

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 sub-

title 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 adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

**(2) Limitation on transfer of built-in losses in section 351 transactions**

**(A) In general**

If—

(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

**(B) Allocation of basis reduction**

The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

**(C) Election to apply limitation to transferor's stock basis**

**(i) In general**

If the transferor and transferee of a transaction described in subparagraph (A) both elect the application of this subparagraph—

(I) subparagraph (A) shall not apply, and

(II) the transferor's basis in the stock received for property to which subparagraph (A) does not apply by reason of the election shall not exceed its fair market value immediately after the transfer.

**(ii) Election**

Any election under clause (i) shall be made at such time and in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.

(Aug. 16, 1954, ch. 736, 68A Stat. 118; Pub. L. 90-621, §2(b), Oct. 22, 1968, 82 Stat. 1311; Pub. L.

94-455, title XIX, §1906(b)(13)(A), title XXI, §2120(b), Oct. 4, 1976, 90 Stat. 1834, 1913; Pub. L. 99-514, title VIII, §824(b), Oct. 22, 1986, 100 Stat. 2374; Pub. L. 106-36, title III, §3001(b)(2), June 25, 1999, 113 Stat. 182; Pub. L. 108-357, title VIII, §836(a), Oct. 22, 2004, 118 Stat. 1594; Pub. L. 109-135, title IV, §403(dd)(2), Dec. 21, 2005, 119 Stat. 2631; Pub. L. 113-295, div. A, title II, §221(a)(51), Dec. 19, 2014, 128 Stat. 4045; Pub. L. 115-141, div. U, title IV, §401(a)(67), Mar. 23, 2018, 132 Stat. 1187.)

### Editorial Notes

#### AMENDMENTS

2018—Subsec. (a). Pub. L. 115-141 struck out comma after “acquired” in introductory provisions.

2014—Subsec. (a). Pub. L. 113-295 struck out “on or after June 22, 1954” after “If property was acquired” in introductory provisions.

Subsec. (c)(1)(A), (2)(A). Pub. L. 113-295 struck out “, on or after June 22, 1954,” after “by a corporation”.

2005—Subsec. (e)(2)(C)(ii). Pub. L. 109-135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “An election under clause (i) shall be included with the return of tax for the taxable year in which the transaction occurred, shall be in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.”

2004—Subsec. (e). Pub. L. 108-357 added subsec. (e).

1999—Subsec. (d). Pub. L. 106-36 added subsec. (d).

1986—Subsec. (c)(3). Pub. L. 99-514 struck out par. (3) relating to exceptions for contributions in aid of construction.

1976—Subsec. (c)(2)(B). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c)(3). Pub. L. 94-455, §2120(b), added par. (3).

1968—Subsec. (b). Pub. L. 90-621 substituted the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) for the issuance of stock or securities of the transferee as the transaction rendering the subsection applicable.

### 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 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, §836(c)(1), Oct. 22, 2004, 118 Stat. 1596, provided that: “The amendment made by subsection (a) [amending this section] shall apply to transactions after the date of the enactment of this Act [Oct. 22, 2004].”

#### 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 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to amounts received after Dec. 31, 1986, in taxable years ending after such date, with certain exceptions and qualifications, see section 824(c) of Pub. L. 99-514, set out as a note under section 118 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2120(b) of Pub. L. 94-455 applicable to contributions made after Jan. 31, 1976, see sec-

tion 2120(c) of Pub. L. 94-455, set out as a note under section 118 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-621 applicable only in respect of plans of reorganization adopted after Oct. 22, 1968, see section 2(c) of Pub. L. 90-621, set out as a note under section 358 of this title.

### [§ 363. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(49), Oct. 4, 1976, 90 Stat. 1773]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 119, related to cross reference for rules relating to effect on earnings and profits of transactions to which this part applies.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

### SUBPART D—SPECIAL RULE; DEFINITIONS

Sec.

367.

Foreign corporations.

368.

Definitions relating to corporate reorganizations.

### § 367. Foreign corporations

#### (a) Transfers of property from the United States

##### (1) General rule

If, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation.

##### (2) Exception for certain stock or securities

Except to the extent provided in regulations, paragraph (1) shall not apply to the transfer of stock or securities of a foreign corporation which is a party to the exchange or a party to the reorganization.

##### (3) Special rule for transfer of partnership interests

Except as provided in regulations prescribed by the Secretary, a transfer by a United States person of an interest in a partnership to a foreign corporation in an exchange described in paragraph (1) shall, for purposes of this subsection, be treated as a transfer to such corporation of such person's pro rata share of the assets of the partnership.

##### (4) Paragraph (2) not to apply to certain section 361 transactions

Paragraph (2) shall not apply in the case of an exchange described in subsection (a) or (b) of section 361. Subject to such basis adjustments and such other conditions as shall be provided in regulations, the preceding sentence shall not apply if the transferor corporation is controlled (within the meaning of section 368(c)) by 5 or fewer domestic corporations. For purposes of the preceding sentence, all members of the same affiliated group (within the meaning of section 1504) shall be treated as 1 corporation.