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Sec. 332 Complete liquidations of subsidiaries

(a) General rule
No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(b) Liquidations to which section applies
For purposes of this section, a distribution shall be considered to be in complete liquidation only if--

1. the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) meeting the requirements of section 1504(a)(2); and either

2. the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

3. such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within 3 years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year, the Secretary may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such 3-year period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, the assessment and collection of all income taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this subsection shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for purposes of this subsection a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (A) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, on an exchange described in section 361, and (B) the complete cancellation or redemption under the plan, as a result of exchanges described in section 354, of the shares not owned by the taxpayer.

(c) Deductible liquidating distributions of regulated investment companies and real estate investment trusts
If a corporation receives a distribution from a regulated investment company or a real estate investment trust which is considered under subsection (b) as being in complete liquidation of such company or trust, then, notwithstanding any other provision of this chapter, such corporation shall recognize and treat as a dividend from such company or trust an amount equal to the deduction for dividends paid allowable to such company or trust by reason of such distribution.


(d) Recognition of gain on liquidation of certain holding companies

1. IN GENERAL
   In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company
   --
   (A) subsection (a) and section 331 shall not apply to such distribution, and
   (B) such distribution shall be treated as a distribution in which section 301 applies.

2. APPLICABLE HOLDING COMPANY
   For purposes of this subsection --
   (A) IN GENERAL
The term "applicable holding company" means any domestic corporation --
(i) which is a common parent of an affiliated group,
(ii) stock of which is directly owned by the distributee foreign corporation,
(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and
(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

(B) AFFILIATED GROUP
For purposes of this subsection, the term "affiliated group" has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) of section 1504(b)).

(3) COORDINATION WITH SUBPART F
If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

(4) REGULATIONS
The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.
Sec. 351 Transfer to corporation controlled by transferor

(a) General rule

No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange such person or persons are in control (as defined in section 368(c)) of the corporation.

(b) Receipt of property

If subsection (a) would apply to an exchange but for the fact that there is received, in addition to the stock permitted to be received under subsection (a), other property or money, then--

(1) gain (if any) to such recipient shall be recognized, but not in excess of--
   (A) the amount of money received, plus
   (B) the fair market value of such other property received; and

(2) no loss to such recipient shall be recognized.

(c) Special rules where distribution to shareholders

(1) In general

In determining control for purposes of this section, the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account.

(2) Special rule for section 355

If the requirements of section 355 (or so much of section 356 as relates to section 355) are met with respect to a distribution described in paragraph (1), then, solely for purposes of determining the tax treatment of the transfers of property to the controlled corporation by the distributing corporation, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock, or the fact that the corporation whose stock was distributed issues additional stock, shall not be taken into account in determining control for purposes of this section.

(d) Services, certain indebtedness, and accrued interest not treated as property

For purposes of this section, stock issued for--

(1) services,

(2) indebtedness of the transferee corporation which is not evidenced by a security, or

(3) interest on indebtedness of the transferee corporation which accrued on or after the beginning of the transferor's holding period for the debt,

shall not be considered as issued in return for property.

(e) Exceptions

This section shall not apply to--

(1) Transfer of property to an investment company.

A transfer of property to an investment company. For purposes of the preceding sentence, the determination of whether a company is an investment company shall be made--

(A) by taking into account all stock and securities held by the company, and

(B) by treating as stock and securities--

(i) money,

(ii) stocks and other equity interests in a corporation, evidences of indebtedness, options, forward or futures contracts, notional principal contracts and derivatives,

(iii) any foreign currency,

(iv) any interest in a real estate investment trust, a common trust fund, a regulated investment company, a publicly-traded partnership (as defined in section 7704(b) or any other equity interest (other than in a corporation) which pursuant to its terms or any other arrangement is readily convertible into, or exchangeable for, any asset described in any preceding clause, this clause or clause (v) or (viii),

(v) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal, unless such metal is used or held in the active conduct of a trade or business after the contribution,

(vi) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of any assets described in any preceding clause or clause (viii),

(vii) to the extent provided in regulations prescribed by the Secretary, any interest in any entity not
described in clause (vi), but only to the extent of the value of such interest that is attributable to assets listed in clauses (i) through (v) or clause (viii), or

(viii) any other asset specified in regulations prescribed by the Secretary.

The Secretary may prescribe regulations that, under appropriate circumstances, treat any asset described in clauses (i) through (v) as not so listed.

(2) Title 11 or similar case

A transfer of property of a debtor pursuant to a plan while the debtor is under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), to the extent that the stock received in the exchange is used to satisfy the indebtedness of such debtor.

(f) Treatment of controlled corporation

If--

(1) property is transferred to a corporation (hereinafter in this subsection referred to as the "controlled corporation") in an exchange with respect to which gain or loss is not recognized (in whole or in part) to the transferor under this section, and

(2) such exchange is not in pursuance of a plan of reorganization,

section 311 shall apply to any transfer in such exchange by the controlled corporation in the same manner as if such transfer were a distribution to which subpart A of part I applies.

(g) Nonqualified preferred stock not treated as stock

(1) In general

In the case of a person who transfers property to a corporation and receives nonqualified preferred stock--

(A) subsection (a) shall not apply to such transferor and

(B) if (and only if) the transferor receives stock other than nonqualified preferred stock--

(i) subsection (b) shall apply to such transferor; and

(ii) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).

(2) Nonqualified preferred stock

For purposes of paragraph (1)--

(A) In general

The term "nonqualified preferred stock" means preferred stock if--

(i) the holder of such stock has the right to require the issuer or a related person to redeem or purchase the stock,

(ii) the issuer or a related person is required to redeem or purchase such stock,

(iii) the issuer or a related person has the right to redeem or purchase the stock and, as of the issue date, it is more likely than not that such right will be exercised, or

(iv) the dividend rate on such stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices.

(B) Limitations

Clauses (i), (ii), and (iii) of subparagraph (A) shall apply only if the right or obligation referred to therein may be exercised within the 20-year period beginning on the issue date of such stock and such right or obligation is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase.

(C) Exceptions for certain rights or obligations

(i) In general

A right or obligation shall not be treated as described in clause (i), (ii), or (iii) of subparagraph (A) if--

(I) it may be exercised only upon the death, disability, or mental incompetency of the holder, or

(II) in the case of a right or obligation to redeem or purchase stock transferred in connection with the performance of services for the issuer or a related person (and which represents reasonable compensation), it may be exercised only upon the holder's separation from service from the issuer or a related person.

(ii) Exception

Clause (i)(I) shall not apply if the stock relinquished in the exchange, or the stock acquired in the exchange is in--

(I) a corporation if any class of stock in such corporation or a related party is readily tradable on an established securities market or otherwise, or
(II) any other corporation if such exchange is part of a transaction or series of transactions in which such corporation is to become a corporation described in subclause (I).

(3) Definitions
For purposes of this subsection--

(A) Preferred stock
The term "preferred stock" means stock which is limited and preferred as to dividends and does not participate in corporate growth to any significant extent. Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.

(B) Related person
A person shall be treated as related to another person if they bear a relationship to such other person described in section 267(b) or 707(b).

(4) Regulations
The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and sections 354(a)(2)(C), 355(a)(3)(D), and 356(e). The Secretary may also prescribe regulations, consistent with the treatment under this subsection and such sections, for the treatment of nonqualified preferred stock under other provisions of this title.

(h) Cross references
(1) For special rule where another party to the exchange assumes a liability, see section 357.
(2) For the basis of stock or property received in an exchange to which this section applies, see sections 358 and 362.
(3) For special rule in the case of an exchange described in this section but which results in a gift, see section 2501 and following.
(4) For special rule in the case of an exchange described in this section but which has the effect of the payment of compensation by the corporation or by a transferor, see section 61(a)(1).
(5) For coordination of this section with section 304, see section 304(b)(3).
Sec. 354 Exchanges of stock and securities in certain reorganizations

(a) General rule
   (1) In general
   No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.
   (2) Limitations
      (A) Excess principal amount
      Paragraph (1) shall not apply if--
         (i) the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or
         (ii) any such securities are received and no such securities are surrendered.
      (B) Property attributable to accrued interest
      Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock (including nonqualified preferred stock, as defined in section 351(g)(2), securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.
      (C) Nonqualified preferred stock
         (i) In general
         Nonqualified preferred stock (as defined in section 351(g)(2) received in exchange for stock other than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.
         (ii) Recapitalizations of family-owned corporations
            (I) In general
            Clause (i) shall not apply in the case of a recapitalization under section 368(a)(1)(E) of a family-owned corporation.
            (II) Family-owned corporation
               For purposes of this clause, except as provided in regulations, the term "family-owned corporation" means any corporation which is described in clause (i) of section 447(d)(2)(C) throughout the 8-year period beginning on the date which is 5 years before the date of the recapitalization. For purposes of the preceding sentence, stock shall not be treated as owned by a family member during any period described in section 355(d)(6)(B).
            (III) Extension of statute of limitations
               The statutory period for the assessment of any deficiency attributable to a corporation failing to be a family-owned corporation shall not expire before the expiration of 3 years after the date the Secretary is notified by the corporation (in such manner as the Secretary may prescribe) of such failure, and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.
      Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock, securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.
   (3) Cross references
      (A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including nonqualified preferred stock and an excess principal amount of securities received over securities surrendered, but not including property to which paragraph (2)(B) applies), see section 356.
      (B) For treatment of accrued interest in the case of an exchange described in paragraph (2)(B), see section 61.

