

(2) Permanent records in substantial form must be kept by every taxpayer who participates in a tax-free exchange in connection with a corporate reorganization showing the cost or other basis of the transferred property and the amount of stock or securities and other property or money received (including any liabilities assumed upon the exchange), in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or securities and other property received from the exchange.

§ 1.371-2 Exchanges by security holders.

(a) *In general.* (1) Section 371(b) prescribes the rules relative to the recognition of gain or loss upon certain exchanges made by the holders of stock or securities of an insolvent corporation in connection with a reorganization described in section 371(a). Under section 371(b)(1), no gain or loss shall be recognized if, pursuant to the plan of reorganization, stock or securities in the insolvent corporation are exchanged solely for stock or securities in the corporation organized or made use of to effectuate such plan. If, in addition to such stock or securities, other property or money is received upon such exchange, gain is recognized to the extent of such other property or money (section 371(b)(2)), but no loss is recognized (section 371(c)). As to the basis of the stock or securities or other property acquired upon an exchange under section 371(b), see section 358.

(2) By thus characterizing as an exchange, and regarding as a single taxable event, the event or series of events resulting in the relinquishment or extinguishment of the stock or securities in the old corporation and the acquisition in consideration thereof, in whole or in part, of stock or securities in the new corporation, the Code secures uniformity of treatment for the participating security holders, regardless of the particular steps or the procedural

devices by which such exchange is effected. Thus, the transaction which qualified as a reorganization under section 371(a) may take one of several forms. In a typical creditors' reorganization there may be a transfer of the property of the old corporation to its bondholders, or the bondholders' committee, upon surrender of the bonds, followed by the transfer of such property to the new corporation in consideration of stock in the latter; or there may be a transfer of the bonds to the new corporation in exchange for its stocks or securities, followed by the transfer of the property of the old corporation in consideration of the surrender of its bonds. In either event, section 371(b) treats the result to the participating security holders as an exchange of the securities of the old corporation for securities of the new corporation. In order, however, to qualify as an exchange under section 371(b) the various events resulting in the relinquishment or extinguishment of the old securities and the acquisition of the new securities must be embraced within the plan of reorganization and must be undertaken for reasons germane to the plan. If the event, or series of events, qualifies as an exchange under section 371(b), no antecedent event necessarily a component of the relinquishment or extinguishment of the securities of the old corporation in consideration of the acquisition of the securities of the new corporation shall be considered a transaction or event having consequences for income tax purposes.

(b) *Exchange solely for stock or securities.* Section 371(b)(1) provides that no gain or loss shall be recognized upon an exchange consisting of the relinquishment or extinguishment of stock or securities in an insolvent corporation described in section 371(a), in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate the plan of reorganization. As used in this section, the term security does not include a short-term note.

(c) *Exchanges for stock or securities and other property or money.* If an exchange would be within section 371(b)(1) if it were not for the fact that the property received in the exchange consists not

only of stock or securities in the corporation organized or made use of to effectuate the plan of reorganization, but also of other property or money, then

(1) As provided in section 371(b)(2), the gain, if any, to the taxpayer will be recognized in an amount not in excess of the sum of money and the fair market value of the other property. The gain so recognized shall be treated as capital gain.

(2) The loss, if any, to the taxpayer from such an exchange is not to be recognized to any extent (see section 371(c)).

(d) *Records to be kept and information to be filed.* (1) Every taxpayer who receives stock or securities and other property or money upon an exchange described in section 371(b) in connection with a corporate reorganization, must furnish a complete statement of all facts pertinent to the recognition or nonrecognition of gain or loss upon such exchange, including—

(i) A statement of the cost or other basis of the stock or securities transferred in the exchange, and

(ii) A statement in full of the amount of stock or securities and other property or money received from the exchange, including any liability assumed upon the exchange. The amount of each kind of stock or securities and other property (other than liabilities assumed upon the exchange) received shall be set forth upon the basis of the fair market value thereof at the date of the exchange. The statement shall be incorporated in the taxpayer's income tax return for the taxable year in which the exchange occurs.

(2) Permanent records in substantial form shall be kept by every taxpayer who participates in an exchange described in section 371(b), showing the cost or other basis of the transferred property and the amount of stock or securities and other property or money received (including any liabilities assumed upon the exchange), in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or securities and other property received from the exchange.

§ 1.372-1 Corporations.

(a) If, as the result of a transaction described in section 371, so much of section 371(c) as relates to section 371(a), or the corresponding provisions of prior law, the property of an insolvent corporation is transferred, in pursuance of a plan of reorganization, to a corporation organized or made use of to effectuate such plan, the basis of such property in the hands of the acquiring corporation is the same as it would be in the hands of the insolvent corporation, increased in the amount of gain recognized upon such transfer under the law applicable to the year in which the transfer was made. In any such case, the adjustments to basis provided by section 270 of the Bankruptcy Act (11 U.S.C. 670), or section 1017 of the Code, shall not be made in respect of any indebtedness cancelled pursuant to the plan of reorganization under which the transfer was made. If the transaction falls within the provisions of section 372(a), the basis of the property involved shall be determined pursuant to such provisions, notwithstanding that the transaction might otherwise fall within another basis provision.

(b) The provisions of section 372(a) are applicable in the determination of basis for all taxable years beginning after December 31, 1933, except that the basis so determined shall not be given effect in the determination of the tax liability for any taxable year beginning prior to January 1, 1943. With the exception indicated, the basis so prescribed is applicable from the date of acquisition of such property. For example, the provisions of section 1016 relating to adjusted basis shall be applied as if section 372(a) were a part of the Internal Revenue Code of 1939 and prior internal revenue laws applicable to all taxable years beginning after December 31, 1933. Hence, in determining the amount of the adjustments for depreciation, depletion, etc., under the provisions of section 1016(a)(2), the *amount allowable* is the amount computed with reference to the basis provided in section 372(a).

(c) The effect of the application of section 372(a) may be illustrated by the following examples: