

§ 1.355-0

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however, section 356 and regulations pertaining to such section.

(d) The rules of section 354 may be illustrated by the following examples:

Example 1. Pursuant to a reorganization under section 368(a) to which Corporations T and W are parties, A, a shareholder in Corporation T, surrenders all his common stock in Corporation T in exchange for common stock of Corporation W. No gain or loss is recognized to A.

Example 2. Pursuant to a reorganization under section 368(a) to which Corporations X and Y (which are not railroad corporations) are parties, B, a shareholder in Corporation X, surrenders all his stock in X for stock and securities in Y. Section 354 does not apply to this exchange. See, however, section 356.

Example 3. C, a shareholder in Corporation Z (which is not a railroad corporation), surrenders all his stock in Corporation Z in exchange for securities in Corporation Z. Whether or not this exchange is in connection with a recapitalization under section 368(a)(1)(E), section 354 does not apply. See, however, section 302.

Example 4. The facts are the same as in *Example 3* of this paragraph (d), except that C receives solely rights to acquire stock in Corporation Z. Section 354 does not apply.

(e) Except as provided in § 1.356-6, for purposes of section 354, the term *securities* includes rights issued by a party to the reorganization to acquire its stock. For purposes of this section and section 356(d)(2)(B), a right to acquire stock has no principal amount. For this purpose, rights to acquire stock has the same meaning as it does under sections 305 and 317(a). Other Internal Revenue Code provisions governing the treatment of rights to acquire stock may also apply to certain exchanges occurring in connection with a reorganization. See, for example, sections 83 and 421 through 424 and the regulations thereunder. This paragraph (e) applies to exchanges occurring on or after March 9, 1998.

(f) See § 1.356-7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for nonqualified preferred stock or preferred stock. See § 1.356-7(c) for the treatment of preferred stock received in certain exchanges for common or preferred

stock described in section 351(g)(2)(C)(i)(II).

[T.D. 6500, 25 FR 11607, Nov. 26, 1960, as amended by T.D. 7616, 44 FR 26869, May 8, 1979; T.D. 8752, 63 FR 410, Jan. 6, 1998; T.D. 8882, 65 FR 31078, May 16, 2000; T.D. 8904, 65 FR 58651, Oct. 2, 2000]

§ 1.355-0 Outline of sections.

In order to facilitate the use of §§ 1.355-1 through 1.355-7T, this section lists the major paragraphs in those sections as follows:

§ 1.355-1 DISTRIBUTION OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION.

- (a) Effective date of certain sections.
- (b) Application of section.

§ 1.355-2 LIMITATIONS.

- (a) Property distributed.
- (b) Independent business purpose.
 - (1) Independent business purpose requirement.
 - (2) Corporate business purpose.
 - (3) Business purpose for distribution.
 - (4) Business purpose as evidence of non-device.
- (c) Examples.
- (d) Continuity of interest requirement.
 - (1) Requirement.
 - (2) Examples.
 - (3) Device for distribution of earnings and profits.
 - (i) In general.
 - (ii) Device factors.
 - (i) In general.
 - (ii) Pro rata distribution.
 - (iii) Subsequent sale or exchange of stock.
 - (A) In general.
 - (B) Sale or exchange negotiated or agreed upon before the distribution.
 - (C) Sale or exchange not negotiated or agreed upon before the distribution.
 - (D) Negotiated or agreed upon before the distribution.
 - (E) Exchange in pursuance of a plan of reorganization.
 - (iv) Nature and use of assets.
 - (A) In general.
 - (B) Assets not used in a trade or business meeting the requirement of section 355(b).
 - (C) Related function.
 - (3) Nondevice factors.
 - (i) In general.
 - (ii) Corporate business purpose.
 - (iii) Distributing corporation publicly traded and widely held.
 - (iv) Distribution to domestic corporate shareholders.
 - (4) Examples.
 - (5) Transactions ordinarily not considered as a device.
 - (i) In general.
 - (ii) Absence of earnings and profits.