(b) Exception
   (1) In general
   Subsection (a) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of subparagraph (D) or (G) of section 368(a)(1), unless--
      (A) the corporation to which the assets are transferred acquires substantially all of the assets of the transferor of such assets; and
      (B) the stock, securities, and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization.
(2) Cross reference
For special rules for certain exchanges in pursuance of plans of reorganization within the meaning of subparagraph (D) or (G) of section 368(a)(1), see section 355.

(c) Certain railroad reorganizations
Notwithstanding any other provision of this subchapter, subsection (a)(1) (and so much of section 356 as relates to this section) shall apply with respect to a plan of reorganization (whether or not a reorganization within the meaning of section 368(a)) for a railroad confirmed under section 1173 of title 11 of the United States Code, as being in the public interest.

(d) Exchanges under the final system plan for ConRail [Repealed-- 1990 Rev. Act, sec. 11801(c)(8)(D)]
(a) Effect on distributees

(1) General rule

If--

(A) a corporation (referred to in this section as the "distributing corporation")--

(i) distributes to a shareholder, with respect to its stock, or

(ii) distributes to a security holder, in exchange for its securities,

solely stock or securities of a corporation (referred to in this section as "controlled corporation") which it controls immediately before the distribution,

(B) the transaction was not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or more of such corporations are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such distribution) shall not be construed to mean that the transaction was used principally as such a device),

(C) the requirements of subsection (b) (relating to active businesses) are satisfied, and

(D) as part of the distribution, the distributing corporation distributes--

(i) all of the stock and securities in the controlled corporation held by it immediately before the distribution, or

(ii) an amount of stock in the controlled corporation constituting control within the meaning of section 368(c), and it is established to the satisfaction of the Secretary that the retention by the distributing corporation of stock (or stock and securities) in the controlled corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax,

then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder or security holder on the receipt of such stock or securities.

(2) Non pro rata distributions, etc.

Paragraph (1) shall be applied without regard to the following:

(A) whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation,

(B) whether or not the shareholder surrenders stock in the distributing corporation, and

(C) whether or not the distribution is in pursuance of a plan of reorganization (within the meaning of section 368(a)(1)(D)).

(3) Limitations

(A) Excess principal amount

Paragraph (1) shall not apply if--

(i) the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or

(ii) securities in the controlled corporation are received and no securities are surrendered in connection with such distribution.

(B) Stock acquired in taxable transactions within 5 years treated as boot

For purposes of this section (other than paragraph (1)(D) of this subsection) and so much of section 356 as relates to this section, stock of a controlled corporation acquired by the distributing corporation by reason of any transaction--

(i) which occurs within 5 years of the distribution of such stock, and

(ii) in which gain or loss was recognized in whole or in part,

shall not be treated as stock of such controlled corporation, but as other property.

(C) Property attributable to accrued interest

Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock (including nonqualified preferred stock, as defined in section 351(g)(2), securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.

(D) Nonqualified preferred stock

Nonqualified preferred stock (as defined in section 351(g)(2) received in a distribution with respect to stock other
than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.

(4) Cross references

(A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including nonqualified preferred stock and an excess principal amount of securities received over securities surrendered, but not including property to which paragraph (3)(C) applies), see section 356.

(B) For treatment of accrued interest in the case of an exchange described in paragraph (3)(C), see section 61.

(b) Requirements as to active business

(1) In general

Subsection (a) shall apply only if either--

(A) the distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations), is engaged immediately after the distribution in the active conduct of a trade or business, or

(B) immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.

(2) Definition

For purposes of paragraph (1), a corporation shall be treated as engaged in the active conduct of a trade or business if and only if--

(A) it is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged,

(B) such trade or business has been actively conducted throughout the 5-year period ending on the date of the distribution,

(C) such trade or business was not acquired within the period described in subparagraph (B) in a transaction in which gain or loss was recognized in whole or in part, and

(D) control of a corporation which (at the time of acquisition of control) was conducting such trade or business--

(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B) and was not acquired by the distributing corporation directly (or through 1 or more corporations) within such period, or

(ii) was so acquired by any such corporation within such period, but, in each case in which such control was so acquired, it was so acquired, only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.

For purposes of subparagraph (D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation.

(c) Taxability of corporation on distribution

(1) In general

Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

(2) Distribution 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 subparagraph (A), the term "qualified property" means any stock or securities in the controlled corporation.

(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) Coordination with sections 311 and 336(a)
Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1).

(d) Recognition of gain on certain distributions of stock or securities in controlled corporation

(1) In general
In the case of a disqualified distribution, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

(2) Disqualified distribution
For purposes of this subsection, the term "disqualified distribution" means any distribution to which this section (or so much of section 356 as relates to this section) applies if, immediately after the distribution --

(A) any person holds disqualified stock in the distributing corporation which constitutes a 50-percent or greater interest in such corporation, or

(B) any person holds disqualified stock in the controlled corporation (or, if stock of more than 1 controlled corporation is distributed, in any controlled corporation) which constitutes a 50-percent or greater interest in such corporation.

(3) Disqualified stock
For purposes of this subsection, the term "disqualified stock" means --

(A) any stock in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, and

(B) any stock in any controlled corporation --

(i) acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, or

(ii) received in the distribution to the extent attributable to distributions on --

(I) stock described in subparagraph (A), or

(II) any securities in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution.

(4) 50-percent or greater interest
For purposes of this subsection, the term "50-percent or greater interest" means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock.

(5) Purchase
For purposes of this subsection --

(A) In general
Except as otherwise provided in this paragraph, the term "purchase" means any acquisition but only if--

(i) the basis of the property acquired in the hands of the acquirer is not determined (I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or (II) under section 1014(a), and

(ii) the property is not acquired in an exchange to which section 351, 354, 355, or 356 applies.

(B) Certain section 351 exchanges treated as purchases
The term "purchase" includes any acquisition of property in an exchange to which section 351 applies to the extent such property is acquired in exchange for --

(i) any cash or cash item,

(ii) any marketable stock or security, or

(iii) any debt of the transferor.

(C) Carryover basis transactions
If--

(i) any person acquires property from another person who acquired such property by purchase (as determined under this paragraph with regard to this subparagraph), and

(ii) the adjusted basis of such property in the hands of such acquirer is determined in whole or in part by reference to the adjusted basis of such property in the hands of such other person,
such acquirer shall be treated as having acquired such property by purchase on the date it was so acquired by such
other person.

(6) Special rule where substantial diminution of risk

(A) In general

If this paragraph applies to any stock or securities for any period, the running of any 5-year period set forth in
paragraph (A) or (B) of paragraph (3) (whichever applies) shall be suspended during such period.

(B) Property to which suspension applies

This paragraph applies to any stock or securities for any period during which the holder's risk of loss with respect
to such stock or securities, or with respect to any portion of the activities of the corporation, is (directly or indirectly)
substantially diminished by --

(i) an option,
(ii) a short sale,
(iii) any special class of stock, or
(iv) any other device or transaction.

(7) Aggregation rules

(A) In general

For purposes of this subsection, a person and all persons related to such person (within the meaning of section
267(b) or 707(b)(1)) shall be treated as one person.

(B) Persons acting pursuant to plans or arrangements

If two or more persons act pursuant to a plan or arrangement with respect to acquisitions of stock or securities in
the distributing corporation or controlled corporation, such persons shall be treated as one person for purposes of this
subsection.

(8) Attribution from entities

(A) In general

Paragraph (2) of section 318(a) shall apply in determining whether a person holds stock or securities in any
corporation (determined by substituting "10 percent" for "50 percent" in subparagraph (C) of such paragraph (2) and
by treating any reference to stock as including a reference to securities).

(B) Deemed purchase rule

If --

(i) any person acquires by purchase an interest in any entity, and
(ii) such person is treated under subparagraph (A) as holding any stock or securities by reason of holding
such interest,

such stock or securities shall be treated as acquired by purchase by such person on the later of the date of the
purchase of the interest in such entity or the date such stock or securities are acquired by purchase by such entity.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection,
including --

(A) regulations to prevent the avoidance of the purposes of this subsection through the use of related persons,
intermediaries, pass-thru entities, options, or other arrangements, and

(B) regulations modifying the definition of the term "purchase".

(e) Recognition of gain on certain distributions of stock or securities in connection with acquisitions

(1) General rule

If there is a distribution to which this subsection applies, any stock or securities in the controlled corporation shall
not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

(2) Distributions to which subsection applies

(A) In general

This subsection shall apply to any distribution--

(i) to which this section (or so much of section 356 as relates to this section) applies, and

(ii) which is part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire
directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any
controlled corporation.

(B) Plan presumed to exist in certain cases
If 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation during the 4-year period beginning on the date which is 2 years before the date of the distribution, such acquisition shall be treated as pursuant to a plan described in subparagraph (A)(ii) unless it is established that the distribution and the acquisition are not pursuant to a plan or series of related transactions.

(C) Certain plans disregarded

A plan (or series of related transactions) shall not be treated as described in subparagraph (A)(ii) if, immediately after the completion of such plan or transactions, the distributing corporation and all controlled corporations are members of a single affiliated group (as defined in section 1504 without regard to subsection (b) thereof).

(D) Coordination with subsection (d)

This subsection shall not apply to any distribution to which subsection (d) applies.

