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## TITLE 7—AGRICULTURE

### Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

Subchapter B—Sugar Requirements and Quotas

[Sugar Reg. 814.31, Amdt. 2]

PART 814—ALLOTMENT OF SUGAR QUOTAS

DOMESTIC BEET SUGAR AREA, 1955

*Basis and purpose.* This amendment is issued under section 205 (a) of the Sugar Act of 1948, as amended (7 U. S. C. 1100 et seq., hereinafter called the "act") for the purpose of revising Sugar Regulation 814.31 (19 F. R. 9326, 20 F. R. 3999) which allots the 1955 sugar quota for the Domestic Beet Sugar Area among persons who process domestic sugar beets into sugar.

In accordance with the provisions of the applicable rules of practice and procedure (7 CFR 801.1 et seq.) as amended (20 F. R. 1174) notice was given (20 F. R. 2820) and a hearing was held on May 6, 1955, to permit the taking of evidence on the basis of which the Secretary might revise the allotment of the 1955 sugar quota for the Domestic Beet Sugar Area for the purpose of allotting deficits in other area quotas or deficits in allotments declared by any allottee. Based on the evidence in the record of the allotment proceeding, a finding and conclusion was made in S. R. 814.31, Amendment 1, effective June 9, 1955 (20 F. R. 3999) that any quantities within allotments made therein which allottees were unable to fill should be reallotted to others able to supply the additional sugar in proportion to their allotments.

The Department was notified by The National Sugar Manufacturing Company and the Superior Sugar Refining Company that they will be unable to market in 1955, 1,338 and 1,070 short tons, raw value, respectively, of the allotments made to them in Sugar Regulation 814.31, Amendment 1, effective June 9, 1955, and The Great Western Sugar Company notified the Department that it would be unable to market in 1955 a quantity of sugar in excess of its 1955 allotment. The quantity released, amounting to 2,408 short tons, raw value, has been prorated to the other allottees, all of whom notified the Department that they will be able to market the additional quantities of sugar. The proration has been made on the basis of the allotments of such allottees as set forth in paragraph (a) of § 814.31, Amendment 1. The names of the allottees receiving additional prorations and the quantities prorated are set forth below:

| Processors | Additional allotments | |
|---|---|---|
| | Short tons, raw value | 100-pound bags beet sugar |
| Amalgamated Sugar Co., The | 494 | 7,409 |
| American Crystal Sugar Co. | 459 | 8,416 |
| Buckeye Sugars, Inc. | 18 | 331 |
| Franklin County Sugar Co. | 18 | 331 |
| Garden City Co., The | 13 | 244 |
| Great Lakes Sugar Co. | 37 | 697 |
| Holly Sugar Corp. | 489 | 8,974 |
| Lake Shore Sugar Co. | 16 | 299 |
| Layton Sugar Co. | 14 | 225 |
| Menominee Sugar Co. | 9 | 174 |
| Michigan Sugar Co. | 103 | 1,917 |
| Monitor Sugar Division of Robt. Gage Coal Co. | 35 | 645 |
| Spreckels Sugar Co. | 352 | 6,578 |
| Union Sugar Division, Consolidated Foods Corp. | 139 | 2,599 |
| Utah-Idaho Sugar Co. | 329 | 5,977 |
| Total | 2,408 | 45,000 |

Because of the limited time remaining in the quota year to which the allotments apply, it is imperative that this amendment become effective at the earliest possible date in order to permit the continued orderly marketing of sugar. Accordingly, it is hereby found that compliance with the 30-day effective date requirements of the Administrative Procedure Act (60 Stat. 237) is impracticable and contrary to the public interest and consequently this amendment shall be effective when published in the FEDERAL REGISTER.

Pursuant to the authority vested in the Secretary of Agriculture by section 205 (a) of the Act, paragraph (a) of § 814.31, Amendment 1, is hereby further amended to read as follows:

§ 814.31 *Allotment of the 1955 sugar quota for Domestic Beet Sugar Area*—(a) *Allotments.* The 1955 sugar quota for the Domestic Beet Sugar Area is hereby allotted to the following persons

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in the amounts which appear opposite their respective names:

| Processors | Allotment | |
|---|---|---|
| | Short tons raw value | 100-pound bags beet sugar |
| Amalgamated Sugar Co., The | 232,801 | 4,351,429 |
| American Crystal Sugar Co | 258,855 | 4,838,416 |
| Buckeye Sugars, Inc | 10,183 | 190,331 |
| Franklin County Sugar Co | 10,183 | 190,331 |
| Garden City Co., The | 7,503 | 140,244 |
| Great Lakes Sugar Co | 21,437 | 400,697 |
| Great Western Sugar Co., The | 408,600 | 7,600,000 |
| Holly Sugar Corp | 276,005 | 5,158,974 |
| Lake Shore Sugar Co | 9,111 | 170,236 |
| Layton Sugar Co | 7,825 | 146,235 |
| Menominee Sugar Co | 5,359 | 100,174 |
| Michigan Sugar Co | 58,953 | 1,101,917 |
| Monitor Sugar Division of Robt. Gage Coal Co | 19,830 | 370,645 |
| National Sugar Manufacturing Co., The | 4,012 | 75,000 |
| Spreckels Sugar Co | 202,314 | 3,781,578 |
| Superior Sugar Refining Co | 5,350 | 100,000 |
| Union Sugar Division, Consolidated Foods Corp | 79,854 | 1,492,536 |
| Utah-Idaho Sugar Co | 183,825 | 3,435,977 |
| All other persons | 000 | 000 |
| Total | 1,800,000 | 33,644,860 |

(Sec. 403, 61 Stat. 932; 7 U. S. C. 1153. Interprets or applies sec. 205, 61 Stat. 926; 7 U. S. C. 1115)

Done at Washington, D. C., this 29th day of November 1955. Witness my hand and the seal of the Department of Agriculture.

[SEAL] TRUE D. MORSE,
*Acting Secretary of Agriculture.*

[F. R. Doc. 55-9698; Filed, Dec. 2, 1955; 8:47 a. m.]

## Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 63]

### PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

LIMITATION OF HANDLING

§ 914.363 *Navel Orange Regulation 63*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914; 19 F. R. 2941) regulating the handling of navel oranges grown in Arizona and designated part of California, effective September 22, 1953, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Navel Orange Administrative Committee held an open meeting on December 1, 1955, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein was promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective date hereof.

(b) *Order* (1) The quantity of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a. m., P. s. t., December 4, 1955, and ending at 12:01 a. m., P. s. t., December 11, 1955, is hereby fixed as follows:

(i) District 1. 1,108,800 cartons;
(ii) District 2: 10,420 cartons;
(iii) District 3: Unlimited movement;
(iv) District 4: Unlimited movement.

(2) Navel oranges handled pursuant to the provisions of this section shall be subject to any size restrictions applicable thereto which have heretofore been issued on the handling of such oranges and which are effective during the period specified herein.

(3) As used in this section, "handled," "District 1," "District 2," "District 3," and "District 4" have the same meaning as when used in said amended marketing agreement and order; and "carton" means the standard one-half orange, grapefruit, or lemon box set forth as standard container number 58 in section 828.83, as amended, of the Agricultural Code of California.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: December 2, 1955.

[SEAL] S. R. SMITH,
*Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F. R. Doc. 55-9806; Filed, Dec. 2, 1955; 11:16 a. m.]

[Grapefruit Reg. 232]

### PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.756 *Grapefruit Regulation 232*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than December 5, 1955. Shipments of grapefruit, grown in the State of Florida, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order, and will so continue until December 5, 1955; the recommendation and supporting information for continued regulation subsequent to December 4, 1955, was promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 29; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., December 5, 1955, and ending at 12:01 a. m., e. s. t., December 19, 1955, no handler shall ship:

(i) Any seeded grapefruit, grown in the State of Florida, which are not mature and do not grade at least U. S. No. 1 Russet;

(ii) Any seedless grapefruit, grown in Regulation Area I, which are not mature and do not grade at least U. S. No. 1 Russet;

(iii) Any seedless grapefruit, grown in Regulation Area II, which are not mature and do not grade at least U. S. No. 2;

(iv) Any seedless grapefruit, grown in Regulation Area II, which are mature and which grade U. S. No. 2 or U. S. No. 2 Bright unless such seedless grapefruit (*a*) are in the same container with seedless grapefruit which grade at least U. S. No. 1 Russet and (*b*) are not in excess of 50 percent, by count, of the number of all seedless grapefruit in such container;

(v) Any seeded grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 70 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box; or

(vi) Any seedless grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 96 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box.

(2) As used in this section, "handler," "ship," "Growers Administrative Committee," "Regulation Area I," and "Regulation Area II," shall have the same meaning as when used in said amended marketing agreement and order; the terms "U. S. No. 1 Russet," "U. S. No. 2," "U. S. No. 2 Bright," "standard pack," and "standard nailed box" shall have the same meaning as when used in the revised United States Standards for Florida Grapefruit (7 CFR 51.750–51.790) and the term "mature" shall have the same meaning as set forth in section 601.16 Florida Statutes, Chapters 26492 and 28090, known as the Florida Citrus Code of 1949, as supplemented by section 601.17 (Chapters 25149 and 28090) and also by section 601.18, as amended on June 2, 1955 (Chapter 29760)

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: November 30, 1955.

[SEAL] FLOYD F HEDLUND,
*Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F. R. Doc. 55–9738; Filed, Dec. 2, 1955; 8:49 a. m.]

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[Orange Reg. 286]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.757 *Orange Regulation 286*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933) regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order and upon other available information, it is hereby found that the limitation of shipments of all Florida oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than December 5, 1955. Shipments of all oranges, grown in the State of Florida, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order, and will so continue until December 5, 1955; the recommendation and supporting information for continued regulation subsequent to December 4, 1955, were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 29 such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of all oranges, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order* (1) During the period beginning at 12:01 a. m., e. s. t., December 5, 1955, and ending at 12:01 a. m., e. s. t., December 19, 1955, no handler shall ship:

(i) Any oranges, including Temple oranges, grown in the State of Florida, which do not grade at least U. S. No. 1 Russet; or

(ii) Any oranges, except Temple oranges, grown in the State of Florida, which are of a size smaller than a size that will pack 252 oranges, packed in accordance with the requirements of a standard pack, in a standard 1⅗ bushel nailed box.

(2) As used herein, the terms "handler," "ship," and "Growers Administrative Committee" shall each have the same meaning as when used in said amended marketing agreement and order; and the terms "U. S. No. 1 Russet," "standard pack," and "standard 1⅗ bushel nailed box" shall have the same meaning as when used in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140–51.1186 of this title, 20 F R. 7205)

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: November 30, 1955.

[SEAL] FLOYD F HEDLUND,
*Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F R. Doc. 55–9739; Filed, Dec. 2, 1955; 8:49 a. m.]

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[Tangerine Reg. 163]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.758 *Tangerine Regulation 163*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than December 5, 1955. Shipments of tangerines, grown in the State of Florida, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order, and will so continue until December 5, 1955, the recommendation and supporting information for continued regulation subsequent to December 4, 1955, was promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 29 such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their

views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective time hereof.

(b) *Order* (1) During the period beginning at 12:01 a. m., e. s. t., December 5, 1955, and ending at 12:01 a. m., e. s. t., December 19, 1955, no handler shall ship:

(i) Any tangerines, grown in the State of Florida, that do not grade at least U. S. No. 1 Russet; or

(ii) Any tangerines, grown in the State of Florida, that are of a size smaller than the size that will pack 210 tangerines, packed in accordance with the requirements of a standard pack, in a half-standard box (inside dimensions 9½ x 9½ x 19⅛ inches; capacity 1,726 cubic inches)

(2) As used in this section, "handler," "ship," and "Growers Administrative Committee" shall have the same meaning as when used in said amended marketing agreement and order; and the terms "U. S. No. 1 Russet" and "standard pack" shall have the same meaning as when used in the revised United States Standards for Florida Tangerines (7 CFR 51.1810–51.1836)

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: November 30, 1955.

[SEAL] FLOYD F HEDLUND,
*Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F. R. Doc. 55-9740; Filed, Dec. 2, 1955; 8:50 a. m.]

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[Lemon Reg. 618]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATIONS OF SHIPMENTS

§ 953.725 *Lemon Regulation 618*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 20 F. R. 2913) regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of lemons, grown in the State of California or in the State of Arizona, are currently subject to regulation pursuant to said amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein was promptly submitted to the Department after an open meeting of the Lemon Administrative Committee on November 30, 1955, such meeting was held, after giving due notice thereof to consider recommendations for regulation, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time thereof.

(b) *Order* (1) The quantity of lemons grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., December 4, 1955, and ending at 12:01 a. m., P. s. t., December 11, 1955, is hereby fixed as follows:

(i) District 1. Unlimited movement;

(ii) District 2: 158,100 cartons;

(iii) District 3: 13,950 cartons.

(2) As used in this section, "handled," "District 1," "District 2," and "District 3" have the same meaning as when used in the said amended marketing agreement and order; and "carton" means the standard one-half orange, grapefruit or lemon box set forth as standard container number 58 in section 828.83, as amended, of the Agricultural Code of California.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: December 1, 1955.

[SEAL] S. R. SMITH,
*Director Fruit and Vegetable Division, Agricultural Marketing Service.*

[F. R. Doc. 55-9781; Filed, Dec. 2, 1955; 8:50 a. m.]

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# TITLE 29—LABOR

## Chapter V—Wage and Hour Division, Department of Labor

PART 545—HOMEWORKERS IN NEEDLEWORK AND FABRICATED TEXTILE PRODUCTS INDUSTRY IN PUERTO RICO

PIECE RATES

On November 9, 1955, notice was published in the FEDERAL REGISTER (20 F. R. 8389) that the Administrator of the Wage and Hour Division, United States Department of Labor, proposed to amend 29 CFR, § 545.13, providing piece rates for the needlework and fabricated textile products industry in Puerto Rico (1) by the addition to Schedule A of piece rates applicable to the silk, rayon and nylon (except infants') underwear division, and (2) by the addition of Schedule E, containing the piece rates applicable to the general division. Interested persons were given 15 days to submit for consideration data, views or arguments pertaining to the proposed changes. No objections have been received.

Accordingly, pursuant to authority under section 6 (a) of the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), § 545.13 is amended by the addition of the following piece rates:

§ 545.13 *Piece rates established in accordance with § 545.9.*

SCHEDULE A—PIECE RATE SCHEDULE FOR THE SILK, RAYON AND NYLON (EXCEPT INFANTS') DIVISION OF THE NEEDLEWORK AND FABRICATED TEXTILE PRODUCTS INDUSTRY IN PUERTO RICO

| No. | Operation | Piece rates based on hourly rate of 25 cents | Unit of payment |
|---|---|---|---|
| | HAND-SEWING OPERATIONS[1] | *Cents* | |
| 1 | Arenilla (seed stitch), close, ½" squares | 31.20 | Per dozen squares. |
| 2 | Arenilla (seed stitch), scattered, ½" squares | 15.60 | Do. |
| 3 | Arrows, filled in, ¾" | 7.80 | Per dozen. |
| 4 | Back stitch on yokes, armholes, etc | 17.33 | Per yard. |
| 5 | Basting bias with cord | 8.58 | Do. |
| 6 | Basting darts before sewing | 9.04 | Do. |
| 7 | Basting for fagoting | 2.35 | Do. |
| 8 | Basting hems, 1" to 6" wide | 5.20 | Do. |
| 9 | Basting lace | 4.49 | Do. |
| 10 | Basting waist lines, pockets and facings, 2 to 3 stitches per inch | 3.26 | Do. |
| 11 | Bias piping, joined, double, over 10 stitches per inch | 10.49 | Do. |
| 12 | Bias piping, joined, single, over 10 stitches per inch | 13.00 | Do. |
| 13 | Bias piping, second seam, joined, double, set flat on garment with running stitch. | 15.60 | Do. |
| 14 | Blanket stitch, folding included, 18 stitches per inch | 29.46 | Do. |

[1] For description of operations included under "hand-sewing", see definitions in applicable section of wage order.

SCHEDULE A—PIECE RATE SCHEDULE FOR THE SILK, RAYON AND NYLON (EXCEPT INFANTS) DIVISION OF THE NEEDLEWORK AND FABRICATED TEXTILE PRODUCTS INDUSTRY IN PUERTO RICO—Con

| No | Operation | Piece rates based on hourly rate of 26 cents | Unit of payment |
|---|---|---|---|
| | HAND SEWING OPERATIONS[1]—continued | | |
| | | *Cents* | |
| 15 | Buttons sewed on with double thread 2 to 3 stitches | 3 39 | Per dozen. |
| 16 | Buttonholes stamped ⅜" long | 11 20 | Do |
| 17 | Buttonholes, stamped, ½' long | 14 91 | Do. |
| 18 | Buttonhole stitch close | 23 40 | Per yard |
| 19 | Buttonhole stitch for joining seams | 23 40 | Do |
| 20 | Cord, twisted, over basting | 2 60 | Per dozen inches |
| 21 | Cutting material applied over lace with solid cord stitch | 3 55 | Per yard |
| 22 | Cutting material under lace or at seams straight outline following hand-sewing operation | 1 46 | Do |
| 23 | Dots Baby, not finished off 2 to 3 stitches | 2 17 | Per dozen. |
| 24 | Dots, medium, not filled in, finished off 8 to 9 stitches | 3 44 | Do |
| 25 | Eyelets up to ⅛" diameter | 5 79 | Do |
| 26 | Eyelets, 3/16" diameter | 10 40 | Do. |
| 27 | Fagoting straight lines | 36 21 | Per yard. |
| 28 | Fagoting, twisted lines | 17 33 | Do |
| 29 | Feather stitch 12 stitches per inch | 17 33 | Do |
| 30 | Feather stitch cord | 9 12 | Do |
| 31 | Flat fell seams, first seam by machine | 10 15 | Do |
| 32 | Flat roll | 7 89 | Do. |
| 33 | French knots not finished off | 1 09 | Per dozen |
| 34 | French seams, over 12 stitches per inch | 6 50 | Per yard |
| 35 | French seams, first seam by machine 9 to 12 stitches per inch | 4 27 | Do |
| 36 | Furuneces with tape | 43 33 | Do |
| 37 | Furuneces, without tape | 31 20 | Do. |
| 38 | Guariquenas | 2 60 | Per dozen |
| 39 | Half roll | 8 52 | Per yard |
| 40 | Hemming stitch for folling, 2 to 3 stitches per inch | 4.56 | Do |
| 41 | Hemming stitch for felling cuffs collars plackets and waist bands 8 to 10 stitches per inch. | 11 62 | Do |
| 42 | Hemstitching, double, (tru tru) 4 threads in a bundle thread drawing not included. | 32 24 | Do |
| 43 | Hemstitching single 4 threads in a bundle thread drawing not included | 16 92 | Do |
| 44 | Lace joined with whipping stitch | 27 09 | Do |
| 45 | Lace, sewed on with hemming stitch or round roll | 13.00 | Do. |
| 46 | Leaves open ¼" long | 10 40 | Per dozen |
| 47 | Leaves open ⅜' to ½" long | 15 60 | Do |
| 48 | Leaves simple | 93 | Do. |
| 49 | Leaves solid not finished off ⅛" long | 2.85 | Per dozen |
| 50 | Leaves solid not finished off ¼ long | 3 47 | Do |
| 51 | Leaves solid not finished off, ⅜" to ½" long | 5 20 | Do |
| 52 | Leaves, solid, finished off ⅝" to ¾" long | 10 40 | Do |
| 53 | Loops knitted ¼" | 3 26 | Do |
| 54 | Loops knitted, 1" to 1½" | 5.47 | Do |
| 55 | Loops, made with buttonhole stitch, ¼" | 7.80 | Do. |
| 56 | Mounting fagoting appliques, including pinning and basting to garment first seam with running stitch felled seam with hemming stitch. | 31 07 | Per yard |
| 57 | Overcasting seams | 5 53 | Do |
| 58 | Pasadas short, 1" to 8" | -- -- | |
| 59 | Patches sewed on with single point de turc | 51 80 | Do. |
| 59 1 | Patches rectangular, sewed on with blind stitch, up to 1½" | 3 24 | Per dozen inches |
| 59.2 | Patches, sewed on with solid cord, cutting and basting included | 51.01 | Per yard. |
| 60 | Pin stitch, thread drawing not included, 1" squares | 62.40 | Per dozen squares |
| 61 | Point de turc double, with embroidery thread | 25 89 | Per yard |
| 62 | Point de turc, plain, with embroidery thread | 15.17 | Do |
| 63 | Randa bundles twisted but not tied, thread drawing not included | 6 50 | Do |
| 64 | Randa Don Gonzales, thread drawing not included | 27 29 | Do |
| 65 | Randa, Mexican fied at center only thread drawing not included | 7.80 | Do. |
| 66 | Ribbons, setting ends of | 3.55 | Per dozen |
| 67 | Rolling armholes and roboques | 13 28 | Per yard. |
| 68 | Rose-buds, worm stitch 4 worms, 1 or 2 colors or tones | 7 71 | Per dozen |
| 69 | Running stitch on darts, 8 to 10 stitches per inch | 6 50 | Per yard. |
| 70 | Running stitch for felling, very close stitch | 6 50 | Do |
| 71 | Running stitch on hems up to 1" wide 12 stitches per inch | 7 00 | Do |
| 72 | Running stitch on lace | 6.91 | Do |
| 73 | Running stitch for plain sewing | 4.69 | Do |
| 74 | Scallops plain, cutting included | 26.17 | Do |
| 75 | Shadow stitch, up to ⅜" wide | 50.26 | Do |
| 76 | Shell stitch, 4 to 5 stitches per inch | 8.92 | Do |
| 77 | Shirring material to be measured before shirring | 5 22 | Do |
| 78 | Shirring and basting lace edging, material to be measured after shirring. | 6.30 | Do |

[1] For description of operations included under "hand-sewing' see definitions in applicable section of wage order.

SCHEDULE A—PIECE RATE SCHEDULE FOR THE SILK, RAYON AND NYLON (EXCEPT INFANTS) DIVISION OF THE NEEDLEWORK AND FABRICATED TEXTILE PRODUCTS INDUSTRY IN PUERTO RICO—Con

| No | Operation | Piece rates based on hourly rate of 26 cents | Unit of payment |
|---|---|---|---|
| | HAND-SEWING OPERATIONS[1]—continued | | |
| | | *Cents* | |
| 79 | Shirring and setting lace edging with hemming stitch on straight outline material to be measured after shirring. | 11 32 | Per yard |
| 80 | Shoulder straps, set with buttonhole stitch 14½' x ¼ measured after turning, sewing up to ⅝" at each end of strap. | 30 73 | Per dozen straps |
| 81 | Size tickets set with hemming stitch cutting tickets included | 5 20 | Per dozen inches. |
| 82 | Smocking | 22 | Per dozen stitches |
| 83 | Snaps, sewing on, both sides | 5 20 | Per dozen |
| 84 | Solid cord stitch on gores and embroidery | 24 44 | Per yard |
| 85 | Solid cord stitch to sew on lace | 22 10 | Do. |
| 86 | Spiders 4 legs | 5 20 | Per dozen. |
| 87 | Spiders, 8 legs | 10 16 | Do |
| 88 | Tacks, set for fagoting | 2 60 | Do |
| 89 | Tucks stamped, 1/16" to ¼" wide, up to 6" long | 8 13 | Do |
| 90 | Tucks pin stamped, up to 7" long | 8 57 | Do |
| 91 | Tucks pin unstamped up to 6" long | 10 40 | Do |
| | NON HAND SEWING OPERATIONS | | |
| 93 | Cutting material under lace or at seams straight outline following machine operations. | 2 68 | Per yard |
| 94 | Turning bolts machine sewn 29' x ½' measured after turning | 11 17 | Per dozen bolts |
| 95 | Turning bolts, machine sewn, 60 x ½', measured after turning | 14 19 | Do. |
| 96 | Turning shoulder pads 5¾" long with an unsewn slit of 1" for turning. | 7 27 | Per dozen pads |
| 97 | Turning shoulder straps 14½ x ¼' measured after turning | 22 24 | Per dozen straps |

[1] For description of operations included under "hand sewing" see definitions in applicable section of wage order

SCHEDULE E—PIECE RATE SCHEDULE FOR THE GENERAL DIVISION OF THE NEEDLEWORK AND FABRICATED TEXTILE PRODUCTS INDUSTRY IN PUERTO RICO[1]

| No | Operation | Piece rates based on hourly rate of 45 cents | Unit of Payment |
|---|---|---|---|
| | CROCHETING SHADE PULLS NOT OVER 30 STITCHES PER RING | | |
| 207 | Cotton thread | $1 44 | Per gross |
| 208 | Nylon thread | 1 47 | Do |

[1] The piece rates apply only to "hand sewing" operations For description of operations included under "hand sewing' see definition in applicable section of wage orders

A wage order which fixed the minimum hourly wage rates to which these piece rates are related became effective October 6 1955 and an order making final other proposed piece rates related to the same industry will become effective December 9 1955 It is in the public interest for all piece rates in this industry to become effective simultaneously and as soon as possible after the applicable wage order establishing new minimum hourly wage rates

I noticed in the proposed amendment published in the November 9, 1955 issue of the FEDERAL REGISTER my intention to find good cause to shorten the period prior to the effective date of any final order on the proposed amendment in order to make the piece rates contained therein effective December 9 1955 This statement of intention afforded persons affected 30 days in which to prepare for the effective date of this amendment and therefore, I find that it is contrary to the public interest and not practicable to delay its effective date and this amendment shall become effective December 9 1955

(Secs 6 11, 52 Stat 1062 1066 as amended; 29 U S C 206 211)

Signed at Washington D C this 1st day of December 1955

NEWELL BROWN
*Administrator Wage and Hour Division United States Department of Labor*

[F R Doc 55-9748; Filed Dec 2 1955; 8:50 a m.]

# TITLE 26—INTERNAL REVENUE, 1954

## Chapter I—Internal Revenue Service, Department of the Treasury

### Subchapter A—Income Tax

[T. D. 6152]

PART 1—INCOME TAX: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

CORPORATE DISTRIBUTIONS AND ADJUSTMENTS

On December 11, 1954, notice of proposed rule making regarding the regulations under Parts I to IV, inclusive, and Part VI of Subchapter C of Chapter 1 of the Internal Revenue Code of 1954 was published in the FEDERAL REGISTER (19 F. R. 8237) After consideration of such relevant suggestions as were presented by interested persons regarding the proposals, the following regulations are hereby adopted:

*Part I—Distributions by corporations.* The rules in §§ 1.301 to 1.318–4 are to be applied in connection with the provisions of Part I, sections 301 through 318. For rules relating to the effective date of §§ 1.301 to 1.318–4 and to the application of §§ 1.301 to 1.318–4 to years subject to the Internal Revenue Code of 1939, see Part VI (§§ 1.391 to 1.395–1)

*Part II—Corporate liquidations.* The rules in §§ 1.331 to 1.346–3 are to be applied in connection with the provisions of Part II, sections 331 through 346. For rules relating to the effective date of §§ 1.331 to 1.346–3 and to the application of §§ 1.331 to 1.346–3 to years subject to the Internal Revenue Code of 1939, see Part VI (§§ 1.391 to 1.395–1)

*Part III—Corporate organizations and reorganizations.* The rules in §§ 1.351 to 1.368–3 are to be applied in connection with the provisions of Part III, sections 351 through 368. For rules relating to the effective date of §§ 1.351 to 1.368–3 and to the application of §§ 1.351 to 1.368–3 to years subject to the Internal Revenue Code of 1939, see Part VI (§§ 1.391 to 1.395–1)

*Part IV—Insolvency reorganizations.* The rules in §§ 1.371 to 1.373–3 are to be applied in connection with the provisions of Part IV sections 371 through 373. For rules relating to the effective date of §§ 1.371 to 1.373–3 and to the application of §§ 1.371 to 1.373–3 to years subject to the Internal Revenue Code of 1939, see Part VI (§§ 1.391 to 1.395–1)

*Part VI—Effective date of subchapter C.* The rules in §§ 1.391 to 1.395–1 are to be applied in connection with the provisions of Part VI, sections 391 through 395.

CORPORATE DISTRIBUTIONS AND ADJUSTMENTS

DISTRIBUTIONS BY CORPORATIONS

*Effects on Recipients*


Sec.
1.301 Statutory provisions; distributions by corporations; distributions of property.
1.301–1 Rules applicable with respect to distributions of money and other property.
1.302 Statutory provisions; distributions in redemption of stock.
1.302–1 General.
1.302–2 Redemptions not taxable as dividends.
1.302–3 Substantially disproportionate redemption.
1.302–4 Termination of shareholder's interest.
1.303 Statutory provisions; distributions in redemption of stock to pay death taxes.
1.303–1 General.
1.303–2 Requirements.
1.303–3 Application of other sections.
1.304 Statutory provisions; redemption through use of related corporations.
1.304–1 General.
1.304–2 Acquisition by related corporation (other than subsidiary).
1.304–3 Acquisition by a subsidiary.
1.305 Statutory provisions; distributions of stock and stock rights.
1.305–1 Stock dividends.
1.305–2 Election of shareholders as to medium of payment.
1.305–3 Distributions in discharge of preference dividends.
1.306 Statutory provisions; dispositions of certain stock.
1.306–1 General.
1.306–2 Exceptions.
1.306–3 Section 306 stock defined.
1.307 Statutory provisions; basis of stock and stock rights acquired in distribution.
1.307–1 General.
1.307–2 Exception.


*Effects on Corporation*


1.311 Statutory provisions; taxability of corporation on distribution.
1.311–1 General.
1.312 Statutory provisions; effect on earnings and profits.
1.312–1 Adjustment to earnings and profits reflecting distributions by corporations.
1.312–2 Distributions of inventory assets.
1.312–3 Liabilities.
1.312–4 Examples of adjustments provided in section 312 (c).
1.312–5 Special rule for partial liquidations and certain redemptions.
1.312–6 Earnings and profits.
1.312–7 Effect on earnings and profits of gain or loss realized after February 28, 1913.
1.312–8 Effect on earnings and profits of receipt of tax-free distributions requiring adjustment or allocation of basis of stock.
1.312–9 Adjustments to earnings and profits reflecting increase in value accrued before March 1, 1913.
1.312–10 Allocation of earnings in certain corporate separations.
1.312–11 Effect on earnings and profits of certain other tax-free exchanges and tax-free distributions.
1.312–12 Distributions of proceeds of loans guaranteed by the United States.


*Definitions; Constructive Ownership of Stock*


1.316 Statutory provisions; dividend defined.
1.316–1 Dividends.
1.316–2 Sources of distribution in general.
1.317 Statutory provisions; other definitions.
1.317–1 Property defined.
1.318 Statutory provisions; constructive ownership of stock.
1.318–1 Constructive ownership of stock; introduction.
1.318–2 Application of general rules.
1.318–3 Estates, trusts, and options.
1.318–4 Constructive family ownership.


CORPORATE LIQUIDATIONS

*Effects on Recipients*


Sec.
1.331 Statutory provisions; gain or loss to shareholders in corporate liquidations.
1.331–1 Corporate liquidations.
1.332 Statutory provisions; complete liquidations of subsidiaries.
1.332–1 Distributions in liquidation of subsidiary corporation; general.
1.332–2 Requirements for nonrecognition of gain or loss.
1.332–3 Liquidations completed within one taxable year.
1.332–4 Liquidations covering more than one taxable year.
1.332–5 Distributions in liquidation as affecting minority interests.
1.332–6 Records to be kept and information to be filed with return.
1.332–7 Indebtedness of subsidiary to parent.
1.333 Statutory provisions; election as to recognition of gain in certain liquidations.
1.333–1 Corporate liquidation in some one calendar month.
1.333–2 Qualified electing shareholder.
1.333–3 Making and filing of written elections.
1.333–4 Treatment of gain.
1.333–5 Records to be kept and information to be filed with return.
1.334 Statutory provisions; corporate liquidations; basis of property received in liquidations.
1.334–1 Basis of property received in liquidations.
1.334–2 Property received in liquidation under section 333.


*Effects on Corporation*


1.336 Statutory provisions; general rule.
1.336–1 General rule on liquidation of corporation.
1.337 Statutory provisions; gain or loss on sales or exchanges in connection with certain liquidations.
1.337–1 General.
1.337–2 Sales or exchanges within the scope of section 337.
1.337–3 Property defined.
1.337–4 Limitation of gain.
1.337–5 Information to be filed with return.
1.338 Statutory provisions; effect on earnings and profits.


*Collapsible Corporations; Foreign Personal Holding Companies*


1.341 Statutory provisions; collapsible corporations.
1.341–1 Collapsible corporations; in general.
1.341–2 Definitions.
1.341–3 Presumptions.
1.341–4 Limitations on application of section.
1.341–5 Application of section.
1.342 Statutory provisions; liquidation of certain foreign personal holding companies.
1.342–1 General.


*Definition*


1.346 Statutory provisions; partial liquidation defined.
1.346–1 Partial liquidation.
1.346–2 Treatment of certain redemptions.
1.346–3 Effect of certain sales.


CORPORATE ORGANIZATIONS AND REORGANIZATIONS


1.351 Statutory provisions; transfer to corporation controlled by transferor.
1.351–1 Transfer to corporation controlled by transferor.
1.351–2 Receipt of property.
1.351–3 Records to be kept and information to be filed.

*Effects on Shareholders and Security Holders*

Sec.
1.354 Statutory provisions; exchanges of stock and securities in certain reorganizations.
1.354-1 Exchanges of stock and securities in certain reorganizations.
1.355 Statutory provisions; distribution of stock and securities of a controlled corporation.
1.355-1 Distribution of stock and securities of controlled corporation.
1.355-2 Limitations.
1.355-3 Non prorata distributions, etc.
1.355-4 Active conduct of a trade or business.
1.355-5 Records to be kept and information to be filed.
1.356 Statutory provisions; receipt of additional consideration.
1.356-1 Receipt of additional consideration in connection with an exchange.
1.356-2 Receipt of additional consideration not in connection with an exchange.
1.356-3 Rules for treatment of securities as "other property"
1.356-4 Exchanges for section 306 stock.
1.356-5 Transactions involving gift or compensation.
1.357 Statutory provisions; assumption of liability.
1.357-1 Assumption of liability.
1.357-2 Liabilities in excess of basis.
1.358 Statutory provisions; basis to distributees.
1.358-1 Basis to distributees.
1.358-2 Allocation of basis among nonrecognition property.
1.358-3 Treatment of assumption of liabilities.
1.358-4 Exception.

*Effects on Corporation*

1.361 Statutory provisions; nonrecognition of gain or loss to corporations.
1.361-1 Nonrecognition of gain or loss to corporations.
1.362 Statutory provisions; basis to corporations.
1.362-1 Basis to corporations.
1.362-2 Certain contributions to capital.
1.363 Statutory provisions; effect on earnings and profits.

*Special Rule; Definitions*

1.367 Statutory provisions; foreign corporations.
1.367-1 Foreign corporations.
1.368 Statutory provisions; definitions relating to corporate reorganizations.
1.368-1 Purpose and scope of exception of reorganization exchanges.
1.368-2 Definition of terms.
1.368-3 Records to be kept and information to be filed with returns.

INSOLVENCY REORGANIZATIONS

1.371 Statutory provisions; insolvency reorganizations; reorganization in certain receivership and bankruptcy proceedings.
1.371-1 Exchanges by corporations.
1.371-2 Exchanges by security holders.
1.372 Statutory provisions; insolvency reorganizations; basis in connection with certain receivership and bankruptcy proceedings.
1.372-1 Corporations.
1.373 Statutory provisions; insolvency reorganizations; loss not recognized in certain railroad reorganizations.
1.373-1 Nonrecognition of loss upon transfer of property of railroad corporation.
1.373-2 Property acquired by railroad corporation in a receivership or railroad reorganization proceeding.
1.373-3 Property acquired by electric railway corporation in corporate reorganization proceeding.

EFFECTIVE DATE OF SUBCHAPTER C

1.391 Statutory provisions; effective date of Part I.
1.391-1 Effective date of Part I of subchapter C.
1.392 Statutory provisions; effective date of Part II.
1.392-1 Effective date of Part II of subchapter C.
1.393 Statutory provisions; effective dates of Parts III and IV
1.393-1 Effective dates of Parts III and IV of subchapter C.
1.393-2 Special rule with respect to certain plans of reorganization arising in 1954.
1.393-3 Making and filing of elections.
1.395 Statutory provisions; special rules for application of subchapter C.
1.395-1 Special rules for application of subchapter C.

AUTHORITY: §§ 1.301 to 1.395-1 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805.

## CORPORATE DISTRIBUTIONS AND ADJUSTMENTS

### DISTRIBUTIONS BY CORPORATIONS

### *Effects on Recipients*

§ 1.301 *Statutory provisions; distributions by corporations; distributions of property.*

SEC. 301. *Distributions of property*—(a) *In general.* Except as otherwise provided in this chapter, a distribution of property (as defined in section 317 (a)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in subsection (c).

(b) *Amount distributed*—(1) *General rule.* For purposes of this section, the amount of any distribution shall be—

(A) *Noncorporate distributees.* If the shareholder is not a corporation, the amount of money received, plus the fair market value of the other property received.