- (iii) Section 303(a) transactions.
- (iv) Section 302(a) transactions.
- (v) Examples.
- (e) Stock and securities distributed.
 - (1) In general.
 - (2) Additional rules.
- (f) Principal amount of securities.
 - (1) Securities received.
 - (2) Only stock received.
- (g) Period of ownership.
 - (1) Other property.
 - (2) Example.
- (h) Active conduct of a trade or business.

§ 1.355-3 ACTIVE CONDUCT OF A TRADE OR BUSINESS.

- (a) General requirements.
 - (1) Application of section 355.
 - (2) Examples.
- (b) Active conduct of a trade or business defined.
 - (1) In general.
 - (2) Active conduct of a trade or business immediately after distribution.
 - (i) In general.
 - (ii) Trade or business.
 - (iii) Active conduct.
 - (iv) Limitations.
 - (3) Active conduct for five-year period preceding distribution.
 - (4) Special rules for acquisition of a trade or business (Prior to the Revenue Act of 1987 and Technical and Miscellaneous Revenue Act of 1988).
 - (i) In general.
 - (ii) Example.
 - (iii) Gain or loss recognized in certain transactions.
 - (iv) Affiliated group.
 - (5) Special rules for acquisition of a trade or business (After the Revenue Act of 1987 and Technical and Miscellaneous Revenue Act of 1988).
- (c) Examples.

§ 1.355-4 NON PRO RATA DISTRIBUTIONS, ETC.

§ 1.355-5 RECORDS TO BE KEPT AND INFORMATION TO BE FILED.

§ 1.355-6 RECOGNITION OF GAIN ON CERTAIN DISTRIBUTIONS OF STOCK OR SECURITIES IN CONTROLLED CORPORATION.

- (a) Conventions.
 - (1) Examples.
 - (2) Five-year period.
 - (3) Distributing securities.
 - (4) Marketable securities.
- (b) General rules and purposes of section 355(d).
 - (1) Disqualified distributions in general.
 - (i) In general.
 - (ii) Purchase.
 - (iii) Exceptions.
 - (A) Purchase eliminated.
 - (B) Deemed purchase eliminated.

- (C) Elimination of basis.
 - (f) General rule.
 - (2) Special rule for transferred and exchanged basis property.
 - (3) Special rule for Split-offs and Split-ups.
 - (D) Special rule if basis allocated between two corporations.
 - (3) Certain distributions not disqualified distributions because purposes of section 355(d) not violated.
 - (i) In general.
 - (ii) Disqualified person.
 - (iii) Purchased basis.
 - (iv) Increase in interest because payment of cash in lieu of fractional shares.
 - (v) Other exceptions.
 - (vi) Examples.
 - (4) Anti-avoidance rule.
 - (i) In general.
 - (ii) Example.
 - (c) Whether a person holds a 50 percent or greater interest.
 - (1) In general.
 - (2) Valuation.
 - (3) Effect of options, warrants, convertible obligations, and other similar interests.
 - (i) Application.
 - (ii) General rule.
 - (iii) Options deemed newly issued and substituted options.
 - (A) Exchange, adjustment, or alteration of existing option.
 - (B) Certain compensatory options.
 - (C) Substituted options.
 - (iv) Effect of treating an option as exercised.
 - (A) In general.
 - (B) Stock purchase agreement or similar arrangement.
 - (v) Instruments treated as options.
 - (vi) Instruments generally not treated as options.
 - (A) Escrow, pledge, or other security agreements.
 - (B) Compensatory options.
 - (f) General rule.
 - (2) Exception.
 - (C) Certain stock conversion features.
 - (D) Options exercisable only upon death, disability, mental incompetency, or separation from service.
 - (E) Rights of first refusal.
 - (F) Other enumerated instruments.
 - (vii) Reasonably certain that the option will be exercised.
 - (A) In general.
 - (B) Stock purchase agreement or similar arrangement.
 - (viii) Examples.
 - (4) Plan or arrangement.
 - (i) In general.
 - (ii) Understanding.
 - (iii) Examples.
 - (iv) Exception.
 - (A) Subsequent disposition.
 - (B) Example.
 - (d) Purchase.

