

## 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 a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

**(3) Treatment of certain transfers to creditors**

For purposes of this subsection, any transfer of qualified property by the corporation to its creditors in connection with the reorganization shall be treated as a distribution to its shareholders pursuant to the plan of reorganization.

**(4) Coordination with other provisions**

Section 311 and subpart B of part II of this subchapter shall not apply to any distribution referred to in paragraph (1).

**(5) Cross reference**

**For provision providing for recognition of gain in certain distributions, see section 355(d).**

(Aug. 16, 1954, ch. 736, 68A Stat. 118; Pub. L. 99-514, title XVIII, §1804(g)(1), Oct. 22, 1986, 100 Stat. 2805; Pub. L. 100-647, title I, §1018(d)(5)(A), Nov. 10, 1988, 102 Stat. 3578; Pub. L. 101-508, title XI, §11321(b), Nov. 5, 1990, 104 Stat. 1388-463; Pub. L. 108-357, title VIII, §898(a), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109-135, title IV, §403(jj)(1), Dec. 21, 2005, 119 Stat. 2632.)

**Editorial Notes**

**AMENDMENTS**

2005—Subsec. (b)(3). Pub. L. 109-135 inserted before period at end “(reduced by the amount of the liabilities assumed (within the meaning of section 357(c)))”.

2004—Subsec. (b)(3). Pub. L. 108-357 inserted at end “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.”

1990—Subsec. (c)(5). Pub. L. 101-508 added par. (5).

1988—Pub. L. 100-647 substituted “corporations; treatment of distributions” for “transferor corporations; other treatment of transferor corporation; etc.” in section catchline and amended text generally, revising content and structure of section.

1986—Pub. L. 99-514 amended section generally. Prior to amendment, section related to whether gain or loss was recognized if corporation which was party to reorganization exchanged property, pursuant to plan of reorganization, for stock or securities in another corporation which was party to the reorganization or for other property or money.

**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**

Amendment by Pub. L. 108-357 applicable to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after Oct. 22, 2004, see section 898(c) of Pub. L. 108-357, set out as a note under section 357 of this title.

**EFFECTIVE DATE OF 1990 AMENDMENT**

Amendment by Pub. L. 101-508 applicable to distributions after Oct. 9, 1990, but not applicable to any distribution pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such distribution, see section 11321(c) of Pub. L. 101-508, set out as a note under section 355 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 1986 AMENDMENT**

Pub. L. 99-514, title XVIII, §1804(g)(4), Oct. 22, 1986, 100 Stat. 2806, provided that: “The amendments made by this subsection [amending this section and section 368

of this title] shall apply to plans of reorganizations adopted after the date of the enactment of this Act [Oct. 22, 1986].”

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.

### § 362. Basis to corporations

#### (a) Property acquired by issuance of stock or as paid-in surplus

If property was acquired by a corporation—

(1) in connection with a transaction to which section 351 (relating to transfer of property to corporation controlled by transferor) applies, or

(2) as paid-in surplus or as a contribution to capital,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer.

#### (b) Transfers to corporations

If property was acquired by a corporation in connection with a reorganization to which this part applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) as the consideration in whole or in part for the transfer.

#### (c) Special rule for certain contributions to capital

##### (1) Property other than money

Notwithstanding subsection (a)(2), if property other than money—

(A) is acquired by a corporation as a contribution to capital, and

(B) is not contributed by a shareholder as such,

then the basis of such property shall be zero.

##### (2) Money

Notwithstanding subsection (a)(2), if money—

(A) is received by a corporation as a contribution to capital, and

(B) is not contributed by a shareholder as such,

then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of such contribution over the amount of the reduction under the preceding sentence shall be applied to the reduction (as of the last day of

the period specified in the preceding sentence) of the basis of any other property held by the taxpayer. The particular properties to which the reductions required by this paragraph shall be allocated shall be determined under regulations prescribed by the Secretary.

#### (d) Limitation on basis increase attributable to assumption of liability

##### (1) In general

In no event shall the basis of any property be increased under subsection (a) or (b) above the fair market value of such property (determined without regard to section 7701(g)) by reason of any gain recognized to the transferor as a result of the assumption of a liability.

##### (2) Treatment of gain not subject to tax

Except as provided in regulations, if—

(A) gain is recognized to the transferor as a result of an assumption of a nonrecourse liability by a transferee which is also secured by assets not transferred to such transferee; and

(B) no person is subject to tax under this title on such gain,

then, for purposes of determining basis under subsections (a) and (b), the amount of gain recognized by the transferor as a result of the assumption of the liability shall be determined as if the liability assumed by the transferee equaled such transferee's ratable portion of such liability determined on the basis of the relative fair market values (determined without regard to section 7701(g)) of all of the assets subject to such liability.

#### (e) Limitations on built-in losses

##### (1) Limitation on importation of built-in losses

###### (A) In general

If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

###### (B) Property described

For purposes of subparagraph (A), property is described in this subparagraph if—

(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

##### (C) Importation of net built-in loss

For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate ad-