(B) *Corporate distributees.* If the shareholder is a corporation, the amount of money received, plus whichever of the following is the lesser:

(i) The fair market value of the other property received; or

(ii) The adjusted basis (in the hands of the distributing corporation immediately before the distribution) of the other property received, increased in the amount of gain to the distributing corporation which is recognized under subsection (b) or (c) of section 311.

(2) *Reduction for liabilities.* The amount of any distribution determined under paragraph (1) shall be reduced (but not below zero) by—

(A) The amount of any liability of the corporation assumed by the shareholder in connection with the distribution, and

(B) The amount of any liability to which the property received by the shareholder is subject immediately before, and immediately after, the distribution.

(3) *Determination of fair market value.* For purposes of this section, fair market value shall be determined as of the date of the distribution.

(c) *Amount taxable.* In the case of a distribution to which subsection (a) applies—

(1) *Amount constituting dividend.* That portion of the distribution which is a dividend (as defined in section 316) shall be included in gross income.

(2) *Amount applied against basis.* That portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock.

(3) *Amount in excess of basis*—(A) *In general.* Except as provided in subparagraph (B), that portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, shall be treated as gain from the sale or exchange of property.

(B) *Distributions out of increase in value accrued before March 1, 1913.* That portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock and to the exent that it is out of increase in value accrued before March 1, 1913, shall be exempt from tax.

(d) *Basis.* The basis of property received in a distribution to which subsection (a) applies shall be—

(1) *Noncorporate distributees.* If the shareholder is not a corporation, the fair market value of such property.

(2) *Corporate distributees.* If the shareholder is a corporation, whichever of the following is the lesser:

(A) The fair market value of such property; or

(B) The adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property, increased in the amount of gain to the distributing corporation which is recognized under subsection (b) or (c) of section 311.

(e) *Exception for certain distributions by personal service corporations.* Any distribution made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 or the Revenue Act of 1921, out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 (40 Stat. 1070), or section 218 of the Revenue Act of 1921 (42 Stat. 245), shall be exempt from tax to the distributees.

(f) *Special rules.* (1) For distributions in redemption of stock, see section 302.

(2) For distributions in partial or complete liquidation, see part II (sec. 331 and following).

(3) For distributions in corporate organizations and reorganizations, see part III (sec. 351 and following).

(4) For partial exclusion from gross income of dividends received by individuals, see section 116.

§ 1.301-1 *Rules applicable with respect to distributions of money and other property*—(a) *General.* Section 301 provides the general rule for treatment of distributions on or after June 22, 1954, of property by a corporation to a shareholder with respect to its stock. The term "property" is defined in section 317 (a) Such distributions, except as otherwise provided in this chapter, shall be treated as provided in section 301 (c) Under section 301 (c), distributions may be included in gross income, applied against and reduce the adjusted basis of the stock, treated as gain from the sale or exchange of property, or (in the case of certain distributions out of increase in value accrued before March 1, 1913) may be exempt from tax. The amount of the distributions to which section 301 applies is determined in accordance with the provisions of section 301 (b) The basis of property received in a distribution to which section 301 applies is determined in accordance with the provisions of section 301 (d) Accordingly, except as otherwise provided in this chapter, a distribution on or after June 22, 1954, of property by a corporation to a shareholder with respect to its stock shall be included in gross income to the extent the amount distributed is considered a dividend under section 316. For examples of distributions treated other-

wise, see sections 116, 301 (c) (2) 301 (c) (3) (B) 301 (e) 302 (b) 303, and 305. See also Part II (relating to distributions in partial or complete liquidation) Part III (relating to corporate organizations and reorganizations) and Part IV (relating to insolvency reorganizations) of subchapter C.

(b) *Time of inclusion in gross income and of determination of fair market value.* A distribution made by a corporation to its shareholders shall be included in the gross income of the distributees when the cash or other property is unqualifiedly made subject to their demands. However, if such distribution is a distribution other than in cash, the fair market value of the property shall be determined as of the date of distribution without regard to whether such date is the same as that on which the distribution is includible in gross income. For example, if a corporation distributes a taxable dividend in property (the adjusted basis of which exceeds its fair market value on December 31, 1955) on December 31, 1955, which is received by, or unqualifiedly made subject to the demand of, its shareholders on January 2, 1956, the amount to be included in the gross income of the shareholders will be the fair market value of such property on December 31, 1955, although such amount will not be includible in the gross income of the shareholders until January 2, 1956.

(c) *Application of section to shareholders.* Section 301 is not applicable to an amount paid by a corporation to a shareholder unless the amount is paid to the shareholder in his capacity as such.

(d) *Distributions of property to corporate shareholders.* If property (other than money and other than the obligations of the distributing corporation) is distributed in kind to a shareholder which is a corporation and the fair market value of such property is greater than the adjusted basis in the hands of the distributing corporation, only the adjusted basis of such property (determined immediately before the distribution and increased for any gain recognized to the distributing corporation under section 311 (b) and (c)) shall be taken into account under section 301 (c) Thus, in such a case, the amount of such a dividend in kind under section 301 (c) (1) may not exceed such adjusted basis. Similarly, in such cases where the distribution is not out of earnings and profits, the amount of the reduction in basis of the shareholder's stock and the amount of any gain resulting from such distribution are determined by reference to the adjusted basis of the property distributed. If the property distributed is money, the amount of the distribution shall be the amount of such money. If the property distributed consists of the obligations of the distributing corporation, or stock of the distributing corporation treated as property under section 305 (b) or rights to acquire such stock treated as property under section 305 (b) the amount of such distribution shall be an amount equal to the fair market value of such obligations, stock, or rights. For special rule as to certain distributions of property received by a domestic corporation from a foreign corporation, see section 902 (d)

(e) *Adjusted basis.* In determining the adjusted basis of property distributed in the hands of the distributing corporation immediately before the distribution for purposes of section 301 (b) (1) (B) (ii) and (d) (2) (B), the basis to be used shall be the basis for determining gain upon a sale or exchange.

(f) *Examples.* The application of section 301 may be illustrated by the following examples:

*Example (1).* On January 1, 1955, A, an individual owned all of the stock of Corporation M with an adjusted basis of $2,000. During 1955, A received distributions from Corporation M totaling $30,000, consisting of $10,000 in cash and listed securities having a basis in the hands of Corporation M and a fair market value on the date distributed of $20,000. Corporation M's taxable year is the calendar year. As of December 31, 1954, Corporation M had earnings and profits accumulated after February 28, 1913, in the amount of $26,000, and it had no earnings and profits and no deficit for 1955. Of the $30,000 received by A, $26,000 will be treated as an ordinary dividend; the remaining $4,000 will be applied against the adjusted basis of his stock; the $2,000 in excess of the adjusted basis of his stock will either be treated as gain from the sale or exchange of property (under section 301 (c) (3) (A)) or, if out of increase in value accrued before March 1, 1913, will (under section 301 (c) (3) (B)) be exempt from tax. If A subsequently sells his stock in Corporation M, the basis for determining gain or loss on the sale will be zero.

*Example (2).* The facts are the same as in Example 1 with the exceptions that the shareholder of Corporation M is Corporation W and that the securities which were distributed had an adjusted basis to Corporation M of $15,000. The distribution received by Corporation W totals $25,000 consisting of $10,000 in cash and securities with an adjusted basis of $15,000. The total $25,000 will be treated as a dividend to Corporation W since the earnings and profits of Corporation M ($26,000) are in excess of the amount of the distribution.

*Example (3).* Corporation X owns timber land which it acquired prior to March 1, 1913, at a cost of $50,000 with $5,000 allocated as the separate cost of the land. On March 1, 1913, this property had a fair market value of $150,000 of which $135,000 was attributable to the timber and $15,000 to the land. All of the timber was cut prior to 1955 and the full appreciation in the value thereof, $90,000 ($135,000—$45,000), realized through depletion allowances based on March 1, 1913, value. None of this surplus from realized appreciation had been distributed. In 1955, Corporation X sold the land for $20,000 thereby realizing a gain of $15,000. Of this gain, $10,000 is due to realized appreciation in value which accrued before March 1, 1913 $15,000—$5,000). Of the gain of $15,000, $5,000 is taxable. Therefore, at December 31, 1955, Corporation X had a surplus from realized appreciation in the amount of $100,000. It had no accumulated earnings and profits and no deficit at January 1, 1955. The net earnings for 1955 (including the $5,000 gain on the sale of the land) were $20,000. During 1955, Corporation X distributed $75,000 to its stockholders. Of this amount, $20,000 will be treated as a dividend. The remaining $55,000, which is a distribution of realized appreciation, will be applied against and reduce the adjusted basis of the shareholders' stock. If any part of the $55,000 is in excess of the adjusted basis of a shareholder's stock, such part will be exempt from tax.

(g) *Reduction for liabilities.* For the purpose of section 301 (a), the amount of any distribution shall be reduced by—

(1) The amount of any liability of the corporation assumed by the shareholder in connection with the distribution, and

(2) The amount of any liability to which the property received by the shareholder is subject immediately before and immediately after the distribution.

Such reduction, however, shall not cause the amount of the distribution to be reduced below zero.

(h) *Basis.* The basis of property received in the distribution to which section 301 applies shall be—

(1) If the shareholder is not a corporation, the fair market value of such property·

(2) If the shareholder is a corporation—

(i) In the case of a distribution of the obligations of the distributing corporation or of the stock of such corporation or rights to acquire such stock (if such stock or rights are treated as property under section 305 (b)), the fair market value of such obligations, stock, or rights;

(ii) In the case of the distribution of any other property, whichever of the following is the lesser—

(a) The fair market value of such property· or

(b) The adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property increased in the amount of gain to the distributing corporation which is recognized under section 311 (b) (relating to distributions of LIFO inventory) or under section 311 (c) (relating to distributions of property subject to liabilities in excess of basis)

(j) *Transfers for less than fair market value.* If property is transferred by a corporation to a shareholder which is not a corporation for an amount less than its fair market value in a sale or exchange, such shareholder shall be treated as having received a distribution to which section 301 applies. In such case, the amount of the distribution shall be the difference between the amount paid for the property and its fair market value. If property is transferred in a sale or exchange by a corporation to a shareholder which is a corporation, for an amount less than its fair market value and also less than its adjusted basis, such shareholder shall be treated as having received a distribution to which section 301 applies, and—

(1) Where the fair market value of the property equals or exceeds its adjusted basis in the hands of the distributing corporation the amount of the distribution shall be the excess of the adjusted basis over the amount paid for the property·

(2) Where the fair market value of the property is less than its adjusted basis in the hands of the distributing corporation, the amount of the distribution shall be the excess of such fair market value over the amount paid for the property.

In all cases, the earnings and profits of the distributing corporation shall be decreased by the excess of the basis of the property in the hands of the distributing corporation over the amount received therefor. In computing gain or loss from the subsequent sale of such property, its basis shall be the amount paid for the property increased by the amount of the distribution.

(k) *Application of rule respecting transfers for less than fair market value.* The application of paragraph (j) of this section may be illustrated by the following example:

*Example.* On January 1, 1955, A, an individual shareholder of Corporation X, purchased property from that corporation for $20. The fair market value of such property was $100, and its basis in the hands of Corporation X was $25. The amount of the distribution determined under section 301 (b) is $80. If A were a corporation, the amount of the distribution would be $5, the excess of the basis of the property in the hands of Corporation X over the amount received therefor. The basis of such property to Corporation A would be $25. If the basis of the property in the hands of Corporation X were $10, the corporate shareholder, A, would not receive a distribution. The basis of such property to Corporation A would be $20. Whether or not A is a corporation, the excess of the amount paid over the basis of the property in the hands of Corporation X ($20 over $10) would be a taxable gain to Corporation X.

(l) *Transactions treated as distributions.* A distribution to shareholders with respect to their stock is within the terms of section 301 although it takes place at the same time as another transaction if the distribution is in substance a separate transaction whether or not connected in a formal sense. This is most likely to occur in the case of a recapitalization, a reincorporation, or a merger of a corporation with a newly organized corporation having substantially no property. For example, if a corporation having only common stock outstanding, exchanges one share of newly issued common stock and one bond in the principal amount of $10 for each share of outstanding common stock, the distribution of the bonds will be a distribution of property (to the extent of their fair market value) to which section 301 applies, even though the exchange of common stock for common stock may be pursuant to a plan of reorganization under the terms of section 368 (a) (1) (E) (recapitalization) and even though the exchange of common stock for common stock may be tax free by virtue of section 354.

(m) *Cancellation of indebtedness.* The cancellation of indebtedness of a shareholder by a corporation shall be treated as a distribution of property.

(n) *Cross references.* For certain rules relating to adjustments to earnings and profits and for determining the extent to which a distribution is a dividend, see sections 312 and 316 and regulations thereunder.

§ 1.302 *Statutory provisions; distributions in redemption of stock.*

SEC. 302. *Distributions in redemption of stock*—(a) *General rule.* If a corporation redeems its stock (within the meaning of section 317 (b)), and if paragraph (1), (2), (3), or (4) of subsection (b) applies, such redemption shall be treated as a distribution in part or full payment in exchange for the stock.

(b) *Redemptions treated as exchanges*—(1) *Redemptions not equivalent to dividends.* Subsection (a) shall apply if the redemption is not essentially equivalent to a dividend.

(2) *Substantially disproportionate redemption of stock*—(A) *In general.* Subsection (a) shall apply if the distribution is substantially disproportionate with respect to the shareholder.

(B) *Limitation.* This paragraph shall not apply unless immediately after the redemption the shareholder owns less than 50 percent of the total combined voting power of all classes of stock entitled to vote.

(C) *Definitions.* For purposes of this paragraph, the distribution is substantially disproportionate if—

(i) The ratio which the voting stock of the corporation owned by the shareholder immediately after the redemption bears to all of the voting stock of the corporation at such time,

is less than 80 percent of—

(ii) The ratio which the voting stock of the corporation owned by the shareholder immediately before the redemption bears to all of the voting stock of the corporation at such time.

For purposes of this paragraph no distribution shall be treated as substantially disproportionate unless the shareholder's ownership of the common stock of the corporation (whether voting or nonvoting) after and before redemption also meets the 80 percent requirement of the preceding sentence. For purposes of the preceding sentence, if there is more than one class of common stock, the determinations shall be made by reference to fair market value.

(D) *Series of redemptions.* This paragraph shall not apply to any redemption made pursuant to a plan the purpose or effect of which is a series of redemptions resulting in a distribution which (in the aggregate) is not substantially disproportionate with respect to the shareholder.

(3) *Termination of shareholder's interest.* Subsection (a) shall apply if the redemption is in complete redemption of all of the stock of the corporation owned by the shareholder.

(4) *Stock issued by railroad corporations in certain reorganizations.* Subsection (a) shall apply if the redemption is of stock issued by a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act, as amended) pursuant to a plan of reorganization under section 77 of the Bankruptcy Act.

(5) *Application of paragraphs.* In determining whether a redemption meets the requirements of paragraph (1), the fact that such redemption fails to meet the requirements of paragraph (2), (3), or (4) shall not be taken into account. If a redemption meets the requirements of paragraph (3) and also the requirements of paragraph (1), (2), or (4), then so much of subsection (c) (2) as would (but for this sentence) apply in respect of the acquisition of an interest in the corporation within the 10-year period beginning on the date of the distribution shall not apply.

(c) *Constructive ownership of stock*—(1) *In general.* Except as provided in paragraph (2) of this subsection, section 318 (a) shall apply in determining the ownership of stock for purposes of this section.

(2) *For determining termination of interest.* (A) In the case of a distribution described in subsection (b) (3), section 318 (a) (1) shall not apply if—

(i) Immediately after the distribution the distributee has no interest in the corporation (including an interest as officer, director, or employee), other than an interest as a creditor,

(ii) The distributee does not acquire any such interest (other than stock acquired by bequest or inheritance) within 10 years from the date of such distribution, and

(iii) The distributee, at such time and in such manner as the Secretary or his delegate by regulations prescribes, files an agreement to notify the Secretary or his delegate of any acquisition described in clause (ii) and to retain such records as may be necessary for the application of this paragraph.

If the distributee acquires such an interest in the corporation (other than by bequest or inheritance) within 10 years from the date of the distribution, then the periods of limitation provided in sections 6501 and 6502 on the making of an assessment and the collection by levy or a proceeding in court shall, with respect to any deficiency (including interest and additions to the tax) resulting from such acquisition, include one year immediately following the date on which the distributee (in accordance with regulations prescribed by the Secretary or his delegate) notifies the Secretary or his delegate of such acquisition; and such assessment and collection may be made notwithstanding any provision of law or rule of law which otherwise would prevent such assessment and collection.

(B) Subparagraph (A) of this paragraph shall not apply if—

(i) Any portion of the stock redeemed was acquired, directly or indirectly, within the 10-year period ending on the date of the distribution by the distributee from a person the ownership of whose stock would (at the time of distribution) be attributable to the distributee under section 318 (a), or

(ii) Any person owns (at the time of the distribution) stock the ownership of which is attributable to the distributee under section 318 (a) and such person acquired any stock in the corporation, directly or indirectly, from the distributee within the 10-year period ending on the date of the distribution, unless such stock so acquired from the distributee is redeemed in the same transaction.

The preceding sentence shall not apply if the acquisition (or, in the case of clause (ii), the disposition) by the distributee did not have as one of its principal purposes the avoidance of Federal income tax.

(d) *Redemptions treated as distributions of property.* Except as otherwise provided in this subchapter, if a corporation redeems its stock (within the meaning of section 317 (b)), and if subsection (a) of this section does not apply, such redemption shall be treated as a distribution of property to which section 301 applies.

(e) *Cross references.* For special rules relating to redemption—

(1) *Death taxes.* Of stock to pay death taxes, see section 303.

(2) *Section 306 stock.* Of section 306 stock, see section 306.

(3) *Liquidations.* Of stock in partial or complete liquidation, see section 331.

§ 1.302-1 *General.* (a) Under section 302 (d), unless otherwise provided in subchapter C, a distribution in redemption of stock shall be treated as a distribution of property to which section 301 applies if the distribution is not within any of the provisions of section 302 (b) A distribution in redemption of stock shall be considered a distribution in part or full payment in exchange for the stock under section 302 (a) provided paragraph (1) (2) (3), or (4) of section 302 (b) applies. Section 318 (a) (relating to constructive ownership of stock) applies to all redemptions under section 302 except that in the termination of a shareholder's interest certain limitations are placed on the applica-

tion of section 318 (a) (1) by section 302 (c) (2) The term "redemption of stock" is defined in section 317 (b) Section 302 does not apply to that portion of any distribution which qualifies as a distribution in partial liquidation under section 346. For special rules relating to redemption of stock to pay death taxes see section 303. For special rules relating to redemption of section 306 stock see section 306. For special rules relating to redemption of stock in partial or complete liquidation see section 331.

(b) If, in connection with a partial liquidation under the terms of section 346, stock is redeemed in an amount in excess of the amount specified by section 331 (a) (2) section 302 (b) shall first apply as to each shareholder to which it is applicable without limitation because of section 331 (a) (2) That portion of the total distribution which is used in all redemptions from specific shareholders which are within the terms of section 302 (a) shall be excluded in determining the application of sections 346 and 331 (a) (2) For example, Corporation X has $50,000 which is attributable to the sale of one of two active businesses and which, if distributed in redemption of stock, would qualify as a partial liquidation under the terms of section 346 (b). Corporation X distributes $60,000 to its shareholders in redemption of stock, $20,000 of which is in redemption of all of the stock of shareholder A within the meaning of section 302 (b) (3) The $20,000 distributed in redemption of the stock of shareholder A will be excluded in determining the application of sections 346 and 331 (a) (2) The entire $60,000 will be treated as in part or full payment for stock ($20,000 qualifying under section 302 (a) and $40,000 qualifying under sections 346 and 331 (a) (2))

§ 1.302–2 *Redemptions not taxable as dividends.* (a) The fact that a redemption fails to meet the requirements of paragraph (2) (3) or (4) of section 302 (b) shall not be taken into account in determining whether the redemption is not essentially equivalent to a dividend under section 302 (b) (1) See, however, paragraph (b) of this section. For example, if a shareholder owns only nonvoting stock of a corporation which is not section 306 stock and which is limited and preferred as to dividends and in liquidation, and one-half of such stock is redeemed, the distribution will ordinarily meet the requirements of paragraph (1) of section 302 (b) but will not meet the requirements of paragraph (2) (3) or (4) of such section. The determination of whether or not a distribution is within the phrase "essentially equivalent to a dividend" (that is, having the same effect as a distribution without any redemption of stock) shall be made without regard to the earnings and profits of the corporation at the time of the distribution. For example, if A owns all the stock of a corporation and the corporation redeems part of his stock at a time when it has no earnings and profits, the distribution shall be treated as a distribution under section 301 pursuant to section 302 (d)

(b) The question whether a distribution in redemption of stock of a shareholder is not essentially equivalent to a dividend under section 302 (b) (1) depends upon the facts and circumstances of each case. One of the facts to be considered in making this determination is the constructive stock ownership of such shareholder under section 318 (a) All distributions in pro rata redemptions of a part of the stock of a corporation generally will be treated as distributions under section 301 if the corporation has only one class of stock outstanding. However, for distributions in partial liquidation, see section 346. The redemption of all of one class of stock (except section 306 stock) either at one time or in a series of redemptions generally will be considered as a distribution under section 301 if all classes of stock outstanding at the time of the redemption are held in the same proportion. Distribution in redemption of stock may be treated as distributions under section 301 regardless of the provisions of the stock certificate and regardless of whether all stock being redeemed was acquired by the stockholders from whom the stock was redeemed by purchase or otherwise. In every case in which a shareholder transfers stock to the corporation which issued such stock in exchange for property, the facts and circumstances shall be reported on his return except as provided in § 1.331–1 (d). See sections 346 (a) and 6043 for requirements relating to returns by corporations.

(c) In any case in which an amount received in redemption of stock is treated as a distribution of a dividend, proper adjustment of the basis of the remaining stock will be made with respect to the stock redeemed. The following examples illustrate the application of this rule:

*Example (1).* A, an individual, purchased all of the stock of Corporation X for $100,000. In 1955 the corporation redeems half of the stock for $150,000, and it is determined that this amount constitutes a dividend. The remaining stock of Corporation X held by A has a basis of $100,000.

*Example (2).* H and W, husband and wife, each own half of the stock of Corporation X. All of the stock was purchased by H for $100,000 cash. In 1950 H gave one-half of the stock to W, the stock transferred having a value in excess of $50,000. In 1955 all of the stock of H is redeemed for $150,000, and it is determined that the distribution to H in redemption of his shares constitutes the distribution of a dividend. Immediately after the transaction, W holds the remaining stock of Corporation X with a basis of $100,000.

*Example (3).* The facts are the same as in Example (2) with the additional facts that the outstanding stock of Corporation X consists of 1,000 shares and all but 10 shares of the stock of H is redeemed. Immediately after the transaction, H holds 10 shares of the stock of Corporation X with a basis of $50,000, and W holds 500 shares with a basis of $50,000.

§ 1.302–3 *Substantially disproportionate redemption.* (a) Section 302 (b) (2) provides for the treatment of an amount received in redemption of stock as an amount received in exchange for such stock if—

(1) Immediately after the redemption the shareholder owns less than 50 percent of the total combined voting power of all classes of stock as provided in section 302 (b) (2) (B)

(2) The redemption is a substantially disproportionate redemption within the meaning of section 302 (b) (2) (C) and

(3) The redemption is not pursuant to a plan described in section 302 (b) (2) (D).

Section 318 (a) (relating to constructive ownership of stock) shall apply both in making the disproportionate redemption test and in determining the percentage of stock ownership after the redemption. The requirements under section 302 (b) (2) shall be applied to each shareholder separately and shall be applied only with respect to stock which is issued and outstanding in the hands of the shareholders. Section 302 (b) (2) only applies to a redemption of voting stock or to a redemption of both voting stock and other stock. Section 302 (b) (2) does not apply to the redemption solely of nonvoting stock (common or preferred) However, if a redemption is treated as an exchange to a particular shareholder under the terms of section 302 (b) (2) such section will apply to the simultaneous redemption of nonvoting preferred stock (which is not section 306 stock) owned by such shareholder and such redemption will also be treated as an exchange. Generally, for purposes of this section, stock which does not have voting rights until the happening of an event, such as a default in the payment of dividends on preferred stock, is not voting stock until the happening of the specified event. Subsection 302 (b) (2) (D) provides that a redemption will not be treated as substantially disproportionate if made pursuant to a plan the purpose or effect of which is a series of redemptions which result in the aggregate in a distribution which is not substantially disproportionate. Whether or not such a plan exists will be determined from all the facts and circumstances.

(b) The application of paragraph (a) of this section is illustrated by the following example:

*Example.* Corporation M has outstanding 400 shares of common stock of which A, B, C and D each own 100 shares or 25 percent. No stock is considered constructively owned by A, B, C or D under section 318. Corporation M redeems 55 shares from A, 25 shares from B, and 20 shares from C. For the redemption to be disproportionate as to any shareholder, such shareholder must own after the redemptions less than 20 percent (80 percent of 25 percent) of the 300 shares of stock then outstanding. After the redemptions, A owns 45 shares (15 percent), B owns 75 shares (25 percent), and C owns 80 shares (26⅔ percent). The distribution is disproportionate only with respect to A.

§ 1.302–4 *Termination of shareholder's interest.* Section 302 (b) (3) provides that a distribution in redemption of all of the stock of the corporation owned by a shareholder shall be treated as a distribution in part or full payment in exchange for the stock of such shareholder. In determining whether all of the stock of the shareholder has been redeemed, the general rule of section 302

(c) (1) requires that the rules of constructive ownership provided in section 318 (a) shall apply. Section 302 (c) (2) however, provides that section 318 (a) (1) (relating to constructive ownership of stock owned by members of a family) shall not apply where the specific requirements of section 302 (c) (2) are met. The following rules shall be applicable in determining whether the specific requirements of section 302 (c) (2) are met:

(a) The agreement specified in section 302 (c) (2) (A) (iii) shall be in the form of a separate statement in duplicate signed by the distributee and attached to his return timely filed for the year in which the distribution described in section 302 (b) (3) occurs. The agreement shall recite that the distributee has not acquired any interest in the corporation (as described in section 302 (c) (2) (A) (i)) since such distribution, and that he agrees to notify the district director of internal revenue for the district in which such return is filed of any acquisition of such an interest in the corporation within 30 days after such acquisition if such acquisition occurs within 10 years from the date of such distribution.

(b) The distributee who files an agreement under section 302 (c) (2) (A) (iii) shall retain copies of income tax returns and any other records indicating fully the amount of tax which would have been payable had the redemption been treated as a distribution subject to section 301.

(c) If stock of a parent corporation is redeemed, subparagraph (A) relating to acquisition of an interest in the corporation within 10 years after termination shall be applied with reference to an interest both in the parent corporation and any subsidiary of such parent corporation. If stock of a parent corporation is sold to a subsidiary in a transaction described in section 304, subparagraph (A) shall be applicable to the acquisition of an interest in such subsidiary corporation or in the parent corporation. If stock of a subsidiary corporation is redeemed, subparagraph (A) shall be applied with reference to an interest both in such subsidiary corporation and its parent. Such subparagraph shall also be applied with respect to an interest in a corporation which is a successor corporation to the corporation the interest in which has been terminated.

(d) For the purpose of section 302 (c) (2) (A) (i) a person will be considered to be a creditor only if the rights of such person with respect to the corporation are not greater or broader in scope than necessary for the enforcement of his claim. Such claim must not in any sense be proprietary and must not be subordinate to the claims of general creditors. An obligation in the form of a debt may thus constitute a proprietary interest. For example, if under the terms of the instrument the corporation may discharge the principal amount of its obligation to a person by payments, the amount or certainty of which are dependent upon the earnings of the corporation, such a person is not a creditor of the corporation. Furthermore, if under the terms of the instrument the rate of purported interest is dependent upon earnings, the holder of such instrument may not, in some cases, be a creditor.

(e) In the case of a distributee to whom section 302 (b) (3) is applicable, who is a creditor after such transaction, the acquisition of the assets of the corporation in the enforcement of the rights of such creditor shall not be considered an acquisition of an interest in the corporation for purposes of section 302 (c) (2) unless stock of the corporation, its parent corporation, or, in the case of a redemption of stock of a parent corporation, of a subsidiary of such corporation is acquired.

(f) In determining whether an entire interest in the corporation has been terminated under section 302 (b) (3) under all circumstances paragraphs (2), (3) and (4) of section 318 (a) (relating to constructive ownership of stock) shall be applicable.

(g) Section 302 (c) (2) (B) provides that section 302 (c) (2) (A) shall not apply—

(1) If any portion of the stock redeemed was acquired directly or indirectly within the 10-year period ending on the date of the distribution by the distributee from a person, the ownership of whose stock would (at the time of distribution) be attributable to the distributee under section 318 (a) or

(2) If any person owns (at the time of the distribution) stock, the ownership of which is attributable to the distributee under section 318 (a) such person acquired any stock in the corporation directly or indirectly from the distributee within the 10-year period ending on the date of the distribution, and such stock so acquired from the distributee is not redeemed in the same transaction,

unless the acquisition (described in (1) above) or the disposition by the distributee (described in (2) above) did not have as one of its principal purposes the avoidance of Federal income tax. A transfer of stock by the transferor, within the 10-year period ending on the date of the distribution, to a person whose stock would be attributable to the transferor shall not be deemed to have as one of its principal purposes the avoidance of Federal income tax merely because the transferee is in a lower income tax bracket than the transferor.

§ 1.303 *Statutory provisions; distributions in redemption of stock to pay death taxes.*

SEC. 303. *Distributions in redemption of stock to pay death taxes*—(a) *In general.* A distribution of property to a shareholder by a corporation in redemption of part or all of the stock of such corporation which (for Federal estate tax purposes) is included in determining the gross estate of a decedent, to the extent that the amount of such distribution does not exceed the sum of—

(1) The estate, inheritance, legacy, and succession taxes (including any interest collected as a part of such taxes) imposed because of such decedent's death, and

(2) The amount of funeral and administration expenses allowable as deductions to the estate under section 2053 (or under section 2106 in the case of the estate of a decedent nonresident, not a citizen of the United States),

shall be treated as a distribution in full payment in exchange for the stock so redeemed.

(b) *Limitations on application of subsection* (a)—(1) *Period for distribution.* Subsection (a) shall apply only to amounts distributed after the death of the decedent and—

(A) Within the period of limitations provided in section 6501 (a) for the assessment of the Federal estate tax (determined without the application of any provision other than section 6501 (a)), or within 90 days after the expiration of such period, or

(B) If a petition for redetermination of a deficiency in such estate tax has been filed with the Tax Court within the time prescribed in section 6213, at any time before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) *Relationship of stock to decedent's estate*—(A) *In general.* Subsection (a) shall apply to a distribution by a corporation only if the value (for Federal estate tax purposes) of all of the stock of such corporation which is included in determining the value of the decedent's gross estate is either—

(i) More than 35 percent of the value of the gross estate of such decedent, or

(ii) More than 50 percent of the taxable estate of such decedent.

(B) *Special rule for stock of two or more corporations.* For purposes of the 35 percent and 50 percent requirements of subparagraph (A), stock of two or more corporations, with respect to each of which there is included in determining the value of the decedent's gross estate more than 75 percent in value of the outstanding stock, shall be treated as the stock of a single corporation. For the purpose of the 75 percent requirement of the preceding sentence, stock which, at the decedent's death, represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property shall be treated as having been included in determining the value of the decedent's gross estate.

(c) *Stock with substituted basis.* If—

(1) A shareholder owns stock of a corporation (referred to in this subsection as "new stock") the basis of which is determined by reference to the basis of stock of a corporation (referred to in this subsection as "old stock"),

(2) The old stock was included (for Federal estate tax purposes) in determining the gross estate of a decedent, and

(3) Subsection (a) would apply to a distribution of property to such shareholder in redemption of the old stock,

then, subject to the limitation specified in subsection (b) (1), subsection (a) shall apply in respect of a distribution in redemption of the new stock.

§ 1.303-1 *General.* Section 303 provides that in certain cases a distribution in redemption of stock, the value of which is included in determining the value of the gross estate of a decedent, shall be treated as a distribution in full payment in exchange for the stock so redeemed.

§ 1.303-2 *Requirements.* (a) Section 303 applies only where the distribution is with respect to stock of a corporation the value of whose stock in the gross estate of the decedent for Federal estate tax purposes is an amount in excess of (1) 35 percent of the value of the gross estate of such decedent, or (2) 50 percent of the taxable estate of such decedent. For the purposes of such 35 percent and 50 percent requirements, stock of two or more corporations shall be treated as the stock of a single corporation if more than 75 percent in value of the outstanding

stock of each such corporation is included in determining the value of the decedent's gross estate. For the purpose of the 75 percent requirement, stock which, at the decedent's death, represents the surviving spouse's interest in community property shall be considered as having been included in determining the value of the decedent's gross estate.

(b) For the purpose of section 303 (b) (2) (A) (i) the term "gross estate" means the gross estate as computed in accordance with section 2031 (or, in the case of the estate of a decedent nonresident not a citizen of the United States, in accordance with section 2103) For the purpose of section 303 (b) (2) (A) (ii) the term "taxable estate" means the taxable estate as computed in accordance with section 2051 (or, in the case of the estate of a decedent nonresident not a citizen of the United States, in accordance with section 2106)

(c) (1) In determining whether the estate of the decedent is comprised of stock of a corporation of sufficient value to satisfy the percentage requirements of section 303 (b) (2) (A) and section 303 (b) (2) (B) the total value, in the aggregate, of all classes of stock of the corporation includible in determining the value of the gross estate is taken into account. A distribution under section 303 (a) may be in redemption of the stock of the corporation includible in determining the value of the gross estate, without regard to the class of such stock.

(2) The above may be illustrated by the following example:

*Example.* The gross estate of the decedent has a value of $1,000,000, the taxable estate is $700,000, and the sum of the death taxes and funeral and administration expenses is $275,000. Included in determining the gross estate of the decedent is stock of three corporations which, for Federal estate tax purposes, is valued as follows:

| | |
|---|---|
| Corporation A: | |
| Common stock | $100,000 |
| Preferred stock | 100,000 |
| Corporation B: | |
| Common stock | 50,000 |
| Preferred stock | 350,000 |
| Corporation C: | |
| Common stock | 200,000 |

The stock of Corporation A and Corporation C included in the estate of the decedent constitutes all of the outstanding stock of both corporations. The stock of Corporation A and the stock of Corporation C, treated as the stock of a single corporation under section 303 (b) (2) (B), has a value in excess of $350,000 (35 percent of the gross estate or 50 percent of the taxable estate). Likewise, the stock of Corporation B has a value in excess of $350,000. The distribution by one or more of the above corporations, within the period prescribed in section 303 (b) (1), of amounts not exceeding, in the aggregate, $275,000, in redemption of preferred stock or common stock of such corporation or corporations, will be treated as in full payment in exchange for the stock so redeemed.

(d) If stock includible in determining the value of the gross estate of a decedent is exchanged for new stock, the basis of which is determined by reference to the basis of the old stock, the redemption of the new stock will be treated the same under section 303 as the redemption of the old stock would have been. Thus section 303 shall apply with respect to a distribution in redemption of stock received by the estate of a decedent (1) in connection with a reorganization under section 368, (2) in a distribution or exchange under section 355 (or so much of section 356 as relates to section 355), (3) in an exchange under section 1036 or (4) in a distribution to which section 305 (a) applies. Similarly, a distribution in redemption of stock will qualify under section 303, notwithstanding the fact that the stock redeemed is section 306 stock to the extent that the conditions of section 303 are met.

(e) Section 303 applies to distributions made after the death of the decedent and (1) before the expiration of the 3-year period of limitations for the assessment of estate tax provided in section 6501 (a) (determined without the application of any provisions of law extending or suspending the running of such period of limitations) or within 90 days after the expiration of such period, or (2) if a petition for redetermination of a deficiency in such estate tax has been filed with the Tax Court within the time prescribed in section 6213, at any time before the expiration of 60 days after the decision of the Tax Court becomes final. The extension of the period of distribution provided in section 303 (b) (1) (B) has reference solely to bona fide contests in the Tax Court and will not apply in the case of a petition for redetermination of a deficiency which is initiated solely for the purpose of extending the period within which section 303 would otherwise be applicable.

(f) While section 303 will most frequently have application in the case where stock is redeemed from the executor or administrator of an estate, the section is also applicable to distributions in redemption of stock included in the decedent's gross estate and held at the time of the redemption by any person who acquired the stock by any of the means comprehended by Part III, Subchapter A, Chapter 11 of Subtitle B, including the heir, legatee, or donee of the decedent, a surviving joint tenant, surviving spouse, appointee, or taker in default of appointment, or a trustee of a trust created by the decedent. Thus section 303 may apply with respect to a distribution in redemption of stock from a donee to whom the decedent has transferred stock in contemplation of death where the value of such stock is included in the decedent's gross estate under section 2035. Similarly, section 303 may apply to the redemption of stock from a beneficiary of the estate to whom an executor has distributed the stock pursuant to the terms of the will of the decedent. However, section 303 is not applicable to the case where stock is redeemed from a stockholder who has acquired the stock by gift or purchase from any person to whom such stock has passed from the decedent. Nor is section 303 applicable to the case where stock is redeemed from a stockholder who has acquired the stock from the executor in satisfaction of a specific monetary bequest.