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- (1) In general.
- (i) Definition of purchase under section 355(d)(5)(A).
- (ii) Section 355 distributions.
- (iii) Example.
- (2) Exceptions to definition of purchase under section 355(d)(5)(A).
- (i) Acquisition of stock in a transaction which includes other property or money.
- (A) Transferors and shareholders of transferor or distributing corporations.
- (J) In general.
- (2) Exception.
- (B) Transferee corporations.
- (J) In general.
- (2) Exception.
- (C) Examples.
- (ii) Acquisition of stock in a distribution to which section 305(a) applies.
- (iii) Section 1036(a) exchange.
- (iv) Section 338 elections.
- (A) In general.
- (B) Example.
- (v) Partnership distributions.
- (A) Section 732(b).
- (B) Section 734(b).
- (3) Certain section 351 exchanges treated as purchases.
- (i) In general.
- (A) Treatment of stock received by transferor.
- (B) Multiple classes of stock.
- (ii) Cash item, marketable stock.
- (iii) Exception for certain acquisitions.
- (A) In general.
- (B) Example.
- (iv) Exception for assets transferred as part of an active trade or business.
- (A) In general.
- (B) Active conduct of a trade or business.
- (C) Reasonable needs of the trade or business.
- (D) Consideration of all facts and circumstances.
- (E) Successive transfers.
- (v) Exception for transfer between members of the same affiliated group.
- (A) In general.
- (B) Examples.
- (4) Triangular asset reorganizations.
- (i) Definition.
- (ii) Treatment.
- (iii) Example.
- (5) Reverse triangular reorganizations other than triangular asset reorganizations.
- (i) In general.
- (ii) Letter ruling and closing agreement.
- (iii) Example.
- (6) Treatment of group structure changes.
- (i) In general.
- (ii) Adjustments to basis of higher-tier members.
- (iii) Example.
- (7) Special rules for triangular asset reorganizations, other reverse triangular reorganizations, and group structure changes.
- (e) Deemed purchase and timing rules.

- (1) Attribution and aggregation.
- (i) In general.
- (ii) Purchase of additional interest.
- (iii) Purchase between persons treated as one person.
- (iv) Purchase by a person already treated as holding stock under section 355(d)(8)(A).
- (v) Examples.
- (2) Transferred basis rule.
- (3) Exchanged basis rule.
- (i) In general.
- (ii) Example.
- (4) Certain section 355 or section 305 distributions.
- (i) Section 355.
- (ii) Section 305.
- (5) Substantial diminution of risk.
- (i) In general.
- (ii) Property to which suspension applies.
- (iii) Risk of loss substantially diminished.
- (iv) Special class of stock.
- (f) Duty to determine stockholders.
- (1) In general.
- (2) Deemed knowledge of contents of securities filings.
- (3) Presumptions as to securities filings.
- (4) Presumption as to less-than-five-percent shareholders.
- (5) Examples.
- (g) Effective date.
- §1.355-7T *Recognition of gain on certain distributions of stock or securities in connection with an acquisition.*
- (a) In general.
- (b) Plan.
- (1) In general.
- (2) Certain post-distribution acquisitions.
- (3) Plan factors.
- (4) Non-plan factors.
- (c) Operating rules.
- (1) Internal discussions and discussions with outside advisors evidence of business purpose.
- (2) Takeover defense.
- (3) Effect of distribution on trading in stock.
- (4) Consequences of section 355(e) disregarded for certain purposes.
- (5) Multiple acquisitions.
- (d) Safe harbors.
- (1) Safe Harbor I.
- (2) Safe Harbor II.
- (3) Safe Harbor III.
- (4) Safe Harbor IV.
- (5) Safe Harbor V.
- (i) In general.
- (ii) Special rules.
- (6) Safe Harbor VI.
- (i) In general.
- (ii) Special rule.
- (7) Safe Harbor VII.
- (i) In general.
- (ii) Special rule.
- (e) Stock acquired by exercise of options, warrants, convertible obligations, and other similar interests.
- (1) Treatment of options.

