).

1978—Subsec. (d). Pub. L. 95-600 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (a). Pub. L. 94-253, § 1(b)(1), substituted “371(b), or 374” for “or 371(b)”.

Subsec. (b)(1), (3). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

Pub. L. 94-253, § 1(b)(2), added par. (3).

1968—Subsec. (e). Pub. L. 90-621 substituted exchange of stock and securities for issuance of stock or securities as the transaction involved and inserted parenthetical provisions making reference to stock or securities of a corporation which is in control of the acquiring corporation.

1958—Subsec. (a)(1)(A)(iii). Pub. L. 85-866 added cl. (iii).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106-554], to which such amendment relates, see section 412(e) of Pub. L. 107-147, set out as a note under section 151 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, § 1(a)(7) [title III, § 309(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-638, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 357 of this title] shall apply to assumptions of liability after October 18, 1999.

“(2) RULES.—The rules prescribed under subsection (c) [see Application of Comparable Rules to Partnerships and S Corporations note below] shall apply to assumptions of liability after October 18, 1999, or such later date as may be prescribed in such rules.”

#### 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 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable, with certain exceptions, to distributions after Apr. 16, 1997, pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of this title occurring after such date, see section 1012(d) of Pub. L. 105-34, set out as a note under section 351 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to transfers occurring on or after Nov. 6, 1978, see section 365(c) of Pub. L. 95-600, set out as a note under section 357 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-253 applicable to taxable years ending after Mar. 31, 1976, see section 2 of Pub. L. 94-253, set out as a note under section 354 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-621, § 2(c), Oct. 22, 1968, 82 Stat. 1311, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 362 of this title] shall apply only in respect of plans of reorganization adopted after the date of the enactment of this Act [Oct. 22, 1968].”

#### EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-866, § 21(b), Sept. 2, 1958, 72 Stat. 1620, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by subsection (a) [amending this section] shall apply as provided in section 393 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as if the clause (iii) added by such amendment had been included in such Code at the time of its enactment [Aug. 16, 1954].”

#### SAVINGS PROVISION

For provisions that nothing in amendment 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.

#### ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS

United States Railway Association abolished effective Apr. 1, 1987, all powers, duties, rights, and obligations of Association relating to Consolidated Rail Corporation under Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) transferred to Secretary of Transportation on Jan. 1, 1987, and any securities of Corporation held by Association transferred to Secretary of Transportation on Oct. 21, 1986, see section 1341 of Title 45, Railroads.

#### APPLICATION OF COMPARABLE RULES TO PARTNERSHIPS AND S CORPORATIONS

Pub. L. 106-554, § 1(a)(7) [title III, § 309(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-638, provided that: “The Secretary of the Treasury or his delegate—

“(1) shall prescribe rules which provide appropriate adjustments under subchapter K of chapter 1 of the Internal Revenue Code of 1986 to prevent the acceleration or duplication of losses through the assumption of (or transfer of assets subject to) liabilities described in section 358(h)(3) of such Code (as added by subsection (a)) in transactions involving partnerships, and

“(2) may prescribe rules which provide appropriate adjustments under subchapter S of chapter 1 of such Code in transactions described in paragraph (1) involving S corporations rather than partnerships.”

#### SUBPART C—EFFECTS ON CORPORATIONS

Sec.	
361.	Nonrecognition of gain or loss to corporations; treatment of distributions.
362.	Basis to corporations.
[363.	Repealed.]

#### Editorial Notes

##### AMENDMENTS

2018—Pub. L. 115–141, div. U, title IV, §401(a)(66), Mar. 23, 2018, 132 Stat. 1187, substituted “Corporations” for “Corporation” in subpart heading.

1988—Pub. L. 100–647, title I, §1018(d)(5)(F), Nov. 10, 1988, 102 Stat. 3580, substituted “corporations; treatment of distributions.” for “transferor corporation; other treatment of transferor corporation; etc.” in item 361.

1986—Pub. L. 99–514, title XVIII, §1804(g)(3), Oct. 22, 1986, 100 Stat. 2806, substituted “to transferor corporation; other treatment of transferor corporation; etc.” for “corporations” in item 361.

1976—Pub. L. 94–455, title XIX, §1901(b)(13), Oct. 4, 1976, 90 Stat. 1795, struck out item 363 “Effect on earnings and profits”.

#### § 361. Nonrecognition of gain or loss to corporations; treatment of distributions

##### (a) General rule

No gain or loss shall be recognized to a corporation if such corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

##### (b) Exchanges not solely in kind

###### (1) Gain

If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by subsection (a) to be received without the recognition of gain, but also of other property or money, then—

###### (A) Property distributed

If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

###### (B) Property not distributed

If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized.

The amount of gain recognized under subparagraph (B) shall not exceed the sum of the money and the fair market value of the other

property so received which is not so distributed.

##### (2) Loss

If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by subsection (a) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

##### (3) Treatment of transfers to creditors

For purposes of paragraph (1), any transfer of the other property or money received in the exchange by the corporation to its creditors in connection with the reorganization shall be treated as a distribution in pursuance of the plan of reorganization. The Secretary may prescribe such regulations as may be necessary to prevent avoidance of tax through abuse of the preceding sentence or subsection (c)(3). In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred (reduced by the amount of the liabilities assumed (within the meaning of section 357(c))).

##### (c) Treatment of distributions

###### (1) In general

Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation a party to a reorganization on the distribution to its shareholders of property in pursuance of the plan of reorganization.

###### (2) Distributions of appreciated property

###### (A) In general

If—

- (i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and
- (ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

###### (B) Qualified property

For purposes of this subsection, the term “qualified property” means—

- (i) any stock in (or right to acquire stock in) the distributing corporation or obligation of the distributing corporation, or
- (ii) any stock in (or right to acquire stock in) another corporation which is a party to the reorganization or obligation of another corporation which is such a party if such stock (or right) or obligation is received by the distributing corporation in the exchange.

###### (C) Treatment of liabilities

If any property distributed in the distribution referred to in paragraph (1) is subject to