(g) The total application of section 303 with respect to stock included in the gross estate of any decedent can never exceed the sum of the amount of the estate, inheritance, legacy, and succession taxes (including any interest collected as a part of such taxes) imposed because of the decedent's death and the amount of funeral and administration expenses allowable as deductions to the estate. In determining whether the total distributions in redemption of such stock made within the period of time prescribed in section 303 (b) (1) exceed the amount of such taxes, interest, and expenses, account shall be taken of all such distributions without regard to whether any distribution would be treated as a dividend were it not for section 303.

(h) For the purpose of section 303, the Federal estate tax or any other estate, inheritance, legacy, or succession tax shall be ascertained after the allowance of any credit, relief, discount, refund, remission or reduction of tax.

§ 1.303-3 *Application of other sections.* (a) The sole effect of section 303 is to exempt from tax as a dividend a distribution to which such section is applicable when made in redemption of stock includible in a decedent's gross estate. Such section does not, however, in any other manner affect the principles set forth in sections 302 and 306. Thus, if stock of a corporation is owned equally by A, B, and the C Estate, and the corporation redeems one-half of the stock of each shareholder, the determination of whether the distributions to A and B are essentially equivalent to dividends shall be made without regard to the effect which section 303 may have upon the taxability of the distribution to the C Estate.

(b) See section 304 relative to redemption of stock through the use of related corporations.

§ 1.304 *Statutory provisions; redemption through use of related corporations.*

SEC. 304. *Redemption through use of related corporations*—(a) *Treatment of certain stock purchases*—(1) *Acquisition by related corporation (other than subsidiary).* For purposes of sections 302 and 303, if—

(A) One or more persons are in control of each of two corporations, and

(B) In return for property, one of the corporations acquires stock in the other corporation from the person (or persons) so in control,

then (unless paragraph (2) applies) such property shall be treated as a distribution in redemption of the stock of the corporation acquiring such stock. In any such case, the stock so acquired shall be treated as having been transferred by the person from whom acquired, and as having been received by the corporation acquiring it, as a contribution to the capital of such corporation.

(2) *Acquisition by subsidiary.* For purposes of sections 302 and 303, if—

(A) In return for property, one corporation acquires from a shareholder of another corporation stock in such other corporation, and

(B) The issuing corporation controls the acquiring corporation,

then such property shall be treated as a distribution in redemption of the stock of the issuing corporation.

(b) *Special rules for application of subsection (a)*—(1) *Rule for determinations under section 302 (b).* In the case of any acquisition of stock to which subsection (a) of this section applies, determinations as to whether the acquisition is, by reason of section 302 (b), to be treated as a dis-

tribution in part or full payment in exchange for the stock shall be made by reference to the stock of the issuing corporation. In applying section 318 (a) (relating to constructive ownership of stock) with respect to section 302 (b) for purposes of this paragraph, section 318 (a) (2) (C) shall be applied without regard to the 50 percent limitation contained therein.

(2) *Amount constituting dividend*—(A) *Where subsection (a) (1) applies.* In the case of any acquisition of stock to which paragraph (1) (and not paragraph (2)) of subsection (a) of this section applies, the determination of the amount which is a dividend shall be made solely by reference to the earnings and profits of the acquiring corporation.

(B) *Where subsection (a) (2) applies.* In the case of any acquisition of stock to which subsection (a) (2) of this section applies, the determination of the amount which is a dividend shall be made as if the property were distributed by the acquiring corporation to the issuing corporation and immediately thereafter distributed by the issuing corporation.

(c) *Control*—(1) *In general.* For purposes of this section, control means the ownership of 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. If a person (or persons) is in control (within the meaning of the preceding sentence) of a corporation which in turn owns at least 50 percent of the total combined voting power of all stock entitled to vote of another corporation, or owns at least 50 percent of the total value of the shares of all classes of stock of another corporation, then such person (or persons) shall be treated as in control of such other corporation.

(2) *Constructive ownership.* Section 318 (a) (relating to the constructive ownership of stock) shall apply for purposes of determining control under paragraph (1). For purposes of the preceding sentence, section 318 (a) (2) (C) shall be applied without regard to the 50 percent limitation contained therein.

§ 1.304–1 *General.* Section 304 is applicable where a shareholder sells stock of one corporation to a related corporation as defined in section 304. Such sales shall be treated as redemptions subject to sections 302 and 303.

§ 1.304–2 *Acquisition by related corporation (other than subsidiary)* (a) If a corporation, in return for property, acquires stock of another corporation from one or more persons and the person or persons from whom the stock was acquired were in control of both such corporations before the acquisition, then such property shall be treated as received in redemption of stock of the acquiring corporation. The stock received by the acquiring corporation shall be treated as a contribution to the capital of such corporation and shall have the same basis in its hands as it had in the hands of the transferor. The transferor's basis for his stock in the acquiring corporation shall be increased by the basis of stock surrendered by him. (But see below for subsequent reductions of basis in certain cases. As to each person transferring stock, the amount received shall be treated as a distribution of property under section 302 (d) unless as to such person such amount is to be treated as received in exchange for the stock under the terms of section 302 (a) or section 303. In applying section 302 (b) reference shall be had to the shareholder's ownership of stock in the issuing corporation and not to his ownership of stock in the acquiring corporation (except for purposes of applying section 318 (a)) In determining control and applying section 302 (b), section 318 (a) (relating to the constructive ownership of stock) shall be applied without regard to the 50 percent limitation in section 318 (a) (2) (C) A series of redemptions referred to in section 302 (b) (2) (D) shall include acquisitions by either of the corporations of stock of the other and stock redemptions by both corporations. If section 302 (d) applies to the surrender of stock by a shareholder, his basis for his stock in the acquiring corporation after the transaction (increased as above stated) shall not be decreased except as provided in section 301. If section 302 (d) does not apply, the property received shall be treated as received in a distribution in payment in exchange for stock of the acquiring corporation under section 302 (a) which stock has a basis equal to the amount by which the shareholder's basis for his stock in the acquiring corporation was increased on account of the contribution to capital as provided for above. Accordingly, such amount shall be applied in reduction of the shareholder's basis for his stock in the acquiring corporation. Thus, the basis of each share of the shareholder's stock in the acquiring corporation will be the same as the basis of such share before the entire transaction. The holding period of the stock which is considered to have been redeemed shall be the same as the holding period of the stock actually surrendered.

(b) In any case in which two or more persons, in the aggregate, control two corporations, section 304 (a) (1) will apply to sales by such persons of stock in either corporation to the other (whether or not made simultaneously) provided the sales by each of such persons are related to each other. The determination of whether the sales are related to each other shall be dependent upon the facts and circumstances surrounding all of the sales. For this purpose, the fact that the sales may occur during a period of one or more years (such as in the case of a series of sales by persons who together control each of such corporations immediately prior to the first of such sales and immediately subsequent to the last of such sales) shall be disregarded, provided the other facts and circumstances indicate related transactions.

(c) The application of section 304 (a) (1) may be illustrated by the following examples:

*Example (1).* Corporation X and Corporation Y each have outstanding 100 shares of common stock. One-half of the stock of each corporation is owned by an individual, A, and one-half by another individual, B, who is unrelated to A. A sells 40 shares of Corporation X stock to Corporation Y for $50,000, such stock having an adjusted basis of $10,000 to A. After the sale, A is considered as owning Corporation X stock as follows:

(i) 10 shares directly.

(ii) 45 shares constructively since by virtue of his 50 percent ownership of Y, he constructively owns 50 percent of the 40 shares owned directly by Corporation Y, and 50 percent of the 50 shares attributed to Corporation Y because they are owned by Y's stockholder, B.

Since after the sale A owns a total of more than 50 percent of the voting power of all the outstanding stock of Corporation X, the transfer is not "substantially disproportionate" as to him as provided in section 302 (b) (2). Under these facts, section 302 (b) (1) is not applicable and the entire $50,000 is, therefore, treated as a dividend to A to the extent of the earnings and profits of Corporation Y. The basis of the Corporation X stock to Corporation Y is $10,000, its adjusted basis to A. The amount of $10,000 is added to the basis of the stock of Corporation Y in the hands of A.

*Example (2).* Corporation X and Corporation Y each have outstanding 100 shares of common stock. A, an individual, owns one-half the stock of each corporation, B owns one-half the stock of Corporation X, and C owns one-half the stock of Corporation Y. A, B, and C are unrelated. A sells 30 shares of the stock of Corporation X to Corporation Y for $50,000, such stock having an adjusted basis of $10,000 to him. After the sale, A is considered as owning 35 shares of the stock of Corporation X (20 shares directly and 15 constructively because one-half of the 30 shares owned by Corporation Y are attributed to him). Since before the sale, he owned 50 percent of the stock of Corporation X and after the sale he owned directly and constructively only 35 percent of such stock, the redemption is substantially disproportionate as to him pursuant to the provisions of section 302 (b) (2). He, therefore, realizes a gain of $40,000 ($50,000 minus $10,000). If the stock surrendered is a capital asset, such gain is long-term or short-term capital gain depending on the period of time that such stock was held. The basis to A for the stock of Corporation Y is not changed as a result of the entire transaction. The basis to Corporation Y for the stock of Corporation X is $10,000, the basis of the transferor.

*Example (3).* Corporation X and Corporation Y each have outstanding 100 shares of common stock. H, an individual, W, his wife, S, his son, and G, his grandson, each own 25 shares of stock of each corporation. H sells all of his 25 shares of stock of Corporation X to Corporation Y. Since both before and after the transaction H owned directly and constructively 100 percent of the stock of Corporation X, the amount received by him for his stock of Corporation X is treated as a dividend to him to the extent of the earnings and profits of Corporation Y.

§ 1.304–3 *Acquisition by a subsidiary.* (a) If a subsidiary acquires stock of its parent corporation from a shareholder of the parent corporation, the acquisition of such stock shall be treated as though the parent corporation had redeemed its own stock. For the purpose of this section, a corporation is a parent corporation if it meets the 50 percent ownership requirements of section 304 (c) The determination whether the amount received shall be treated as an amount received in payment in exchange for the stock shall be made by applying section 303, or by applying section 302 (b) with reference to the stock of the issuing parent corporation. If such distribution would have been treated as a distribution of property (pursuant to section 302 (d)) under section 301, the entire amount of the selling price of the stock shall be treated as a dividend to the seller to the extent

of the earnings and profits of the parent corporation determined as if the distribution had been made to it of the property that the subsidiary exchanged for the stock. In such cases, the transferor's basis for his remaining stock in the parent corporation will be determined by including the amount of the basis of the stock of the parent corporation sold to the subsidiary.

(b) Section 304 (a) (2) may be illustrated by the following example:

*Example.* Corporation M has outstanding 100 shares of common stock which are owned as follows: B, 75 shares, C, son of B, 20 shares, and D, daughter of B, 5 shares. Corporation M owns the stock of Corporation X. B sells his 75 shares of Corporation M stock to Corporation X. Under section 302 (b) (3) this is a termination of B's entire interest in Corporation M and the full amount received from the sale of his stock will be treated as payment in exchange for this stock, provided he fulfills the requirements of section 302 (c) (2) (relating to an acquisition of an interest in the corporations).

§ 1.305 *Statutory provisions; distributions of stock and stock rights.*

SEC. 305. *Distributions of stock and stock rights*—(a) *General rule.* Except as provided in subsection (b), gross income does not include the amount of any distribution made by a corporation to its shareholders, with respect to the stock of such corporation, in its stock or in rights to acquire its stock.

(b) *Distributions in lieu of money.* Subsection (a) shall not apply to a distribution by a corporation of its stock (or rights to acquire its stock), and the distribution shall be treated as a distribution of property to which section 301 applies—

(1) To the extent that the distribution is made in discharge of preference dividends for the taxable year of the corporation in which the distribution is made or for the preceding taxable year; or

(2) If the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either—

(A) In its stock (or in rights to acquire its stock), or

(B) In property.

(c) *Cross references.* For special rules—

(1) Relating to the receipt of stock and stock rights in corporate organizations and reorganizations, see part III (sec. 351 and following).

(2) In the case of a distribution which results in a gift, see section 2501 and following.

(3) In the case of a distribution which has the effect of the payment of compensation, see section 61 (a) (1).

§ 1.305-1 *Stock dividends.* Under section 305, a distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall not be included in gross income except as provided in section 305 (b) If the distribution of stock or rights to acquire stock is received in discharge of preference dividends, to the extent that such distribution is not taxable pursuant to section 305, such stock, whether or not preferred stock, or such rights may be section 306 stock within the meaning of section 306 (c) A distribution made by a corporation to its shareholders in its stock or rights to acquire its stock which would not otherwise be included in gross income by reason of section 305 shall not be so treated merely because such distribution was made out of treasury stock or consisted of rights to acquire treasury stock. A right to acquire stock is an option to buy unissued or treasury stock of the corporation issuing the right. See section 307 for rules as to basis of stock and stock rights acquired in a distribution.

§ 1.305-2 *Election of shareholders as to medium of payment.* (a) If any shareholder has the right to an election or option with respect to whether a distribution shall be made either in money or any other property, or in stock or rights to acquire stock of the distributing corporation, then, with respect to all shareholders, the distribution of stock or rights to acquire stock shall be considered as a distribution of property to which section 301 applies regardless of—

(1) Whether the distribution is actually made in whole or in part in stock or in stock rights;

(2) Whether the election or option is exercised or exercisable before or after the declaration of the distribution;

(3) Whether the declaration of the dividend provides that payment will be made in one medium unless the shareholder specifically requests payment in the other; or

(4) Whether all or part of the shareholders have the election.

(b) The application of the above rule may be illustrated by the following example:

*Example.* Corporation X declared a dividend payable in additional shares of its common stock to the holders of its outstanding common stock on the basis of two additional shares for each share held on the record date but with the provision that, at the election of any shareholder made within a specified period prior to the distribution date, he may receive one additional share for each share held on the record date plus $12 principal amount of securities of Corporation Y owned by Corporation X. The fair market value of the stock of Corporation X on the distribution date was $10 per share. The fair market value of $12 principal amount of securities of Corporation Y on the distribution date was $11 but such securities had a cost basis to Corporation X of $9. The distribution of the second share of stock of Corporation X to those shareholders who do not elect to receive securities of Corporation Y will constitute a distribution of property to which section 301 applies whether such shareholders are individuals or corporations. The amount of the distribution to which section 301 applies will be $10 per share of stock of Corporation X held on the record date (the fair market value of the stock of Corporation X on the distribution date). The distribution of securities of Corporation X in lieu of the second share of stock of Corporation X to the shareholders of Corporation X, whether individuals or corporations, who elect to receive such securities, will also constitute a distribution of property to which section 301 applies. Thus, in the case of the individual shareholders of Corporation X who elect to receive such securities, the amount of the distribution to which section 301 applies will be $11 per share of stock of Corporation X held on the record date (the fair market value of the $12 principal amount of securities of Corporation Y on the distribution date). In the case of the corporate shareholders of Corporation X electing to receive such securities, the amount of the distribution to which section 301 applies will be $9 per share of stock of Corporation X held on the record date (the basis of the securities of Corporation Y in the hands of Corporation X). The receipt by either an individual or corporate shareholder of the one additional share of stock of Corporation X (with respect to which no election applies) for each share held will not result in a distribution of property to such shareholder to which section 301 is applicable.

§ 1.305-3 *Distributions in discharge of preference dividends.* A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall be treated as a distribution of property to which section 301 applies to the extent that the distribution is made in discharge of preference dividends for the taxable year of the corporation in which the distribution is made made or for the preceding taxable year.

§ 1.306 *Statutory provisions; dispositions of certain stock.*

SEC. 306. *Dispositions of certain stock*—(a) *General rule.* If a shareholder sells or otherwise disposes of section 306 stock (as defined in subsection (c))—

(1) *Dispositions other than redemptions.* If such disposition is not a redemption (within the meaning of section 317 (b))—

(A) The amount realized shall be treated as gain from the sale of property which is not a capital asset. This subparagraph shall not apply to the extent that—

(i) The amount realized, exceeds

(ii) Such stock's ratable share of the amount which would have been a dividend at the time of distribution if (in lieu of section 306 stock) the corporation had distributed money in an amount equal to the fair market value of the stock at the time of distribution.

(B) Any excess of the amount realized over the sum of—

(i) The amount treated under subparagraph (A) as gain from the sale of property which is not a capital asset, plus

(ii) The adjusted basis of the stock,

shall be treated as gain from the sale of such stock.

(C) No loss shall be recognized.

(2) *Redemption.* If the disposition is a redemption, the amount realized shall be treated as a distribution of property to which section 301 applies.

(b) *Exceptions:* Subsection (a) shall not apply—

(1) *Termination of shareholder's interest*—(A) *Not in redemption.* If the disposition—

(i) Is not a redemption;

(ii) Is not, directly or indirectly, to a person the ownership of whose stock would (under section 318 (a)) be attributable to the shareholder; and

(iii) Terminates the entire stock interest of the shareholder in the corporation (and for purposes of this clause, section 318 (a) shall apply).

(B) *In redemption.* If the disposition is a redemption and section 302 (b) (3) applies.

(2) *Liquidations.* If the section 306 stock is redeemed in a distribution in partial or complete liquidation to which part II (sec. 331 and following) applies.

(3) *Where gain or loss is not recognized.* To the extent that, under any provision of this subtitle, gain or loss to the shareholder is not recognized with respect to the disposition of the section 306 stock.

(4) *Transactions not in avoidance.* If it is established to the satisfaction of the Secretary or his delegate—

(A) That the distribution, and the disposition or redemption, or

(B) In the case of a prior or simultaneous disposition (or redemption) of the stock with respect to which the section 306 stock disposed of (or redeemed) was issued, that the disposition (or redemption) of the section 306 stock,

was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(c) *Section 306 stock defined*—(1) *In general.* For purposes of this subchapter, the term "section 306 stock" means stock which meets the requirements of subparagraph (A), (B), or (C) of this paragraph.

(A) *Distributed to seller.* Stock (other than common stock issued with respect to common stock) which was distributed to the shareholder selling or otherwise disposing of such stock if, by reason of section 305 (a), any part of such distribution was not includible in the gross income of the shareholder.

(B) *Received in a corporate reorganization or separation.* Stock which is not common stock and—

(i) Which was received, by the shareholder selling or otherwise disposing of such stock, in pursuance of a plan of reorganization (within the meaning of section 368 (a)), or in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applied, and

(ii) With respect to the receipt of which gain or loss to the shareholder was to any extent not recognized by reason of part III, but only to the extent that either the effect of the transaction was substantially the same as the receipt of a stock dividend, or the stock was received in exchange for section 306 stock.

For purposes of this section, a receipt of stock to which the foregoing provisions of this subparagraph apply shall be treated as a distribution of stock.

(C) *Stock having transferred or substituted basis.* Except as otherwise provided in subparagraph (B), stock the basis of which (in the hands of the shareholder selling or otherwise disposing of such stock) is determined by reference to the basis (in the hands of such shareholder or any other person) of section 306 stock.

(2) *Exception where no earnings and profits.* For purposes of this section, the term "section 306 stock" does not include any stock no part of the distribution of which would have been a dividend at the time of the distribution if money had been distributed in lieu of the stock.

(d) *Stock rights.* For purposes of this section—

(1) Stock rights shall be treated as stock, and

(2) Stock acquired through the exercise of stock rights shall be treated as stock distributed at the time of the distribution of the stock rights, to the extent of the fair market value of such rights at the time of the distribution.

(e) *Convertible stock.* For purposes of subsection (c)—

(1) If section 306 stock was issued with respect to common stock and later such section 306 stock is exchanged for common stock in the same corporation (whether or not such exchange is pursuant to a conversion privilege contained in the section 306 stock), then (except as provided in paragraph (2)) the common stock so received shall not be treated as section 306 stock; and

(2) Common stock with respect to which there is a privilege of converting into stock other than common stock (or into property), whether or not the conversion privilege is contained in such stock, shall not be treated as common stock.

(f) *Source of gain.* The amount treated under subsection (a) (1) (A) as gain from the sale of property which is not a capital asset shall, for purposes of part I of subchapter N (sec. 861 and following, relating to determination of sources of income), be treated as derived from the same source as would have been the source if money had been received from the corporation as a dividend at the time of the distribution of such stock. If under the preceding sentence such amount is determined to be derived from sources within the United States, such amount shall be considered to be fixed or determinable annual or periodical gains, profits, and income within the meaning of section 871 (a) or section 881 (a), as the case may be.

(g) *Change in terms and conditions of stock.* If a substantial change is made in the terms and conditions of any stock, then, for purposes of this section—

(1) The fair market value of such stock shall be the fair market value at the time of the distribution or at the time of such change, whichever such value is higher;

(2) Such stock's ratable share of the amount which would have been a dividend if money had been distributed in lieu of stock shall be determined as of the time of distribution or as of the time of such change, whichever such ratable share is higher; and

(3) Subsection (c) (2) shall not apply unless the stock meets the requirements of such subsection both at the time of such distribution and at the time of such change.

(h) *Stock received in distributions and reorganizations to which 1939 Code applied.* If stock—

(1) Was received in a distribution or reorganization to which the Internal Revenue Code of 1939 (or the corresponding provisions of prior law) applied,

(2) Such stock would have been section 306 stock if this Code applied to such distribution or reorganization, and

(3) Such stock is disposed of or redeemed on or after June 22, 1954,

then the foregoing subsections of this section shall not apply in respect of such disposition or redemption. The extent to which such disposition or redemption shall be treated as a dividend shall be determined as if the Internal Revenue Code of 1939 (as modified by the provisions of this Code other than the foregoing subsections of this section) continued to apply in respect of such disposition or redemption.

§ 1.306–1 *General.* (a) Section 306 provides, in general, that the proceeds from the sale or redemption of certain stock (referred to as "section 306 stock") shall be treated either as gain from the sale of property which is not a capital asset, or as a distribution of property to which section 301 applies. Section 306 stock is defined in section 306 (c) and is usually preferred stock received either as a nontaxable dividend or in a transaction in which no gain or loss is recognized. Section 306 (b) lists certain circumstances in which the special rules of section 306 (a) shall not apply.

(b) (1) If a shareholder sells or otherwise disposes of section 306 stock (other than by redemption or within the exceptions listed in section 306 (b)), the entire proceeds received from such disposition shall be treated as gain from the sale of property not a capital asset to the extent that the fair market value of the stock sold, on the date distributed to the shareholder, would have been a dividend to such shareholder had the distributing corporation distributed cash in lieu of stock. Any excess of the amount received over the sum of the amount treated as ordinary income plus the adjusted basis of the stock disposed of, shall be treated as gain from the sale of a capital asset or noncapital asset as the case may be. No loss shall be recognized. While the amount of earnings and profits at the time of the distribution is one of the measures of the amount to be treated as ordinary income, no reduction of earnings and profits results from any disposition of stock other than a redemption. The term "disposition" under section 306 (a) (1) includes, among other things, pledges of stock under certain circumstances, particularly where the pledgee can look only to the stock itself as its security.

(2) Section 306 (a) (1) may be illustrated by the following examples:

*Example (1).* On December 15, 1954, A and B owned equally all of the stock of Corporation X which files its income tax return on a calendar year basis. On that date Corporation X distributed pro rata 100 shares of preferred stock as a dividend on its outstanding common stock. On December 15, 1954, the preferred stock had a fair market value of $10,000. On December 31, 1954, the earnings and profits of Corporation X were $20,000. The 50 shares of preferred stock so distributed to A had an allocated basis to him of $10 per share or a total of $500 for the 50 shares. Such shares had a fair market value of $5,000 when issued. A sold the 50 shares of preferred stock on July 1, 1955, for $6,000. Of this amount $5,000 will be treated as gain from the sale of property which is not a capital asset; $500 ($6,000 minus $5,500) will be treated as gain from the sale of a capital or noncapital asset as the case may be.

*Example (2).* The facts are the same as in Example 1 except that A sold his 50 shares of preferred stock for $5,100. Of this amount $5,000 will be treated as gain from the sale of property which is not a capital asset. No loss will be allowed. There will be added back to the basis of the common stock of Corporation X with respect to which the preferred stock was distributed, $400, the allocated basis of $500 reduced by the $100 received.

*Example (3).* The facts are the same as in example 1 except that A sold 25 of his shares of preferred stock for $2,600. Of this amount $2,500 will be treated as gain from the sale of property which is not a capital asset. No loss will be allowed. There will be added back to the basis of the common stock of Corporation X with respect to which the preferred stock was distributed, $150, the allocated basis of $250 reduced by the $100 received.

(c) The entire amount received by a shareholder from the redemption of section 306 stock shall be treated as a distribution of property under section 301. In the case of a redemption, the amount of the earnings and profits of the distributing corporation at the time the section 306 stock was distributed is immaterial. See also section 303 (relating to distribution in redemption of stock to pay death taxes)

§ 1.306–2 *Exception.* (a) If a shareholder terminates his entire stock interest in a corporation,

(1) By a sale or other disposition within the requirements of section 306 (b) (1) (A) or

(2) By redemption under section 302 (b) (3) (through the application of section 306 (b) (1) (B)),

the amount received from such disposition shall be treated as an amount received in part or full payment for the stock sold or redeemed. In the case of a sale, only the stock interest need be terminated. In determining whether an entire stock interest has been terminated under section 306 (b) (1) (A), all of the provisions of section 318 (a) (relating to constructive ownership of

stock) shall be applicable. In determining whether a shareholder has terminated his entire interest in a corporation by a redemption of his stock under section 302 (b) (3) all of the provisions of section 318 (a) shall be applicable unless the shareholder meets the requirements of section 302 (c) (2) (relating to termination of all interest in the corporation) If the requirements of section 302 (c) (2) are met, section 318 (a) (1) (relating to members of a family) shall be inapplicable. Under all circumstances paragraphs (2) (3) and (4) of section 318 (a) shall be applicable.

(b) Section 306 (a) does not apply to—

(1) Redemptions of section 306 stock pursuant to a partial or complete liquidation of a corporation to which part II (section 331 and following) applies.

(2) Exchanges of section 306 stock solely for stock in connection with a reorganization or in an exchange under section 351, 355, or section 1036 (relating to exchanges of stock for stock in the same corporation) to the extent that gain or loss is not recognized to the shareholder as the result of the exchange of the stock (see § 1.306–3 (d) relative to the receipt of other property) and

(3) A disposition or redemption, if it is established to the satisfaction of the Commissioner that the distribution, and the disposition or redemption, was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax. However, in the case of a prior or simultaneous disposition (or redemption) of the stock with respect to which the section 306 stock disposed of (or redeemed) was issued, it is not necessary to establish that the distribution was not in pursuance of such a plan. For example, in the absence of such a plan and of any other facts, the first sentence of this subparagraph would be applicable to the case of dividends and isolated dispositions of section 306 stock by minority shareholders. Similarly, in the absence of such a plan and of any other facts, if a shareholder received a distribution of 100 shares of section 306 stock on his holdings of 100 shares of voting common stock in a corporation and sells his voting common stock before he disposes of his section 306 stock, the subsequent disposition of his section 306 stock would not ordinarily be considered a disposition one of the principal purposes of which is the avoidance of Federal income tax.

§ 1.306–3 *Section 306 stock defined.* (a) For the purpose of Subchapter C the term "section 306 stock" means stock which meets the requirements of section 306 (c) (1) Any class of stock distributed to a shareholder in a transaction in which no amount is includible in the income of the shareholder or no gain or loss is recognized may be section 306 stock, provided the distributing corporation has earnings and profits at the time of distribution and for this purpose the total amount of the earnings and profits is immaterial. However, except as provided in section 306 (g) if the distributing corporation has no earnings and profits at the time of distribution, pursuant to section 306 (c) (2) the stock distributed will not constitute section 306 stock.

(b) For the purpose of section 306, rights to acquire stock shall be treated as stock. Such rights shall not be section 306 stock if no part of the distribution would have been a dividend if money had been distributed in lieu of such rights. If money distributed in lieu of such rights would have been a dividend, the amount referred to in section 306 (a) (1) (A) (ii) shall be determined as of the time of the distribution of such rights. When stock is acquired by the exercise of rights which are section 306 stock, the stock acquired is section 306 stock, and the amount referred to in section 306 (a) (1) (A) (ii) is determined by reference to the date of distribution of the rights.

(c) Section 306 (c) (1) (A) provides that section 306 stock is any stock (other than common issued with respect to common) distributed to the shareholder selling or otherwise disposing thereof if, under section 305 (a) (relating to distributions of stock and stock rights) any part of the distribution was not included in the gross income of the distributee. Common stock received as a stock dividend will not be considered as section 306 stock unless such dividend is (1) distributed with respect to stock which is not common stock, and (2) is not taxable upon receipt. For example, common stock distributed in payment of arrearages on preferred stock dividends may be section 306 stock unless the common stock is taxable under section 305 (b) (1) Thus, where part of the distribution is in payment of the dividends for the current and preceding year on preferred stock and part of the distribution relates to arrearages of such stock, only that part of the distribution applying to arrearages will be treated as section 306 stock. For example, if 100 shares of common stock are distributed in payment of all dividends due on preferred stock and part of the distribution relates to arrearages on such stock, applying to the current and immediately preceding year's dividends and nine-tenths to arrearages, only nine-tenths of each share may be section 306 stock.

(d) Section 306 (c) (1) (B) includes in the definition of section 306 stock any stock except common stock, which is received by a shareholder in connection with a reorganization under section 368 or in a distribution or exchange under section 355 (or so much of section 356 as relates to section 355) provided the effect of the transaction is substantially the same as the receipt of a stock dividend, or the stock is received in exchange for section 306 stock. If, in a transaction to which section 356 is applicable, a shareholder exchanges section 306 stock for stock and money or other property, the entire amount of such money and of the fair market value of the other property (not limited to the gain recognized) shall be treated as a distribution of property to which section 301 applies. Common stock received in exchange for section 306 stock in a recapitalization shall not be considered section 306 stock. Ordinarily, section 306 stock includes stock which is not common stock received in pursuance of a plan of reorganization (within the meaning of section 368 (a)) or received in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies if cash received in lieu of such stock would have been treated as a dividend under section 356 (a) (2) or would have been treated as a distribution to which section 301 applies by virtue of section 356 (b) or section 302 (d) The application of the preceding sentence is illustrated by the following examples:

*Example (1).* Corporation A, having only common stock outstanding, is merged in a statutory merger (qualifying as a reorganization under section 368 (a)) with Corporation B. Pursuant to such merger, the shareholders of Corporation A received both common and preferred stock in Corporation B. The preferred stock received by such shareholders is section 306 stock.

*Example (2).* X and Y each own one-half of the 2,000 outstanding shares of preferred stock and one-half of the 2,000 outstanding shares of common stock of Corporation C. Pursuant to a reorganization within the meaning of section 368 (a) (1) (E) (recapitalization) each shareholder exchanges his preferred stock for preferred stock of a new issue which is not substantially different from the preferred stock previously held. Unless the preferred stock exchanged was itself section 306 stock the preferred stock received is not section 306 stock.

(e) Section 306 (c) (1) (C) includes in the definition of section 306 stock any stock (except as provided in section 306 (c) (1) (B)) the basis of which in the hands of the person disposing of such stock, is determined by reference to section 306 stock held by such shareholder or any other person. Under this subparagraph common stock can be section 306 stock. Thus, if a person owning section 306 stock in Corporation A transfers it to Corporation B which is controlled by him in exchange for common stock of Corporation B in a transaction to which section 351 is applicable, the common stock so received by him would be section 306 stock and subject to the provisions of section 306 (a) on its disposition. In addition, the section 306 stock transferred is section 306 stock in the hands of Corporation B, the transferee. Section 306 stock transferred by gift remains section 306 stock in the hands of the donee. Stock received in exchange for section 306 stock under section 1036 (a) (relating to exchange of stock for stock in the same corporation) or under so much of section 1031 (b) as relates to section 1036 (a) becomes section 306 stock and acquires, for purposes of section 306, the characteristics of the section 306 stock exchanged. The entire amount of the fair market value of the other property received in such transaction shall be considered as received upon a disposition (other than a redemption) to which section 306 (a) applies. Section 306 stock ceases to be so classified if the basis of such stock is determined by reference to its fair market value on the date of the decedent-stockholder's death or the optional valuation date under section 1014.

(f) If section 306 stock which was distributed with respect to common stock, is exchanged for common stock in the same corporation (whether or not such exchange is pursuant to a conversion privilege contained in section 306 stock), such common stock shall not be section 306

stock. This subparagraph applies to exchanges not coming within the purview of section 306 (c) (1) (B) Common stock which is convertible into stock other than common stock or into property, shall not be considered common stock. It is immaterial whether the conversion privilege is contained in the stock or in some type of collateral agreement.

(g) If there is a substantial change in the terms and conditions of any stock, then, for the purpose of this section—

(1) The fair market value of such stock shall be the fair market value at the time of distribution or the fair market value at the time of such change, whichever is higher;

(2) Such stock's ratable share of the amount which would have been a dividend if money had been distributed in lieu of stock shall be determined as of the time of distribution or as of the time of such change, whichever ratable share is higher; and

(3) Section 306 (c) (2) shall be inapplicable if there would have been a dividend to any extent if money had been distributed in lieu of the stock either at the time of the distribution or at the time of such change.

(h) When section 306 stock is disposed of, the amount treated under section 306 (a) (1) (A) as gain from the sale of property which is not a capital asset will, for the purposes of Part I of Subchapter N, be treated as derived from the same source as would have been the source if money had been received from the corporation as a dividend at the time of the distribution of such stock. If the amount is determined to be derived from sources within the United States, the amount shall be considered to be fixed or determinable annual or periodic gains, profits, and income within the meaning of section 871 (a) or section 881 (a) relating, respectively, to the tax on nonresident alien individuals and on foreign corporations not engaged in business in the United States.

(i) Section 306 shall be inapplicable to stock received before June 22, 1954, and to stock received on or after June 22, 1954, in transactions subject to the provisions of the 1939 Code. See § 1.391–1.

§ 1.307 *Statutory provisions; basis of stock and stock rights acquired in distribution.*

SEC. 307. *Basis of stock and stock rights acquired in distribution*—(a) *General rule.* If a shareholder in a corporation receives its stock or rights to acquire its stock (referred to in this subsection as "new stock") in a distribution to which section 305 (a) applies, then the basis of such new stock and of the stock with respect to which it is distributed (referred to in this section as "old stock"), respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock. Such allocation shall be made under regulations prescribed by the Secretary or his delegate.

(b) *Exception for certain stock rights*—(1) *In general.* If—

(A) A corporation distributes rights to acquire its stock to a shareholder in a distribution to which section 305 (a) applies, and

(B) The fair market value of such rights at the time of the distribution is less than 15 percent of the fair market value of the old stock at such time,

then subsection (a) shall not apply and the basis of such rights shall be zero, unless the taxpayer elects under paragraph (2) of this subsection to determine the basis of the old stock and of the stock rights under the method of allocation provided in subsection (a).

(2) *Election.* The election referred to in paragraph (1) shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such rights were received. Such election shall be made in such manner as the Secretary or his delegate may by regulations prescribe, and shall be irrevocable when made.

(c) *Cross Reference.* For basis of stock and stock rights distributed before June 22, 1954, see section 1052.

§ 1.307–1 *General.* (a) If a shareholder receives stock or stock rights as a distribution on stock previously held and under section 305 such distribution is not includible in gross income then, except as provided in section 307 (b) and § 1.307–2, the basis of the stock with respect to which the distribution was made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution. If a shareholder receives stock or stock rights as a distribution on stock previously held and pursuant to section 305 part of the distribution is not includible in gross income, then (except as provided in section 307 (b) and § 1.307–2) the basis of the stock with respect to which the distribution is made shall be allocated between (1) the old stock and (2) that part of the new stock or rights which is not includible in gross income, in proportion to the fair market values of each on the date of distribution. The date of distribution in each case shall be the date the stock or the rights are distributed to the stockholder and not the record date. The general rule will apply with respect to stock rights only if such rights are exercised or sold.

(b) The application of paragraph (a) of this section is illustrated by the following example:

*Example.* A taxpayer in 1947 purchased 100 shares of common stock at $100 per share and in 1954 by reason of the ownership of such stock acquired 100 rights entitling him to subscribe to 100 additional shares of such stock at $90 a share. Immediately after the issuance of the rights, each of the shares of stock in respect of which the rights were acquired had a fair market value, ex-rights, of $110 and the rights had a fair market value of $19 each. The basis of the rights and the common stock for the purpose of determining the basis for gain or loss on a subsequent sale or exercise of the rights or a sale of the old stock is computed as follows:

100 (shares) × $100 = $10,000, cost of old stock (stock in respect of which the rights were acquired).

100 (shares) × $110 = $11,000, market value of old stock.

100 (rights) × $19 = $1,900, market value of rights.

$\frac{11,000}{12,900}$ of $10,000 = $8,527.13, cost of old stock apportioned to such stock.

$\frac{1,900}{12,900}$ of $10,000 = $1,472.87, cost of old stock apportioned to rights.

If the rights are sold, the basis for determining gain or loss will be $14.7287 per right. If the rights are exercised, the basis of the new stock acquired will be the subscription price paid therefor ($90) plus the basis of the rights exercised ($14.7287 each) or $104.7287 per share. The remaining basis of the old stock for the purpose of determining gain or loss on a subsequent sale will be $85.2713 per share.