(3) Special rules relating to acquisitions

(A) Certain acquisitions not taken into account

Except as provided in regulations, the following acquisitions shall not be taken into account in applying paragraph (2)(A)(ii):

(i) The acquisition of stock in any controlled corporation by the distributing corporation.
(ii) The acquisition by a person of stock in any controlled corporation by reason of holding stock or securities in the distributing corporation.
(iii) The acquisition by a person of stock in any successor corporation of the distributing corporation or any controlled corporation by reason of holding stock or securities in such distributing or controlled corporation.
(iv) The acquisition of stock in the distributing corporation or any controlled corporation to the extent that the percentage of stock owned directly or indirectly in such corporation by each person owning stock in such corporation immediately before the acquisition does not decrease.

This subparagraph shall not apply to any acquisition if the stock held before the acquisition was acquired pursuant to a plan (or series of related transactions) described in paragraph (2)(A)(ii).

(B) Asset acquisitions

Except as provided in regulations, for purposes of this subsection, if the assets of the distributing corporation or any controlled corporation are acquired by a successor corporation in a transaction described in subparagraph (A), (C), or (D) of section 368(a)(1) or any other transaction specified in regulations by the Secretary, the shareholders (immediately before the acquisition) of the corporation acquiring such assets shall be treated as acquiring stock in the corporation from which the assets were acquired.

(4) Definition and special rules

For purposes of this subsection--

(A) 50-percent or greater interest

The term "50-percent or greater interest" has the meaning given such term by subsection (d)(4).

(B) Distributions in title 11 or similar case

Paragraph (1) shall not apply to any distribution made in a title 11 or similar case (as defined in section 368(a)(3).

(C) Aggregation and attribution rules

(i) Aggregation

The rules of paragraph (7)(A) of subsection (d) shall apply.

(ii) Attribution

Section 318(a)(2) shall apply in determining whether a person holds stock or securities in any corporation. Except as provided in regulations, section 318(a)(2)(C) shall be applied without regard to the phrase "50 percent or more in value" for purposes of the preceding sentence.

(D) Successors and predecessors

For purposes of this subsection, any reference to a controlled corporation or a distributing corporation shall include a reference to any predecessor or successor of such corporation.

(E) Statute of limitations

If there is a distribution to which paragraph (1) applies--

(i) the statutory period for the assessment of any deficiency attributable to any part of the gain recognized under this subsection by reason of such distribution shall not expire before the expiration of 3 years from the date the
Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) that such distribution occurred, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(5) Regulations
The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations--

(A) providing for the application of this subsection where there is more than 1 controlled corporation,

(B) treating 2 or more distributions as 1 distribution where necessary to prevent the avoidance of such purposes, and

(C) providing for the application of rules similar to the rules of subsection (d)(6) where appropriate for purposes of paragraph (2)(B).

(f) Section not to apply to certain intragroup distributions
Except as provided in regulations, this section (or so much of section 356 as relates to this section) shall not apply to the distribution of stock from 1 member of an affiliated group (as defined in section 1504(a) to another member of such group if such distribution is part of a plan (or series of related transactions) described in subsection (e)(2)(A)(ii) (determined after the application of subsection (e)).
Sec. 356 Receipt of additional consideration

(a) Gain on exchanges
   (1) Recognition of gain
       If--
       (A) section 354 or 355 would apply to an exchange but for the fact that
       (B) the property received in the exchange consists not only of property permitted by section 354 or 355 to be
           received without the recognition of gain but also of other property or money,
           then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money
           and the fair market value of such other property.
   (2) Treatment as dividend
       If an exchange is described in paragraph (1) but has the effect of the distribution of a dividend (determined with
       the application of section 318(a)), then there shall be treated as a dividend to each distributee such an amount of the
       gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits
       of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under
       paragraph (1) shall be treated as gain from the exchange of property.

(b) Additional consideration received in certain distributions
   If--
   (1) section 355 would apply to a distribution but for the fact that
       (2) the property received in the distribution consists not only of property permitted by section 355 to be received
           without the recognition of gain, but also of other property or money,
           then an amount equal to the sum of such money and the fair market value of such other property shall be treated as a
           distribution of property to which section 301 applies.

(c) Loss
   If--
   (1) section 354 would apply to an exchange or section 355 would apply to an exchange or distribution, but for the
       fact that
       (2) the property received in the exchange or distribution consists not only of property permitted by section 354 or
           355 to be received without the recognition of gain or loss, but also of other property or money,
           then no loss from the exchange or distribution shall be recognized.

(d) Securities as other property
   For purposes of this section--
   (1) In general
       Except as provided in paragraph (2), the term "other property" includes securities.
   (2) Exceptions
       (A) Securities with respect to which nonrecognition of gain would be permitted
           The term "other property" does not include securities to the extent that, under section 354 or 355, such securities
           would be permitted to be received without the recognition of gain.
       (B) Greater principal amount in section 354 exchange
           If--
           (i) in an exchange described in section 354 (other than subsection (c) thereof), securities of a corporation a
               party to the reorganization are surrendered and securities of any corporation a party to the reorganization are
               received, and
           (ii) the principal amount of such securities received exceeds the principal amount of such securities
               surrendered,
               then, with respect to such securities received, the term "other property" means only the fair market value of such
               excess. For purposes of this subparagraph and subparagraph (C) if no securities are surrendered, the excess shall be
               the entire principal amount of the securities received.
       (C) Greater principal amount in section 355 transaction
           If, in an exchange or distribution described in section 355, the principal amount of the securities in the controlled
           corporation which are received exceeds the principal amount of the securities in the distributing corporation which
           are surrendered, then, with respect to such securities received, the term "other property" means only the fair market
value of such excess.

(e) Nonqualified preferred stock treated as other property
For purposes of this section--

(1) In general
   Except as provided in paragraph (2), the term "other property" includes nonqualified preferred stock (as defined in section 351(g)(2).

(2) Exception
   The term "other property" does not include nonqualified preferred stock (as so defined) to the extent that, under section 354 or 355, such preferred stock would be permitted to be received without the recognition of gain.

(f) Exchanges for section 306 stock
Notwithstanding any other provision of this section, to the extent that any of the other property (or money) is received in exchange for section 306 stock, an amount equal to the fair market value of such other property (or the amount of such money) shall be treated as a distribution of property to which section 301 applies.

(g) Transactions involving gift or compensation
For special rules for a transaction described in section 354, 355, or this section, but which--

(1) results in a gift, see section 2501 and following, or
(2) has the effect of the payment of compensation, see section 61(a)(1).
Sec. 357 Assumption of liability

(a) General rule
Except as provided in subsections (b) and (c), if--

(1) the taxpayer receives property which would be permitted to be received under section 351 or 361, without the recognition of gain if it were the sole consideration, and

(2) as part of the consideration, another party to the exchange assumes a liability of the taxpayer, then such assumption shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of section 351 or 361, as the case may be.

(b) Tax avoidance purpose

(1) In general
If, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption was made, it appears that the principal purpose of the taxpayer with respect to the assumption described in subsection (a)--

(A) was a purpose to avoid Federal income tax on the exchange, or

(B) if not such purpose, was not a bona fide business purpose,

then such assumption (in the total amount of the liability assumed pursuant to such exchange) shall, for purposes of section 351 or 361, (as the case may be), be considered as money received by the taxpayer on the exchange.

(2) Burden of proof
In any suit or proceeding where the burden is on the taxpayer to prove such assumption or acquisition is not to be treated as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

(c) Liabilities in excess of basis

(1) In general
In the case of an exchange--

(A) to which section 351 applies, or

Caution: Code section 357(c)(1)(B), as amended by P.L. 108-357, inserts "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)" applicable to transfers of money or other property, or liabilities assumed in connection with a reorganization occurring after October 21, 2004.

(B) to which section 361 applies by reason of a plan of reorganization within the meaning of section 368(a)(1)(D),

if the sum of the amount of the liabilities assumed exceeds the total of the adjusted basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of a capital asset or of property which is not a capital asset, as the case may be.

(2) Exceptions
Paragraph (1) shall not apply to any exchange--

(A) to which subsection (b)(1) of this section applies, or

(B) which is pursuant to a plan of reorganization within the meaning of section 368(a)(1)(G) where no former shareholder of the transferor corporation receives any consideration for his stock.

(3) Certain liabilities excluded

(A) In general
If a taxpayer transfers, in an exchange to which section 351 applies, a liability the payment of which either--

(i) would give rise to a deduction, or

(ii) would be described in section 736(a),

then, for purposes of paragraph (1), the amount of such liability shall be excluded in determining the amount of liabilities assumed.

(B) Exception
Subparagraph (A) shall not apply to any liability to the extent that the incurrence of the liability resulted in the creation of, or an increase in, the basis of any property.

(d) Determination of amount of liability assumed

(1) In general
For purposes of this section, section 358(d), section 358(h), section 362(d), section 368(a)(1)(C), and section 368(a)(2)(B), except as provided in regulations --

(A) a recourse liability (or portion thereof) shall be treated as having been assumed if, as determined on the basis of all facts and circumstances, the transferee has agreed to, and is expected to, satisfy such liability (or portion), whether or not the transferor has been relieved of such liability; and

(B) except to the extent provided in paragraph (2), a nonrecourse liability shall be treated as having been assumed by the transferee of any asset subject to such liability.

(2) Exception for nonrecourse liability

The amount of the nonrecourse liability treated as described in paragraph (1)(B) shall be reduced by the lesser of

(A) the amount of such liability which an owner of other assets not transferred to the transferee and also subject to such liability has agreed with the transferee to, and is expected to, satisfy; or

(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.
Sec. 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 recognition 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.

(3) Certain exchanges involving ConRail [Striken--1990 Rev. Act, sec. 11801(c)(8)(G)(ii)]

(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.
Sec. 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.
Caution: Code section 361(b)(3), as amended by P.L. 108-357, inserted last sentence applicable to transfers of money or other property, or liabilities assumed in connection with a reorganization occurring after October 21, 2004.

(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.

(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).
Sec. 362 Basis to corporations

(a) Property acquired by issuance of stock or as paid-in surplus
If property was acquired on or after June 22, 1954, 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, on or after June 22, 1954, 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, on or after June 22, 1954, 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 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
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.
Sec. 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) Exception for transfers of certain property used in the active conduct of a trade or business

(A) In general

Except as provided in regulations prescribed by the Secretary, paragraph (1) shall not apply to any property transferred to a foreign corporation for use by such foreign corporation in the active conduct of a trade or business outside of the United States.

(B) Paragraph not to apply to certain property

Except as provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to any--

(i) property described in paragraph (1) or (3) of section 1221(a) (relating to inventory and copyrights, etc.),
(ii) installment obligations, accounts receivable, or similar property,
(iii) foreign currency or other property denominated in foreign currency,
(iv) intangible property (within the meaning of section 936(h)(3)(B)), or
(v) property with respect to which the transferor is a lessor at the time of the transfer, except that this clause shall not apply if the transferee was the lessee.

(C) Transfer of foreign branch with previously deducted losses

Except as provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to gain realized on the transfer of the assets of a foreign branch of a United States person to a foreign corporation in an exchange described in paragraph (1) to the extent that--

(i) the sum of losses--

(I) which were incurred by the foreign branch before the transfer, and
(II) with respect to which a deduction was allowed to the taxpayer, exceeds
(ii) the sum of--

(I) any taxable income of such branch for a taxable year after the taxable year in which the loss was incurred and through the close of the taxable year of the transfer, and
(II) the amount which is recognized under section 904(f)(3) on account of the transfer.

Any gain recognized by reason of the preceding sentence shall be treated for purposes of this chapter as income from sources outside the United States having the same character as such losses had.

(4) 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.

(5) Paragraphs (2) and (3) not to apply to certain section 361 transactions

Paragraphs (2) and (3) 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.

(6) Secretary may exempt certain transactions from application of this subsection

Paragraph (1) shall not apply to the transfer of any property which the Secretary, in order to carry out the purposes of this subsection, designates by regulation.

(b) Other transfers

(1) Effect of section to be determined under regulations

In the case of any exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is
no transfer of property described in subsection (a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes.

(2) Regulations relating to sale or exchange of stock in foreign corporations
The regulations prescribed pursuant to paragraph (1) shall include (but shall not be limited to) regulations dealing with the sale or exchange of stock or securities in a foreign corporation by a United States person, including regulations providing--

(A) the circumstances under which--
   (i) gain shall be recognized currently, or amounts included in gross income currently as a dividend, or both, or
   (ii) gain or other amounts may be deferred for inclusion in the gross income of a shareholder (or his successor in interest) at a later date, and

(B) the extent to which adjustments shall be made to earnings and profits, basis of stock or securities, and basis of assets.
(c) Transactions to be treated as exchanges
(1) Section 355 distribution
   For purposes of this section, any distribution described in section 355 (or so much of section 356 as relates to section 355) shall be treated as an exchange whether or not it is an exchange.

(2) Contribution of capital to controlled corporations
   For purposes of this chapter, any transfer of property to a foreign corporation as a contribution to the capital of such corporation by one or more persons who, immediately after the transfer, own (within the meaning of section 318) stock possessing at least 80 percent of the total combined voting power of all classes of stock of such corporation entitled to vote shall be treated as an exchange of such property for stock of the foreign corporation equal in value to the fair market value of the property transferred.
(d) Special rules relating to transfers of intangibles
(1) In general
   Except as provided in regulations prescribed by the Secretary, if a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B)) to a foreign corporation in an exchange described in section 351 or 361--
   (A) subsection (a) shall not apply to the transfer of such property, and
   (B) the provisions of this subsection shall apply to such transfer.

(2) Transfer of intangibles treated as transfer pursuant to sale of contingent payments
   (A) In general
      If paragraph (1) applies to any transfer, the United States person transferring such property shall be treated as--
      (i) having sold such property in exchange for payments which are contingent upon the productivity, use, or disposition of such property, and
      (ii) receiving amounts which reasonably reflect the amounts which would have been received--
         (I) annually in the form of such payments over the useful life of such property, or
         (II) in the case of a disposition following such transfer (whether direct or indirect), at the time of the disposition.
      The amounts taken into account under clause (ii) shall be commensurate with the income attributable to the intangible.

   (B) Effect on earnings and profits
      For purposes of this chapter, the earnings and profits of a foreign corporation to which the intangible property was transferred shall be reduced by the amount required to be included in the income of the transferor of the intangible property under subparagraph (A)(ii).

   (C) Amounts received treated as ordinary income
      For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income. For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.

(3) Regulations relating to transfers of intangibles to partnerships
   The Secretary may provide by regulations that the rules of paragraph (2) also apply to the transfer of intangible
property by a United States person to a partnership in circumstances consistent with the purposes of this subsection.

(e) Treatment of distributions described in section 355 or liquidations under section 332
   (1) Distributions described in section 355
      In the case of any distribution described in section 355 (or so much of section 356 as relates to section 355) by a
domestic corporation to a person who is not a United States person, to the extent provided in regulations, gain shall
be recognized under principles similar to the principles of this section.
   (2) Liquidations under section 332
      In the case of any liquidation to which section 332 applies, except as provided in regulations, subsections (a) and
(b)(1) of section 337 shall not apply where the 80-percent distributee (as defined in section 337(c)) is a foreign
corporation.

(f) Other transfers
To the extent provided in regulations, if a United States person transfers property to a foreign corporation as paid-in
surplus or as a contribution to capital (in a transaction not otherwise described in this section), such transfer shall be
treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the
transferor shall recognize as gain the excess of--
   (1) the fair market value of the property so transferred, over
   (2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor.
Sec. 368 Definitions relating to corporate reorganizations

(a) Reorganization

(1) In general

For purposes of parts I and II and this part, the term "reorganization" means--

(A) a statutory merger or consolidation;

(B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other shall be disregarded;

(D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356;

(E) a recapitalization;

(F) a mere change in identity, form, or place of organization of one corporation, however effected; or

(G) a transfer by a corporation of all or part of its assets to another corporation in a title 11 or similar case; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356.

(2) Special rules relating to paragraph (1)

(A) Reorganizations described in both paragraph (1)(C) and paragraph (1)(D)

If a transaction is described in both paragraph (1)(C) and paragraph (1)(D), then, for purposes of this subchapter (other than for purposes of subparagraph (C)), such transaction shall be treated as described only in paragraph (1)(D).

(B) Additional consideration in certain paragraph (1)(C) cases

If--

(i) one corporation acquires substantially all of the properties of another corporation,

(ii) the acquisition would qualify under paragraph (1)(C) but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and

(iii) the acquiring corporation acquires, solely for voting stock described in paragraph (1)(C), property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation,

then such acquisition shall (subject to subparagraph (A) of this paragraph) be treated as qualifying under paragraph (1)(C). Solely for the purpose of determining whether clause (iii) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation shall be treated as money paid for the property.

(C) Transfers of assets or stock to subsidiaries in certain paragraph (1)(A), (1)(B), (1)(C), and (1)(G) cases

A transaction otherwise qualifying under paragraph (1)(A), (1)(B), or (1)(C) shall not be disqualified by reason of the fact that part or all of the assets or stock which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets or stock. A similar rule shall apply to a transaction otherwise qualifying under paragraph (1)(G) where the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets.

(D) Use of stock of controlling corporation in paragraph (1)(A) and (1)(G) cases

The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subparagraph as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation shall not disqualify a transaction under paragraph (1)(A) or (1)(G) if--

(i) no stock of the acquiring corporation is used in the transaction, and

(ii) in the case of a transaction under paragraph (1)(A), such transaction would have qualified under
paragraph (1)(A) had the merger been into the controlling corporation.

(E) Statutory merger using voting stock of corporation controlling merged corporation

A transaction otherwise qualifying under paragraph (1)(A) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subparagraph as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if--

(i) after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and

(ii) in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

(F) Certain transactions involving 2 or more investment companies

(i) If immediately before a transaction described in paragraph (1) (other than subparagraph (E) thereof), 2 or more parties to the transaction were investment companies, then the transaction shall not be considered to be a reorganization with respect to any such investment company (and its shareholders and security holders) unless it was a regulated investment company, a real estate investment trust, or a corporation which meets the requirements of clause (ii).

(ii) A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer. For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust.

(iii) For purposes of this subparagraph the term "investment company" means a regulated investment company, a real estate investment trust, or a corporation 50 percent or more of the value of whose total assets are stock and securities and 80 percent or more of the value of whose total assets are assets held for investment. In making the 50-percent and 80-percent determinations under the preceding sentence, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratably share of the subsidiary's assets, and a corporation shall be considered a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock outstanding.