- (i) General rule.
- (ii) Agreement, understanding, or arrangement to write an option.
- (iii) Substantial negotiations related to options.
 - (2) Instruments treated as options.
 - (3) Instruments generally not treated as options.
 - (i) Escrow, pledge, or other security agreements.
 - (ii) Compensatory options.
 - (iii) Options exercisable only upon death, disability, mental incompetency, or separation from service.
 - (iv) Rights of first refusal.
 - (v) Other enumerated instruments.
 - (f) Multiple controlled corporations.
 - (g) Valuation.
 - (h) Definitions.
 - (1) Agreement, understanding, arrangement, or substantial negotiations.
 - (2) Controlled corporation.
 - (3) Controlling shareholder.
 - (4) Coordinating group.
 - (5) Discussions.
 - (6) Established market.
 - (7) Five-percent shareholder.
 - (8) Similar acquisition.
 - (9) Ten-percent shareholder.
 - (i) [Reserved]
 - (j) Examples.
 - (k) Effective dates.

[T.D. 8238, 54 FR 289, Jan. 5, 1989, as amended by T.D. 8913, 65 FR 79722, Dec. 20, 2000; T.D. 8960, 66 FR 40591, Aug. 3, 2001; T.D. 8988, 67 FR 20636, Apr. 26, 2002; 67 FR 38200, June 3, 2002]

§ 1.355-1 Distribution of stock and securities of a controlled corporation.

(a) *Effective date of certain sections.* Sections 1.355-1 through 1.355-4 apply to transactions occurring after February 6, 1989. For transactions occurring on or before that date, see 26 CFR 1.355-1 through 1.355-4 (revised as of April 1, 1987). Sections 1.355-1 through 1.355-4 do not reflect the amendments to section 355 made by the Revenue Act of 1987 and the Technical and Miscellaneous Revenue Act of 1988.

(b) *Application of section.* Section 355 provides for the separation, without recognition of gain or loss to (or the inclusion in income of) the shareholders and security holders, of one or more existing businesses formerly operated, directly or indirectly, by a single corporation (the “distributing corporation”). It applies only to the separation of existing businesses that have been in active operation for at least five years (or a business that has been in active operation for at least five years into

separate businesses), and which, in general, have been owned, directly or indirectly, for at least five years by the distributing corporation. A separation is achieved through the distribution by the distributing corporation of stock, or stock and securities, of one or more subsidiaries (the “controlled corporations”) to its shareholders with respect to its stock or to its security holders in exchange for its securities. The controlled corporations may be pre-existing or newly created subsidiaries. Throughout the regulations under section 355, the term *distribution* refers to a distribution by the distributing corporation of stock, or stock and securities, of one or more controlled corporations, unless the context indicates otherwise. Section 355 contemplates the continued operation of the business or businesses existing prior to the separation. See § 1.355-4 for types of distributions that may qualify under section 355, including pro rata distributions and non pro rata distributions.

(c) *Stock rights.* Except as provided in § 1.356-6, for purposes of section 355, the term *securities* includes rights issued by the distributing corporation or the controlled corporation to acquire the stock of that corporation. For purposes of this section and section 356(d)(2)(B), a right to acquire stock has no principal amount. For this purpose, rights to acquire stock has the same meaning as it does under sections 305 and 317(a). Other Internal Revenue Code provisions governing the treatment of rights to acquire stock may also apply to certain distributions occurring in connection with a transaction described in section 355. See, for example, sections 83 and 421 through 424 and the regulations thereunder. This paragraph (c) applies to distributions occurring on or after March 9, 1998.

(d) *Nonqualified preferred stock.* See § 1.356-7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for (or in certain distributions with respect to) nonqualified preferred stock or preferred stock. See § 1.356-7(c) for the treatment of the receipt of preferred stock in certain exchanges for (or in certain distributions with respect to) common or preferred