§ 1.307–2 *Exception.* The basis of rights to buy stock which are excluded from gross income under section 305 (a), shall be zero if the fair market value of such rights on the date of distribution is less than 15 percent of the fair market value of the old stock on that date, unless the shareholder elects to allocate part of the basis of the old stock to the rights as provided in § 1.307–1 (a) The election shall be made by a shareholder with respect to all the rights received by him in a particular distribution in respect of all the stock of the same class owned by him in the issuing corporation at the time of such distribution. Such election to allocate basis to rights shall be in the form of a statement attached to the shareholder's return for the year in which the rights are received. This election, once made, shall be irrevocable with respect to the rights for which the election was made. Any shareholder making such an election shall retain a copy of the election and of the tax return with which it was filed, in order to substantiate the use of an allocated basis upon a subsequent disposition of the stock acquired by exercise.

*Effects on Corporation*

§ 1.311 *Statutory provisions; taxability of corporations on distribution.*

SEC. 311. *Taxability of corporation on distribution*—(a) *General rule.* Except as provided in subsections (b) and (c) of this section and section 453 (d), no gain or loss shall be recognized to a corporation on the distribution, with respect to its stock, of—

(1) Its stock (or rights to acquire its stock), or

(2) Property.

(b) *LIFO inventory*—(1) *Recognition of gain.* If a corporation inventorying goods under the method provided in section 472 (relating to last-in, first-out inventories) distributes inventory assets (as defined in paragraph (2) (A)), then the amount (if any) by which—

(A) The inventory amount (as defined in paragraph (2) (B)) of such assets under a method authorized by section 471 (relating to general rule for inventories), exceeds

(B) The inventory amount of such assets under the method provided in section 472,

shall be treated as gain to the corporation recognized from the sale of such inventory assets.

(2) *Definitions.* For purposes of paragraph (1)—

(A) *Inventory assets.* The term "inventory assets" means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(B) *Inventory amount.* The term "inventory amount" means, in the case of inventory assets distributed during a taxable year, the amount of such inventory assets determined as if the taxable year closed at the time of such distribution.

(3) *Method of determining inventory amount.* For purposes of this subsection, the

inventory amount of assets under a method authorized by section 471 shall be determined—

(A) If the corporation uses the retail method of valuing inventories under section 472, by using such method, or

(B) If subparagraph (A) does not apply, by using cost or market, whichever is lower.

(c) *Liability in excess of basis.* If—

(1) A corporation distributes property to a shareholder with respect to its stock,

(2) Such property is subject to a liability, or the shareholder assumes a liability of the corporation in connection with the distribution, and

(3) The amount of such liability exceeds the adjusted basis (in the hands of the distributing corporation) of such property,

then gain shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. In the case of a distribution of property subject to a liability which is not assumed by the shareholder, the amount of gain to be recognized under the preceding sentence shall not exceed the excess, if any, of the fair market value of such property over its adjusted basis.

§ 1.311–1 *General.* (a) Except as provided in subsections (b) and (c) of section 311 and section 453 (d) (relating to installment obligations) no gain or loss is recognized to a corporation on the distribution, with respect to its stock, of stock, or rights to acquire its stock, or property (regardless of the fact that such property may have appreciated or depreciated in value since its acquisition by the corporation) However, the proceeds of the sale of property in form made by a shareholder receiving such property in kind from the corporation may be imputed to the corporation if, in fact, the corporation made the sale. Moreover, where property is distributed by a corporation, which distribution is in effect an anticipatory assignment of income, such income may be taxable to the corporation. The term "distributions with respect to its stock" includes distributions made in redemption of stock (other than distributions in complete or partial liquidations) See, however, paragraph (e) for distributions to which section 311 does not apply. For the rule respecting the taxation of a corporation making a distribution of property in partial or complete liquidation, see section 336.

(b) In any case in which a corporation distributes with respect to its stock assets which have been part of an inventory, the value of which has been computed for income tax purposes under the method provided in section 472 (relating to last-in, first-out inventories) such corporation shall—

(1) Compute the amount of its inventory under the method provided in section 472 immediately prior to the distribution and immediately after such distribution;

(2) Compute the difference between the two amounts described in (1) of this paragraph;

(3) Compute the amount of its inventory under the method authorized by section 471 (relating to general rule for inventories) immediately prior to the distribution and immediately after such distribution;

(4) Compute the difference between the two amounts determined under (3) of this paragraph.

If the amount computed under (4) of this paragraph is in excess of the amount computed under (2) of this paragraph, then such excess shall be included in the income of the corporation for the year in which such distribution occurs. In any case in which a corporation distributes assets which have been a part of an inventory whose value has been computed for income tax purposes under the method provided in section 472, such corporation shall on the date of distribution record a specific statement of the amount of its inventory under each of the applicable methods for use in the determination of the amount of income includible under section 311.

(c) The following example illustrates the application of section 311 (b)

*Example.* Corporation R, a manufacturing corporation inventorying goods under the method provided in section 472, distributes 200 units of its inventory assets to its shareholders on November 15, 1955. Immediately before the distribution, the corporation held 300 identical inventory units at the following basis determined by reference to the value computed by using the LIFO method and the value computed by using the FIFO method, in the order of acquisition:

| Number of units | Basis LIFO | Number of units | Basis FIFO |
|---|---|---|---|
| a. 100 | $1,000 | 100 | $4,000 |
| b. 100 | 2,000 | 50 | 2,500 |
| c. 50 | 1,000 | 50 | 2,500 |
| d. 50 | 2,000 | 100 | 6,000 |

The amount includible in income pursuant to section 311 (b) is $4,000 computed as follows:

| | | |
|---|---|---|
| (1) Inventory before distribution under FIFO method (a, b, c and d) | $15,000 | |
| (2) Inventory under FIFO method immediately after distribution (d) | 6,000 | |
| (3) Difference (FIFO basis of inventory distributed) | | $9,000 |
| (4) Inventory before distribution under LIFO method (a, b, c and d) | $6,000 | |
| (5) Inventory under LIFO method immediately after distribution (a) | 1,000 | |
| (6) Difference (LIFO basis of inventory distributed) | | 5,000 |
| (7) Amount includible in income under section 311 (b) | | 4,000 |

(d) Section 311 (c) provides in general for the inclusion in the income of a corporation, on a distribution of property by such corporation to its shareholders, of an amount equal to the excess of a liability over the basis of the property distributed. Thus, section 311 (c) applies where the property distributed is subject to a liability or where the shareholder assumes a liability of the corporation in connection with the distribution. For example, if property which is a capital asset having an adjusted basis to the distributing corporation of $100 and a fair market value of $1,000 (but subject to a liability of $900) is distributed to a shareholder, such distribution is taxable (as long-term or short-term gain, as the case may be) to the corporation to the extent of the excess of the liability ($900) over the adjusted basis ($100) or $800. However, if in the preceding example the fair market value of the property distributed were $800, the amount taxable to the corporation is limited to the excess of the fair market value of the property ($800) over its adjusted basis ($100) or $700. If the property subject to a liability were not a capital asset in the hands of the distributing corporation, the gain would be taxable as gain from the sale of a noncapital asset. The holding period of assets so distributed shall be determined as if such property were sold on the date of the distribution.

(e) (1) Section 311 is limited to distributions which are made by reason of the corporation-stockholder relationship. Section 311 does not apply to transactions between a corporation and a shareholder in his capacity as debtor, creditor, employee, or vendee, where the fact that such debtor, creditor, employee, or vendee is a shareholder is incidental to the transaction. Thus, if the corporation receives its own stock as consideration upon the sale of property by it, or in satisfaction of indebtedness to it, the gain or loss resulting is to be computed in the same manner as though the payment had been made in any other property.

(2) The following examples illustrate the application of subparagraph (1)

*Example (1).* Corporation A has a claim against Corporation B for damages for loss of profits due to patent infringement. Corporation B satisfies such claim by surrendering shares of the stock of Corporation A to Corporation A. The fair market value of such stock is includible in the gross income of Corporation A.

*Example (2).* Corporation C, a corporation engaged in the manufacture and sale of automobiles, sells an automobile to individual X, and receives in payment therefor shares of the stock of Corporation C. The transaction will be treated in the same manner as if an amount of cash equal to the fair market value of such stock had been received by Corporation C.

§ 1.312 *Statutory provision; effect on earnings and profits.*

SEC. 312. *Effect on earnings and profits*—(a) *General rule.* Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of—

(1) The amount of money,

(2) The principal amount of the obligations of such corporation, and

(3) The adjusted basis of the other property,

so distributed.

(b) *Certain inventory assets*—(1) *In general.* On the distribution by a corporation, with respect to its stock, of inventory assets (as defined in paragraph (2) (A)) the fair market value of which exceeds the adjusted basis thereof, the earnings and profits of the corporation—

(A) Shall be increased by the amount of such excess; and

(B) Shall be decreased by whichever of the following is the lesser:

(i) The fair market value of the inventory assets distributed, or

(ii) The earnings and profits (as increased under subparagraph (A)).

(2) *Definitions*—(A) *Inventory assets.* For purposes of paragraph (1), the term "inventory assets" means—

(i) Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year;

(ii) Property held by the corporation primarily for sale to customers in the ordinary course of its trade or business; and

(iii) Unrealized receivables or fees, except receivables from sales or exchanges of assets other than assets described in this subparagraph.

(B) *Unrealized receivables or fees.* For purposes of subparagraph (A) (iii), the term "unrealized receivables or fees" means, to the extent not previously includible in income under the method of accounting used by the corporation, any rights (contractual or otherwise) to payment for—

(i) Goods delivered, or to be delivered, to the extent that the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(ii) Services rendered or to be rendered.

(c) *Adjustments for liabilities, etc.* In making the adjustments to the earnings and profits of a corporation under subsection (a) or (b), proper adjustment shall be made for—

(1) The amount of any liability to which the property distributed is subject,

(2) The amount of any liability of the corporation assumed by a shareholder in connection with the distribution, and

(3) Any gain to the corporation recognized under subsection (b) or (c) of section 311.

(d) *Certain distributions of stock and securities*—(1) *In general.* The distribution to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities in another corporation, or of property, in a distribution to which this Code applies, shall not be considered a distribution of the earnings and profits of any corporation—

(A) If no gain to such distributee from the receipt of such stock or securities, or property, was recognized under this Code, or

(B) If the distribution was not subject to tax in the hands of such distributee by reason of section 305 (a).

(2) *Prior distributions.* In the case of a distribution of stock or securities, or property, to which section 115 (h) of the Internal Revenue Code of 1939 (or the corresponding provision of prior law) applied, the effect on earnings and profits of such distribution shall be determined under such section 115 (h), or the corresponding provision of prior law, as the case may be.

(3) *Stock or securities.* For purposes of this subsection, the term "stock or securities" includes rights to acquire stock or securities.

(e) *Special rule for partial liquidations and certain redemptions.* In the case of amounts distributed in partial liquidation (whether before, on, or after June 22, 1954) or in a redemption to which section 302 (a) or 303 applies, the part of such distribution which is properly chargeable to capital account shall not be treated as a distribution of earnings and profits.

(f) *Effect on earnings and profits of gain or loss and of receipt of tax-free distributions*—(1) *Effect on earnings and profits of gain or loss.* The gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation—

(A) For the purpose of the computation of the earnings and profits of the corporation, shall (except as provided in subparagraph (B)) be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of March 1, 1913; but

(B) For purposes of the computation of the earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing taxable income under the law applicable to the year in which such sale or disposition was made. Where, in determining the adjusted basis used in computing such realized gain or loss, the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings and profits, then the latter adjustment shall be used in determining the increase or decrease above provided. For purposes of this subsection, a loss with respect to which a deduction is disallowed under section 1091 (relating to wash sales of stock or securities), or the corresponding provision of prior law, shall not be deemed to be recognized.

(2) *Effect on earnings and profits of receipt of tax-free distributions.* Where a corporation receives (after February 28, 1913) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

(A) No such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made; and

(B) No such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would, but for section 307 (b), be so allocated).

(g) *Earnings and profits—increase in value accrued before March 1, 1913.* (1) If any increase or decrease in the earnings and profits for any period beginning after February 28, 1913, with respect to any matter would be different had the adjusted basis of the property involved been determined without regard to its March 1, 1913, value, then, except as provided in paragraph (2), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(2) If the application of subsection (f) to a sale or other disposition after February 28, 1913, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding subsection (f) and in lieu of the rule provided in paragraph (1) of this subsection, the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss exceeds the adjusted basis computed without regard to the value of the property on March 1, 1913, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(h) *Earnings and profits of personal service corporations.* In the case of a personal service corporation subject for any taxable year to supplement S of the Internal Revenue Code of 1939, an amount equal to the undistributed supplement S net income of the personal service corporation for its taxable year shall be considered as paid in as of the close of such taxable year as paid-in surplus or as a contribution to capital, and the accumulated earnings and profits as of the close of such taxable year shall be correspondingly reduced, if such amount or any portion thereof is required to be included as a dividend in the gross income of the shareholders.

(i) *Allocation in certain corporate separations.* In the case of a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under regulations prescribed by the Secretary or his delegate.

(j) *Distribution of proceeds of loan insured by the United States*—(1) *In general.* If a corporation distributes property with respect to its stock, and if, at the time of the distribution—

(A) There is outstanding a loan to such corporation which was made, guaranteed, or insured by the United States (or by any agency or instrumentality thereof), and

(B) The amount of such loan so outstanding exceeds the adjusted basis of the property constituting security for such loan,

then the earnings and profits of the corporation shall be increased by the amount of such excess and (immediately after the distribution) shall be decreased by the amount of such excess. For purposes of subparagraph (B) of the preceding sentence, the adjusted basis of the property at the time of distribution shall be determined without regard to any adjustment under section 1016 (a) (2) (relating to adjustment for depreciation, etc.). For purposes of this paragraph, a commitment to make, guarantee, or insure a loan shall be treated as the making, guaranteeing, or insuring of a loan.

(2) *Effective date.* Paragraph (1) shall apply only with respect to distributions made on or after June 22, 1954.

§ 1.312–1 *Adjustment to earnings and profits reflecting distributions by corporations.* (a) In general, on the distribution of property by a corporation with respect to its stock, its earnings and profits (to the extent thereof) shall be decreased by—

(1) The amount of money,

(2) The principal amount of the obligations of such corporation issued in such distribution, and

(3) The adjusted basis of other property.

For special rule with respect to distributions to which section 312 (e) applies, see § 1.312–5.

(b) The adjustment provided in section 312 (a) (3) and (a) (3) of this section with respect to a distribution of property (other than money or its own obligations) shall be made notwithstanding the fact that such property has appreciated or depreciated in value since acquisition.

(c) The application of paragraphs (a) and (b) of this section may be illustrated by the following examples:

*Example (1).* Corporation A distributes to its sole shareholder property with a value of $10,000 and a basis of $5,000. It has $12,500 in earnings and profits. The reduction in earnings and profits by reason of such distribution is $5,000. Such is the reduction even though the amount of $10,000

is includible in the income of the shareholder (other than a corporation) as a dividend.

*Example* (2). The facts are the same as in example (1) above except that the property has a basis of $15,000 and the earnings and profits of the corporation are $20,000. The reduction in earnings and profits is $15,000. Such is the reduction even though only the amount of $10,000 is includible in the income of the shareholder as a dividend.

(d) In the case of a distribution of stock or rights to acquire stock a portion of which is includible in income by reason of section 305 (b) the earnings and profits shall be reduced by the fair market value of such portion. No reduction shall be made if a distribution of stock or rights to acquire stock is not includible in income under the provisions of section 305.

(e) No adjustment shall be made in the amount of the earnings and profits of the issuing corporation upon a disposition of section 306 stock unless such disposition is a redemption.

§ 1.312–2 *Distribution of inventory assets.* Section 312 (b) provides for the increase and the decrease of the earnings and profits of a corporation which distributes with respect to its stock, inventory assets as defined in section 312 (b) (2) where the fair market value of such assets exceeds their adjusted basis. The rules provided in section 312 (b) (relating to distributions of certain inventory assets) shall be applicable without regard to the method used in computing inventories for the purpose of the computation of taxable income. Section 312 (b) does not apply to distributions described in section 312 (e)

§ 1.312–3 *Liabilities.* The amount of any reductions in earnings and profits described in section 312 (a) or (b) shall be (a) reduced by the amount of any liability to which the property distributed was subject and by the amount of any other liability of the corporation assumed by the shareholder in connection with such distribution, and (b) increased by the amount of gain recognized to the corporation under section 311 (b) or (c)

§ 1.312–4 *Examples of adjustments provided in section 312* (c) The adjustments provided in section 312 (c) may be illustrated by the following examples:

*Example* (1). On December 2, 1954, Corporation X distributed to its sole shareholder, A, an individual, as a dividend in kind a vacant lot which was not an inventory asset. On that date, the lot had a fair market value of $5,000 and was subject to a mortgage of $2,000. The adjusted basis of the lot was $3,100. The amount of the earnings and profits was $10,000. The amount of the dividend received by A is $3,000 ($5,000, the fair market value, less $2,000, the amount of the mortgage) and the reduction in the earnings and profits of Corporation X is $1,100 ($3,100, the basis, less $2,000, the amount of mortgage).

*Example* (2). The facts are the same as in example (1) above with the exception that the amount of the mortgage to which the property was subject was $4,000. The amount of the dividend received by A is $1,000, and there is no reduction in the earnings and profits of the corporation as a result of the distribution (disregarding such reduction as may result from an increase in tax to Corporation X because of gain resulting from the distribution). There is a gain of $900 recognized to Corporation X, the difference between the basis of the property ($3,100) and the amount of the mortgage ($4,000), under section 311 (c) and an increase in earnings and profits of $900.

*Example* (3). Corporation A, having accumulated earnings and profits of $100,000, distributed in kind to its shareholders, not in liquidation, inventory assets which had a basis to it on the "Lifo" method (section 472) of $46,000 and on the basis of cost or market (section 471) of $50,000. The inventory had a fair market value of $55,000 and was subject to a liability of $35,000. This distribution results in a net decrease in earnings and profits of Corporation A of $11,000, (without regard to any tax on Corporation A) computed as follows:

| | | |
|---|---|---|
| "Fifo" basis of inventory | $50,000 | |
| Less: "Lifo" basis of inventory | 46,000 | |
| Gain recognized—addition to earnings and profits (section 311 (b)) | | $4,000 |
| Adjustment to earnings and profits required by section 312 (b) (1) (A) | | |
| Fair market value of inventory | $55,000 | |
| Less: "Lifo" basis plus adjustment under section 311 (b) | 50,000 | |
| | | 5,000 |
| Total increase in earnings and profits | | 9,000 |
| Decrease in earnings and profits—under section 312 (b) (1) (B) (i) | $55,000 | |
| Less: Liability assumed | 35,000 | |
| Net amount of distribution (decrease in earnings) | | 20,000 |
| Net decrease in earnings and profits | | 11,000 |

§ 1.312–5 *Special rule for partial liquidations and certain redemptions.* The part of the distribution properly chargeable to capital account within the provisions of section 312 (e) shall not be considered a distribution of earnings and profits within the meaning of section 301 for the purpose of determining taxability of subsequent distributions by the corporation.

§ 1.312–6 *Earnings and profits.* (a) In determining the amount of earnings and profits (whether of the taxable year, or accumulated since February 28, 1913, or accumulated before March 1, 1913) due consideration must be given to the facts, and, while mere bookkeeping entries increasing or decreasing surplus will not be conclusive, the amount of the earnings and profits in any case will be dependent upon the method of accounting properly employed in computing taxable income (or net income, as the case may be) For instance, a corporation keeping its books and filing its income tax returns under subchapter E on the cash receipts and disbursements basis may not use the accrual basis in determining earnings and profits; a corporation computing income on the installment basis as provided in section 453 shall, with respect to the installment transactions, compute earnings and profits on such basis; and an insurance company subject to taxation under section 831 shall exclude from earnings and profits that portion of any premium which is unearned under the provisions of section 832 (b) (4) and which is segregated accordingly in the unearned premium reserve.

(b) Among the items entering into the computation of corporate earnings and profits for a particular period are all income exempted by statute, income not taxable by the Federal Government under the Constitution, as well as all items includible in gross income under section 61 or corresponding provisions of prior revenue acts. Gains and losses within the purview of section 1002 or corresponding provisions of prior revenue acts are brought into the earnings and profits at the time and to the extent such gains and losses are recognized under that section. Interest on State bonds and certain other obligations, although not taxable when received by a corporation, is taxable to the same extent as other dividends when distributed to shareholders in the form of dividends.

(c) (1) In the case of a corporation in which depletion or depreciation is a factor in the determination of income, the only depletion or depreciation deductions to be considered in the computation of the total earnings and profits are those based on cost or other basis without regard to March 1, 1913, value. In computing the earnings and profits for any period beginning after February 28, 1913, the only depletion or depreciation deductions to be considered are those based on (i) cost or other basis, if the depletable or depreciable asset was acquired subsequent to February 28, 1913; or (ii) adjusted cost or March 1, 1913, value, whichever is higher, if acquired before March 1, 1913. Thus, discovery or percentage depletion under all revenue acts for mines and oil and gas wells is not to be taken into consideration in computing the earnings and profits of a corporation. Similarly, where the basis of property in the hands of a corporation is a substituted basis, such basis, and not the fair market value of the property at the time of the acquisition by the corporation, is the basis for computing depletion and depreciation for the purpose of determining earnings and profits of the corporation.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

*Example.* Oil producing property which A had acquired in 1949 at a cost of $28,000 was transferred to Corporation Y in December 1951, in exchange for all of its capital stock. The fair market value of the stock and of the property as of the date of the transfer was $247,000. Corporation Y, after four years' operation, effected in 1955 a cash distribution to A in the amount of $165,000. In determining the extent to which the earnings and profits of Corporation Y available for dividend distributions have been increased as the result of production and sale of oil, the depletion to be taken into account is to be computed upon the basis of $28,000 established in the nontaxable exchange in 1951 regardless of the fair market value of the property or of the stock issued in exchange therefor.

(d) A loss sustained for a year before the taxable year does not affect the earnings and profits of the taxable year.

However, in determining the earnings and profits accumulated since February 28, 1913, the excess of a loss sustained for a year subsequent to February 28, 1913, over the undistributed earnings and profits accumulated since February 28, 1913, and before the year for which the loss was sustained, reduces surplus as of March 1, 1913, to the extent of such excess. If the surplus as of March 1, 1913, was sufficient to absorb such excess, distributions to shareholders after the year of the loss are out of earnings and profits accumulated since the year of the loss to the extent of such earnings.

(e) With respect to the effect on the earnings and profits accumulated since February 28, 1913, of distributions made on or after January 1, 1916, and before August 6, 1917, out of earnings or profits accumulated before March 1, 1913, which distributions were specifically declared to be out of earnings and profits accumulated before March 1, 1913, see section 31 (b) of the Revenue Act of 1916, as amended by section 1211 of the Revenue Act of 1917.

§ 1.312-7 *Effect on earnings and profits of gain or loss realized after February 28, 1913.* (a) In order to determine the effect on earnings and profits of gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation, section 312 (f) (1) prescribed certain rules for—

(1) The computation of the total earnings and profits of the corporation of most frequent application in determining invested capital; and

(2) The computation of earnings and profits of the corporation for any period beginning after February 28, 1913, of most frequent application in determining the source of dividend distributions.

Such rules are applicable whenever under any provision of this subtitle it is necessary to compute either the total earnings and profits of the corporation or the earnings and profits for any period beginning after February 28, 1913. For example, since the earnings and profits accumulated after February 28, 1913, or the earnings and profits of the taxable year, are earnings and profits for a period beginning after February 28, 1913, the determination of either must be in accordance with the rules herein prescribed for the ascertainment of earnings and profits for any period beginning after February 28, 1913. Under subparagraph (1) of this paragraph, such gain or loss is determined by using the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, but disregarding value as of March 1, 1913. Under subparagraph (2) of this paragraph, there is used such adjusted basis for determining gain, giving effect to the value as of March 1, 1913, whenever applicable. In both cases the rules are the same as those governing depreciation and depletion in computing earnings and profits (see § 1.312-6) Under both subparagraphs (1) and (2) of this paragraph, the adjusted basis is subject to the limitations of the third sentence of section 312 (f) (1) requiring the use of adjustments proper in determining earnings and profits. The proper adjustments may differ under (A) and (B) of the first sentence of section 312 (f) (1) depending upon the basis to which the adjustments are to be made. If the application of (B) of the first sentence of section 312 (f) (1) results in a loss and if the application of (A) of such sentence to the same transaction reaches a different result, then the loss under (B) of such first sentence will be subject to the adjustment thereto required by section 312 (g) (2) (See § 1.312-9)

(b) (1) The gain or loss so realized increases or decreases the earnings and profits to, but not beyond, the extent to which such gain or loss was recognized in computing taxable income (or net income, as the case may be) under the law applicable to the year in which such sale or disposition was made. As used in this paragraph, the term "recognized" has reference to that kind of realized gain or loss which is recognized for income tax purposes by the statute applicable to the year in which the gain or loss was realized. For example, see section 356. A loss (other than a wash sale loss with respect to which a deduction is disallowed under the provisions of section 1091 or corresponding provisions of prior revenue laws) may be recognized though not allowed as a deduction (by reason, for example, of the operation of sections 267 and 1211 and corresponding provisions of prior revenue laws) but the mere fact that it is not allowed does not prevent decrease in earnings and profits by the amount of such disallowed loss. Wash sale losses, however, disallowed under section 1091 and corresponding provisions of prior revenue laws, are deemed nonrecognized losses and do not reduce earnings or profits. The "recognized" gain or loss for the purpose of computing earnings and profits is determined by applying the recognition provisions to the realized gain or loss computed under the provisions of section 312 (f) (1) as distinguished from the realized gain or loss used in computing taxable income (or net income, as the case may be)

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

*Example (1).* Corporation X on January 1, 1952, owned stock in Corporation Y which it had acquired from Corporation Y in December 1951, in an exchange transaction in which no gain or loss was recognized. The adjusted basis to Corporation X of the property exchanged by it for the stock in Corporation Y was $30,000. The fair market value of the stock in Corporation Y when received by Corporation X was $930,000. On April 9, 1955, Corporation X made a cash distribution of $900,000 and, except for the possible effect of the transaction in 1951, had no earnings or profits accumulated after February 28, 1913, and had no earnings or profits for the taxable year. The amount of $900,000 representing the excess of the fair market value of the stock of Corporation Y over the adjusted basis of the property exchanged therefor was not recognized gain to Corporation X under the provisions of section 112 of the Internal Revenue Code of 1939. Accordingly, the earnings and profits of Corporation X are not increased by $900,000, the amount of the gain realized but not recognized in the exchange, and the distribution was not a taxable dividend. The basis in the hands of Corporation Y of the property acquired by it from Corporation X is $30,000. If such property is thereafter sold by Corporation Y, gain or loss will be computed on such basis of $30,000, and earnings and profits will be increased or decreased accordingly.

*Example (2).* On January 2, 1910, Corporation M acquired nondepreciable property at a cost of $1,000. On March 1, 1913, the fair market value of such property in the hands of Corporation M was $2,200. On December 31, 1952, Corporation M transfers such property to Corporation N in exchange for $1,900 in cash and all Corporation N's stock, which has a fair market value of $1,100. For the purpose of computing the total earnings and profits of Corporation M, the gain on such transaction is $2,000 (the sum of $1,900 in cash and stock worth $1,100 minus $1,000, the adjusted basis for computing gain, determined without regard to March 1, 1913, value), $1,900 of which is recognized under section 356, since this was the amount of money received, although for the purpose of computing net income the gain is only $800 (the sum of $1,900 in cash and stock worth $1,100, minus $2,200, the adjusted basis for computing gain determined by giving effect to March 1, 1913, value). Such earnings and profits will therefore be increased by $1,900. In computing the earnings and profits of Corporation M for any period beginning after February 28, 1913, however, the gain arising from the transaction, like the taxable gain, is only $800, all of which is recognized under section 112 (c) of the Internal Revenue Code of 1939, the money received being in excess of such amount. Such earnings and profits will therefore be increased by only $800 as a result of the transaction. For increase in that part of the earnings and profits consisting of increase in value of property accrued before, but realized on or after March 1, 1913, see § 1.312-9.

*Example (3).* On July 31, 1955, Corporation R owned oil-producing property acquired after February 28, 1913, at a cost of $200,000, but having an adjusted basis (by reason of taking percentage depletion) of $100,000 for determining gain. However, the adjusted basis of such property to be used in computing gain or loss for the purpose of earnings and profits is, because of the provisions of the third sentence of section 312 (f) (1), $150,000. On such day Corporation R transferred such property to Corporation S in exchange for $25,000 in cash and all of the stock of Corporation S, which had a fair market value of $100,000. For the purpose of computing taxable income, Corporation R has realized a gain of $25,000 as a result of this transaction, all of which is recognized under section 356. For the purpose of computing earnings and profits, however, Corporation R has realized a loss of $25,000, none of which is recognized owing to the provisions of section 356 (c). The earnings and profits of Corporation R are therefore neither increased nor decreased as a result of the transaction. The adjusted basis of the Corporation S stock in the hands of Corporation R for purposes of computing earnings and profits, however, will be $125,000 (though only $100,000 for the purpose of computing taxable income), computed as follows:

| | |
|---|---|
| Basis of property transferred | $200,000 |
| Less money received on exchange | 25,000 |
| Plus gain or minus loss recognized on exchange | None |
| Basis of stock | 175,000 |
| Less adjustments (same as those used in determining adjusted basis of property transferred) | 50,000 |
| Adjusted basis of stock | 125,000 |

If, therefore, Corporation R should subsequently sell the Corporation S stock for $100,000, a loss of $25,000 will again be realized for the purpose of computing earnings and profits, all of which will be recognized and will be applied to decrease the earnings and profits of Corporation R.

(c) (1) The third sentence of section 312 (f) (1) provides for cases in which the adjustments, prescribed in section 1016, to the basis indicated in (A) or (B) as the case may be, of the first sentence of section 312 (f) (1) differ from the adjustments to such basis proper for the purpose of determining earnings or profits. The adjustments provided by such third sentence reflect the treatment provided by § 1.312–6 relative to cases where the deductions for depletion and depreciation in computing taxable income (or net income, as the case may be) differ from the deductions proper for the purpose of computing earnings and profits.

(2) The effect of the third sentence of section 312 (f) (1) may be illustrated by the following examples:

*Example (1).* Corporation X purchased on January 2, 1931, an oil lease at a cost of $10,000. The lease was operated only for the years 1931 and 1932. The deduction for depletion in each of the years 1931 and 1932 amounted to $2,750, of which amount $1,750 represented percentage depletion in excess of depletion based on cost. The lease was sold in 1955 for $15,000. Under section 1016 (a) (2), in determining the gain or loss from the sale of the property, the basis must be adjusted for cost depletion of $1,000 in 1931 and percentage depletion of $2,750 in 1932. However, the adjustment of such basis, proper for the determination of earnings and profits, is $1,000 for each year, or $2,000. Hence, the cost is to be adjusted only to the extent of $2,000, leaving an adjusted basis of $8,000 and the earnings and profits will be increased by $7,000, and not by $8,750. The difference of $1,750 is equal to the amount by which the percentage depletion for the year 1932 ($2,750) exceeds the depletion on cost for that year ($1,000) and has already been applied in the computation of earnings and profits for the year 1932 by taking into account only $1,000 instead of $2,750 for depletion in the computation of such earnings and profits. (See § 1.316–1.)

*Example (2).* If, in example (1), above, the property, instead of being sold, is exchanged in a transaction described in section 1031 for like property having a fair market value of $7,750 and cash of $7,250, then the increase in earnings and profits amounts to $7,000, that is, $15,000 ($7,750 plus $7,250) minus the basis of $8,000. However, in computing taxable income of Corporation X, the gain is $8,750, that is, $15,000 minus $6,250 ($10,000 less depletion of $3,750), of which only $7,250 is recognized because the recognized gain cannot exceed the sum of money received in the transaction. See section 1031 (b) and the corresponding provisions of prior revenue laws. If, however, the cash received was only $2,250 and the value of the property received was $12,750, then the increase in earnings and profits would be $2,250, that amount being the gain recognized under section 1031.

(d) For adjustment and allocation of the earnings and profits of the transferor as between the transferor and the transferee in cases where the transfer of property by one corporation to another corporation results in the nonrecognition in whole or in part of gain or loss, see § 1.312–10; and see section 381 for earnings and profits of successor corporations in certain transactions.

§ 1.312–8 *Effect on earnings and profits of receipt of tax-free distributions requiring adjustment or allocation of basis of stock.* (a) In order to determine the effect on earnings and profits, where a corporation receives (after February 28, 1913) from a second corporation a distribution which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, section 312 (f) prescribes certain rules. It provides that the amount of such distribution shall not increase the earnings and profits of the first or receiving corporation in the following cases: (1) No such increase shall be made in respect of the part of such distribution which (under the law applicable to the year in which the distribution was made) is directly applied in reduction of the basis of the stock in respect of which the distribution was made and (2) no such increase shall be made if (under the law applicable to the year in which the distribution was made) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would but for section 307 (b) be so allocated). Where, therefore, the law (applicable to the year in which the distribution was made, as, for example, a distribution in 1934 from earnings and profits accumulated before March 1, 1913) requires that the amount of such distribution shall be applied against and reduce the basis of the stock with respect to which the distribution was made, there is no increase in the earnings and profits by reason of the receipt of such distribution. Similarly, where there is received by a corporation a distribution from another corporation in the form of a stock dividend and the law applicable to the year in which such distribution was made requires the allocation, as between the old stock and the stock received as a dividend, of the basis of the old stock (or such basis would but for section 307 (b) be so allocated), then there is no increase in the earnings and profits by reason of the receipt of such stock dividend even though such stock dividend constitutes income within the meaning of the sixteenth amendment to the Constitution.

(b) The principles set forth in paragraph (a) of this section may be illustrated by the following examples:

*Example (1).* Corporation X in 1955 distributed to Corporation Y, one of its shareholders, $10,000 which was out of earnings or profits accumulated before March 1, 1913, and did not exceed the adjusted basis of the stock in respect of which the distribution was made. This amount of $10,000 was, therefore, a tax-free distribution and under the provisions of section 301 (c) (2) must be applied against and reduce the adjusted basis of the stock in respect of which the distribution was made. The earnings and profits of Corporation Y are not increased by reason of the receipt of this distribution.

*Example (2).* Corporation Z in 1955 had outstanding common and preferred stock of which Corporation Y held 100 shares of the common and no preferred. The stock had a cost basis to Corporation Y of $100 per share, or a total cost of $10,000. In December of that year it received a dividend of 100 shares of the preferred stock of Corporation Z. Such distribution is a stock dividend which, under section 305, was not taxable and was accordingly not included in the gross income of Corporation Y. The original cost of $10,000 is allocated to the 200 shares of Corporation Z none of which has been sold or otherwise disposed of by Corporation Y. See section 307 and § 1.307–1. The earnings and profits of Corporation Y are not increased by reason of the receipt of such stock dividend.

§ 1.312–9 *Adjustments to earnings and profits reflecting increase in value accrued before March 1, 1913.* (a) In order to determine, for the purpose of ascertaining the source of dividend distributions, that part of the earnings and profits which is represented by increase in value of property accrued before, but realized on or after, March 1, 1913, section 312 (g) prescribes certain rules.

(b) (1) Section 312 (g) (1) sets forth the general rule with respect to computing the increase to be made in that part of the earnings and profits consisting of increase in value of property accrued before, but realized on or after, March 1, 1913.

(2) The effect of section 312 (g) (1) may be illustrated by the following examples:

*Example (1).* Corporation X acquired nondepreciable property before March 1, 1913, at a cost of $10,000. Its fair market value as of March 1, 1913, was $12,000 and it was sold in 1955 for $15,000. The increase in earnings and profits based on the value as of March 1, 1913, representing earnings and profits accumulated since February 28, 1913, is $3,000. If the basis is determined without regard to the value as of March 1, 1913, there would be an increase in earnings and profits of $5,000. The difference of $2,000 ($5,000 minus $3,000) represents the increase to be made in that part of the earnings and profits of Corporation X consisting of the increase in value of property accrued before, but realized on or after, March 1, 1913.

*Example (2).* Corporation Y acquired depreciable property in 1903 at a cost of $100,000. Assuming no additions or betterments, and that the depreciation sustained before March 1, 1913, was $10,000, the adjusted cost as of that date was $90,000. Its fair market value as of March 1, 1913, was $94,000 and on February 28, 1955, it was sold for $25,000. For the purpose of determining gain from the sale, the basis of the property is the fair market value of $94,000 as of March 1, 1913, adjusted for depreciation for the period subsequent to February 28, 1913, computed on such fair market value. If the amount of the depreciation deduction allowed after February 28, 1913, and properly allowable for each of such years to the date of the sale in 1955 is the aggregate sum of $81,467, the adjusted basis for determining gain in 1955 ($94,000 less $81,467) is $12,533 and the gain would be $12,467 ($25,000 less $12,533). The increase in earnings and profits accumulated since February 28, 1913, by reason of the sale, based on the value as of March 1, 1913, adjusted for depreciation is $12,467. If the depreciation since February 28, 1913, had been based on the adjusted cost of $90,000 ($100,000 less $10,000) instead of the March 1, 1913, value of $94,000, the depreciation sustained from that date to the date of sale would have been $78,000 instead of $81,467 and the actual gain on the sale based on the cost of $100,000 adjusted by depreciation on such cost to $12,000 ($100,000 reduced by the

sum of $10,000 and $78,000) would be $13,000 ($25,000 less $12,000). If the adjusted basis of the property was determined without regard to the value as of March 1, 1913, there would be an increase in earnings and profits of $13,000. The difference of $533 ($13,000 minus $12,467) represents the increase to be made in that part of the earnings and profits of Corporation Y consisting of the increase in value of property accrued before, but realized on or after, March 1, 1913 (assuming that the proper increase in such surplus had been made each year for the difference between depreciation based on cost and the depreciation based on March 1, 1913, value). Thus, the total increase in that part of earnings and profits consisting of the increase in value of property accrued before, but realized on or after, March 1, 1913, is $4,000 ($94,000 less $90,000).

(c) (1) Section 312 (g) (2) is an exception to the general rule in section 312 (g) (1) and also operates as a limitation on the application of section 312 (f). It provides that, if the application of part (B) of the first sentence of section 312 (f) (1) to a sale or other disposition after February 28, 1913, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding section 312 (f) and in lieu of the rule provided in section 312 (g) (1) the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss, exceeds the adjusted basis computed without regard to the fair market value of the property on March 1, 1913. If the amount so applied in reduction of the loss exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before, but realized on or after March 1, 1913.

(2) The application of section 312 (g) (2) may be illustrated by the following examples:

*Example (1).* Corporation Y acquired nondepreciable property before March 1, 1913, at a cost of $8,000. Its fair market value as of March 1, 1913, was $13,000, and it was sold in 1955 for $10,000. Under (B) of the first sentence of section 312 (f) (1) the adjusted basis would be $13,000 and there would be a loss of $3,000. The application of (B) of the first sentence of section 312 (f) (1) would result in a loss from the sale in 1955 to be applied in decrease of earnings and profits for that year. Section 312 (g) (2), however, applies and the loss of $3,000 is reduced by the amount by which the adjusted basis of $13,000 exceeds the cost of $8,000 (the adjusted basis computed without regard to the value on March 1, 1913), namely, $5,000. The amount of the loss is, accordingly, reduced from $3,000 to zero and there is no decrease in earnings and profits of Corporation Y for the year 1955 as a result of the sale. The amount applied in reduction of the decrease, namely, $5,000, exceeds $3,000. Accordingly, as a result of the sale the excess of $2,000 increases that part of the earnings and profits of Corporation Y consisting of increase in value of property accrued before, but realized on or after March 1, 1913.

*Example (2).* Corporation Z acquired nondepreciable property before March 1, 1913, at a cost of $10,000. Its fair market value as of March 1, 1913, was $12,000, and it was sold in 1955 for $8,000. Under (B) of the first sentence of section 312 (f) (1) the adjusted basis would be $12,000 and there would be a loss of $4,000. The application of (B) of the first sentence of section 312 (f) (1) would result in a loss from the sale in 1955 to be applied in decrease of earnings and profits for that year. Section 312 (g) (2), however, applies and the loss of $4,000 is reduced by the amount by which the adjusted basis of $12,000 exceeds the cost of $10,000 (the adjusted basis computed without regard to the value on March 1, 1913), namely, $2,000. The amount of the loss is, accordingly, reduced from $4,000 to $2,000 and the decrease in earnings and profits of Corporation Z for the year 1955 as a result of the sale is $2,000 instead of $4,000. The amount applied in reduction of the decrease, namely, $2,000, does not exceed $4,000. Accordingly, as a result of the sale there is no increase in that part of the earnings and profits of Corporation Z consisting of increase in value of property accrued before, but realized on or after March 1, 1913.

§ 1.312–10 *Allocation of earnings in certain corporate separations.* (a) If one corporation transfers part of its assets constituting an active trade or business to another corporation in a transaction to which section 368 (a) (1) (D) applies and immediately thereafter the stock and securities of the controlled corporation are distributed in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, the earnings and profits of the distributing corporation immediately before the transaction shall be allocated between the distributing corporation and the controlled corporation. In the case of a newly created controlled corporation, such allocation generally shall be made in proportion to the fair market value of the business or businesses (and interests in any other properties) retained by the distributing corporation and the business or businesses (and interests in any other properties) of the controlled corporation immediately after the transaction. In a proper case, allocation shall be made between the distributing corporation and the controlled corporation in proportion to the net basis of the assets transferred and of the assets retained or by such other method as may be appropriate under the facts and circumstances of the case. The term "net basis" means the basis of the assets less liabilities assumed or liabilities to which such assets are subject. The part of the earnings and profits of the taxable year of the distributing corporation in which the transaction occurs allocable to the controlled corporation shall be included in the computation of the earnings and profits of the first taxable year of the controlled corporation ending after the date of the transaction.

(b) If a distribution or exchange to which section 355 applies (or so much of section 356 as relates to section 355) is not in pursuance of a plan meeting the requirements of a reorganization as defined in section 368 (a) (1) (D) the earnings and profits of the distributing corporation shall be decreased by the lesser of the following amounts:

(1) The amount by which the earnings and profits of the distributing corporation would have been decreased if it had transferred the stock of the controlled corporation to a new corporation in a reorganization to which section 368 (a) (1) (D) applied and immediately thereafter distributed the stock of such new corporation or,

(2) The net worth of the controlled corporation. (For this purpose the term "net worth" means the sum of the bases of all of the properties plus cash minus all liabilities.)

If the earnings and profits of the controlled corporation immediately before the transaction are less than the amount of the decrease in earnings and profits of the distributing corporation (including a case in which the controlled corporation has a deficit) the earnings and profits of the controlled corporation, after the transaction, shall be equal to the amount of such decrease. If the earnings and profits of the controlled corporation immediately before the transaction are more than the amount of the decrease in the earnings and profits of the distributing corporation, they shall remain unchanged.

(c) In no case shall any part of a deficit of a distributing corporation within the meaning of section 355 be allocated to a controlled corporation.

§ 1.312–11 *Effect on earnings and profits of certain other tax-free exchanges and tax-free distributions.* (a) (1) If property is transferred by one corporation to another corporation within the provisions of section 351, no allocation of earnings and profits shall be made between the transferor and transferee by reason of such transfer. The preceding sentence may not apply when such transfer immediately follows or immediately precedes either a reorganization under section 368 or a liquidation under section 332 to which section 334 (b) (2) does not apply. See § 1.312–10 for allocation of earnings and profits upon the distribution of the stock of a controlled corporation in a transaction subject to section 355 or so much of section 356 as relates to section 355.

(2) The following example will illustrate the application of paragraph (a) (1) of this section:

*Example.* Corporation A transfers half of its assets subject to half of its liabilities to Corporation B in exchange for all of its stock. Such stock is not distributed by Corporation A. The transaction is not followed or preceded by a reorganization or a liquidation. No allocation of earnings and profits from Corporation A to Corporation B shall be made.

(b) The general rule provided in section 316 that every distribution is made out of earnings or profits to the extent thereof and from the most recently accumulated earnings or profits does not apply to:

(1) The distribution, in pursuance of a plan of reorganization, by or on behalf of a corporation a party to the reorganization, or in a transaction subject to section 355, to its shareholders—

(i) Of stock or securities in such corporation or in another corporation a party to the reorganization in any taxable year beginning before January 1, 1934, without the surrender by the distributees of stock or securities in such corporation (see section 112 (g) of the Revenue Act of 1932) or

(ii) Of stock (other than preferred stock) in another corporation which is

a party to the reorganization without the surrender by the distributees of stock in the distributing corporation if the distribution occurs after October 20, 1951, and is subject to section 112 (b) (11) of the Internal Revenue Code of 1939; or

(iii) Of stock or securities in such corporation or in another corporation a party to the reorganization in any taxable year beginning before January 1, 1939, or on or after such date, in exchange for its stock or securities in a transaction to which section 112 (b) (3) of the Internal Revenue Code of 1939 was applicable; or

(iv) Of stock or securities in such corporation or in another corporation in exchange for its stock or securities in a transaction subject to section 354 or 355,

if no gain to the distributees from the receipt of such stock or securities was recognized by law.

(2) The distribution in any taxable year (beginning before January 1, 1939, or on or after such date) of stock or securities, or other property or money, to a corporation in complete liquidation of another corporation, under the circumstances described in section 112 (b) (6) of the Revenue Act of 1936, the Revenue Act of 1938, of the Internal Revenue Code of 1939, or section 332.

(3) The distribution in any taxable year (beginning after December 31, 1939) of stock or securities, or other property or money, in the case of an exchange or distribution described in section 371 of the Internal Revenue Code of 1939 or in section 1081 (relating to exchanges and distributions in obedience to orders of the Securities and Exchange Commission), if no gain to the distributee from the receipt of such stock, securities, or other property or money was recognized by law.

(4) A stock dividend which was not subject to tax in the hands of the distributee because either it did not constitute income to him within the meaning of the sixteenth amendment to the Constitution or because exempt to him under section 115 (f) of the Revenue Act of 1934 or a corresponding provision of a prior Revenue Act, or section 305.

(5) The distribution, in a taxable year of the distributee beginning after December 31, 1931, by or on behalf of an insolvent corporation, in connection with a section 112 (b) (10) reorganization under the Internal Revenue Code of 1939, or in a transaction subject to section 371, of stock or securities in a corporation organized or made use of to effectuate the plan of reorganization, if under section 112 (1) of the Internal Revenue Code of 1939 or section 371 no gain to the distributee from the receipt of such stock or securities was recognized by law.

(c) A distribution described in subparagraph (1) (2) (3) (4) or (5) of paragraph (b) does not diminish the earnings or profits of any corporation. In such cases, the earnings or profits remain intact and available for distribution as dividends by the corporation making such distribution, or by another corporation to which the earnings or profits are transferred upon such reorganization or other exchange. In the case, however, of amounts distributed in liquidation (other than a tax-free liquidation or reorganization described in subparagraph (1) (2) (3) or (5) of paragraph (b)) the earnings or profits of the corporation making the distribution are diminished by the portion of such distribution properly chargeable to earnings or profits accumulated after February 28, 1913, after first deducting from the amount of such distribution the portion thereof allocable to capital account.

(d) For the purposes of this section, the terms "reorganization" and "party to the reorganization" shall, for any taxable year beginning before January 1, 1934, have the meanings assigned to such terms in section 112 of the Revenue Act of 1932; for any taxable year beginning after December 31, 1933, and before January 1, 1936, have the meanings assigned to such terms in section 112 of the Revenue Act of 1934, for any taxable year beginning after December 31, 1935, and before January 1, 1938, have the meanings assigned to such terms in section 112 of the Revenue Act of 1936; for any taxable year beginning after December 31, 1937; and before January 1, 1939, have the meanings assigned to such terms in section 112 of the Revenue Act of 1938; and for any taxable year beginning after December 31, 1938, and ending before June 22, 1954, providing no election is made under section 393 (b) (2) of the Internal Revenue Code of 1954, have the meanings assigned to such terms in section 213 (b) of the Revenue Act of 1939.

§ 1.312–12 *Distributions of proceeds of loans guaranteed by the United States.* (a) The provisions of section 312 (j) are applicable with respect to a loan, any portion of which is guaranteed by an agency of the United States Government without regard to the percentage of such loan subject to such guarantee.

(b) The application of section 312 (j) is illustrated by the following example:

*Example.* Corporation A borrowed $1,000,000 for the purpose of construction of an apartment house, the cost and adjusted basis of which was $900,000. This loan was guaranteed by an agency of the United States Government. One year after such loan was made and after the completion of construction of the building (but before such corporation had received any income) it distributed $100,000 cash to its shareholders. The earnings and profits of the taxable year of such corporation are increased (pursuant to section 312 (j)) by $100,000 immediately prior to such distribution and are decreased by $100,000 immediately after such distribution. Such decrease, however, does not reduce the earnings and profits below zero. Two years later, it has no accumulated earnings and has earnings of the taxable year of $100,000. Before it has made any payments on the loan, it distributes $200,000 to its shareholders. The earnings and profits of the taxable year of the corporation ($100,000) are increased by $100,000, the excess of the amount of the guaranteed loan over the adjusted basis of the apartment house (calculated without adjustment for depreciation). The entire amount of each distribution is treated as a distribution out of earnings and profits and, accordingly, as a taxable dividend.

*Definitions; Constructive Ownership of Stock*

§ 1.316 *Statutory provisions; dividend defined.*

SEC. 316. *Dividend Defined*—(a) *General rule.* For purposes of this subtitle, the term "dividend" means any distribution of property made by a corporation to its shareholders—

(1) Out of its earnings and profits accumulated after February 28, 1913, or

(2) Out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

Except as otherwise provided in this subtitle, every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits. To the extent that any distribution is, under any provision of this subchapter, treated as a distribution of property to which section 301 applies, such distribution shall be treated as a distribution of property for purposes of this subsection.

(b) *Special rules*—(1) *Certain insurance company dividends.* The definition in subsection (a) shall not apply to the term "dividend" as used in sections 803 (e), 821 (a) (2), 823 (2), and 832 (c) (11) (where the reference is to dividends of insurance companies paid to policyholders.)

(2) *Distributions by personal holding companies.* In the case of a corporation which—

(A) Under the law applicable to the taxable year in which the distribution is made, is a personal holding company (as defined in section 542), or

(B) For the taxable year in respect of which the distribution is made under section 563 (b) (relating to dividends paid after the close of the taxable year), or section 547 (relating to deficiency dividends), or the corresponding provisions of prior law, is a personal holding company under the law applicable to such taxable year,

the term "dividend" also means any distribution of property (whether or not a dividend as defined in subsection (a)) made by the corporation to its shareholders, to the extent of its undistributed personal holding company income (determined under section 545 without regard to distributions under this paragraph) for such year.

§ 1.316–1 *Dividends.* (a) (1) The term "dividend" for the purpose of subtitle A (except when used in section 803 (e) section 821 (a) (2) section 823 (2) and section 832 (c) (11) where the reference is to dividends of insurance companies paid to policyholders) comprises any distribution of property as defined in section 317 in the ordinary course of business, even though extraordinary in amount, made by a domestic or foreign corporation to its shareholders out of either—

(i) Earnings and profits accumulated since February 28, 1913, or

(ii) Earnings and profits of the taxable year computed without regard to the amount of the earnings and profits (whether of such year or accumulated since February 28, 1913) at the time the distribution was made.

The earnings and profits of the taxable year shall be computed as of the close of such year, without diminution by reason of any distributions made during the taxable year. For the purpose of deter-

mining whether a distribution constitutes a dividend, it is unnecessary to ascertain the amount of the earnings and profits accumulated since February 28, 1913, if the earnings and profits of the taxable year are equal to or in excess of the total amount of the distributions made within such year.

(2) Where a corporation distributes property to its shareholders on or after June 22, 1954, the amount of the distribution which is a dividend to them may not exceed the earnings and profits of the distributing corporation.

(3) The rule of (2) above may be illustrated by the following example:

*Example.* X and Y, individuals, each own one-half of the stock of Corporation A which has earnings and profits of $10,000. Corporation A distributes property having a basis of $6,000 and a fair market value of $16,000 to its shareholders, each shareholder receiving property with a basis of $3,000 and with a fair market value of $8,000 in a distribution to which section 301 applies. The amount taxable to each shareholder as a dividend under section 301 (c) is $5,000.

(b) In the case of a corporation which, under the law applicable to the taxable year in which a distribution is made, is a personal holding company or which, for the taxable year in respect of which a distribution is made under section 563, relating to dividends paid within 2½ months after the close of the taxable year, or section 547 (relating to deficiency dividends) or corresponding provisions of a prior income-tax law, was under the applicable law a personal holding company, the term "dividend," in addition to the meaning set forth in the first sentence of section 316, also means a distribution to its shareholders as follows: A distribution within a taxable year of the corporation, or of a shareholder, is a dividend to the extent of the corporation's undistributed personal holding company income (determined under section 545 without regard to distributions under section 316 (b) (2)) for the taxable year in which, or, in the case of a distribution under section 563 or section 547, the taxable year in respect of which, the distribution was made.

(c) Except as provided in section 316 (b) (1) the term "dividend" includes any distribution of property to shareholders to the extent made out of accumulated or current earnings and profits. See, however, section 331 (relating to distributions in complete or partial liquidation) section 301 (e) (relating to distributions by personal service corporations) section 302 (b) (relating to redemptions treated as amounts received from the sale or exchange of stock) and section 303 (relating to distributions in redemption of stock to pay death taxes) See also section 305 (b) for certain distributions of stock or stock rights treated as distributions of property.

(d) The application of section 316 may be illustrated by the following examples:

*Example (1).* At the beginning of the calendar year 1955, Corporation M had an operating deficit of $200,000 and the earnings and profits for the year amounted to $100,000. Beginning on March 16, 1955, the corporation made quarterly distributions of $25,000 during the taxable year to its shareholders. Each distribution is a taxable dividend in full, irrespective of the actual or the pro rata amount of the earnings and profits on hand at any of the dates of distribution, since the total distributions made during the year ($100,000) did not exceed the total earnings and profits of the year ($100,000).

*Example (2).* At the beginning of the calendar year 1955, Corporation N, a personal holding company, had no accumulated earnings and profits. During that year it made no earnings and profits but, due to the disallowance of certain deductions, its undistributed personal holding company income (determined under section 545 without regard to distributions under section 316 (b) (2)) was $16,000. It distributed to shareholders on December 15, 1955, $15,000, and on February 1, 1956, $1,000, the latter amount being claimed as a deduction under section 563 in its personal holding company schedule for 1955 filed with its return for 1955 on March 15, 1956. Both distributions are taxable dividends in full, since they do not exceed the undistributed personal holding company income (determined without regard to such distributions) for 1955, the taxable year in which the distribution of $15,000 was made and with respect to which the distribution of $1,000 was made. It is immaterial whether Corporation N is a personal holding company for the taxable year 1956 or whether it had any income for that year.

*Example (3).* In 1959, a deficiency in personal holding company tax was established against Corporation O for the taxable year 1955 in the amount of $35,500 based on an undistributed personal holding company income of $42,000. Corporation O, complied with the provisions of section 547 and in December 1959 distributed $42,000 to its stockholders as "deficiency dividends." The distribution of $42,000 is a taxable dividend since it does not exceed $42,000 (the undistributed personal holding company income for 1955, the taxable year with respect to which the distribution was made). It is immaterial whether Corporation O is a personal holding company for the taxable year 1959 or whether it had any income for that year.

*Example (4).* At the beginning of the taxable year 1955, Corporation P a personal holding company, had a deficit in earnings and profits of $200,000. During that year it made earnings and profits of $90,000. For that year, however, it had an undistributed personal holding income (determined under section 545 without regard to distributions under section 316 (b) (2)) of $80,000. During such taxable year it distributed to its shareholders $100,000. The distribution of $100,000 is a taxable dividend to the extent of $90,000 since its earnings and profits for that year, $90,000, exceed $80,000 the undistributed personal holding company income determined without regard to such distribution.

§ 1.316–2 *Sources of distribution in general.* (a) For the purpose of income taxation every distribution made by a corporation is made out of earnings and profits to the extent thereof and from the most recently accumulated earnings and profits. In determining the source of a distribution, consideration should be given first, to the earnings and profits of the taxable year; second, to the earnings and profits accumulated since February 28, 1913, only in the case where, and to the extent that, the distributions made during the taxable year are not regarded as out of the earnings and profits of that year; third, to the earnings and profits accumulated before March 1, 1913, only after all the earnings and profits of the taxable year and all the earnings and profits accumulated since February 28, 1913, have been distributed; and, fourth, to sources other than earnings and profits only after the earnings and profits have been distributed.

(b) If the earnings and profits of the taxable year (computed as of the close of the year without diminution by reason of any distributions made during the year and without regard to the amount of earnings and profits at the time of the distribution) are sufficient in amount to cover all the distributions made during that year, then each distribution is a taxable dividend. See § 1.316–1. If the distributions made during the taxable year consist only of money and exceed the earnings and profits of such year, then that proportion of each distribution which the total of the earnings and profits of the year bears to the total distributions made during the year shall be regarded as out of the earnings and profits of that year. The portion of each such distribution which is not regarded as out of earnings and profits of the taxable year shall be considered a taxable dividend to the extent of the earnings and profits accumulated since February 28, 1913, and available on the date of the distribution. In any case in which it is necessary to determine the amount of earnings and profits accumulated since February 28, 1913, and the actual earnings and profits to the date of a distribution within any taxable year (whether beginning before January 1, 1936, or, in the case of an operating deficit, on or after that date) cannot be shown, the earnings and profits for the year (or accounting period, if less than a year) in which the distribution was made shall be prorated to the date of the distribution not counting the date on which the distribution was made.

(c) The provisions of the section may be illustrated by the following example:

*Example.* At the beginning of the calendar year 1955, Corporation M had $12,000 in earnings and profits accumulated since February 28, 1913. Its earnings and profits for 1955 amounted to $30,000. During the year it made quarterly cash distributions of $15,000 each. Of each of the four distributions made, $7,500 (that portion of $15,000 which the amount of $30,000, the total earnings and profits of the taxable year, bears to $60,000, the total distributions made during the year) was paid out of the earnings and profits of the taxable year; and of the first and second distributions, $7,500 and $4,500, respectively, were paid out of the earnings and profits accumulated after February 28, 1913, and before the taxable year, as follows:

| Distributions during 1955 | | Portion out of earnings and profits of the taxable year | Portion out of earnings accumulated since Feb. 28, 1913, and before the taxable year | Taxable amount of each distribution |
|---|---|---|---|---|
| Date | Amount | | | |
| March 10 | $15,000 | $7,500 | $7,500 | $15,000 |
| June 10 | 15,000 | 7,500 | 4,500 | 12,000 |
| September 10 | 15,000 | 7,500 | | 7,500 |
| December 10 | 15,000 | 7,500 | | 7,500 |
| Total amount taxable as dividends | | | | 42,000 |

(d) Any distribution by a corporation out of earnings and profits accumulated before March 1, 1913, or out of increase in value of property accrued before March 1, 1913 (whether or not realized by sale or other disposition, and, if realized, whether before, on, or after March 1, 1913) is not a dividend within the meaning of subtitle A.

(e) A reserve set up out of gross income by a corporation and maintained for the purpose of making good any loss of capital assets on account of depletion or depreciation is not a part of surplus out of which ordinary dividends may be paid. A distribution made from a depletion or a depreciation reserve based upon the cost or other basis of the property will not be considered as having been paid out of earnings and profits, but the amount thereof shall be applied against and reduce the cost or other basis of the stock upon which declared. If such a distribution is in excess of the basis, the excess shall be taxed as a gain from the sale or other disposition of property as provided in section 301 (c) (3) (A) A distribution from a depletion reserve based upon discovery value to the extent that such reserve represents the excess of the discovery value over the cost or other basis for determining gain or loss, is, when received by the shareholders, taxable as an ordinary dividend. The amount by which a corporation's percentage depletion allowance for any year exceeds depletion sustained on cost or other basis, that is, determined without regard to discovery or percentage depletion allowances for the year of distribution or prior years, constitutes a part of the corporation's "earnings and profits accumulated after February 28, 1913," within the meaning of section 316, and, upon distribution to shareholders, is taxable to them as a dividend. A distribution made from that portion of a depletion reserve based upon a valuation as of March 1, 1913, which is in excess of the depletion reserve based upon cost, will not be considered as having been paid out of earnings and profits, but the amount of the distribution shall be applied against and reduce the cost or other basis of the stock upon which declared. See section 301. No distribution, however, can be made from such a reserve until all the earnings and profits of the corporation have first been distributed.

§ 1.317 *Statutory provisions; other definitions.*

SEC. 317. *Other definitions*—(a) *Property.* For purposes of this part, the term "property" means money, securities, and any other property; except that such term does not include stock in the corporation making the distribution (or rights to acquire such stock).

(b) *Redemption of stock.* For purposes of this part, stock shall be treated as redeemed by a corporation if the corporation acquires its stock from a shareholder in exchange for property, whether or not the stock so acquired is cancelled, retired, or held as treasury stock.

§ 1.317–1 *Property defined.* The term "property" for purposes of Part 1 of subchapter C, means any property (including money, securities, and indebtedness to the corporation) other than stock, or rights to acquire stock, in the corporation making the distribution.

§ 1.318 *Statutory provisions; constructive ownership of stock.*

SEC. 318. *Constructive ownership of stock*—(a) *General rule.* For purposes of those provisions of this subchapter to which the rules contained in this section are expressly made applicable—

(1) *Members of family*—(A) *In general.* An individual shall be considered as owning the stock owned, directly or indirectly, by or for—

(i) His spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), and

(ii) His children, grandchildren and parents.

(B) *Effect of adoption.* For purposes of subparagraph (A) (ii), a legally adopted child of an individual shall be treated as a child of such individual by blood.

(2) *Partnerships, estates, trusts and corporations*—(A) *Partnerships and estates.* Stock owned, directly or indirectly, by or for a partnership or estate shall be considered as being owned proportionately by its partners or beneficiaries. Stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate shall be considered as being owned by the partnership or estate.

(B) *Trusts.* Stock owned, directly or indirectly, by or for a trust shall be considered as being owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust. Stock owned, directly or indirectly, by or for a beneficiary of a trust shall be considered as being owned by the trust, unless such beneficiary's interest in the trust is a remote contingent interest. For purposes of the preceding sentence, a contingent interest of a beneficiary in a trust shall be considered remote if, under the maximum exercise of discretion by the trustee in favor of such beneficiary, the value of such interest, computed actuarially, is 5 percent or less of the value of the trust property. Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of Part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as being owned by such person; and such trust shall be treated as owning the stock owned, directly or indirectly, by or for that person. This subparagraph shall not apply with respect to any employees' trust described in section 401 (a) which is exempt from tax under section 501 (a).

(C) *Corporations.* If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, then—

(i) Such person shall be considered as owning the stock owned, directly or indirectly, by or for that corporation, in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation; and

(ii) Such corporation shall be considered as owning the stock owned, directly or indirectly, by or for that person.

(3) *Options.* If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) *Constructive ownership as actual ownership*—(A) *In general.* Except as provided in subparagraph (B), stock constructively owned by a person by reason of the application of paragraph (1), (2), or (3) shall, for purposes of applying paragraph (1), (2), or (3), be treated as actually owned by such person.

(B) *Members of family.* Stock constructively owned by an individual by reason of the application of paragraph (1) shall not be treated as owned by him for purposes of again applying paragraph (1) in order to make another the constructive owner of such stock.

(C) *Option rule in lieu of family rule.* For purposes of this paragraph, if stock may be considered as owned by an individual under paragraph (1) or (3), it shall be considered as owned by him under paragraph (3).

(b) *Cross references.* For provisions to which the rules contained in subsection (a) apply, see—

(1) Section 302 (relating to redemption of stock);

(2) Section 304 (relating to redemption by related corporations);

(3) Section 306 (b) (1) (A) (relating to disposition of section 306 stock);

(4) Section 334 (b) (3) (C) (relating to basis of property received in certain liquidations of subsidiaries); and

(5) Section 382 (a) (3) (relating to special limitations on net operating loss carryovers).

§ 1.318–1 *Constructive ownership of stock; introduction.* (a) For the purposes of certain provisions of subchapter C, section 318 (a) provides that stock owned by a taxpayer includes stock constructively owned by such taxpayer under the rules set forth in such section. An individual is considered to own the stock owned, directly or indirectly, by or for his spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), and by or for his children, grandchildren, and parents. Under section 318 (a) (2) constructive ownership rules are established for partnerships and partners, estates and beneficiaries, trusts and beneficiaries, and corporations and stockholders. If any person has an option to acquire stock, such stock is considered as owned by such person. The term "option" includes an option to acquire such an option and each of a series of such options. The rules of section 318 (a) are applicable to the following sections:

(1) Section 302 (relating to redemption of stock),

(2) Section 304 (relating to redemption by related corporations)

(3) Section 306 (b) (1) (A) (relating to disposition of section 306 stock)

(4) Section 334 (b) (3) (C) (relating to basis of property received in certain liquidations of subsidiaries) and

(5) Section 382 (a) (3) (relating to special limitations on net operating loss carryovers).

Stock constructively owned by a person by reason of the application of paragraph (1), (2) or (3) of section 318 (a) is, for purposes of applying paragraph (1), (2) or (3) treated as actually owned by such person, except as provided in section 318 (a) (4) (B) and § 1.318–4.

(b) In applying section 318 (a) to determine the stock ownership of any person for any one purpose—

(1) A corporation shall not be considered to own its own stock by reason of section 318 (a) (2) (C) (ii),

(2) In any case in which an amount of stock owned by any person may be included in the computation more than one time—

(i) Such stock shall be used in such computation only once, and

(ii) Such stock shall be used in such computation in the manner in which it will impute to the person concerned the largest total stock ownership, and

(3) In determining the 50 percent requirement of section 318 (a) (2) (C) all of the stock owned actually and constructively by the person concerned shall be aggregated.

§ 1.318–2 *Application of general rules.* (a) The application of paragraph (b) of § 1.318–1 may be illustrated by the following examples:

*Example (1).* H, an individual, owns all of the stock of Corporation A. Corporation A is not considered to own the stock owned by H in Corporation A.

*Example (2).* A owns 40 percent of the Brown Corporation and 50 percent of the Green Corporation. Under section 318 (a) (2) (C), the stock ownership of A in the Brown Corporation will be limited to 40 percent of such stock. No amount of the stock of the Brown Corporation considered to be owned by the Green Corporation under section 318 (a) (2) (C) (ii) will be considered as owned by A under section 318 (a) (2) (C) (i) since, under § 1.318–1 (b) (2) (i), the same stock shall not be taken into account twice in the same computation, and pursuant to § 1.318–1 (b) (2) (ii), the amount of stock must be computed as if actually owned by A since this will impute to him the largest total stock ownership. The same result will follow if A is a fifty percent beneficiary of a trust or a fifty percent partner in a partnership rather than a 50 percent shareholder of the Green Corporation.

*Example (3).* Two unrelated individuals, A and B, own stock of a corporation, and are also the beneficiaries of a trust or estate or the members of a partnership. In determining the stock constructively owned by A, the trust, estate or partnership is considered as actually owning the stock owned by B.

*Example (4).* H, an individual, his wife, W, and his son, S, each own one-third of the stock of the Green Corporation. For purposes of determining the amount of stock owned by H, W, or S for the purpose of section 318 (a) (2) (C), the amount of stock held by the other members of the family shall be added pursuant to § 1.318–1 (b) (3) above in applying the 50 percent requirement of such section. H, W, or S, as the case may be, is for this purpose deemed to own 100 percent of the stock of the Green Corporation.

(b) The application of section 318 (a) (1) relating to members of a family, may be illustrated by the following example:

*Example.* An individual, H, his wife, W, his son, S, and his grandson (S's son), G, own the 100 outstanding shares of stock of a corporation, each owning 25 shares. H, W, and S are each considered as owning 100 shares. G is considered as owning only 50 shares, that is, his own and his father's.

(c) The application of section 318 (a) (2) relating to partnerships, trusts and corporations may be illustrated by the following examples:

*Example (1).* A, an individual, has a 50 percent interest in a partnership. The partnership owns 50 of the 100 outstanding shares of stock of a corporation, the remaining 50 shares being owned by A. The partnership is considered as owning 100 shares. A is considered as owning 75 shares.

*Example (2).* A testamentary trust owns 25 of the outstanding 100 shares of stock of a corporation. A, an individual, who holds a vested remainder in the trust having a value, computed actuarially equal to 4 percent of the value of the trust property, owns the remaining 75 shares. Since the interest of A in the trust is a vested interest rather than a contingent interest (whether or not remote), the trust is considered as owning 100 shares. A is considered as owning 76 shares.

*Example (3).* The facts are the same as in (2), above, except that A's interest in the trust is a contingent remainder. A is considered as owning 76 shares. However, since A's interest in the trust is a remote contingent interest, the trust is not considered as owning any of the shares owned by A.

*Example (4).* A and B, unrelated individuals, own 70 percent and 30 percent, respectively, in value of the stock of Corporation M. Corporation M owns 50 of the 100 outstanding shares of stock of Corporation O, the remaining 50 shares being owned by A. Corporation M is considered as owning 100 shares of Corporation O, and A is considered as owning 85 shares.

*Example (5).* A and B, unrelated individuals, own 70 percent and 30 percent, respectively, of the stock of Corporation M. A, B and Corporation M all own stock of Corporation O. Since B owns less than 50 percent in value of the stock of Corporation M, neither B nor Corporation M constructively owns the stock of Corporation O owned by the other. However, for the purpose of section 304 (b) (1), 304 (c) (2), and 382 (a) (3), section 318 (a) (2) (C) is applied without regard to the 50 percent limitation contained therein, and for such purposes, B constructively owns the stock of Corporation O owned by Corporation M, and Corporation M constructively owns the stock of Corporation O owned by B. Therefore, for such purpose, in determining the stock constructively owned by A, Corporation M is treated as actually owning the stock of Corporation O owned by B.

§ 1.318–3 *Estates, trusts, and options.* (a) For the purpose of applying section 318 (a) relating to estates, property of a decedent shall be considered as owned by his estate if such property is subject to administration by the executor or administrator for the purpose of paying claims against the estate and expenses of administration notwithstanding that, under local law, legal title to such property vests in the decedent's heirs, legatees or devisees immediately upon death. The term "beneficiary" includes any person entitled to receive property of a decedent pursuant to a will or pursuant to laws of descent and distribution. A person shall no longer be considered a beneficiary of an estate when all the property to which he is entitled has been received by him, when he no longer has a claim against the estate arising out of having been a beneficiary, and when there is only a remote possibility that it will be necessary for the estate to seek the return of property or to seek payment from him by contribution or otherwise to satisfy claims against the estate or expenses of administration. When, pursuant to the preceding sentence, a person ceases to be a beneficiary, stock owned by him shall not thereafter be considered owned by the estate, and stock owned by the estate shall not thereafter be considered owned by him. The application of section 318 (a) relating to estates may be illustrated by the following examples:

*Example (1).* A decedent's estate owns 50 of the 100 outstanding shares of stock of Corporation X. The remaining shares are owned by three unrelated individuals, A, B, and C, who together own the entire interest in the estate. A owns 12 shares of stock of Corporation X directly and is entitled to 50 percent of the estate. B owns 18 shares directly and has a life estate in the remaining 50 percent of the estate. C owns 20 shares directly and also owns the remainder interest after B's life estate. Under these circumstances, the estate is considered as owning 80 shares of the stock of Corporation X; 50 shares directly, 12 shares constructively through A, and 18 shares constructively through B. A is considered as owning 46 shares of the stock of Corporation X; 12 shares directly and 34 shares constructively (50 percent of the 50 shares owned directly by the estate and 50 percent of the 18 shares owned constructively by the estate through B). B is considered as owning 49 shares of the stock of Corporation X; 18 shares directly and 31 shares constructively (50 percent of the 50 shares owned directly by the estate and 50 percent of the 12 shares owned constructively by the estate through A). C is considered as owning 20 shares directly and no shares constructively. C is not considered a beneficiary of the estate under section 318 (a) since he has no direct present interest in the property held by the estate nor in the income produced by such property.

*Example (2).* Under the will of A, Blackacre is left to B for life, remainder to C, an unrelated individual. The residue of the estate consisting of stock of a corporation is left to D. B and D are beneficiaries of the estate under section 318 (a). C is not considered a beneficiary since he has no direct present interest in Blackacre nor in the income produced by such property. The stock owned by the estate is considered as owned proportionately by B an D.

(b) For the purpose of section 318 (a) (2) (B) stock owned by a trust will be considered as being owned by its beneficiaries only to the extent of the interest of such beneficiaries in the trust. Accordingly, the interest of income beneficiaries, remainder beneficiaries, and other beneficiaries will be computed on an actuarial basis. Thus, if a trust owns 100 percent of the stock of Corporation A, and if, on an actuarial basis, W's life interest in the trust is 15 percent, Y's life interest is 25 percent, and Z's remainder interest is 60 percent, under this provision W will be considered to be the owner of 15 percent of the stock of Corporation A, Y will be considered to be the owner of 25 percent of such stock, and Z will be considered to be the owner of 60 percent of such stock.

(c) The application of section 318 (a) relating to options may be illustrated by the following example:

*Example.* A and B, unrelated individuals, own all of the 100 outstanding shares of stock of a corporation, each owning 50 shares. A has an option to acquire 25 of B's shares and has an option to acquire a further option to acquire the remaining 25 of B's shares. A is considered as owning the entire 100 shares of stock of the corporation.

§ 1.318–4 *Constructive family ownership.* An exception concerning the treatment of constructive ownership as actual ownership is provided in section 318 (a) (4) (B) with respect to stock constructively owned by reason of ownership by a member of a family. This exception is intended to make clear that unless the stock is directly attributable to the individual whose stock ownership

is in question, the constructive ownership rules of section 318 (a) (1) are not applicable. Thus, for example, if F and his two sons, A and B, each own one-third of the stock of a corporation, under section 318 (a) (1) A is treated as owning constructively the stock owned by his father but is not treated as owning the stock owned by B. Section 318 (a) (4) (B) prevents the attribution of the stock of one brother through the father to the other brother, an attribution beyond the scope of section 318 (a) (1) directly.