(iv) For purposes of this subparagraph, in determining total assets there shall be excluded cash and cash items (including receivables). Government securities, and, under regulations prescribed by the Secretary, assets acquired (through incurring indebtedness or otherwise) for purposes of meeting the requirements of clause (ii) or ceasing to be an investment company.

(v) This subparagraph shall not apply if the stock of each investment company is owned substantially by the same persons in the same proportions.

(vi) If an investment company which does not meet the requirements of clause (ii) acquires assets of another corporation, clause (i) shall be applied to such investment company and its shareholders and security holders as though its assets had been acquired by such other corporation. If such investment company acquires stock of another corporation in a reorganization described in section 368(a)(1)(B), clause (i) shall be applied to the shareholders of such investment company as though they had exchanged with such other corporation all of their stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange. For purposes of section 1001, the deemed acquisition or exchange referred to in the two preceding sentences shall be treated as a sale or exchange of property by the corporation and by the shareholders and security holders to which clause (i) is applied.

(vii) For purposes of clauses (ii) and (iii), the term "securities" includes obligations of State and local governments, commodity futures contracts, shares of regulated investment companies and real estate investment trusts, and other investments constituting a security within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a-2(36) [80a-2(a)(36)]).

(G) Distribution requirement for paragraph (1)(C)
   (i) In general
   A transaction shall fail to meet the requirements of paragraph (1)(C) unless the acquired corporation
distributes the stock, securities, and other properties it receives, as well as its other properties, in pursuance of the
plan of reorganization. For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to
the plan of reorganization, any distribution to its creditors in connection with such liquidation shall be treated as
pursuant to the plan of reorganization.
   (ii) Exception
   The Secretary may waive the application of clause (i) to any transaction subject to any conditions the
Secretary may prescribe.

(H) Special rules for determining whether certain transactions are qualified under paragraph (1)(D)
   For purposes of determining whether a transaction qualifies under paragraph (1)(D) --
   (i) in the case of a transaction with respect to which the requirements of subparagraphs (A) and (B) of
section 354(b)(1) are met, the term "control" has the meaning given such term by section 304(c), and
   (ii) in the case of a transaction with respect to which the requirements of section 355 (or so much of section
356 as relates to section 355) are met, the fact that the shareholders of the distributing corporation dispose of part or
all of the distributed stock, or the fact that the corporation whose stock was distributed issues additional stock, shall
not be taken into account.

(3) Additional rules relating to title 11 and similar cases
   (A) Title 11 or similar case defined
   For purposes of this part, the term "title 11 or similar case" means --
   (i) a case under title 11 of the United States Code, or
   (ii) a receivership, foreclosure, or similar proceeding in a Federal or State court.
   (B) Transfer of assets in a title 11 or similar case
   In applying paragraph (1)(G), a transfer of the assets of a corporation shall be treated as made in a title 11 or
similar case if and only if --
   (i) any party to the reorganization is under the jurisdiction of the court in such case, and
   (ii) the transfer is pursuant to a plan of reorganization approved by the court.
   (C) Reorganizations qualifying under paragraph (1)(G) and another provision
   If a transaction would (but for this subparagraph) qualify both --
   (i) under subparagraph (G) of paragraph (1), and
   (ii) under any other subparagraph of paragraph (1) or under section 332 or 351,
   then, for purposes of this subchapter (other than section 357(c)(1)), such transaction shall be treated as qualifying
only under subparagraph (G) of paragraph (1).
   (D) Agency receivership proceedings which involve financial institutions
   For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before
a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be
treated as a court.
   (E) Application of paragraph (2)(E)(ii)
   In the case of a title 11 or similar case, the requirement of clause (ii) of paragraph (2)(E) shall be treated as met
if --
   (i) no former shareholder of the surviving corporation received any consideration for his stock, and
   (ii) the former creditors of the surviving corporation exchanged, for an amount of voting stock of the
controlling corporation, debt of the surviving corporation which had a fair market value equal to 80 percent or more
of the total fair market value of the debt of the surviving corporation.
(b) Party to a reorganization
   For purposes of this part, the term "a party to a reorganization" includes --
   (1) a corporation resulting from a reorganization, and
   (2) both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or
properties of another.
In the case of a reorganization qualifying under paragraph (1)(B) or (1)(C) of subsection (a), if the stock exchanged
for the stock or properties is stock of a corporation which is in control of the acquiring corporation, the term "a party
to a reorganization" includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under paragraph (1)(A), (1)(B), (1)(C), or (1)(G) of subsection (a) by reason of paragraph (2)(C) of subsection (a), the term "a party to a reorganization" includes the corporation controlling the corporation to which the acquired assets or stock are transferred. In the case of a reorganization qualifying under paragraph (1)(A) or (1)(G) of subsection (a) by reason of paragraph (2)(D) of that subsection, the term "a party to a reorganization" includes the controlling corporation referred to in such paragraph (2)(D). In the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E), the term "party to a reorganization" includes the controlling corporation referred to in subsection (a)(2)(E).

(c) Control defined
For purposes of part I (other than section 304), part II, this part, and part V, the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.
Sec. 381 Carryovers in certain corporate acquisitions

(a) General rule
In the case of the acquisition of assets of a corporation by another corporation--
   (1) in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies; or
   (2) in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1),
the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c). For purposes of the preceding sentence, a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

(b) Operating rules
Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368(a)(1)--
   (1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.
   (2) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.
   (3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss or a net capital loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

(c) Items of the distributor or transferor corporation
The items referred to in subsection (a) are:
   (1) Net operating loss carryovers
      The net operating loss carryovers determined under section 172, subject to the following conditions and limitations:
         (A) the taxable year of the acquiring corporation to which the net operating loss carryovers of the distributor or transferor corporation are first carried shall be the first taxable year ending after the date of distribution or transfer.
         (B) In determining the net operating loss deduction, the portion of such deduction attributable to the net operating loss carryovers of the distributor or transferor corporation to the first taxable year of the acquiring corporation ending after the date of distribution or transfer shall be limited to an amount which bears the same ratio to the taxable income (determined without regard to a net operating loss deduction) of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.
         (C) For the purpose of determining the amount of the net operating loss carryovers under section 172(b)(2), a net operating loss for a taxable year (hereinafter in this subparagraph referred to as the "loss year") of a distributor or transferor corporation which ends on or before the end of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. For the same purpose, the taxable income for a "prior taxable year" (as the term is used in section 172(b)(2)) shall be computed as provided in such section; except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation--
            (i) such taxable year shall (for the purpose of this subparagraph only) be considered to be 2 taxable years (hereinafter in this subparagraph referred to as the "pre-acquisition part year" and the "post-acquisition part year");
            (ii) the pre-acquisition part year shall begin on the same day as such taxable year begins and shall end on the date of distribution or transfer;
            (iii) the post-acquisition part year shall begin on the day following the date of distribution or transfer and shall end on the same day as the end of such taxable year;
            (iv) the taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)) and the taxable income of the acquiring corporation for the taxable year ending on the same day as such taxable year.
172(b)(2)(A) but without a net operating loss deduction) shall be divided between the pre-acquisition part year and the post-acquisition part year in proportion to the number of days in each;

(v) the net operating loss deduction for the pre-acquisition part year shall be determined as provided in section 172(b)(2)(B), but without regard to a net operating loss year of the distributor or transferor corporation; and

(vi) the net operating loss deduction for the post-acquisition part year shall be determined as provided in section 172(b)(2)(B).

(2) Earnings and profits
In the case of a distribution or transfer described in subsection (a)--

(A) the earnings and profits or deficit in earnings and profits, as the case may be, of the distributor or transferor corporation shall, subject to subparagraph (B), be deemed to have been received or incurred by the acquiring corporation as of the close of the date of the distribution or transfer; and

(B) a deficit in earnings and profits of the distributor, transferor, or acquiring corporation shall be used only to offset earnings and profits accumulated after the date of transfer. For this purpose, the earnings and profits for the taxable year of the acquiring corporation in which the distribution or transfer occurs shall be deemed to have been accumulated after such distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of the acquiring corporation for such taxable year (computed without regard to any earnings and profits received from the distributor or transferor corporation, as described in subparagraph (A) of this paragraph) as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(3) Capital loss carryover
The capital loss carryover determined under section 1212, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the capital loss carryover of the distributor or transferor corporation is first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) The capital loss carryover shall be a short-term capital loss in the taxable year determined under subparagraph (A) but shall be limited to an amount which bears the same ratio to the capital gain net income (determined without regard to a short-term capital loss attributable to capital loss carryover), if any, of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For purposes of determining the amount of such capital loss carryover to taxable years following the taxable year determined under subparagraph (A), the capital gain net income in the taxable year determined under subparagraph (A) shall be considered to be an amount equal to the amount determined under subparagraph (B).

(4) Method of accounting
The acquiring corporation shall use the method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of computing taxable income adopted pursuant to regulations prescribed by the Secretary.

(5) Inventories
In any case in which inventories are received by the acquiring corporation, such inventories shall be taken by such corporation (in determining its income) on the same basis on which such inventories were taken by the distributor or transferor corporation, unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of taking inventory adopted pursuant to regulations prescribed by the Secretary.

(6) Method of computing depreciation allowance
The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under sections 167 and 168 on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.


(8) Installment method
If the acquiring corporation acquires installment obligations (the income from which the distributor or transferor
corporation reports on the installment basis under section 453, the acquiring corporation shall, for purposes of
section 453, be treated as if it were the distributor or transferor corporation.

(9) Amortization of bond discount or premium
If the acquiring corporation assumes liability for bonds of the distributor or transferor corporation issued at a
discount or premium, the acquiring corporation shall be treated as the distributor or transferor corporation after the
date of distribution or transfer for purposes of determining the amount of amortization allowable or includible with
respect to such discount or premium.

(10) Treatment of certain mining development and exploration expenses of distributor or transferor corporation
The acquiring corporation shall be entitled to deduct, as if it were the distributor or transferor corporation,
expenses deferred under section 616 (relating to certain development expenditures) if the distributor or transferor
corporation has so elected.

(11) Contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans
The acquiring corporation shall be considered to be the distributor or transferor corporation after the date of
distribution or transfer for the purpose of determining the amounts deductible under section 404 with respect to
pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

(12) Recovery of tax benefit items
If the acquiring corporation is entitled to the recovery of any amounts previously deducted by (or allowable as
credits to) the distributor or transferor corporation, the acquiring corporation shall succeed to the treatment under
section 111 which would apply to such amounts in the hands of the distributor or transferor corporation.

(13) Involuntary conversions under section 1033
The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution
or transfer for purposes of applying section 1033.

(14) Dividend carryover to personal holding company
The dividend carryover (described in section 564) to taxable years ending after the date of distribution or transfer.

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(16) Certain obligations of distributor or transferor corporation
If the acquiring corporation--
(A) assumes an obligation of the distributor or transferor corporation which, after the date of the distribution or
transfer, gives rise to a liability, and
(B) such liability, if paid or accrued by the distributor or transferor corporation, would have been deductible in
computing its taxable income,
the acquiring corporation shall be entitled to deduct such items when paid or accrued, as the case may be, as if
such corporation were the distributor or transferor corporation. A corporation which would have been an acquiring
corporation under this section if the date of distribution or transfer had occurred on or after the effective date of the
provisions of this subchapter applicable to a liquidation or reorganization, as the case may be, shall be entitled, even
though the date of distribution or transfer occurred before such effective date, to apply this paragraph with respect to
amounts paid or accrued in taxable years beginning after December 31, 1953, on account of such obligations of the
distributor or transferor corporation. This paragraph shall not apply if such obligations are reflected in the amount of
stock, securities, or property transferred by the acquiring corporation to the transferor corporation for the property of
the transferor corporation.

(17) Deficiency dividend of personal holding company
If the acquiring corporation pays a deficiency dividend (as defined in section 547(d)) with respect to the
distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments,
be entitled to the deficiency dividend deduction provided in section 547.

(18) Percentage depletion on extraction of ores or minerals from the waste or residue of prior mining
The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of
determining the applicability of section 613(c)(3) (relating to extraction of ores or minerals from the ground).

(19) Charitable contributions in excess of prior years' limitation
Contributions made in the taxable year ending on the date of distribution or transfer and the 4 prior taxable years
by the distributor or transferor corporation in excess of the amount deductible under section 170(b)(2) for such
taxable years shall be deductible by the acquiring corporation for its taxable years which begin after the date of
distribution or transfer, subject to the limitations imposed in section 170(b)(2). In applying the preceding sentence, each taxable year of the distributor or transferor corporation beginning on or before the date of distribution or transfer shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.


(22) Successor insurance company
If the acquiring corporation is an insurance company taxable under subchapter L, there shall be taken into account (to the extent proper to carry out the purposes of this section and of subchapter L, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter L in respect of the distributor or transferor corporation.

(23) Deficiency dividend of regulated investment company or real estate investment trust
If the acquiring corporation pays a deficiency dividend (as defined in section 860(f)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 860.

(24) Credit under section 38
The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation.

(25) Credit under section 53
The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 53, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 53 in respect of the distributor or transferor corporation.

(26) Enterprise zone provisions
The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and subchapter U, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter U in respect of the distributor or transferor corporation.

(d) Operations loss carrybacks and carryovers of life insurance companies
For application of this part to operations loss carrybacks and carryovers of life insurance companies, see section 810.
Sec. 382 Limitation on net operating loss carryforwards and certain built-in losses following ownership change

(a) General rule
The amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the section 382 limitation for such year.

(b) Section 382 limitation
For purposes of this section--
   (1) In general
      Except as otherwise provided in this section, the section 382 limitation for any post-change year is an amount equal to--
         (A) the value of the old loss corporation, multiplied by
         (B) the long-term tax-exempt rate.
      (2) Carryforward of unused limitation
         If the section 382 limitation for any post-change year exceeds the taxable income of the new loss corporation for such year which was offset by pre-change losses, the section 382 limitation for the next post-change year shall be increased by the amount of such excess.
      (3) Special rule for post-change year which includes change date
         In the case of any post-change year which includes the change date--
         (A) Limitation does not apply to taxable income before change
            Subsection (a) shall not apply to the portion of the taxable income for such year which is allocable to the period in such year on or before the change date. Except as provided in subsection (h)(5) and in regulations, taxable income shall be allocated ratably to each day in the year.
         (B) Limitation for period after change
            For purposes of applying the limitation of subsection (a) to the remainder of the taxable income for such year, the section 382 limitation shall be an amount which bears the same ratio to such limitation (determined without regard to this paragraph) as--
               (i) the number of days in such year after the change date, bears to
               (ii) the total number of days in such year.
   (c) Carryforwards disallowed if continuity of business requirements not met
      (1) In general
         Except as provided in paragraph (2), if the new loss corporation does not continue the business enterprise of the old loss corporation at all times during the 2-year period beginning on the change date, the section 382 limitation for any post-change year shall be zero.
      (2) Exception for certain gains
         The section 382 limitation for any post-change year shall not be less than the sum of--
            (A) any increase in such limitation under--
               (i) subsection (h)(1)(A) for recognized built-in gains for such year, and
               (ii) subsection (h)(1)(C) for gain recognized by reason of an election under section 338, plus
            (B) any increase in such limitation under subsection (b)(2) for amounts described in subparagraph (A) which are carried forward to such year.
   (d) Pre-change loss and post-change year
For purposes of this section--
   (1) Pre-change loss
      The term "pre-change loss" means--
         (A) any net operating loss carryforward of the old loss corporation to the taxable year ending with the ownership change or in which the change date occurs, and
         (B) the net operating loss of the old loss corporation for the taxable year in which the ownership change occurs to the extent such loss is allocable to the period in such year on or before the change date.
      Except as provided in subsection (h)(5) and in regulations, the net operating loss shall, for purposes of subparagraph (B), be allocated ratably to each day in the year.
   (2) Post-change year
      The term "post-change year" means any taxable year ending after the change date.
(e) Value of old loss corporation
For purposes of this section--

(1) In general
Except as otherwise provided in this subsection, the value of the old loss corporation is the value of the stock of such corporation (including any stock described in section 1504(a)(4)) immediately before the ownership change.

(2) Special rule in the case of redemption or other corporate contraction
If a redemption or other corporate contraction occurs in connection with an ownership change, the value under paragraph (1) shall be determined after taking such redemption or other corporate contraction into account.

(3) Treatment of foreign corporations
Except as otherwise provided in regulations, in determining the value of any old loss corporation which is a foreign corporation, there shall be taken into account only items treated as connected with the conduct of a trade or business in the United States.

(f) Long-term tax-exempt rate
For purposes of this section--

(1) In general
The long-term tax-exempt rate shall be the highest of the adjusted Federal long-term rates in effect for any month in the 3-calendar-month period ending with the calendar month in which the change date occurs.

(2) Adjusted Federal long-term rate
For purposes of paragraph (1), the term "adjusted Federal long-term rate" means the Federal long-term rate determined under section 1274(d), except that--

(A) paragraphs (2) and (3) thereof shall not apply, and

(B) such rate shall be properly adjusted for differences between rates on long-term taxable and tax-exempt obligations.

(g) Ownership change
For purposes of this section--

(1) In general
There is an ownership change if, immediately after any owner shift involving a 5-percent shareholder or any equity structure shift--

(A) the percentage of the stock of the loss corporation owned by 1 or more 5-percent shareholders has increased by more than 50 percentage points, over

(B) the lowest percentage of stock of the loss corporation (or any predecessor corporation) owned by such shareholders at any time during the testing period.

(2) Owner shift involving 5-percent shareholder
There is an owner shift involving a 5-percent shareholder if--

(A) there is any change in the respective ownership of stock of a corporation, and

(B) such change affects the percentage of stock of such corporation owned by any person who is a 5-percent shareholder before or after such change.

(3) Equity structure shift defined

(A) In general
The term "equity structure shift" means any reorganization (within the meaning of section 368). Such term shall not include--

(i) any reorganization described in subparagraph (D) or (G) of section 368(a)(1) unless the requirements of section 354(b)(1) are met, and

(ii) any reorganization described in subparagraph (F) of section 368(a)(1).

(B) Taxable reorganization-type transactions, etc.
To the extent provided in regulations, the term "equity structure shift" includes taxable reorganization-type transactions, public offerings, and similar transactions.