CORPORATE LIQUIDATIONS

*Effects on Recipients*

§ 1.331 *Statutory provisions; gain or loss to shareholders in corporate liquidations.*

SEC. 331. *Gain or loss to shareholders in corporate liquidations*—(a) *General rule*—(1) *Complete liquidations.* Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

(2) *Partial liquidations.* Amounts distributed in partial liquidation of a corporation (as defined in section 346) shall be treated as in part or full payment in exchange for the stock.

(b) *Nonapplication of section 301.* Section 301 (relating to effects on shareholder of distributions of property) shall not apply to any distribution of property in partial or complete liquidation.

(c) *Cross references.* (1) For general rule for determination of the amount of gain or loss to the distributee, see section 1001.

(2) For general rule for determination of the amount of gain or loss recognized, see section 1002.

§ 1.331–1 *Corporate liquidations.* (a) Section 331 contains rules governing the extent to which gain or loss is recognized to a shareholder receiving a distribution in complete or partial liquidation of a corporation. Under section 331 (a) (1) it is provided that amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock. Under section 331 (a) (2) it is provided that amounts distributed in partial liquidation of a corporation shall be treated as in full or part payment in exchange for the stock. For this purpose, the term "partial liquidation" shall have the meaning ascribed in section 346. If section 331 is applicable to the distribution of property by a corporation, section 301 (relating to the effects on a shareholder of distributions of property) has no application.

(b) The gain or loss to a shareholder from a distribution in partial or complete liquidation is to be determined under section 1001 by comparing the amount of the distribution with the cost or other basis of the stock. The gain or loss will be recognized to the extent provided in section 1002 and will be subject to the provisions of sections 1201–1223.

(c) A liquidation which is followed by a transfer to another corporation of all or part of the assets of the liquidating corporation or which is preceded by such a transfer may, however, have the effect of the distribution of a dividend or of a transaction in which no loss is recognized and gain is recognized only to the extent of "other property." See sections 301 and 356.

(d) In every case in which a shareholder transfers stock in exchange for property to the corporation which issued such stock, the facts and circumstances shall be reported on his return unless the property is part of a distribution made pursuant to a corporate resolution reciting that the distribution is made in liquidation of the corporation and the corporation is completely liquidated and dissolved within one year after the distribution. See section 6043 for requirements relating to returns by corporations.

(e) The provisions of this section may be illustrated by the following example:

*Example.* A, an individual who makes his income tax returns on the calendar year basis, owns 20 shares of stock of the P Corporation, a domestic corporation, 10 shares of which were acquired in 1951 at a cost of $1,500 and the remainder of 10 shares in December 1954 at a cost of $2,000. He receives in April 1955 a distribution of $250 per share in complete liquidation, or $2,500 on the 10 shares acquired in 1951, and $2,500 on the 10 shares acquired in December 1954. The gain of $1,000 on the shares acquired in 1951 is a long-term capital gain to be treated as provided in sections 1201 through 1223. The loss of $400 on the shares acquired in 1954 is a short-term capital loss to be treated as provided in sections 1201 through 1223.

§ 1.332 *Statutory provisions; complete liquidations of subsidiaries.*

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 subsection (a), 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) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends); 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 or his delegate 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) *Special rule for indebtedness of subsidiary to parent.* If—

(1) A corporation is liquidated and subsection (a) applies to such liquidation, and

(2) On the date of the adoption of the plan of liquidation, such corporation was indebted to the corporation which meets the 80 percent stock ownership requirements specified in subsection (b),

then no gain or loss shall be recognized to the corporation so indebted because of the transfer of property in satisfaction of such indebtedness.

§ 1.332–1 *Distributions in liquidation of subsidiary corporation; general.* Under the general rule prescribed by section 331 for the treatment of distributions in liquidation of a corporation, amounts received by one corporation in complete liquidation of another corporation are treated as in full payment in exchange for stock in such other corporation, and gain or loss from the receipt of such amounts is to be determined as provided in section 1001. Section 332 excepts from the general rule property received, under certain specifically described circumstances, by one corporation as a distribution in complete liquidation of the stock of another corporation and provides for the nonrecognition of gain or loss in those cases which meet the statutory requirements. Section 367 places a limitation on the application of section 332 in the case of foreign corporations. See section 334 (b) for the basis for determining gain or loss from the subsequent sale of property received upon complete liquidations such as described in this section. See section 453 (d) (4) (A) relative to distribution of installment obligations by subsidiary.

§ 1.332–2 *Requirements for nonrecognition of gain or loss.* (a) The nonrecognition of gain or loss is limited to

the receipt of such property by a corporation which is the actual owner of stock (in the liquidating corporation) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends) The recipient corporation must have been the owner of the specified amount of such stock on the date of the adoption of the plan of liquidation and have continued so to be at all times until the receipt of the property. If the recipient corporation does not continue qualified with respect to the ownership of stock of the liquidating corporation and if the failure to continue qualified occurs at any time prior to the completion of the transfer of all the property, the provisions for the nonrecognition of gain or loss do not apply to any distribution received under the plan.

(b) Section 332 applies only to those cases in which the recipient corporation receives at least partial payment for the stock which it owns in the liquidating corporation. If section 332 is not applicable, see section 165 (g) relative to allowance of losses on worthless securities.

(c) To constitute a distribution in complete liquidation within the meaning of section 332, the distribution must be (1) made by the liquidating corporation in complete cancellation or redemption of all of its stock in accordance with a plan of liquidation, or (2) one of a series of distributions in complete cancellation or redemption of all its stock in accordance with a plan of liquidation. Where there is more than one distribution, it is essential that a status of liquidation exist at the time the first distribution is made under the plan and that such status continue until the liquidation is completed. Liquidation is completed when the liquidating corporation and the receiver or trustees in liquidation are finally divested of all the property (both tangible and intangible) A status of liquidation exists when the corporation ceases to be a going concern and its activities are merely for the purpose of winding up its affairs, paying its debts, and distributing any remaining balance to its shareholders. A liquidation may be completed prior to the actual dissolution of the liquidating corporation. However, legal dissolution of the corporation is not required. Nor will the mere retention of a nominal amount of assets for the sole purpose of preserving the corporation's legal existence disqualify the transaction. (See § 39.22 (a)-20 of Regulations 118 (26 CFR (1939) 1953 revision, § 39.22 (a)-20).)

(d) If a transaction constitutes a distribution in complete liquidation within the meaning of the Internal Revenue Code of 1954 and satisfies the requirements of section 332, it is not material that it is otherwise described under the local law. If a liquidating corporation distributes all of its property in complete liquidation and if pursuant to the plan for such complete liquidation a corporation owning the specified amount of stock in the liquidating corporation receives property constituting amounts distributed in complete liquidation within the meaning of the Code and also receives other property attributable to shares not owned by it, the transfer of the property to the recipient corporation shall not be treated, by reason of the receipt of such other property as not being a distribution (or one of a series of distributions) in complete cancellation or redemption of all of the stock of the liquidating corporation within the meaning of section 332, even though for purposes of those provisions relating to corporate reorganizations the amount received by the recipient corporation in excess of its ratable share is regarded as acquired upon the issuance of its stock or securities in a tax-free exchange as described in section 361 and the cancellation or redemption of the stock not owned by the recipient corporation is treated as occurring as a result of a tax-free exchange described in section 354.

(e) The application of these rules may be illustrated by the following example:

*Example.* On September 1, 1954, the M Corporation had outstanding capital stock consisting of 3,000 shares of common stock, par value $100 a share, and 1,000 shares of preferred stock, par value $100 a share, which preferred stock was limited and preferred as to dividends and had no voting rights. On that date, and thereafter until the date of dissolution of the M Corporation, the O Corporation owned 2,500 shares of common stock of the M Corporation. By statutory merger consummated on October 1, 1954, pursuant to a plan of liquidation adopted on September 1, 1954, the M Corporation was merged into the O Corporation, the O Corporation under the plan issuing stock which was received by the other holders of the stock of the M Corporation. The receipt by the O Corporation of the properties of the M Corporation is a distribution received by the O Corporation in complete liquidation of the M Corporation within the meaning of section 332, and no gain or loss is recognized as the result of the receipt of such properties.

§ 1.332-3 *Liquidations completed within one taxable year* If in a liquidation completed within one taxable year pursuant to a plan of complete liquidation, distributions in complete liquidation are received by a corporation which owns the specified amount of stock in the liquidating corporation and which continues qualified with respect to the ownership of such stock until the transfer of all the property within such year is completed (see § 1.332-2 (a)) then no gain or loss shall be recognized with respect to the distributions received by the recipient corporation. In such case no waiver or bond is required of the recipient corporation under section 332.

§ 1.332-4 *Liquidations covering more than one taxable year* (a) If the plan of liquidation is consummated by a series of distributions extending over a period of more than one taxable year, the nonrecognition of gain or loss with respect to the distributions in liquidation shall, in addition to the requirements of § 1.332-2, be subject to the following requirements:

(1) In order for the distribution in liquidation to be brought within the exception provided in section 332 to the general rule for computing gain or loss with respect to amounts received in liquidation of a corporation, the entire property of the corporation shall be transferred in accordance with a plan of liquidation, which plan shall include a statement showing the period within which the transfer of the property of the liquidating corporation to the recipient corporation is to be completed. The transfer of all the property under the liquidation must be completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan.

(2) For each of the taxable years which falls wholly or partly within the period of liquidation, the recipient corporation shall, at the time of filing its return, file with the district director of internal revenue a waiver of the statute of limitations on assessment. The waiver shall be executed on such form as may be prescribed by the Commissioner and shall extend the period of assessment of all income and profits taxes for each such year to a date not earlier than one year after the last date of the period for assessment of such taxes for the last taxable year in which the transfer of the property of such liquidating corporation to the controlling corporation may be completed in accordance with section 332. Such waiver shall also contain such other terms with respect to assessment as may be considered by the Commissioner to be necessary to insure the assessment and collection of the correct tax liability for each year within the period of liquidation.

(3) For each of the taxable years which falls wholly or partly within the period of liquidation, the recipient corporation may be required to file a bond, the amount of which shall be fixed by the district director of internal revenue. The bond shall contain all terms specified by the Commissioner, including provisions unequivocally assuring prompt payment of the excess of income and profits taxes (plus penalty, if any, and interest) as computed by the district director without regard to the provisions of sections 332 and 334 (b) over such taxes computed with regard to such provisions, regardless of whether such excess may or may not be made the subject of a notice of deficiency under section 6212 and regardless of whether it may or may not be assessed. Any bond required under section 332 shall have such surety or sureties as the Commissioner may require. However, see 6 U. S. C. 15, providing that where a bond is required by law or regulations, in lieu of surety or sureties there may be deposited bonds or notes of the United States. Only surety companies holding certificates of authority from the Secretary as acceptable sureties on Federal bonds will be approved as sureties. The bonds shall be executed in triplicate so that the Commissioner, the taxpayer, and the surety or the depositary may each have a copy. On and after September 1, 1953, the functions of the Commissioner with respect to such bonds shall be performed by the district director of internal revenue for the internal revenue district in which the return was filed and any bond filed on or after such date shall be filed with such district director.

(b) Pending the completion of the liquidation, if there is a compliance with subparagraphs (1) (2) and (3) of paragraph (a) of this section and § 1.332–2 with respect to the nonrecognition of gain or loss, the income and profits tax liability of the recipient corporation for each of the years covered in whole or in part by the liquidation shall be determined without the recognition of any gain or loss on account of the receipt of the distributions in liquidation. In such determination, the basis of the property or properties received by the recipient corporation shall be determined in accordance with section 334 (b) However, if the transfer of the property is not completed within the three-year period allowed by section 332 or if the recipient corporation does not continue qualified with respect to the ownership of stock of the liquidating corporation as required by that section, gain or loss shall be recognized with respect to each distribution and the tax liability for each of the years covered in whole or in part by the liquidation shall be recomputed without regard to the provisions of section 332 or section 334 (b) and the amount of any additional tax due upon such recomputation shall be promptly paid.

§ 1.332–5 *Distributions in liquidation as affecting minority interests.* Upon the liquidation of a corporation in pursuance of a plan of complete liquidation, the gain or loss of minority shareholders shall be determined without regard to section 332, since it does not apply to that part of distributions in liquidation received by minority shareholders.

§ 1.332–6 *Records to be kept and information to be filed with return.* (a) Permanent records in substantial form shall be kept by every corporation receiving distributions in complete liquidation within the exception provided in section 332 showing the information required by this section to be submitted with its return. The plan of liquidation must be adopted by each of the corporations parties thereto; and the adoption must be shown by the acts of its duly constituted responsible officers, and appear upon the official records of each such corporation.

(b) For the taxable year in which the liquidation occurs, or, if the plan of liquidation provides for a series of distributions over a period of more than one year, for each taxable year in which a distribution is received under the plan the recipient must file with its return a complete statement of all facts pertinent to the nonrecognition of gain or loss, including—

(1) A certified copy of the plan for complete liquidation, and of the resolutions under which the plan was adopted and the liquidation was authorized, together with a statement under oath showing in detail all transactions incident to, or pursuant to, the plan.

(2) A list of all the properties received upon the distribution, showing the cost or other basis of such properties to the liquidating corporation at the date of distribution and the fair market value of such properties on the date distributed.

(3) A statement of any indebtedness of the liquidating corporation to the recipient corporation on the date the plan of liquidation was adopted and on the date of the first liquidating distribution. If any such indebtedness was acquired at less than face value, the cost thereof to the recipient corporation must also be shown.

(4) A statement as to its ownership of all classes of stock of the liquidating corporation (showing as to each class the number of shares and percentage owned and the voting power of each share) as of the date of the adoption of the plan of liquidation, and at all times since, to and including the date of the distribution in liquidation. The cost or other basis of such stock and the date or dates on which purchased must also be shown.

§ 1.332–7 *Indebtedness of subsidiary to parent.* If section 332 (a) is applicable to the receipt of the subsidiary's property in complete liquidation, then no gain or loss shall be recognized to the subsidiary upon the transfer of such properties even though some of the properties are transferred in satisfaction of the subsidiary's indebtedness to its parent. However, any gain or loss realized by the parent corporation on such satisfaction of indebtedness, shall be recognized to the parent corporation at the time of the liquidation. For example, if the parent corporation purchased its subsidiary's bonds at a discount and upon liquidation of the subsidiary the parent corporation receives payment for the face amount of such bonds, gain shall be recognized to the parent corporation. Such gain shall be measured by the difference between the cost or other basis of the bonds to the parent and the amount received in payment of the bonds.

§ 1.333 *Statutory provisions; election as to recognition of gain in certain liquidations.*

SEC. 333. *Election as to recognition of gain in certain liquidations*—(a) *General rule.* In the case of property distributed in complete liquidation of a domestic corporation (other than a collapsible corporation to which section 341 (a) applies), if—

(1) The liquidation is made in pursuance of a plan of liquidation adopted on or after June 22, 1954, and

(2) The distribution is in complete cancellation or redemption of all the stock, and the transfer of all the property under the liquidation occurs within some one calendar month,

then in the case of each qualified electing shareholder (as defined in subsection (c)) gain on the shares owned by him at the time of the adoption of the plan of liquidation shall be recognized only to the extent provided in subsections (e) and (f).

(b) *Excluded corporation.* For purposes of this section, the term "excluded corporation" means a corporation which at any time between January 1, 1954, and the date of the adoption of the plan of liquidation, both dates inclusive, was the owner of stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote on the adoption of such plan.

(c) *Qualified electing shareholders.* For purposes of this section, the term "qualified electing shareholder" means a shareholder (other than an excluded corporation) of any class of stock (whether or not entitled to vote on the adoption of the plan of liquidation) who is a shareholder at the time of the adoption of such plan, and whose written election to have the benefits of subsection (a) has been made and filed in accordance with subsection (d), but—

(1) In the case of a shareholder other than a corporation, only if written elections have been so filed by shareholders (other than corporations) who at the time of the adoption of the plan of liquidation are owners of stock possessing at least 80 percent of the total combined voting power (exclusive of voting power possessed by stock owned by corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation; or

(2) In the case of a shareholder which is a corporation, only if written elections have been so filed by corporate shareholders (other than an excluded corporation) which at the time of the adoption of such plan of liquidation are owners of stock possessing at least 80 percent of the total combined voting power (exclusive of voting power possessed by stock owned by an excluded corporation and by shareholders who are not corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(d) *Making and filing of elections.* The written elections referred to in subsection (c) must be made and filed in such manner as to be not in contravention of regulations prescribed by the Secretary or his delegate. The filing must be within 30 days after the date of the adoption of the plan of liquidation.

(e) *Noncorporate shareholders.* In the case of a qualified electing shareholder other than a corporation—

(1) There shall be recognized, and treated as a dividend, so much of the gain as is not in excess of his ratable share of the earnings and profits of the corporation accumulated after February 28, 1913, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subsection (a) (2), but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed; and

(2) There shall be recognized, and treated as short-term or long-term capital gain, as the case may be, so much of the remainder of the gain as is not in excess of the amount by which the value of that portion of the assets received by him which consists of money, or of stock or securities acquired by the corporation after December 31, 1953, exceeds his ratable share of such earnings and profits.

(f) *Corporate shareholders.* In the case of a qualified electing shareholder which is a corporation, the gain shall be recognized only to the extent of the greater of the two following—

(1) The portion of the assets received by it which consists of money, or of stock or securities acquired by the liquidating corporation after December 31, 1953; or

(2) Its ratable share of the earnings and profits of the liquidating corporation accumulated after February 28, 1913, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subsection (a) (2), but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed.

§ 1.333–1 *Corporate liquidation in some one calendar month*—(a) *In general.* Section 333 provides a special rule, in the case of certain specifically de-

scribed complete liquidations of domestic corporations (other than collapsible corporations to which section 341 (a) applies) occurring within some one calendar month, for the treatment of gain on the shares of stock owned by qualified electing shareholders at the time of the adoption of the plan of liquidation. The effect of such section is in general to postpone the recognition of that portion of a qualified electing shareholder's gain on the liquidation which would otherwise be recognized and which is attributable to appreciation in the value of certain corporate assets unrealized by the corporation at the time such assets are distributed in complete liquidation. Only qualified electing shareholders are entitled to the benefits of section 333. The determination of who is a qualified electing shareholder is to be made under section 333 (c) For the basis of property received on such liquidations, see section 334 (c) Section 333 has no application to collapsible corporations. See section 341 (b) for definition of collapsible corporations.

(b) *Type of liquidation.* (1) The liquidation must be in pursuance of a plan of liquidation adopted on or after June 22, 1954. The plan must be adopted before the first distribution under the liquidation occurs. The 1954 Code requires that the transfer of all the property, both tangible and intangible, of the corporation to its shareholders shall occur entirely within some one calendar month. This requirement will be considered to have been complied with if cash is set aside under arrangements for the payment, after the close of such month, of unascertained or contingent liabilities and expenses, and such arrangements are made in good faith and the amount set aside is reasonable. It is not necessary that the month in which the transfer occurs must fall within the taxable or calendar year in which the plan of liquidation is adopted. Though it is not necessary that the corporation dissolve in the month of liquidation, it is essential that a status of liquidation exist at the time the first distribution is made under the plan and that such status continue to the date of dissolution of the corporation. A status of liquidation exists when the corporation ceases to be a going concern and its activities are merely for the purpose of winding up its affairs, paying its debts, and distributing any remaining balance to its shareholders.

(2) If a transaction constitutes a distribution in complete liquidation within the meaning of the 1954 Code and satisfies the requirements of section 333, it is immaterial that it is otherwise described under the local law.

§ 1.333-2 *Qualified electing shareholder* (a) No corporate shareholder may be a qualified electing shareholder if at any time between January 1, 1954 and the date of the adoption of the plan of liquidation, both dates inclusive, it is the owner of stock of the liquidating corporation possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote upon the adoption of the plan of liquidation. All other shareholders are divided into two groups for the purpose of determining whether they are qualified electing shareholders: (1) shareholders other than corporations, and (2) corporate shareholders.

(b) Any shareholder of either of such two groups, whether or not the stock he owns is entitled to vote on the adoption of the plan of liquidation, is a qualified electing shareholder if:

(1) His written election to be governed by the provisions of section 333, which cannot be withdrawn or revoked, has been made and filed as prescribed in § 1.333-3; and

(2) Like elections have been made and filed by owners of stock possessing at least 80 percent of the total combined voting power of all classes of stock owned by shareholders of the same group at the time of, and entitled to vote upon, the adoption of the plan of liquidation, whether or not the shareholders making such elections actually realize gain upon the cancellation or redemption of such stock upon the liquidation.

(c) The application of this section may be illustrated by the following example:

*Example.* The R Corporation has outstanding 20 shares of common stock on July 1, 1954, at the time of the adoption of a plan of liquidation within the provisions of section 333, each entitled to one vote upon the adoption of such plan of liquidation. At that time ten of such shares are owned by the S Corporation, two each by the X Corporation and the Y Corporation, one by the Z Corporation, and one each by A, B, C, D, and E, individuals. There are also outstanding at such time two shares of preferred stock, not entitled to vote on liquidation, one share being owned by F, an individual, and one share by the P Corporation. The S Corporation, being a corporate shareholder and the owner of 50 percent of the voting stock, may not be a qualified electing shareholder under any circumstances. In order for any other corporate shareholder to be a qualified electing shareholder, it is necessary that the X Corporation and the Y Corporation file their written elections to be governed by section 333. If this is done, the P Corporation will also be a qualified electing shareholder if it has filed a like election. Similarly, in the case of the individual shareholders, some combination of four of the individual holders of the common stock must have filed their written elections, before any individual shareholder may be considered a qualified electing shareholder, but if this is done, F will also be a qualified electing shareholder if he has filed a like election.

(d) An election to be governed by the provisions of section 333 relates to the treatment of gain realized upon the cancellation or redemption of stock upon liquidation. Such election, therefore, can be made only by or on behalf of the person by whom gains, if any, will be realized. Thus, the shareholder who may make such election must be the actual owner of stock and not a mere record holder, such as a nominee.

(e) A shareholder is entitled to make an election relative to the gain only on stock owned by him at the time of the adoption of the plan of liquidation. The election is personal to the shareholder making it and does not follow such stock into the hands of a transferee.

§ 1.333-3 *Making and filing of written elections.* An election to be governed by section 333 shall be made on Form 964 (revised) in accordance with the instructions printed thereon and with this section. The original and one copy shall be filed by the shareholder with the district director of internal revenue with whom the final income tax return of the corporation will be filed. The elections must be filed within 30 days after the adoption of the plan of liquidation. Under no circumstances shall section 333 be applicable to any shareholders who fail to file their elections within the 30-day period prescribed. An election shall be considered as timely filed if it is placed in the mail on or before midnight of the 30th day after the adoption of the plan of liquidation, as shown by the postmark on the envelope containing the written election or as shown by other available evidence of the mailing date. Another copy of the election shall be attached to and made a part of the shareholder's income tax return for his taxable year in which the transfer of all the property under the liquidation occurs.

§ 1.333-4 *Treatment of gain*—(a) *Computation of gain.* As in the case of shareholders generally, amounts received by qualified electing shareholders are treated as in full payment in exchange for their stock, as provided in section 331 and gain from the receipt of such amounts is determined as provided in section 1001. Gain or loss must be computed separately on each share of stock owned by a qualified electing shareholder at the time of the adoption of the plan of liquidation. The limited recognition and special treatment accorded by section 333 applies only to the gain on such shares of stock upon which gain was realized and not to net gain computed by setting off losses realized on some shares against gain on others. Since section 333 applies only to gain recognized, losses realized on the liquidation will be allowable only in the year of liquidation even though Forms 964 (revised) have been filed by those shareholders who realize only losses. Such filings may be necessary to fulfill the 80 percent requirement (under section 332 (b)) so that these shareholders who realize gain may qualify under this section.

(b) *Recognition of gain.* Pursuant to section 333 only so much of the gain on each share of stock owned by a qualified electing shareholder at the time of the adoption of the plan of liquidation is recognized as does not exceed the greater of the following:

(1) Such share's ratable share of the earnings and profits of the corporation accumulated after February 28, 1913, computed as of the last day of the month of liquidation, without diminution by reason of distributions made during such month, and including in such computation all items of income and expense accrued up to the date on which the transfer of all the property under the liquidation is completed; or

(2) Such share's ratable share of the sum of the amount of money received by such shareholder on shares of the same class and the fair market value of all the stock or securities so received which were acquired by the liquidating

corporation after December 31, 1953. The mere replacement after December 31, 1953 of lost or destroyed certificates or instruments acquired on or before December 31, 1953, or the mere conversion of certificates or instruments into certificates or instruments of larger or smaller denominations will not constitute an acquisition within the meaning of the phrase "acquired after December 31, 1953." Nor will such an acquisition result from the issuance after December 31, 1953 of certificates of stock in connection with a subscription made and accepted on or before December 31, 1953.

(c) *Treatment of recognized gain.* (1) In the case of a qualified electing shareholder other than a corporation, that part of the recognized gain on a share of stock owned at the time of the adoption of the plan of liquidation which is not in excess of his ratable share of the earnings and profits of the liquidating corporation accumulated after February 28, 1913, determined as provided in section 333 (e) (1), is treated as a dividend. It retains its character as a dividend for all tax purposes. The remainder of the gain which is recognized is treated as a short-term or long-term capital gain, as the case may be. In the case of a qualified electing shareholder which is a corporation, the entire amount of the gain which is recognized is treated as a short-term or long-term capital gain, as the case may be.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

*Example.* (i) X Corporation has only one class of stock outstanding, owned in equal amounts by three shareholders. The basis of the stock owned by each shareholder is $50, each having bought his stock in a single block prior to the date of the adoption of a plan of liquidation conforming to the requirements of section 333. One of the shareholders is an individual; two are corporations. All are "qualified electing shareholders"

(ii) X Corporation has earnings and profits accumulated after February 28, 1913, of $60 (computed as provided in section 333). Its assets consist of (*a*) cash of $75, (*b*) stock and securities acquired after December 31, 1953, having a fair market value of $90, and (*c*) other property having a fair market value of $240. In October 1954, all of these assets are distributed to the shareholders pro rata in complete liquidation of the corporation, as provided in section 333. Each shareholder thus receives $135 in cash and property, and has $85 gain.

(iii) $55 of each shareholder's gain is recognized since such amount represents the sum of (*a*) the cash received by him and (*b*) the fair market value of the stock and securities received by him which were acquired by the X Corporation after December 31, 1953, and is greater than his ratable share of the earnings and profits ($20). The remainder of each shareholder's gain ($30) is not recognized.

(iv) In the case of the corporate shareholders the entire amount of the recognized gain ($55) is treated as capital gain. In the case of the individual shareholder, $20, being the amount of the shareholder's ratable share of the earnings and profits, is recognized and treated as a dividend, and $35, being the difference between the shareholder's ratable share of the earnings and profits and the sum of the cash and stock and securities received by him, is treated as a short-term or long-term capital gain, as the case may be.

(v) If the basis of each shareholder's stock had been $100, instead of $50, each of the corporate shareholders would be taxed on only $35 as capital gain and the individual shareholder would be taxed on $20 as a dividend and on only $15 as capital gain, since the total amount taxed is limited to the amount of gain realized by the shareholder upon the cancellation or redemption of his stock.

§ 1.333-5 *Records to be kept and information to be filed with return.* (a) Permanent records in substantial form shall be kept by every qualified electing shareholder receiving distributions in complete liquidation of a domestic corporation. Such shareholder must file with his income tax return for his taxable year in which the liquidation occurs a statement of all facts pertinent to the recognition and treatment of the gain realized by him upon the shares of stock owned by him at the time of the adoption of the plan of liquidation, including:

(1) A statement of his stock ownership in the liquidating corporation as of the date of the distribution, showing the number of shares of each class owned on such date and the cost or other basis of each such share;

(2) A list of all the property, including money, received upon the distribution, showing the fair market value of each item of such property other than money on the date distributed and stating what items, if any, consist of stock or securities acquired by the liquidating corporation after December 31, 1953.

(3) A statement of his ratable share of the earnings and profits of the liquidating corporation accumulated after February 28, 1913, computed without diminution by reason of distributions made during the month of liquidation; and

(4) A copy of such shareholder's written election to be governed by the provisions of section 333. (See § 1.333-3.)

(b) For information to be filed by the liquidating corporation, see section 6043.

§ 1.334 *Statutory provisions; corporate liquidations; basis of property received in liquidations.*

SEC. 334. *Basis of property received in liquidations*—(a) *General rule.* If property is received in a distribution in partial or complete liquidation (other than a distribution to which section 333 applies), and if gain or loss is recognized on receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution.

(b) *Liquidation of subsidiary*—(1) *In general.* If property is received by a corporation in a distribution in complete liquidation of another corporation (within the meaning of section 332 (b)), then, except as provided in paragraph (2), the basis of the property in the hands of the distributee shall be the same as it would be in the hands of the transferor. If property is received by a corporation in a transfer to which section 332 (c) applies, and if paragraph (2) of this subsection does not apply, then the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor.

(2) *Exception.* If property is received by a corporation in a distribution in complete liquidation of another corporation (within the meaning of section 332 (b)), and if—

(A) The distribution is pursuant to a plan of liquidation adopted—

(i) On or after June 22, 1954, and

(ii) Not more than 2 years after the date of the transaction described in subparagraph (B) (or, in the case of a series of transactions, the date of the last such transaction); and

(B) Stock of the distributing corporation 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 (except nonvoting stock which is limited and preferred as to dividends), was acquired by the distributee by purchase (as defined in paragraph (3)) during a period of not more than 12 months,

then the basis of the property in the hands of the distributee shall be the adjusted basis of the stock with respect to which the distribution was made. For purposes of the preceding sentence, under regulations prescribed by the Secretary or his delegate, proper adjustment in the adjusted basis of any stock shall be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of liquidation, for any money received, for any liabilities assumed or subject to which the property was received, and for other items.

(3) *Purchase defined.* For purposes of paragraph (2) (B), the term "purchase" means any acquisition of stock, but only if—

(A) The basis of the stock in the hands of the distributee is not determined (i) in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or (ii) under section 1014 (a) (relating to property acquired from a decedent),

(B) The stock is not acquired in an exchange to which section 351 applies, and

(C) The stock is not acquired from a person the ownership of whose stock would, under section 318 (a), be attributed to the person acquiring such stock.

(4) *Distributee defined.* For purposes of this subsection, the term "distributee" means only the corporation which meets the 80 percent stock ownership requirements specified in section 332 (b).

(c) *Property received in liquidation under section 333.* If—

(1) Property was acquired by a shareholder in the liquidation of a corporation in cancellation or redemption of stock, and

(2) With respect to such acquisition—

(A) Gain was realized, but

(B) As the result of an election made by the shareholder under section 333, the extent to which gain was recognized was determined under section 333,

then the basis shall be the same as the basis of such stock cancelled or redeemed in the liquidation, decreased in the amount of any money received by the shareholder, and increased in the amount of gain recognized to him.

§ 1.334-1 *Basis of property received in liquidations*—(a) *In general.* Section 334 sets forth rules prescribing the basis of property received in a distribution in partial or complete liquidation of a corporation. The general rule of section 334 is set forth in section 334 (a) to the effect that if property is received in a distribution in partial or complete liquidation and if gain or loss is recognized on the receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution. Such general rule has no application to a liquidation to

which section 332 or section 333 applies. See section 334 (b) and (c)

(b) *Transferor's basis.* Unless section 334 (b) (2) and subsection (c) of this section apply, property received by a parent corporation in a complete liquidation to which section 332 is applicable shall, under section 334 (b) (1) have the same basis in the hands of the parent as its adjusted basis in the hands of the subsidiary. The rule stated above is applicable even though the subsidiary was indebted to the parent on the date the plan of liquidation was adopted and part of such property was received in satisfaction of such indebtedness in a transfer to which section 332 (c) is applicable.

(c) *Application of stock basis to property.* If section 334 (b) (2) applies to a complete liquidation to which section 332 is applicable, then property received by a parent corporation in such complete liquidation shall have a basis determined by reference to the basis of the stock of the subsidiary corporation with respect to which it is received. In general, section 334 (b) (2) will be applicable to a distribution in complete liquidation of a subsidiary corporation if the parent corporation purchased, within the meaning of section 334 (b) (3) and during a period of not more than twelve months, 80 percent or more of the stock (other than nonvoting stock which is limited and preferred as to dividends) of the subsidiary corporation and then adopted a plan of liquidation (on or after June 22, 1954) not more than two years after the date on which the stock ownership requirement was met. The application of section 334 (b) (2) is subject to the following rules:

(1) Property received with reference to stock owned immediately before the liquidation by the parent corporation is the only property to which section 334 (b) (2) is applicable. The section is not applicable to property received with respect to debt or other claims. The basis of the stock used in determining the basis of the assets is the total basis of all stock held by the parent corporation whether or not such stock was acquired by purchase and whether or not such stock is the stock acquired during the period to which reference is made in section 334 (b) (2) (A)

(2) The date of adoption of a plan of liquidation is determined under section 332 (b) (2)

(3) (i) In the case of a series of purchases of stock, the two-year period specified in section 334 (b) (2) (A) shall begin on the day following the date of the last such purchase if the amount of stock specified in section 334 (b) (2) (B) is purchased during the preceding 12 months.

(ii) Application of the rule prescribed in subparagraph (3) (i) may be illustrated by the following examples:

*Example (1).* Twenty percent of the stock of Corporation A is purchased on each of the following dates: April 1, 1954, June 30, 1954, September 30, 1954, December 31, 1954, and April 1, 1955. Although 80 percent of the stock of Corporation A has been purchased as of December 31, 1954, the date of the last transaction of the series of transactions described in section 334 (b) (2) (B) is April 1, 1955, and therefore the two-year period shall begin on April 2, 1955.

*Example (2).* The facts are the same as in example (1) except that the last purchase is made on July 1, 1955. Since the date of the last transaction of the series of transactions described in section 334 (b) (2) (B) is December 31, 1954, the two-year period shall begin on January 1, 1955.

(4) For the purpose of section 334 (b) (2) only the following adjustments shall be made to the adjusted basis of the subsidiary's stock in the hands of the parent:

(i) Such adjusted basis shall be reduced by the amount of all distributions received by the parent from the subsidiary during the period beginning on the day on which the stock used in determining the applicability of section 334 (b) (2) was purchased (or if such stock was purchased on more than one day, on the day of the earliest purchase of the stock so used) and ending when the plan of liquidation is adopted.

(ii) In order to apply the rule of (i) the amount of a distribution in kind shall be whichever of the following is the greater:

(*a*) The amount described in section 301 (b) (1) (B) (ii) (regardless of the amount of the distribution under section 301 (b)) or

(*b*) The portion of the adjusted basis of the stock allocable to the property so distributed.

(iii) The reduction provided in (i) shall be made whether or not such distributions were taxable to the parent as ordinary dividends.

(iv) The reduction provided in (i) shall not be made—

(*a*) To the extent that a reduction in the adjusted basis of the stock is required by section 301 (c) (2) or

(*b*) To the extent that such distributions of the subsidiary are out of earnings and profits of the period beginning on the date of purchase and ending upon the date of the last distribution in liquidation.

(v) The adjusted basis of the subsidiary's stock held by the parent with respect to which the distributions in liquidation are made (reduced as in (i))—

(*a*) Shall be increased—

(*1*) By the amount of any unsecured liabilities assumed by the parent, and

(*2*) By the portion of the subsidiary's earnings and profits (less the amount of any distributions therefrom) of the period beginning on the date of purchase and ending upon the date of the last distribution in liquidation attributable to the stock of the subsidiary held by the parent.

(*b*) Shall be decreased—

(*1*) By the amount of any cash and its equivalent received, and

(*2*) By the portion of the subsidiary's deficit in earnings and profits of the period beginning on the date of purchase and ending upon the date of the last distribution in liquidation attributable to the stock of the subsidiary held by the parent.

(vi) For the purpose of (v) (*a*) (2) and (*b*) (2)—

(*a*) With respect to property held on the date of purchase and property held on the date additional stock, if any, is acquired any gain or loss from sales or exchanges of such property (whether tangible or intangible) and any other items determined by reference to basis of such property shall be computed by substituting for such basis a new basis determined by reference to the part of the adjusted basis of the stock allocable to such property.

(*b*) The part of the adjusted basis of stock allocable to such property for the purpose of (*a*) shall be the basis of the stock held on the date of purchase or on the date of a later acquisition of stock allocated among the assets held on such date on the basis of their net fair market values on such date,

(c) In order to prevent distortion in the adjusted basis of the stock—

(*1*) Transactions (including distributions, liquidations, and reorganizations) involving a corporation the affairs of which the subsidiary controls at any time after the date of purchase through ownership of stock (whether or not the subsidiary owns a majority of the stock of such corporation) may be disregarded in whole or in part, and

(2) Tax-free reorganizations involving the subsidiary may be disregarded in whole or in part, and

(*d*) In the case of a subsidiary using the cash receipts and disbursements method of accounting, the earnings and profits of such subsidiary shall be computed for the period specified in (v) (*a*) (2) and (*b*) (2) as if such subsidiary had used an accrual method of accounting prior to such period.

(vii) For the purposes of subdivisions (iv), (v) and (vi) the expression "the date of purchase" means the date of the transaction described in section 334 (b) (2) (B) (or, in the case of a series of transactions, the date of the last such transaction) determined without regard to subparagraph (6) (iii)

(viii) In the case of a distribution by the subsidiary of property directly or indirectly acquired by the subsidiary through a direct or indirect contribution to capital by the parent, the basis of such property to the parent shall be the same as if such contribution had not been made and the adjusted basis of the stock shall not be increased or decreased because of such contribution and distribution. Except as provided in the preceding sentence, the amount of the adjusted basis of the stock adjusted as provided in this paragraph shall be allocated as basis among the various assets received (except cash and its equivalent) both tangible and intangible (whether or not depreciable or amortizable). Ordinarily, such allocation shall be made in proportion to the net fair market values of such assets on the date received (the net fair market value of an asset being its fair market value less any specific mortgage or pledge to which it is subject) To that portion of the basis thus determined, for each property against which there is a lien, should be added the amount of such lien. Where more than one property is covered by the same lien, the amount of the lien should be divided among the properties, allocating to each that portion of the lien which the fair

market value of such property bears to the total fair market value of the properties covered by the same lien. Whether the mortgage indebtedness is assumed by the parent or the property is taken subject to the mortgage is immaterial. The basis of the property received shall be zero if the cash and its equivalent received is equal to or in excess of the adjusted basis of the stock.

(5) The application of the rules prescribed in (4) may be illustrated by the following examples:

*Example (1).* Corporation A bought all of the stock of Corporation B for $1,000 on January 1, 1955. The only asset of Corporation B was a building having a basis of $100. On July 1, 1955, such building was sold for $1,050. The amount received was invested in another building immediately thereafter. On December 30, 1955, Corporation B was liquidated under section 332 in a transaction in which the basis of the assets in the hands of the recipient corporation was determined under section 334 (b) (2). The basis of the stock of Corporation B in the hands of Corporation A is increased by $50 pursuant to § 1.334-1 (c) (4) (v) and (vi). The basis of the building received by Corporation A upon the liquidation of Corporation B is $1,050.

*Example (2).* The facts are the same as in example (1) except that the sale price of the building sold was $750. The basis of the building in the hands of Corporation A upon liquidation is $750.

(6) For the purposes of section 334 (b) (2) the term "purchase" means any acquisition of stock, but only if—

(i) The basis of stock in the hands of the distributee is not determined either in whole or in part by reference to the adjusted basis of stock in the hands of the person from whom acquired, or under section 1014 (a) (relating to property acquired from the decedent)

(ii) The stock is not acquired in an exchange to which section 351 applies; and

(iii) The stock is not acquired from a person the ownership of whose stock would, under section 318 (a), be attributed to the person acquiring such stock. However, if a corporation acquires stock pursuant to an option to buy such stock from a person who, without regard to such option, is not a person the ownership of whose stock would, under section 318 (a) be attributed to such corporation, such stock shall be considered to have been purchased on the date of the acquisition of such option, if such option is exercised on or before the last day of a period of 12 months beginning on the day of the earliest purchase of stock (including the stock subject to such option) used in determining the applicability of section 334 (b) (2) and for this purpose the stock with respect to which the option was exercised shall be deemed to have been purchased on the date such option was acquired.

(7) Section 334 (b) does not apply to minority shareholders. The basis of property, other than cash, received by such shareholders shall be determined under section 334 (a) 334 (c) or 358.

§ 1.334-2 *Property received in liquidation under section 333.* The basis of assets (other than money) acquired by stockholders in a liquidation upon which the amount of gain recognized was limited under section 333 shall be the same as the basis of the shares of stock redeemed or cancelled, decreased in the amount of any money received and increased in the amount of gain recognized and the amount of the unsecured liabilities assumed by the stockholders. The amount thus arrived at should be allocated to the various assets received on the basis of their net fair market values (the net fair market value of an asset is its fair market value less any specific mortgage or pledge to which it is subject) To that portion of the basis thus determined, for each property against which there is a lien, should be added the amount of such lien. Where more than one property is covered by the same lien, the amount of the lien should be divided among the properties, allocating to each that portion of the lien that the fair market value of such property bears to the total market value of the properties covered by the same lien. Whether the mortgage indebtedness is assumed by the shareholders or the property is taken subject to the mortgage is immaterial. The application of this section may be illustrated by the following example:

*Example.* The X corporation distributed all its property in complete liquidation during the month of October 1954 pursuant to the provisions of section 333. A, an individual, and a qualifying electing shareholder, received, in cancellation or redemption of 100 shares of stock owned by him at the time of the adoption of the plan of liquidation, $1,000 in cash, property (other than stock or securities acquired by the corporation after December 31, 1953) with a fair market value of $22,000 subject to a lien of $1,000, and stock acquired by the liquidating corporation after December 31, 1953 with a fair market value of $4,000. A, also assumed a $2,000 liability of the liquidating corporation. The basis of the shares owned by A was $120 per share or $12,000. A's ratable share of the earnings and profits of the X corporation accumulated after February 28, 1913 (computed as provided in section 333) was $2,500. His gain is $12,000, but under section 333 only $5,000 of this gain is recognized, $2,500 thereof being taxed as a dividend. The basis of all the property other than money received by A is $19,000, computed as follows:

| | |
|---|---|
| Adjusted basis of stock cancelled or redeemed | $12,000 |
| Less: money received | 1,000 |
| Remainder | 11,000 |
| Liability assumed | 2,000 |
| Specific lien against property (other than stock) | 1,000 |
| Gain recognized | 5,000 |
| Basis of property acquired | 19,000 |

The basis, excluding the specific lien attached to the property, ($19,000 less $1,000, $18,000) will be apportioned among the classes of property other than money received as follows: $21,000/$25,000 of $18,000 or $15,120 to the property other than stock; $4,000/$25,000 of $18,000 or $2,880 to the stock. The basis of the property other than stock, $15,120, must be increased by the amount of the specific lien attached thereto, $1,000, making a total basis for such property of $16,120.

## *Effects on Corporation*

§ 1.336 *Statutory provisions; general rule.*

SEC. 336. *General rule.* Except as provided in section 453 (d) (relating to disposition of installment obligations), no gain or loss shall be recognized to a corporation on the distribution of property in partial or complete liquidation.

§ 1.336-1 *General rule on liquidation of corporation.* Except as provided in section 453 (d), no gain or loss is recognized to a corporation on the distribution by it of property in kind in partial or complete liquidation (regardless of the fact that such property may have appreciated or depreciated in value since its acquisition by the corporation) However, gain or loss is recognized to a corporation on all sales by it, whether directly or indirectly (as through trustees or a receiver) except as provided in section 337 (relating to sales or exchanges in connection with certain liquidations) See sections 61, 6036, 6155 (a), 6161 (c), 6503 (b), 6601, 6871, 6872 and 6873.

§ 1.337 *Statutory provisions; gain or loss on sales or exchanges in connection with certain liquidations.*

SEC. 337. *Gain or loss on sales or exchanges in connection with certain liquidations*—(a) *General rule.* If—

(1) A corporation adopts a plan of complete liquidation on or after June 22, 1954, and

(2) Within the 12-month period beginning on the date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet claims,

then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such 12-month period.

(b) *Property defined*—(1) *In general.* For purposes of subsection (a), the term "property" does not include—

(A) Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and property held by the corporation primarily for sale to customers in the ordinary course of its trade or business,

(B) Installment obligations acquired in respect of the sale or exchange (without regard to whether such sale or exchange occurred before, on, or after the date of the adoption of the plan referred to in subsection (a)) of stock in trade or other property described in subparagraph (A) of this paragraph, and

(C) Installment obligations acquired in respect of property (other than property described in subparagraph (A)) sold or exchanged before the date of the adoption of such plan of liquidation.

(2) *Nonrecognition with respect to inventory in certain cases.* Notwithstanding paragraph (1) of this subsection, if substantially all of the property described in subparagraph (A) of such paragraph (1) which is attributable to a trade or business of the corporation is, in accordance with this section, sold or exchanged to one person in one transaction, then for purposes of subsection (a) the term "property" includes—

(A) Such property so sold or exchanged, and

(B) Installment obligations acquired in respect of such sale or exchange.

(c) *Limitations*—(1) *Collapsible corporations and liquidations to which section 333 applies.* This section shall not apply to any sale or exchange—

(A) Made by a collapsible corporation (as defined in section 341 (b)), or

(B) Following the adoption of a plan of complete liquidation, if section 333 applies with respect to such liquidation.

(2) *Liquidations to which section 332 applies.* In the case of a sale or exchange fol-

lowing the adoption of a plan of complete liquidation, if section 332 applies with respect to such liquidation, then—

(A) If the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334 (b) (1), this section shall not apply; or

(B) If the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334 (b) (2), this section shall apply only to that portion (if any) of the gain which is not greater than the excess of (i) that portion of the adjusted basis (adjusted for any adjustment required under the second sentence of section 334 (b) (2)) of the stock of the liquidating corporation which is allocable, under regulations prescribed by the Secretary or his delegate, to the property sold or exchanged, over (ii) the adjusted basis, in the hands of the liquidating corporation, of the property sold or exchanged.

§ 1.337–1 *General.* Except as provided in sections 337 (c) and 392 (b) if a corporation distributes all of its assets in complete liquidation within 12 months after the adoption of a plan of liquidation, which plan must be adopted on or after June 22, 1954, no gain or loss shall be recognized from the sale of property (as defined in section 337 (b)) during such 12-month period. For this purpose such sales may be made before the adoption of the plan of liquidation if made on the same day such plan is adopted. All assets (less assets retained to meet claims), both tangible and intangible, must be distributed within the 12-month period. Any assets retained after the expiration of the 12-month period for the payment of claims (including unascertained or contingent liabilities or expenses) must be specifically set apart for that purpose and must be reasonable in amount in relation to the items involved. The 12-month period shall begin on the date of adoption of the plan determined as provided in § 1.337–2 (b) and no extension of such period can be granted. See section 453 (d) (4) (B) relative to nonrecognition of gain on the distribution of certain installment obligations. Sales or exchanges made by a collapsible corporation (as defined in section 341 (b)) are excluded from the operation of section 337 by section 337 (c) Accordingly, section 337 does not apply to any sale or exchange of property whenever the distribution of such property in partial or complete liquidation to the shareholders in lieu of such sale or exchange would have resulted in the taxation of the gain from such distribution in the manner provided in section 341 (a) as to any shareholder or would have resulted in the taxation of the gain in such manner, but for the application of section 341 (d) Likewise, section 337 does not apply to sales or exchanges made by a corporation if such corporation is liquidated in a transaction to which section 333 is applicable, or in a transaction to which section 332 applies (except to the extent provided in section 337 (c) (2) (B)) Section 392 (b) provides special rules with respect to the recognition of gain or loss upon certain sales made by a liquidating corporation during 1954 and 1955.

§ 1.337–2 *Sales or exchanges within the scope of section 337* (a) Provided the other conditions of section 337 are met, sales or exchanges which occur on or after the date on which the plan of complete liquidation is adopted and within the 12-month period thereafter are subject to the provisions of such section. The date on which a sale occurs depends primarily upon the intent of the parties to be gathered from the terms of the contract and the surrounding circumstances. In ascertaining whether a sale or exchange occurs on or after the date on which the plan of complete liquidation is adopted, the fact that negotiations for sale may have been commenced, either by the corporation or its shareholders, or both shall be disregarded. Moreover, an executory contract to sell is to be distinguished from a contract of sale. Ordinarily a sale has not occurred when a contract to sell has been entered into but title and possession of the property have not been transferred and the obligation of the seller to sell or the buyer to buy is conditional.

(b) Ordinarily the date of the adoption of a plan of complete liquidation by a corporation is the date of adoption by the shareholders of the resolution authorizing the distribution of all the assets of the corporation (other than those retained to meet claims) in redemption of all of its stock. Where the corporation sells substantially all of its property of the type defined in section 337 (b) prior to the date of adoption by the shareholders of such resolution, then the date of the adoption of the plan of complete liquidation by such corporation is the date of the adoption by the shareholders of such resolution and gain or loss will be recognized with respect to such sales. Where no substantial part of the property of the type defined in section 337 (b) has been sold by the corporation prior to the date of adoption by the shareholders of such resolution, the date of the adoption of the plan of complete liquidation by such corporation is the date of adoption by the shareholders of such resolution and no gain or loss will be recognized on sales of such property on or after such date, if all the corporate assets (other than those retained to meet claims) are distributed in liquidation to the shareholders within 12 months after the date of the adoption of such resolution. In all other cases the date of the adoption of the plan of liquidation shall be determined from all the facts and circumstances. Section 337 shall not apply in any case in which all of the corporate assets (other than those retained to meet claims) are not distributed to the shareholders within 12 months after the date of the adoption of a resolution by the shareholders authorizing the distribution of all the corporate assets in redemption of all the corporate stock. A corporation will be considered to have distributed all of its property other than assets retained to meet claims even though it has retained an amount of cash equal to its known liabilities and liquidating expenses plus an amount of cash set aside under arrangements for the payment after the close of the 12-month period of unascertained or contingent liabilities and contingent expenses. Such arrangements for payment must be made in good faith, the amount set aside must be reasonable, and no amount may be set aside to meet claims of shareholders with respect to their stock. If it is established to the satisfaction of the Commissioner that there are shareholders who cannot be located, a distribution in liquidation includes a transfer to a State official, trustee, or other person authorized by law to receive distributions for the benefit of such shareholders. For the purposes of this paragraph "property of the type defined in section 337 (b)" means property upon the sale of which section 337 (a) may provide for the nonrecognition of gain or loss upon sale or exchange during a 12-month period, including property described in subparagraph (A) of section 337 (b) (1), if sold or exchanged at any time under the conditions set forth in section 337 (b) (2) and including installment obligations acquired in respect of such sale or exchange.

§ 1.337–3 *Property defined.* (a) Except as provided in section 337 (b) (2) and this section, the term "property" as used in section 337 (a) and § 1.337–1 does not include, (1) stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year and property held by the corporation primarily for sale to customers in the ordinary course of its trade or business (hereinafter for purposes of section 337 referred to as "inventory") (2) installment obligations acquired at any time from the sale or exchange of inventory, or (3) installment obligations acquired from the sale or exchange of property (other than inventory) prior to the adoption of the plan of liquidation. With the exceptions listed above, the term "property" includes all assets owned by a corporation.

(b) Except as provided in paragraph (c) of this section, if substantially all of the inventory is sold or exchanged to one person in one transaction, then for the purpose of section 337 (a) the term "property" shall include:

(1) The inventory so sold or exchanged, and

(2) Installment obligations acquired in such sale or exchange.

For this purpose, the term "substantially all" means substantially all of the inventory at the time of the sale and includes inventory subject to liabilities, specific or otherwise. Section 337 (b) (2) shall be inapplicable if the inventory so sold is replaced by like inventory, or by a new kind of inventory.

(c) The term "property" in the case of a corporation which is engaged in two or more distinct businesses shall include the inventory of any one of such trades or businesses if substantially all of the inventory attributable to such trade or business is sold or exchanged to one person in one transaction. If installment obligations are received upon such a sale, such obligations are also included within the meaning of the term "property"

(d) This section may be illustrated by the following examples:

*Example (1).* Corporation A operates a grocery store at one location and a hardware store at another. Neither store handles items similar to those handled by the other. Both stores are served by a common warehouse. Pursuant to a plan of liquidation adopted by the corporation, the grocery store and all of its inventory, including that part of its inventory held in the warehouse, are sold to one person in one transaction. Thereafter, and within 12 months after the adoption of the plan of liquidation, all of the assets of the corporation are distributed to the shareholders. No gain or loss will be recognized upon the sale of all of the assets attributable to the grocery business, including the inventory items.

*Example (2).* Corporation B operates two department stores, one in the downtown business district and the other in a suburban shopping center. Both handle the same items and are served by a common warehouse which contains an amount of inventory items equal to the total of that in both stores. The part of the inventory in the warehouse which is attributable to each store cannot be clearly determined. Pursuant to a plan of liquidation adopted by the corporation, the assets of the suburban store, including the inventory held in such store, but not including any portion of the inventory held in the warehouse, are sold to one person in one transaction. Thereafter, and within 12 months after the adoption of the plan of liquidation, all of the assets of the corporation are distributed to the shareholders. No gain or loss will be recognized with respect to the sale of the property other than the inventory, but gain or loss will be recognized upon the sale of the inventory.

*Example (3).* The facts are the same as in example (2) except that the part of the inventory in the warehouse which is attributable to the suburban store can be clearly determined and both the inventory held in the store and that part of the inventory in the warehouse attributable to such store are sold. No gain or loss will be recognized upon the sale of the inventory.

§ 1.337–4 *Limitation of gain.* (a) Section 337 (c) (2) (B) provides a limitation upon the amount of gain not recognized where a corporation sells or exchanges property pursuant to a plan of complete liquidation (and such property, if distributed, would take the basis of the stock held by the distributee pursuant to the provisions of section 334 (b) (2) (relating to plans of liquidation adopted within 2 years after purchase of the stock)) The amount of gain not recognized shall not be greater than the excess of (1) that portion of the adjusted basis (further adjusted as provided in the second sentence of section 334 (b) (2) and in § 1.334–1 (c)) of the stock of the liquidating corporation in the hands of its parent corporation allocable to the property sold or exchanged over (2) the adjusted basis of such property in the hands of the liquidating corporation.

(b) Paragraph (a) of this section may be illustrated by the following example:

*Example.* Corporation A owns more than 80 percent of the stock of Corporation B, which it purchased for $10,000. All of the assets of Corporation B, having a total basis of $4,000 are sold for $12,000. The portion of the realized gain of $8,000 which is not recognized is $6,000, computed as follows:

| | |
|---|---|
| Basis of stock allocable to property sold | $10,000 |
| Basis of property sold | 4,000 |
| Excess (not recognized) | 6,000 |

In general, where section 337 (c) (2) (B) is applicable and where the gain realized from the sale of property is greater than the excess of the selling price of the property over the basis of the stock allocable to the property sold, the amount of gain to be recognized from such sale is equal to such excess. In the above example, the $2,000 gain representing the excess of the selling price of $12,000 over the basis of the stock allocable to the property sold ($10,000) would be recognized to the liquidating corporation.

(c) For the purpose of this section only, the basis (adjusted as described in (a) of this section) of the liquidating corporation's stock in the hands of its parent corporation on the date of the first sale of property, shall be allocated to the assets of the liquidating corporation (unreduced by any amount applicable to minority interests) on the basis of the fair market value of such assets (see § 1.334–1 (c)) both tangible and intangible, on the date the first property is sold by the liquidating corporation. The allocation then made shall remain unchanged for the purpose of determining recognized gain upon subsequent sales of property by the liquidating corporation unless the stock ownership of the parent corporation changes. In the event of such a change, a new allocation shall be made at the time of the next sale of property thereafter. The new allocation shall be made on the basis of the fair market value of the liquidating corporation's assets on the date of such sale.

§ 1.337–5 *Information to be filed with return.* There must be attached to the return of the liquidating corporation, the following information:

(a) A copy of the minutes of the stockholders' meeting at which the plan of liquidation was formally adopted, including a copy of the plan of liquidation.

(b) A statement of the assets sold after the adoption of the plan of liquidation including the dates of such sales. If section 337 (c) (2) (B), relating to limited nonrecognition of gain on sales by subsidiaries, is applicable, this statement must include a computation of the total gain and of the gain not recognized under this section.

(c) Information as to the date of the final liquidating distribution.

(d) A statement of the assets, if any, retained to pay liabilities and the nature of the liabilities.

§ 1.338 *Statutory provisions; effect on earnings and profits.*

SEC. 338. *Effect on earnings and profits.* For special rule relating to the effect on earnings and profits of certain distributions in partial liquidation, see section 312 (c).

*Collapsible Corporations; Foreign Personal Holding Companies*

§ 1.341 *Statutory provisions; collapsible corporations.*

SEC. 341. *Collapsible corporations*—(a) *Treatment of gain to shareholders.* Gain from—

(1) The sale or exchange of stock of a collapsible corporation,

(2) A distribution in partial or complete liquidation of a collapsible corporation, which distribution is treated under this part as in part or full payment in exchange for stock, and

(3) A distribution made by a collapsible corporation which, under section 301 (c) (3) (A), is treated, to the extent it exceeds the basis of the stock, in the same manner as a gain from the sale or exchange of property,

to the extent that it would be considered (but for the provisions of this section) as gain from the sale or exchange of a capital asset held for more than 6 months shall, except as provided in subsection (d), be considered as gain from the sale or exchange of property which is not a capital asset.

(b) *Definitions*—(1) *Collapsible corporation.* For purposes of this section, the term "collapsible corporation" means a corporation formed or availed of principally for the manufacture, construction, or production of property, for the purchase of property which (in the hands of the corporation) is property described in paragraph (3), or for the holding of stock in a corporation so formed or availed of, with a view to—

(A) The sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, before the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and

(B) The realization by such shareholders of gain attributable to such property.

(2) *Production or purchase of property.* For purposes of paragraph (1), a corporation shall be deemed to have manufactured, constructed, produced, or purchased property, if—

(A) It engaged in the manufacture, construction, or production of such property to any extent,

(B) It holds property having a basis determined, in whole or in part, by reference to the cost of such property in the hands of a person who manufactured, constructed, produced, or purchased the property, or

(C) It holds property having a basis determined, in whole or in part, by reference to the cost of property manufactured, constructed, produced, or purchased by the corporation.

(3) *Section 341 assets.* For purposes of this section, the term "section 341 assets" means property held for a period of less than 3 years which is—

(A) Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year;

(B) Property held by the corporation primarily for sale to customers in the ordinary course of its trade or business;

(C) Unrealized receivables or fees, except receivables from sales of property other than property described in this paragraph; or

(D) Property described in section 1231 (b) (without regard to any holding period therein provided), except such property which is or has been used in connection with the manufacture, construction, production, or sale of property described in subparagraph (A) or (B).

In determining whether the 3-year holding period specified in this paragraph has been satisfied, section 1223 shall apply, but no such period shall be deemed to begin before the completion of the manufacture, construction, production, or purchase.

(4) *Unrealized receivables.* For purposes of paragraph (3) (C), the term "unrealized receivables or fees" means, to the extent not previously includible in income under the method of accounting used by the corporation, any rights (contractual or otherwise) to payment for—

(A) Goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(B) Services rendered or to be rendered.

(c) *Presumption in certain cases*—(1) *In general.* For purposes of this section, a corporation shall, unless shown to the contrary, be deemed to be a collapsible corporation if (at the time of the sale or exchange, or the distribution, described in subsection (a)) the fair market value of its section 341 assets (as defined in subsection (b) (3)) is—

(A) 50 percent or more of the fair market value of its total assets, and

(B) 120 percent or more of the adjusted basis of such section 341 assets.

Absence of the conditions described in subparagraphs (A) and (B) shall not give rise to a presumption that the corporation was not a collapsible corporation.

(2) *Determination of total assets.* In determining the fair market value of the total assets of a corporation for purposes of paragraph (1) (A), there shall not be taken into account—

(A) Cash,

(B) Obligations which are capital assets in the hands of the corporation (and governmental obligations described in section 1221 (5)), and

(C) Stock in any other corporation.

(d) *Limitations on application of section.* In the case of gain realized by a shareholder with respect to his stock in a collapsible corporation, this section shall not apply—

(1) Unless, at any time after the commencement of the manufacture, construction, or production of the property, or at the time of the purchase of the property described in subsection (b) (3) or at any time thereafter, such shareholder (A) owned (or was considered as owing) more than 5 percent in value of the outstanding stock of the corporation, or (B) owned stock which was considered as owned at such time by another shareholder who then owned (or was considered as owning) more than 5 percent in value of the outstanding stock of the corporation;

(2) To the gain recognized during a taxable year, unless more than 70 percent of such gain is attributable to the property so manufactured, constructed, produced, or purchased; and

(3) To gain realized after the expiration of 3 years following the completion of such manufacture, construction, production, or purchase.

For purposes of paragraph (1), the ownership of stock shall be determined in accordance with the rules prescribed in paragraphs (1), (2), (3), (5), and (6) of section 544 (a) (relating to personal holding companies); except that, in addition to the persons prescribed by paragraph (2) of that section, the family of an individual shall include the spouses of that individual's brothers and sisters (whether by the whole or half blood) and the spouses of that individual's lineal descendants.

§ 1.341–1 *Collapsible corporations; in general.* Subject to the limitations contained in § 1.341–4, the entire gain from (a) the actual sale or exchange of stock of a collapsible corporation, (b) amounts distributed in complete or partial liquidation of a collapsible corporation which are treated, under section 331 as payment in exchange for stock, and (c) a distribution made by a collapsible corporation which, under section 301 (c) (3) is treated, to the extent it exceeds the basis of the stock, in the same manner as a gain from the sale or exchange of property, shall be considered as gain from the sale or exchange of property which is not a capital asset.

§ 1.341–2 *Definitions*—(a) *Determination of collapsible corporation.* (1) A collapsible corporation is defined by section 341 (b) (1) to be a corporation formed or availed of principally (i) for the manufacture, construction, or production of property, (ii) for the purchase of property which (in the hands of the corporation) is property described in section 341 (b) (3) or (iii) for the holding of stock in a corporation so formed or availed of, with a view to (*a*) the sale or exchange of stock by its shareholders (whether in liquidation or otherwise) or a distribution to its shareholders, prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and (*b*) the realization by such shareholders of gain attributable to such property. See § 1.341–5 for a description of the facts which will ordinarily be considered sufficient to establish whether or not a corporation is a collapsible corporation under the rules of this section. See § 1.341–5 (d) for examples of the application of section 341.

(2) Under section 341 (b) (1) the corporation must be formed or availed of with a view to the action therein described, that is, the sale or exchange of its stock by its shareholders, or a distribution to them prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and the realization by the shareholders of gain attributable to such property. This requirement is satisfied in any case in which such action was contemplated by those persons in a position to determine the policies of the corporation, whether by reason of their owning a majority of the voting stock of the corporation or otherwise. The requirement is satisfied whether such action was contemplated, unconditionally, conditionally, or as a recognized possibility. If the corporation was so formed or availed of, it is immaterial that a particular shareholder was not a shareholder at the time of the manufacture, construction, production, or purchase of the property, or if a shareholder at such time, did not share in such view. Any gain of such a shareholder on his stock in the corporation shall be treated in the same manner as gain of a shareholder who did share in such view. The existence of a bona fide business reason for doing business in the corporate form does not, by itself, negate the fact that the corporation may also have been formed or availed of with a view to the action described in section 341 (b)

(3) A corporation is formed or availed of with a view to the action described in section 341 (b) if the requisite view existed at any time during the manufacture, production, construction, or purchase referred to in that section. Thus, if the sale, exchange, or distribution is attributable solely to circumstances which arose after the manufacture, construction, production, or purchase (other than circumstances which reasonably could be anticipated at the time of such manufacture, construction, production, or purchase) the corporation shall, in the absence of compelling facts to the contrary be considered not to have been so formed or availed of. However, if the sale, exchange or distribution is attributable to circumstances present at the time of the manufacture, construction, production, or purchase, the corporation shall, in the absence of compelling facts to the contrary, be considered to have been so formed or availed of.

(4) The property referred to in section 341 (b) is that property or the aggregate of those properties with respect to which the requisite view existed. In order to ascertain the property or properties as to which the requisite view existed, reference shall be made to each property as to which, at the time of the sale, exchange, or distribution referred to in section 341 (b) there has not been a realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property. However, where any such property is a unit of an integrated project involving several properties similar in kind, the determination whether the requisite view existed shall be made only if a substantial part of the taxable income to be derived from the project has not been realized at the time of the sale, exchange, or distribution, and in such case the determination shall be made by reference to the aggregate of the properties constituting the single project.

(5) A corporation shall be deemed to have manufactured, constructed, produced, or purchased property if it (i) engaged in the manufacture, construction, or production of property to any extent, or (ii) holds property having a basis determined, in whole or in part, by reference to the cost of such property in the hands of a person who manufactured, constructed, produced, or purchased the property, or (iii) holds property having a basis determined, in whole or in part, by reference to the cost of property manufactured, constructed, produced, or purchased by the corporation. Thus, under subdivision (i) of this subparagraph, for example, a corporation need not have originated nor have completed the manufacture, construction, or production of the property. Under subdivision (ii) of this subparagraph, for example, if an individual were to transfer property constructed by him to a corporation in exchange for all of the capital stock of such corporation, and such transfer qualifies under section 351, then the corporation would be deemed to have constructed the property, since the basis of the property in the hands of the corporation would, under section 362 be determined by reference to the basis of the property in the hands of the individual. Under subdivision (iii) of this subparagraph, for example, if a corporation were to exchange property constructed by it for property of like kind constructed by another person, and such exchange qualifies under section 1031 (a) then the corporation would be deemed to have constructed the property received by it in the exchange, since the basis of the property received by it in the exchange would, under section 1031 (d), be determined by reference to the basis

of the property constructed by the corporation.

(6) In determining whether a corporation is a collapsible corporation by reason of the purchase of property, it is immaterial whether the property is purchased from the shareholders of the corporation or from persons other than such shareholders. The property, however, must be property which, in the hands of the corporation, is property of a kind described in section 341 (b) (3) The determination whether property is of a kind described in section 341 (b) (3) shall be made without regard to the fact that the corporation is formed or availed of with a view to the action described in section 341 (b) (1)

(7) Section 341 is applicable whether the shareholder is an individual, a trust, an estate, a partnership, a company, or a corporation.

(b) *Section 341 assets.* For the purposes of this section, the term "section 341 assets" means the following listed property if held for less than 3 years:

(1) Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(2) Property held primarily for sale to customers in the ordinary course of a trade or business.

(3) Property used in a trade or business as defined in section 1231 (b) and held for less than 3 years, except property that is or has been used in connection with the manufacture, construction, production or sale of property described above in (1) and (2)

(4) Unrealized receivables or fees pertaining to property listed in this paragraph. The term "unrealized receivables or fees" means any rights (contractual or otherwise) to payment for property listed in (1) (2) and (3) above which has been delivered or is to be delivered and rights to payments for services rendered or to be rendered, to the extent such rights have not been included in the income of the corporation under the method of accounting used by it. In determining whether the assets referred to in this paragraph have been held for 3 years, the time such assets were held by a transferor shall be taken into consideration (section 1223) However, no such period shall begin before the date the manufacture, construction, production, or purchase of such assets is completed.

§ 1.341–3 *Presumptions.* (a) Unless shown to the contrary a corporation shall be considered to be a collapsible corporation if at the time of the transactions described in § 1.341–1 the fair market value of the section 341 assets held by it constitutes 50 percent or more of the fair market value of its total assets and the fair market value of the section 341 assets is 120 percent or more of the adjusted basis of such assets. In determining the fair market value of the total assets, cash, obligations which are capital assets in the hands of the corporation, governmental obligations, and stock in any other corporation shall not be taken into consideration. The failure of a corporation to meet the requirements of this paragraph, shall not give rise to the presumption that the corporation was not a collapsible corporation.

(b) The following example will illustrate the application of this section:

*Example.* A corporation, filing its income tax returns on the accrual basis, on July 31, 1955, owned assets with the following fair market values: Cash, $175,000; note receivable held for investment, $130,000; stocks of other corporations, $545,000; rents receivable, $15,000; and a building constructed by the corporation in 1953 and held thereafter as rental property, $750,000. The adjusted basis of the building on that date was $600,000. The only debt outstanding was a $500,000 mortgage on the building. On July 31, 1955, the corporation liquidated and distributed all of its assets to its shareholders. In computing whether the fair market value of the section 341 assets (only the building) is 50 percent or more of the fair market value of the total assets, the cash, note receivable, and stocks of other corporations are not taken into account in determining the value of the total assets, with the result that the fair market value of the total assets was $765,000 ($750,000 (building) plus $15,000 (rents receivable)). Therefore, the value of the building is 98 percent of the total assets ($750,000÷$765,000). The value of the building is also 125 percent of the adjusted basis of the building ($750,000÷$600,000). In view of the above facts, there arises a presumption that the corporation is a collapsible corporation.

§ 1.341–4 *Limitations on application of section*—(a) *General.* This section shall apply only to the extent that the recognized gain of a shareholder upon his stock in a collapsible corporation would be considered, but for the provisions of this section, as gain from the sale or exchange of a capital asset held for more than six months. Thus, if a taxpayer sells at a gain stock of a collapsible corporation which he had held for six months or less, this section would not, in any event, apply to such gain. Also, if it is determined, under provisions of law other than section 341, that a sale or exchange at a gain of stock of a collapsible corporation which has been held for more than six months results in ordinary income rather than long-term capital gain, then this section (including the limitations contained herein) has no application whatsoever to such gain.

(b) *Stock ownership rules.* (1) This section shall apply in the case of gain realized by a shareholder upon his stock in a collapsible corporation only if the shareholder, at any time after the actual commencement of the manufacture, construction, or production of the property, or at the time of the purchase of the property described in section 341 (b) (3) or at any time thereafter, (i) owned, or was considered as owning, more than 5 percent in value of the outstanding stock of the corporation, or (ii) owned stock which was considered as owned at such time by another shareholder who then owned, or was considered as owning, more than 5 percent in value of the outstanding stock of the corporation.

(2) The ownership of stock shall be determined in accordance with the rules prescribed by section 544 (a) (1), (2), (3) (5) and (6), except that, in addition to the persons prescribed by section 544 (a) (2), the family of an individual shall include the spouses of that individual's brothers and sisters, whether such brothers and sisters are by the whole or the half blood, and the spouses of that individual's lineal descendants.

(3) For the purpose of this limitation, treasury stock shall not be considered as outstanding stock.

(4) It is possible, under this limitation, that a shareholder in a collapsible corporation may have gain upon his stock in that corporation treated differently from the gain of another shareholder in the same collapsible corporation.

(c) *Seventy-percent rule.* (1) This section shall apply to the gain recognized during a taxable year upon the stock in a collapsible corporation only if more than 70 percent of such gain is attributable to the property referred to in section 341 (b) (1). If more than 70 percent of such gain is so attributable, then all of such gain is subject to this section, and, if 70 percent or less of such gain is so attributable, then none of such gain is subject to this section.

(2) For the purpose of this limitation, the gain attributable to the property referred to in section 341(b(1) is the excess of the recognized gain of the shareholder during the taxable year upon his stock in the collapsible corporation over the recognized gain which the shareholder would have if the property had not been manufactured, constructed, produced, or purchased. In the case of gain on a distribution in partial liquidation or a distribution described in section 301 (c) (3) (A), the gain attributable to the property shall not be less than an amount which bears the same ratio to the gain on such distribution as the gain which would be attributable to the property if there had been a complete liquidation at the time of such distribution bears to the total gain which would have resulted from such complete liquidation.

(3) Gain may be attributable to the property referred to in section 341 (b) (1) even though such gain is represented by an appreciation in the value of property other than that manufactured, constructed, produced, or purchased. Where, for example, a corporation owns a tract of land and the development of one-half of the tract increases the value of the other half, the gain attributable to the developed half of the tract includes the increase in the value of the other half.

(4) The following example will illustrate the application of the 70 percent rule:

*Example:* On January 2, 1954, A formed the Z Corporation and contributed $1,000,000 cash in exchange for all of the stock thereof. The Z Corporation invested $400,000 in one project for the purpose of building and selling residential houses. As of December 31, 1954, the residential houses in this project were all sold, resulting in a profit of $100,000 (after taxes). Simultaneously with the development of the first project and in connection with a second and separate project the Z Corporation invested $600,000 in land for the purpose of subdividing such land into lots suitable for sale as home sites and distributing such lots in liquidation before the realization by the corporation of a substantial part of the taxable income to be realized from this second project. As of

December 31, 1954, Corporation Z had derived $60,000 in profits (after taxes) from the sale of some of the lots. On January 2, 1955, the Z Corporation made a distribution in complete liquidation to shareholder A who received:

(i) $560,000 in cash and notes, and

(ii) Lots having a fair market value of $940,000. The gain recognized to shareholder A upon the liquidation is $500,000 ($1,500,000 minus $1,000,000). The gain which would have been recognized to A if the second project had not been undertaken is $100,000 ($1,100,000 minus $1,000,000). Therefore, the gain attributable to the second project which is property referred to in section 341 (b) (1), is $400,000 ($500,000 minus $100,000). Since this gain ($400,000) is more than 70 percent of the entire gain ($500,000) recognized to A on the liquidation, the entire gain so recognized is gain subject to section 341 (a).

(d) *Three-year rule.* This section shall not apply to that portion of the gain of a shareholder that is realized more than three years after the actual completion of the manufacture, construction, production, or purchase of the property to which such portion is attributable.