(4) Special rules for application of subsection

(A) Treatment of less than 5-percent shareholders
Except as provided in subparagraphs (B)(i) and (C), in determining whether an ownership change has occurred, all stock owned by shareholders of a corporation who are not 5-percent shareholders of such corporation shall be treated as stock owned by 1 5-percent shareholder of such corporation.
(B) Coordination with equity structure shifts

For purposes of determining whether an equity structure shift (or subsequent transaction) is an ownership change--

(i) Less than 5-percent shareholders

Subparagraph (A) shall be applied separately with respect to each group of shareholders (immediately before such equity structure shift) of each corporation which was a party to the reorganization involved in such equity structure shift.

(ii) Acquisitions of stock

Unless a different proportion is established, acquisitions of stock after such equity structure shift shall be treated as being made proportionately from all shareholders immediately before such acquisition.

(C) Coordination with other owner shifts

Except as provided in regulations, rules similar to the rules of subparagraph (B) shall apply in determining whether there has been an owner shift involving a 5-percent shareholder and whether such shift (or subsequent transaction) results in an ownership change.

(D) Treatment of worthless stock

If any stock held by a 50-percent shareholder is treated by such shareholder as becoming worthless during any taxable year of such shareholder and such stock is held by such shareholder as of the close of such taxable year, for purposes of determining whether an ownership change occurs after the close of such taxable year, such shareholder--

(i) shall be treated as having acquired such stock on the 1st day of his 1st succeeding taxable year, and

(ii) shall not be treated as having owned such stock during any prior period.

For purposes of the preceding sentence, the term "50-percent shareholder" means any person owning 50 percent or more of the stock of the corporation at any time during the 3-year period ending on the last day of the taxable year with respect to which the stock was so treated.

(h) Special rules for built-in gains and losses and section 338 gains

For purposes of this section--

(1) In general

(A) Net unrealized built-in gain

(i) In general

If the old loss corporation has a net unrealized built-in gain, the section 382 limitation for any recognition period taxable year shall be increased by the recognized built-in gains for such taxable year.

(ii) Limitation

The increase under clause (i) for any recognition period taxable year shall not exceed--

(I) the net unrealized built-in gain, reduced by

(II) recognized built-in gains for prior years ending in the recognition period.

(B) Net unrealized built-in loss

(i) In general

If the old loss corporation has a net unrealized built-in loss, the recognized built-in loss for any recognition period taxable year shall be subject to limitation under this section in the same manner as if such loss were a pre-change loss.

(ii) Limitation

Clause (i) shall apply to recognized built-in losses for any recognition period taxable year only to the extent such losses do not exceed--

(I) the net unrealized built-in loss, reduced by

(II) recognized built-in losses for prior taxable years ending in the recognition period.

(C) Special rules for certain section 338 gains

If an election under section 338 is made in connection with an ownership change and the net unrealized built-in gain is zero by reason of paragraph (3)(B), then, with respect to such change, the section 382 limitation for the post-change year in which gain is recognized by reason of such election shall be increased by the lesser of--

(i) the recognized built-in gains by reason of such election, or

(ii) the net unrealized built-in gain (determined without regard to paragraph (3)(B)).

(2) Recognized built-in gain and loss

(A) Recognized built-in gain
The term "recognized built-in gain" means any gain recognized during the recognition period on the disposition of any asset to the extent the new loss corporation establishes that--
(i) such asset was held by the old loss corporation immediately before the change date, and
(ii) such gain does not exceed the excess of--
(I) the fair market value of such asset on the change date, over
(II) the adjusted basis of such asset on such date.

(B) Recognized built-in loss
The term "recognized built-in loss" means any loss recognized during the recognition period on the disposition of any asset except to the extent the new loss corporation establishes that--
(i) such asset was not held by the old loss corporation immediately before the change date, or
(ii) such loss exceeds the excess of--
(I) the adjusted basis of such asset on the change date, over
(II) the fair market value of such asset on such date.

Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii).

(3) Net unrealized built-in gain and loss defined
(A) Net unrealized built-in gain and loss
(i) In general
The terms "net unrealized built-in gain" and "net unrealized built-in loss" mean, with respect to any old loss corporation, the amount by which--
(I) the fair market value of the assets of such corporation immediately before an ownership change is more or less, respectively, than
(II) the aggregate adjusted basis of such assets at such time.

(ii) Special rule for redemptions or other corporate contractions
If a redemption or other corporate contraction occurs in connection with an ownership change, to the extent provided in regulations, determinations under clause (i) shall be made after taking such redemption or other corporate contraction into account.

(B) Threshold requirement
(i) In general
If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than the lesser of--
(I) 15 percent of the amount determined for purposes of subparagraph (A)(i)(I), or
(II) $10,000,000,
the net unrealized built-in gain or net unrealized built-in loss shall be zero.

(ii) Cash and cash items not taken into account
In computing any net unrealized built-in gain or net unrealized built-in loss under clause (i), except as provided in regulations, there shall not be taken into account--
(I) any cash or cash item, or
(II) any marketable security which has a value which does not substantially differ from adjusted basis.

(4) Disallowed loss allowed as a carryforward
If a deduction for any portion of a recognized built-in loss is disallowed for any post-change year, such portion--
(A) shall be carried forward to subsequent taxable years under rules similar to the rules for the carrying forward of net operating losses (or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses), but
(B) shall be subject to limitation under this section in the same manner as a pre-change loss.

(5) Special rules for post-change year which includes change date
For purposes of subsection (b)(3)--
(A) in applying subparagraph (A) thereof, taxable income shall be computed without regard to recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as pre-change losses), and gain described in paragraph (1)(C), for the year, and
(B) in applying subparagraph (B) thereof, the section 382 limitation shall be computed without regard to
recognized built-in gains, and gain described in paragraph (1)(C), for the year.

(6) Treatment of certain built-in items

(A) Income items
Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the change date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

(B) Deduction items
Any amount which is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the change date shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

(C) Adjustments
The amount of the net unrealized built-in gain or loss shall be properly adjusted for amounts which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period.

(7) Recognition period, etc.

(A) Recognition period
The term "recognition period" means, with respect to any ownership change, the 5-year period beginning on the change date.

(B) Recognition period taxable year
The term "recognition period taxable year" means any taxable year any portion of which is in the recognition period.

(8) Determination of fair market value in certain cases
If 80 percent or more in value of the stock of a corporation is acquired in 1 transaction (or in a series of related transactions during any 12-month period), for purposes of determining the net unrealized built-in loss, the fair market value of the assets of such corporation shall not exceed the grossed up amount paid for such stock properly adjusted for indebtedness of the corporation and other relevant items.

(9) Tax-free exchanges or transfers
The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection where property held on the change date was acquired (or is subsequently transferred) in a transaction where gain or loss is not recognized (in whole or in part).

(i) Testing period
For purposes of this section--

(1) 3-year period
Except as otherwise provided in this section, the testing period is the 3-year period ending on the day of any owner shift involving a 5-percent shareholder or equity structure shift.

(2) Shorter period where there has been recent ownership change
If there has been an ownership change under this section, the testing period for determining whether a 2nd ownership change has occurred shall not begin before the 1st day following the change date for such earlier ownership change.

(3) Shorter period where all losses arise after 3-year period begins
The testing period shall not begin before the earlier of the 1st day of the 1st taxable year from which there is a carryforward of a loss or of an excess credit to the 1st post-change year or the taxable year in which the transaction being tested occurs. Except as provided in regulations, this paragraph shall not apply to any loss corporation which has a net unrealized built-in loss (determined after application of subsection (h)(3)(B)).

(j) Change date
For purposes of this section, the change date is--

(1) in the case where the last component of an ownership change is an owner shift involving a 5-percent shareholder, the date on which such shift occurs, and

(2) in the case where the last component of an ownership change is an equity structure shift, the date of the reorganization.

(k) Definitions and special rules
For purposes of this section--
(1) Loss corporation
The term "loss corporation" means a corporation entitled to use a net operating loss carryover or having a net operating loss for the taxable year in which the ownership change occurs. Except to the extent provided in regulations, such term includes any corporation with a net unrealized built-in loss.

(2) Old loss corporation
The term "old loss corporation" means any corporation--
   (A) with respect to which there is an ownership change, and
   (B) which (before the ownership change) was a loss corporation.

(3) New loss corporation
The term "new loss corporation" means a corporation which (after an ownership change) is a loss corporation. Nothing in this section shall be treated as implying that the same corporation may not be both the old loss corporation and the new loss corporation.

(4) Taxable income
Taxable income shall be computed with the modifications set forth in section 172(d).

(5) Value
The term "value" means fair market value.

(6) Rules relating to stock
   (A) Preferred stock
Except as provided in regulations and subsection (e), the term "stock" means stock other than stock described in section 1504(a)(4).
   (B) Treatment of certain rights, etc.
The Secretary shall prescribe such regulations as may be necessary--
      (i) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and
      (ii) to treat stock as not stock.
   (C) Determinations on basis of value
Determinations of the percentage of stock of any corporation held by any person shall be made on the basis of value.

(7) 5-percent shareholder
The term "5-percent shareholder" means any person holding 5 percent or more of the stock of the corporation at any time during the testing period.

(l) Certain additional operating rules
For purposes of this section--
   (1) Certain capital contributions not taken into account
      (A) In general
      Any capital contribution received by an old loss corporation as part of a plan a principal purpose of which is to avoid or increase any limitation under this section shall not be taken into account for purposes of this section.
      (B) Certain contributions treated as part of plan
      For purposes of subparagraph (A), any capital contribution made during the 2-year period ending on the change date shall, except as provided in regulations, be treated as part of a plan described in subparagraph (A).
   (2) Ordering rules for application of section
      (A) Coordination with section 172(b) carryover rules
      In the case of any pre-change loss for any taxable year (hereinafter in this subparagraph referred to as the "loss year") subject to limitation under this section, for purposes of determining under the 2nd sentence of section 172(b)(2) the amount of such loss which may be carried to any taxable year, taxable income for any taxable year shall be treated as not greater than--
         (i) the section 382 limitation for such taxable year, reduced by
         (ii) the unused pre-change losses for taxable years preceding the loss year.
      Similar rules shall apply in the case of any credit or loss subject to limitation under section 383.
      (B) Ordering rule for losses carried from same taxable year
      In any case in which--
         (i) a pre-change loss of a loss corporation for any taxable year is subject to a section 382 limitation, and
(ii) a net operating loss of such corporation from such taxable year is not subject to such limitation, taxable income shall be treated as having been offset first by the loss subject to such limitation.

(3) Operating rules relating to ownership of stock

(A) Constructive ownership

Section 318 (relating to constructive ownership of stock) shall apply in determining ownership of stock, except that--

(i) paragraphs (1) and (5)(B) of section 318(a) shall not apply and an individual and all members of his family described in paragraph (1) of section 318(a) shall be treated as 1 individual for purposes of applying this section,

(ii) paragraph (2) of section 318(a) shall be applied--

(I) without regard to the 50-percent limitation contained in subparagraph (C) thereof, and

(II) except as provided in regulations, by treating stock attributed thereunder as no longer being held by the entity from which attributed,

(iii) paragraph (3) of section 318(a) shall be applied only to the extent provided in regulations,

(iv) except to the extent provided in regulations, an option to acquire stock shall be treated as exercised if such exercise results in an ownership change, and

(v) in attributing stock from an entity under paragraph (2) of section 318(a), there shall not be taken into account--

(I) in the case of attribution from a corporation, stock which is not treated as stock for purposes of this section, or

(II) in the case of attribution from another entity, an interest in such entity similar to stock described in subclause (I).

A rule similar to the rule of clause (iv) shall apply in the case of any contingent purchase, warrant, convertible debt, put, stock subject to a risk of forfeiture, contract to acquire stock, or similar interests.

(B) Stock acquired by reason of death, gift, divorce, separation, etc.

If--

(i) the basis of any stock in the hands of any person is determined--

(I) under section 1014 (relating to property acquired from a decedent),

(II) section 1015 (relating to property acquired by a gift or transfer in trust), or

(III) section 1041(b)(2) (relating to transfers of property between spouses or incident to divorce),

(ii) stock is received by any person in satisfaction of a right to receive a pecuniary bequest, or

(iii) stock is acquired by a person pursuant to any divorce or separation instrument (within the meaning of section 71(b)(2)),

such person shall be treated as owning such stock during the period such stock was owned by the person from whom it was acquired.

(C) Certain changes in percentage ownership which are attributable to fluctuations in value not taken into account

Except as provided in regulations, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

(4) Reduction in value where substantial nonbusiness assets

(A) In general

If, immediately after an ownership change, the new loss corporation has substantial nonbusiness assets, the value of the old loss corporation shall be reduced by the excess (if any) of--

(i) the fair market value of the nonbusiness assets of the old loss corporation, over

(ii) the nonbusiness asset share of indebtedness for which such corporation is liable.

(B) Corporation having substantial nonbusiness assets

For purposes of subparagraph (A)--

(i) In general

The old loss corporation shall be treated as having substantial nonbusiness assets if at least 1/3 of the value of the total assets of such corporation consists of nonbusiness assets.

(ii) Exception for certain investment entities

A regulated investment company to which part I of subchapter M applies, a real estate investment trust to
which part II of subchapter M applies, or a REMIC to which part IV of subchapter M applies, shall not be treated as a new loss corporation having substantial nonbusiness assets.

(C) Nonbusiness assets
For purposes of this paragraph, the term "nonbusiness assets" means assets held for investment.

(D) Nonbusiness asset share
For purposes of this paragraph, the nonbusiness asset share of the indebtedness of the corporation is an amount which bears the same ratio to such indebtedness as--

(i) the fair market value of the nonbusiness assets of the corporation, bears to
(ii) the fair market value of all assets of such corporation.

(E) Treatment of subsidiaries
For purposes of this paragraph, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets. For purposes of the preceding sentence, a corporation shall be treated as a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, and 50 percent or more of the total value of shares of all classes of stock.

(5) Title 11 or similar case
(A) In general
Subsection (a) shall not apply to any ownership change if--

(i) the old loss corporation is (immediately before such ownership change) under the jurisdiction of the court in a title 11 or similar case, and
(ii) the shareholders and creditors of the old loss corporation (determined immediately before such ownership change) own (after such ownership change and as a result of being shareholders or creditors immediately before such change) stock of the new loss corporation (or stock of a controlling corporation if also in bankruptcy) which meets the requirements of section 1504(a)(2) (determined by substituting "50 percent" for "80 percent" each place it appears).

(B) Reduction for interest payments to creditors becoming shareholders
In any case to which subparagraph (A) applies, the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed as if no deduction was allowable under this chapter for the interest paid or accrued by the old loss corporation on indebtedness which was converted into stock pursuant to title 11 or similar case during--

(i) any taxable year ending during the 3-year period preceding the taxable year in which the ownership change occurs, and
(ii) the period of the taxable year in which the ownership change occurs on or before the change date.

(C) Coordination with section 108
In applying section 108(e)(8) to any case to which subparagraph (A) applies, there shall not be taken into account any indebtedness for interest described in subparagraph (B).

(D) Section 382 limitation zero if another change within 2 years
If, during the 2-year period immediately following an ownership change to which this paragraph applies, an ownership change of the new loss corporation occurs, this paragraph shall not apply and the section 382 limitation with respect to the 2nd ownership change for any post-change year ending after the change date of the 2nd ownership change shall be zero.

(E) Only certain stock taken into account
For purposes of subparagraph (A)(ii), stock transferred to a creditor shall be taken into account only to the extent such stock is transferred in satisfaction of indebtedness and only if such indebtedness--

(i) was held by the creditor at least 18 months before the date of the filing of the title 11 or similar case, or
(ii) arose in the ordinary course of the trade or business of the old loss corporation and is held by the person who at all times held the beneficial interest in such indebtedness.

(F) Special rule for certain financial institutions
(i) In general
In the case of any ownership change to which this subparagraph applies, this paragraph shall be applied--

(1) by substituting "1504(a)(2)(B)" for "1504(a)(2)" and "20 percent" for "50 percent" in subparagraph (A)(ii), and
(II) without regard to subparagraphs (B) and (C).

(ii) Special rule for depositors
For purposes of applying this paragraph to an ownership change to which this subparagraph applies--
(1) a depositor in the old loss corporation shall be treated as a stockholder in such loss corporation immediately before the change,
(II) deposits which, after the change, become deposits of the new loss corporation shall be treated as stock of the new loss corporation, and
(III) the fair market value of the outstanding stock of the new loss corporation shall include the amount of deposits in the new loss corporation immediately after the change.

(iii) Changes to which subparagraph applies
This subparagraph shall apply to--
(1) an equity structure shift which is a reorganization described in section 368(a)(3)(D)(ii) (as modified by section 368(a)(3)(D)(iv)), or
(II) any other equity structure shift (or transaction to which section 351 applies) which occurs as an integral part of a transaction involving a change to which subclause (I) applies.

This subparagraph shall not apply to any equity structure shift or transaction occurring on or after May 10, 1989.

(G) Title 11 or similar case
For purposes of this paragraph, the term "title 11 or similar case" has the meaning given such term by section 368(a)(3)(A).

(H) Election not to have paragraph apply
A new loss corporation may elect, subject to such terms and conditions as the Secretary may prescribe, not to have the provisions of this paragraph apply.

(6) Special rule for insolvency transactions
If paragraph (5) does not apply to any reorganization described in subparagraph (G) of section 368(a)(1) or any exchange of debt for stock in a title 11 or similar case (as defined in section 368(a)(3)(A)), the value under subsection (e) shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction.

(7) Coordination with alternative minimum tax
The Secretary shall by regulation provide for the application of this section to the alternative tax net operating loss deduction under section 56(d).

(8) Predecessor and successor entities
Except as provided in regulations, any entity and any predecessor or successor entities of such entity shall be treated as 1 entity.

(m) Regulations
The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section and section 383, including (but not limited to) regulations--
(1) providing for the application of this section and section 383 where an ownership change with respect to the old loss corporation is followed by an ownership change with respect to the new loss corporation, and
(2) providing for the application of this section and section 383 in the case of a short taxable year,
(3) providing for such adjustments to the application of this section and section 383 as is necessary to prevent the avoidance of the purposes of this section and section 383, including the avoidance of such purposes through the use of related persons, pass-thru entities, or other intermediaries,
(4) providing for the application of subsection (g)(4) where there is only 1 corporation involved, and
(5) providing, in the case of any group of corporations described in section 1563(a) (determined by substituting "50 percent" for "80 percent" each place it appears and determined without regard to paragraph (4) thereof), appropriate adjustments to value, built-in gain or loss, and other items so that items are not omitted or taken into account more than once.