§ 1.341-5 *Application of section.* (a) Whether or not a corporation is a collapsible corporation shall be determined under the rules of § 1.341-2 and § 1.341-3 on the basis of all the facts and circumstances in each particular case. The following paragraphs of this section set forth those facts which will ordinarily be considered sufficient to establish that a corporation is or is not a collapsible corporation. The facts set forth in the following paragraphs of this section are not exclusive of other facts which may be controlling in any particular case. For example, if the facts in paragraph (b) of this section, but not the facts in paragraph (c) of this section, are present, the corporation may nevertheless not be a collapsible corporation if there are other facts which clearly establish that the rules of § 1.341-2 and § 1.341-3 are not satisfied. Similarly if the facts in paragraph (c) of this section are present, the corporation may nevertheless be a collapsible corporation if there are other facts which clearly establish that the corporation was formed or availed of in the manner described in § 1.341-2 and § 1.341-3 or if the facts in paragraph (c) of this section are not significant by reason of other facts, such as the fact that the corporation is subject to the control of persons other than those who were in control immediately prior to the manufacture, construction, production, or purchase of the property. See § 1.341-4 for provisions which make section 341 inapplicable to certain shareholders of collapsible corporations.

(b) The following facts will ordinarily be considered sufficient (except as otherwise provided in paragraph (a) of this section and paragraph (c) of this section) to establish that a corporation is a collapsible corporation:

(1) A shareholder of the corporation sells or exchanges his stock, or receives a liquidating distribution, or a distribution described in section 301 (c) (3) (A),

(2) Upon such sale, exchange, or distribution, such shareholder realizes gain attributable to the property described in subparagraphs (4) and (5) of this paragraph, and

(3) At the time of the manufacture, construction, production, or purchase of the property described in subparagraphs (4) and (5) of this paragraph, such activity was substantially in relation to the other activities of the corporation which manufactured, constructed, produced, or purchased such property.

The property referred to in subparagraphs (2) and (3) of this paragraph is that property or the aggregate of those properties which meet the following two requirements:

(4) The property is manufactured, constructed, or produced by the corporation or by another corporation stock of which is held by the corporation, or is property purchased by the corporation or by such other corporation which (in the hands of the corporation holding such property) is property described in section 341 (b) (3) and

(5) At the time of the sale, exchange, or distribution described in subparagraph (1) of this paragraph, the corporation which manufactured, constructed, produced, or purchased such property has not realized a substantial part of the taxable income to be derived from such property.

In the case of property which is a unit of an integrated project involving several properties similar in kind, the rules of this subparagraph shall be applied to the aggregate of the properties constituting the single project rather than separately to such unit. Under the rules of this subparagraph, a corporation shall be considered a collapsible corporation by reason of holding stock in other corporations which manufactured, constructed, produced, or purchased the property only if the activity of the corporation in holding stock in such other corporations is substantial in relation to the other activities of the corporation.

(c) The absence of any of the facts set forth in paragraph (b) of this section or the presence of the following facts will ordinarily be considered sufficient (except as otherwise provided in paragraph (a) of this section) to establish that a corporation is not a collapsible corporation:

(1) In the case of a corporation subject to the rules of paragraph (b) of this section only by reason of the manufacture, construction, production, or purchase (either by the corporation or by another corporation the stock of which is held by the corporation) of property which is property described in section 341 (b) (3) (A) and (B) the amount (both in quantity and value) of such property is not in excess of the amount which is normal—

(i) For the purpose of the business activities of the corporation which manufactured, constructed, produced, or purchased the property if such corporation has a substantial prior business history involving the use of such property and continues in business, or

(ii) For the purpose of an orderly liquidation of the business if the corporation which manufactured, constructed, produced, or purchased such property has a substantial prior business history involving the use of such property and is in the process of liquidation.

(2) In the case of a corporation subject to the rules of paragraph (b) of this section with respect to the manufacture, construction, or production (either by the corporation or by another corporation the stock of which is held by the corporation) of property, the amount of the unrealized taxable income from such property is not substantial in relation to the amount of the taxable income realized (after the completion of a material part of such manufacture, construction, or production, and prior to the sale, exchange, or distribution referred to in paragraph (b) (1) of this section) from such property and from other property manufactured, constructed, or produced by the corporation.

(d) The following examples will illustrate the application of this section:

*Example (1).* (i) On January 2, 1954, A formed the W Corporation and contributed $50,000 cash in exchange for all of the stock thereof. The W Corporation borrowed $900,000 from a bank and used $800,000 of such sum in the construction of an apartment house on land which it purchased for $50,000. The apartment house was completed on December 31, 1954. On December 31, 1954, the corporation, having determined that the fair market value of the apartment house separate and apart from the land, was $900,000, made a distribution (permitted under the applicable State law) to A of $100,000. At this time, the fair market value of the land was $50,000. As of December 31, 1954, the corporation has not realized any earnings and profits. In 1955, the corporation began the operation of the apartment house and received rentals therefrom. The corporation has since continued to own and operate the building. The corporation reported on the basis of the calendar year and cash receipts and disbursements.

(ii) Since A received a distribution and realized a gain attributable to the building constructed by the corporation, since, at the time of such distribution, the corporation has not realized a substantial part of the taxable income to be derived from such building, and since the construction of the building was a substantial activity of the corporation, the W Corporation is considered a collapsible corporation under § 1.341-5 (b). The provisions of section 341 (d) do not prohibit the application of section 341 (a). Therefore, the distribution, if and to the extent that it may be considered long-term capital gain rather than ordinary income without regard to section 341, will be considered ordinary income under section 341 (a).

(iii) In the event of the existence of additional facts and circumstances in the above case, the corporation, notwithstanding the above facts, might not be considered a collapsible corporation. See §§ 1.341-2 and 1.341-5 (a).

*Example (2).* (i) On January 2, 1954, B formed X Corporation and became its sole shareholder. In August 1954, the corporation completed construction of an office building. It immediately sold this building at a gain of $50,000, included this entire gain in its return for 1954, and distributed this entire gain (less taxes) to B. In June 1955, the corporation completed construction of a second office building. In August 1955, B sold the entire stock of X Corporation at a gain of $12,000, which gain is attributable to the second building.

(ii) X Corporation is a collapsible corporation under section 341 (b) for the following reasons: The gain realized through the sale

of the stock of X Corporation was attributable to the second office building; the construction of that building was a substantial activity of X Corporation during the time of construction and, at the time of sale, the corporation had not realized a substantial part of the taxable income to be derived from such building. Since the provisions of section 341 (d) do not prohibit the application of section 341 (a) to B, the gain of $12,000 to B is, accordingly, considered ordinary income.

*Example (3).* The facts are the same as in example (2), except that the following facts are shown: B was the president of the X Corporation and active in the conduct of its business. The second building was constructed as the first step in a project of the X Corporation for the development for rental purposes of a large suburban center involving the construction of several buildings by the corporation. The sale of the stock by B was caused by his retiring from all business activity as a result of illness arising after the second building was constructed. Under these additional facts, the corporation is not considered a collapsible corporation. See §§ 1.341-2 and 1.341-5 (a).

*Example (4).* (i) On January 2, 1948, C formed the Y Corporation and became the sole shareholder thereof. The Y Corporation has been engaged solely in the business of producing motion pictures and licensing their exhibition. On January 2, 1955, C sold all of the stock of the Y Corporation at a gain. The Y Corporation has produced one motion picture each year since its organization and before January 2, 1955, it has realized a substantial part of the taxable income to be derived from each of its motion pictures except the last one made in 1954. This last motion picture was completed September 1, 1954. As of January 2, 1955, no license had been made for its exhibition. The fair market value on January 2, 1955, of this last motion picture exceeds the cost of its production by $50,000. A material part of the production of this last picture was completed on January 1, 1954, and between that date and January 2, 1955, the corporation had realized taxable income of $500,000 from other motion pictures produced by it. The corporation has consistently distributed to its shareholder its taxable income when received (after adjustment for taxes).

(ii) Although the corporation is within paragraph (b) of this section with respect to the production of property, the amount of the unrealized income from such property ($50,000) is not substantial in relation to the amount of the income realized, after the completion of a material part of the production of such property and prior to sale of the stock, from such property and other property produced by the corporation ($500,000). Accordingly, the Y Corporation is within paragraph (c) (2) of this section, and is not considered a collapsible corporation.

*Example (5).* The facts are the same as in example (4) except that C sold all of his stock to D on February 1, 1954. On January 2, 1955, D sold all of the Y Corporation stock at a gain, the gain being attributable to the picture completed September 1, 1954, and not released by the corporation for exhibition. In view of the change of control of the corporation, the provisions of paragraph (c) (2) of this section are not significant at the time of the sale by D, and the Y Corporation would be considered a collapsible corporation on January 2, 1955. See §§ 1.341-2 and 1.341-5 (a).

§ 1.342 *Statutory provisions; liquidation of certain foreign personal holding companies.*

SEC. 342. *Liquidation of certain foreign personal holding companies*—(a) *In general.* If any distribution—

(1) Is, within the meaning of the Internal Revenue Code of 1939, a distribution in partial liquidation or in complete liquidation (including any one of a series of distributions made by the corporation in complete cancellation or redemption of all its stock) and

(2) Is made by a foreign corporation which, with respect to any taxable year beginning on or before, and ending after, August 26, 1937, was a foreign personal holding company, and with respect to which a United States group (as defined in section 552 (a) (2)) existed after August 26, 1937, and before January 1, 1938,

then the distribution shall be treated as a distribution in full or part payment in exchange for the stock, and the amount of the gain recognized (determined under section 1002 without regard to this part) resulting from such distribution shall be considered as a gain from the sale or exchange of a capital asset held for not more than 6 months.

(b) *Special rule for certain liquidations before 1956.* Subsection (a) shall not apply in the case of a series of distributions in complete liquidation described in subsection (a) if—

(1) The first distribution is made on or after June 22, 1954, and

(2) The final distribution is made before January 1, 1956;

and the amount of the gain recognized (determined under section 1002 without regard to this part) resulting from such distributions 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.

§ 1.342-1 *General.* The determination of whether a foreign corporation was a foreign personal holding company with respect to a taxable year beginning on or before, and ending after August 26, 1937, shall be made under section 331 of the Revenue Act of 1936 and the regulations thereunder. For the purpose of section 342 (a), a liquidation may be completed before the actual dissolution of the liquidating corporation. However, no liquidation shall be considered as completed until the liquidating corporation and the receiver (or trustees in liquidation) are finally divested of all the property, whether tangible or intangible.

*Definition*

§ 1.346 *Statutory provisions; partial liquidation defined.*

SEC. 346. *Partial liquidation defined*—(a) *In general.* For purposes of this subchapter, a distribution shall be treated as in partial liquidation of a corporation if—

(1) The distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan; or

(2) The distribution is not essentially equivalent to a dividend, is in redemption of a part of the stock of the corporation pursuant to a plan, and occurs within the taxable year in which the plan is adopted or within the succeeding taxable year, including (but not limited to) a distribution which meets the requirements of subsection (b).

For purposes of section 562 (b) (relating to the dividends paid deduction) and section 6043 (relating to information returns), a partial liquidation includes a redemption of stock to which section 302 applies.

(b) *Termination of a business.* A distribution shall be treated as a distribution described in subsection (a) (2) if the requirements of paragraphs (1) and (2) of this subsection are met.

(1) The distribution is attributable to the corporation's ceasing to conduct, or consists of the assets of, a trade or business which has been actively conducted throughout the 5-year period immediately before the distribution, which trade or business was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(2) Immediately after the distribution the liquidating corporation is actively engaged in the conduct of a trade or business, which trade or business was actively conducted throughout the 5-year period ending on the date of the distribution and was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

Whether or not a distribution meets the requirements of paragraphs (1) and (2) of this subsection shall be determined without regard to whether or not the distribution is pro rata with respect to all of the shareholders of the corporation.

(c) *Treatment of certain redemptions.* The fact that, with respect to a shareholder, a distribution qualifies under section 302 (a) (relating to redemptions treated as distributions in part or full payment in exchange for stock) by reason of section 302 (b) shall not be taken into account in determining whether the distribution, with respect to such shareholder, is also a distribution in partial liquidation of the corporation.

§ 1.346-1 *Partial liquidation*—(a) *General.* This section defines a partial liquidation. If amounts are distributed in partial liquidation such amounts are treated under section 331 (a) (2) as received in part or full payment in exchange for the stock. A distribution is treated as in partial liquidation of a corporation if—

(1) The distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan of complete liquidation, or

(2) The distribution—

(i) Is not essentially equivalent to a dividend,

(ii) Is in redemption of a part of the stock of the corporation pursuant to a plan, and

(iii) Occurs within the taxable year in which the plan is adopted or within the succeeding taxable year.

An example of a distribution which will qualify as a partial liquidation under paragraph (2) and section 346 (a) is a distribution resulting from a genuine contraction of the corporate business such as the distribution of unused insurance proceeds recovered as a result of a fire which destroyed part of the business causing a cessation of a part of its activities. On the other hand, the distribution of funds attributable to a reserve for an expansion program which has been abandoned does not qualify as a partial liquidation within the meaning of section 346 (a) A distribution to which section 355 applies (or so much of section 356 as relates to section 355) is not a distribution in partial liquidation within the meaning of section 346 (a)

(b) *Special requirements on termination of business.* A distribution which occurs within the taxable year in which the plan is adopted or within the succeeding taxable year and which meets

the requirements of subsection (b) of section 346 falls within subparagraph (2) of paragraph (a) of this section and within section 346 (a) (2) The requirements which a distribution must meet to fall within subsection (b) of section 346 are:

(1) Such distribution is attributable to the corporation's ceasing to conduct, or consists of assets of, a trade or business which has been actively conducted throughout the five-year period immediately before the distribution, which trade or business was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part, and

(2) Immediately after such distribution by the corporation it is actively engaged in the conduct of a trade or business, which trade or business was actively conducted throughout the five-year period ending on the date of such distribution and was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

A distribution shall be treated as having been made in partial liquidation pursuant to section 346 (b) if it consists of the proceeds of the sale of the assets of a trade or business which has been actively conducted for the five-year period and has been terminated, or if it is a distribution in kind of the assets of such a business, or if it is a distribution in kind of some of the assets of such a business and of the proceeds of the sale of the remainder of the assets of such a business. In general, a distribution which will qualify under section 346 (b) may consist of, but is not limited to—

(i) Assets (other than inventory or property described in (ii)) used in the trade or business throughout the five-year period immediately before the distribution (for this purpose an asset shall be considered used in the trade or business during the period of time the asset which it replaced was so used) or

(ii) Proceeds from the sale of assets described in (i) and, in addition,

(iii) The inventory of such trade or business or property held primarily for sale to customers in the ordinary course of business, if—

(*a*) The items constituting such inventory or such property were substantially similar to the items constituting such inventory or property during the five-year period immediately before the distribution, and

(*b*) The quantity of such items on the date of distribution was not substantially in excess of the quantity of similar items regularly on hand in the conduct of such business during such five-year period,

or

(iv) Proceeds from the sale of inventory or property described in (iii) if such inventory or property is sold in bulk in the course of termination of such trade or business and if with respect to such inventory the conditions of (*a*) and (*b*) of (iii) would have been met had such inventory or property been distributed on the date of such sale.

(c) *Active conduct of a trade or business.* For the purpose of section 346 (b) (1), a corporation shall be deemed to have actively conducted a trade or business immediately before the distribution, if—

(1) In the case of a business the assets of which have been distributed in kind, the business was operated by such corporation until the date of distribution, or

(2) In the case of a business the proceeds of the sale of the assets of which are distributed, such business was actively conducted until the date of sale and the proceeds of such sale were distributed as soon thereafter as reasonably possible.

The term "active conduct of a trade or business" shall have the same meaning in this section as in § 1.355–1 (c)

§ 1.346–2 *Treatment of certain redemptions.* If a distribution in a redemption of stock qualifies as a distribution in part or full payment in exchange for the stock under both section 302 (a) and this section, then only this section shall be applicable. None of the limitations of section 302 shall be applicable to such redemption.

§ 1.346–3 *Effect of certain sales.* The determination of whether assets sold in connection with a partial liquidation are sold by the distributing corporation or by the shareholder is a question of fact to be determined under the facts and circumstances of each case.

CORPORATE ORGANIZATIONS AND REORGANIZATIONS

§ 1.351 *Statutory provisions; transfer to corporation controlled by transferor*

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 or securities in such corporation and immediately after the exchange such person or persons are in control (as defined in section 368 (c)) of the corporation. For purposes of this section, stock or securities issued for services shall not be considered as issued in return for property.

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

(d) *Cross references.* (1) For special rule where another party to the exchange assumes a liability, or acquires property subject to a liability, see section 357.

(2) For the basis of stock, securities, 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).

§ 1.351–1 *Transfer to corporation controlled by transferor* (a) (1) Section 351 (a) provides, in general, for the nonrecognition of gain or loss upon the transfer by one or more persons of property to a corporation solely in exchange for stock or securities in such corporation if, immediately after the exchange, such person or persons are in control of the corporation to which the property was transferred. As used in section 351, the phrase "one or more persons" includes individuals, trusts, estates, partnerships, associations, companies, or corporations (see section 7701 (a) (1)) To be in control of the transferee corporation, such person or persons must own immediately after the transfer 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 such corporation (see section 368 (c)) In determining control under this section, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account. The phrase "immediately after the exchange" does not necessarily require simultaneous exchanges by two or more persons, but comprehends a situation where the rights of the parties have been previously defined and the execution of the agreement proceeds with an expedition consistent with orderly procedure. For purposes of this section—

(i) Stock or securities issued for services rendered or to be rendered to or for the benefit of the issuing corporation will not be treated as having been issued in return for property, and

(ii) Stock or securities issued for property which is of relatively small value in comparison to the value of the stock and securities already owned (or to be received for services) by the person who transferred such property, shall not be treated as having been issued in return for property if the primary purpose of the transfer is to qualify under this section the exchanges of property by other persons transferring property.

For the purpose of section 351, stock rights or stock warrants are not included in the term "stock or securities."

(2) The application of section 351 (a) is illustrated by the following examples:

*Example* (*1*). C owns a patent right worth $25,000 and D owns a manufacturing plant worth $75,000. C and D organize the R Corporation with an authorized capital stock of $100,000. C transfers his patent right to the R Corporation for $25,000 of its stock and D transfers his plant to the new corporation for $75,000 of its stock. No gain or loss to C or D is recognized.

*Example* (*2*). B owns certain real estate which cost him $50,000 in 1930, but which has a fair market value of $200,000 in 1955. He transfers the property to the N Corporation in 1955 for 78 percent of each class of stock of the corporation having a fair market value of $200,000, the remaining 22 percent of the stock of the corporation having been issued by the corporation in 1940 to other persons for cash. B realized a taxable gain of $150,000 on this transaction.

*Example* (*3*). E, an individual, owns property with a basis of $10,000 but which has a fair market value of $18,000. E also

had rendered services valued at $2,000 to Corporation F. Corporation F has outstanding 100 shares of common stock all of which are held by G. Corporation F issues 400 shares of its common stock (having a fair market value of $20,000) to E in exchange for his property worth $18,000 and in compensation for the services he has rendered worth $2,000. Since immediately after the transaction, E owns 80 percent of the outstanding stock of Corporation F, no gain is recognized upon the exchange of the property for the stock. However, E realized $2,000 of ordinary income as compensation for services rendered to Corporation F.

(b) (1) Where property is transferred to a corporation by two or more persons in exchange for stock or securities, as described in paragraph (a) of this section, it is not required that the stock and securities received by each be substantially in proportion to his interest in the property immediately prior to the transfer. However, where the stock and securities received are received in disproportion to such interest, the entire transaction will be given tax effect in accordance with its true nature, and in appropriate cases the transaction may be treated as if the stock and securities had first been received in proportion and then some of such stock and securities had been used to make gifts (section 2501 and following) to pay compensation (section 61 (a) (1)) or to satisfy obligations of the transferor of any kind.

(2) The application of paragraph (b) (1) of this section may be illustrated as follows:

*Example (1).* Individuals A and B, father and son, organize a corporation with 100 shares of common stock to which A transfers property worth $8,000 in exchange for 20 shares of stock, and B transfers property worth $2,000 in exchange for 80 shares of stock. No gain or loss will be recognized under section 351. However, if it is determined that A in fact made a gift to B, such gift will be subject to tax under section 2501 and following. Similarly, if B had rendered services to A (such services having no relation to the assets transferred or to the business of the corporation) and the disproportion in the amount of stock received constituted the payment of compensation by A to B, B will be taxable upon the fair market value of the 60 shares of stock received as compensation for services rendered, and A will realize gain or loss upon the difference between the basis to him of the 60 shares and their fair market value at the time of the exchange.

*Example (2).* Individuals C and D each transferred, to a newly organized corporation, property having a fair market value of $4,500 in exchange for the issuance by the corporation of 45 shares of its capital stock to each transferor. At the same time, the corporation issued to E, an individual, 10 shares of its capital stock in payment for organizational and promotional services rendered by E for the benefit of the corporation. E transferred no property to the corporation. C and D were under no obligation to pay for E's services. No gain or loss is recognized to C or D. E received compensation taxable as ordinary income to the extent of the fair market value of the 10 shares of stock received by him.

§ 1.351-2 *Receipt of property.* (a) If an exchange would be within the provisions of section 351 (a) if it were not for the fact that the property received in exchange consists not only of property permitted by such subsection 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. No loss to the recipient shall be recognized.

(b) See section 357 and the regulations pertaining to that section for applicable rules as to the treatment of liabilities as "other property" in cases subject to section 351, where another party to the exchange assumes a liability, or acquires property subject to a liability.

(c) See sections 358 and 362 and the regulations pertaining to those sections for applicable rules with respect to the determination of the basis of stock, securities, or other property received in exchanges subject to section 351.

(d) See Part I of subchapter C and regulations pertaining to that part (§§ 1.301 to 1.318-4) for applicable rules with respect to the taxation of dividends where a distribution by a corporation of its stock or securities in connection with an exchange subject to section 351 (a) has the effect of the distribution of a taxable dividend.

§ 1.351-3 *Records to be kept and information to be filed.* (a) Every person who received the stock or securities of a controlled corporation, or other property as part of the consideration, in exchange for property under section 351, shall file with his income tax return for the taxable year in which the exchange is consummated a complete statement of all facts pertinent to such exchange, including—

(1) A description of the property transferred, or of his interest in such property, together with a statement of the cost or other basis thereof, adjusted to the date of transfer.

(2) With respect to stock of the controlled corporation received in the exchange, a statement of—

(i) The kind of stock and preferences, if any;

(ii) The number of shares of each class received; and

(iii) The fair market value per share of each class at the date of the exchange.

(3) With respect to securities of the controlled corporation received in the exchange, a statement of—

(i) The principal amount and terms; and

(ii) The fair market value at the date of exchange.

(4) The amount of money received, if any.

(5) With respect to other property received—

(i) A complete description of each separate item;

(ii) The fair market value of each separate item at the date of exchange; and

(iii) In the case of a corporate shareholder, the adjusted basis of the other property in the hands of the controlled corporation immediately before the distribution of such other property to the corporate shareholder in connection with the exchange.

(6) With respect to liabilities of the transferors assumed by the controlled corporation, a statement of—

(i) The nature of the liabilities;

(ii) When and under what circumstances created;

(iii) The corporate business reason for assumption by the controlled corporation; and

(iv) Whether such assumption eliminates the transferor's primary liability.

(b) Every such controlled corporation shall file with its income tax return for the taxable year in which the exchange is consummated—

(1) A complete description of all the property received from the transferors.

(2) A statement of the cost or other basis thereof in the hands of the transferors adjusted to the date of transfer.

(3) The following information with respect to the capital stock of the controlled corporation—

(i) The total issued and outstanding capital stock immediately prior to and immediately after the exchange, with a complete description of each class of stock;

(ii) The classes of stock and number of shares issued to each transferor in the exchange, and the number of shares of each class of stock owned by each transferor immediately prior to and immediately after the exchange, and

(iii) The fair market value of the capital stock as of the date of exchange which was issued to each transferor.

(4) The following information with respect to securities of the controlled corporation—

(i) The principal amount and terms of all securities outstanding immediately prior to and immediately after the exchange,

(ii) The principal amount and terms of securities issued to each transferor in the exchange, with a statement showing each transferor's holdings of securities of the controlled corporation immediately prior to and immediately after the exchange,

(iii) The fair market value of the securities issued to the transferors on the date of the exchange, and

(iv) A statement as to whether the securities issued in the exchange are subordinated in any way to other claims against the controlled corporation.

(5) The amount of money, if any, which passed to each of the transferors in connection with the transaction.

(6) With respect to other property which passed to each transferor—

(i) A complete description of each separate item;

(ii) The fair market value of each separate item at the date of exchange, and

(iii) In the case of a corporate transferor, the adjusted basis of each separate item in the hands of the controlled corporation immediately before the distribution of such other property to the corporate transferor in connection with the exchange.

(7) The following information as to the transferor's liabilities assumed by the controlled corporation in the exchange—

(i) The amount and a description thereof,

(ii) When and under what circumstances created, and

(iii) The corporate business reason or reasons for assumption by the controlled corporation.

(c) Permanent records in substantial form shall be kept by every taxpayer who participates in the type of exchange described in section 351, showing the information listed above, in order to facilitate the determination of gain or loss from a subsequent disposition of stock or securities and other property, if any, received in the exchange.

*Effects on Shareholders and Security Holders*

§ 1.354 *Statutory provisions; exchanges of stock and securities in certain reorganizations.*

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) *Limitation.* Paragraph (1) shall not apply if—

(A) The principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or

(B) Any such securities are received and no such securities are surrendered.

(3) *Cross reference.* For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including an excess principal amount of securities received over securities surrendered), see section 356.

(b) *Exception*—(1) *In general.* Subsection (a) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of section 368 (a) (1) (D), 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 section 368 (a) (1) (D), 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 approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act, or under section 20b of the Interstate Commerce Act, as being in the public interest.

§ 1.354-1 *Exchanges of stock and securities in certain reorganizations.* (a) Section 354 provides that under certain circumstances no gain or loss is recognized to a shareholder who surrenders his stock in exchange for other stock or to a security holder who surrenders his securities in exchange for stock. Section 354 also provides that under certain circumstances a security holder may surrender securities and receive securities in the same principal amount or in a lesser principal amount without the recognition of gain or loss to him. The exchanges to which section 354 applies must be pursuant to a plan of reorganization as provided in section 368 (a), and the stock and securities surrendered as well as the stock and securities received must be those of a corporation which is a party to the reorganization. Section 354 does not apply to exchanges pursuant to a reorganization described in section 368 (a) (1) (D) unless the transferor corporation—

(1) Transfers all or substantially all of its assets to a single corporation, and

(2) Distributes all of its remaining properties (if any) and the stock, securities and other properties received in the exchange to its shareholders or security holders in pursuance of the plan of reorganization. The fact that properties retained by the transferor corporation, or received in exchange for the properties transferred in the reorganization, are used to satisfy existing liabilities not represented by securities and which were incurred in the ordinary course of business before the reorganization does not prevent the application of section 354 to an exchange pursuant to a plan of reorganization defined in section 368 (a) (1) (D)

(b) Except in the case described in subsection (c) section 354 is not applicable to an exchange of stock or securities if a greater principal amount of securities is received than the principal amount of securities the recipient surrenders, or if securities are received and the recipient surrenders no securities. See, however, section 356 and regulations pertaining to such section. See also section 306 with respect to the receipt of preferred stock in a transaction to which section 354 is applicable.

(c) An exchange of stock or securities shall be subject to section 354 (a) (1) even though—

(1) Such exchange is not pursuant to a plan of reorganization described in section 368 (a) and

(2) The principal amount of the securities received exceeds the principal amount of the securities surrendered or if securities are received and no securities are surrendered—

if such exchange is pursuant to a plan of reorganization for a railroad corporation as defined in section 77 (m) of the Bankruptcy Act and is approved by the Interstate Commerce Commission under section 77 of such act or under section 20b of the Interstate Commerce Act as being in the public interest. Section 354 is not applicable to such exchanges if there is received property other than stock or securities. See, 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.

(e) For the purpose of section 354, stock rights or stock warrants are not included in the term "stock or securities"

§ 1.355 *Statutory provisions; distribution of stock and securities of a controlled corporation.*

SEC. 355. *Distribution of stock and securities of a controlled corporation*—(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 or his delegate 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) *Limitation.* Paragraph (1) shall not apply if—

(A) 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

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

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 which occurs within 5 years of the distribution of such stock and 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.

(4) *Cross reference.* For treatment of the distribution if any property is received which is not permitted to be received under this subsection (including an excess principal amount of securities received over securities surrendered), see section 356.

(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 directly (or through one or more corporations) by another corporation within the period described in subparagraph (B), or

(ii) Was so acquired by another corporation within such period, but such control 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.

§ 1.355–1 *Distribution of stock and securities of controlled corporation*—(a) *Application of section.* Section 355 provides for the separation, without recognition of gain or loss to the shareholders and security holders, of two or more existing businesses formerly operated, directly or indirectly, by a single corporation. It applies only to the separation of existing businesses which have been in active operation for at least five years, and which, in general, have been owned for at least five years by the corporation making the distribution of stock or of stock and securities. Section 355 does not apply to the division of a single business. For the purpose of section 355, stock rights or stock warrants are not included in the term "stock and securities"

(b) *Types of separations.* Section 355 is concerned with two general types of separations of businesses. The first is the distribution of the stock of an existing corporation. The second is the distribution of the stock of a new corporation which stock was received in exchange for the assets of a business previously operated by the distributing corporation. In both cases, this section contemplates the continued operation of the businesses existing prior to the separation.

(c) *Active business.* Section 355 is not applicable unless the controlled corporation and the distributing corporation are each engaged in the active conduct of a trade or business. For specific rules in this connection see section 355 (b) (1) and (2) Without regard to such rules, for purposes of section 355, a trade or business consists of a specific existing group of activities being carried on for the purpose of earning income or profit from only such group of activities, and the activities included in such group must include every operation which forms a part of, or a step in, the process of earning income or profit from such group. Such group of activities ordinarily must include the collection of income and the payment of expenses. It does not include—

(1) The holding for investment purposes of stock, securities, land or other property, including casual sales thereof (whether or not the proceeds of such sales are reinvested),

(2) The ownership and operation of land or buildings all or substantially all of which are used and occupied by the owner in the operation of a trade or business, or

(3) A group of activities which, while a part of a business operated for profit, are not themselves independently producing income even though such activities would produce income with the addition of other activities or with large increases in activities previously incidental or insubstantial.

(d) The following examples illustrate the application of the rules described in paragraph (c) of this section:

*Example (1).* Corporation A is engaged in the manufacture and sale of soap and detergents and owns investment securities. It proposes to place the investment securities in a new corporation and distribute the stock of such new corporation to its shareholders. The holding of investment securities does not constitute a trade or business.

*Example (2).* Corporation B is engaged in the business of manufacturing and selling hats in its own factory building. It proposes to transfer the factory building to a new corporation and distribute the stock of such new corporation to its shareholders. The activities in connection with the manufacturing of hats constitute a trade or business; but the operation of the factory building does not.

*Example (3).* Corporation C, a bank, owns an eleven-story downtown office building, the ground floor of which is occupied by it in the conduct of its banking business and the remaining ten floors of which it rents to various tenants. The ten floors are rented, managed and maintained by the real estate department of the bank. It is proposed to transfer the building to a new corporation and distribute the stock of such new corporation to the bank's shareholders. The activities in connection with banking constitute a trade or business as do also the activities in connection with the rental of the building.

*Example (4).* Corporation D, a bank, owns a two-story building in a suburban area, the ground floor and approximately one-half of the second floor of which is occupied by it in the conduct of its banking business. The remainder of the second floor is rented as storage space to a neighboring retail merchant. It is proposed to transfer the building to a new corporation and distribute the stock of such new corporation to the bank's shareholders. With respect to the rental of part of the second floor of its building, the bank is not engaged in the active conduct of a trade or business, such activity being only incidental to its banking business.

*Example (5).* Corporation E is engaged in the manufacture and sale of wood products. In connection with such manufacturing, it maintains a research department for its own use. It proposes to transfer the research department to a new corporation after which it will engage the services of the new corporation on a contract basis. The activities of the research department do not constitute a trade or business.

*Example (6).* Corporation F owns and rents an office building and owns vacant land. It proposes to transfer the vacant land to a new corporation and distribute the stock of such new corporation to its shareholders. The holding of the vacant land does not constitute a trade or business.

*Example (7).* Corporation G owns land on which it engages in the ranching business. Oil has been discovered in the area and it is apparent that oil may be found under the land on which the ranching activities are maintained. Corporation G has engaged in no activities in connection with the mineral rights. It proposes to transfer the mineral rights to a new corporation and distribute the stock of such new corporation to shareholders. Corporation G is not engaged in an active trade or business with respect to the mineral rights.

*Example (8).* Corporation H manufactures and sells ice cream at a plant in State X and at a plant in State Y. Corporation H proposes to transfer the plant and related activities in State Y to a new corporation and distribute the stock of such new corporation to its shareholders. The activities in each State constitute a trade or business.

*Example (9).* Corporation I manufactures and sells ice cream in State X. It purchases land and constructs a new plant in State Y. After manufacturing and selling operations have commenced at the new plant, it proposes to transfer it to a new corporation and distribute the stock of such new corporation to its shareholders. The activities at the new plant constitute a trade or business which, however, has been in existence only since such activities began.

*Example (10).* Corporation J has owned and operated a men's retail clothing store in the downtown area of the City of R for seven years and has also owned and operated a men's retail clothing store in the suburban area of the City of R for nine years. The manager of each store directs its operations and makes the necessary purchases. No common warehouse is maintained. Corporation J proposes to transfer the store building, fixtures, and inventory of the suburban store to a new corporation and distribute the stock of such new corporation to the shareholders of Corporation J. The activities of each store constitute a trade or business which has been in existence for more than five years.

*Example (11).* Corporation K processes and sells meat products. It is proposed to separate the selling from the manufacturing activities by forming a separate corporation, L, to handle sales. Corporation K will transfer to Corporation L certain

physical assets pertaining to the sales function plus cash for working capital in exchange for the capital stock of Corporation L which will be distributed to the shareholders of Corporation K. Since the manufacturing and selling operations constitute only one integrated business, neither Corporation K nor Corporation L will be continuing the active conduct of a trade or business formerly conducted by Corporation K.

*Example (12).* Corporation M is engaged in the manufacture and sale of steel and steel products. In addition, Corporation M owns and operates a coal mine for the sole purpose of supplying its coal requirements in the manufacture of steel. It is proposed to transfer the coal mine to a new corporation and distribute the stock of such new corporation to the shareholders of Corporation M. The activities of Corporation M in connection with the operation of the coal mine do not constitute a trade or business, since such activities are not themselves independently producing income although a part of the business operated for profit.

*Example (13).* Corporation N manufactures steel containers for oil and oil products at a plant in State X and at a plant in State Y. Pursuant to a sales contract with Corporation O, Corporation N sells its entire product to Corporation O. Corporation N proposes to transfer the plant and related activities in State Y, together with that portion of the sales contract with Corporation O applicable to the sales of that plant to a new corporation and distribute the stock of such new corporation to its shareholders. The activities in each State constitute a trade or business before and after the transfer to the new corporation.

*Example (14).* Corporation P manufactures and sells steel containers for oil and oil products at a plant in State X and at a plant in State Y. Corporation P makes all of its sales through its wholly-owned subsidiary pursuant to a sales contract, by virtue of which the subsidiary acts either as principal or sales agent for Corporation P. Corporation P proposes to transfer the plant and related activities in State Y, together with that portion of the sales contract applicable to the sales of that plant to a new corporation and distribute the stock of such new corporation to its shareholders. The activities in each State constitute a trade or business before and after the transfer to the new corporation.

*Example (15).* Corporation Q manufactures electrical products at a plant in State X and at a plant in State Y. The sales of the electrical products produced by each plant are made by the corporation's sales office located at the plant in State X. Corporation Q proposes to transfer the plant and related activities in State Y, together with that portion of the facilities and personnel of the sales office allocable to the sales of the plant in State Y to a new corporation and distribute the stock of such new corporation to its shareholders. The activities in each state constitute a trade or business before and after the transfer to the new corporation.

*Example (16).* Corporation R manufactures and sells automobiles and operates an executive dining room primarily for the convenience of its executives. The dining room is managed and operated as a separate unit and the executives are charged for their meals. Corporation R derives a profit from the operation of the dining room. The activities connected with the executive dining room do not constitute a trade or business.

(e) For further examples of businesses operated by one corporation, see § 1.337-3 (d)

§ 1.355-2 *Limitations*—(a) *Property distributed.* The property distributed must consist solely of stock or stock and securities of a controlled corporation. If additional property (including an excess principal amount of securities received over securities surrendered) is received, see section 356.

(b) *Distribution of earnings and profits.* (1) The transaction must not have been used principally as a device for the distribution of the earnings and profits of the distributing corporation or of the controlled corporation or of both. If, pursuant to an arrangement negotiated or agreed upon prior to the distribution of stock or securities of the controlled corporation, part or all of the stock or securities of either corporation are sold or exchanged after the distribution, such sale or exchange will be evidence that the transaction was used principally as a device for the distribution of the earnings and profits of the distributing corportion or of the controlled corporation, or both. However, if the rules respecting continuity of interest contained in paragraph (c) of this section are not met, section 355 will not apply. If a sale of such stock or securities is made after the distribution and is not pursuant to an arrangement negotiated or agreed upon prior to the distribution, the mere fact of such sale is not determinative that the transactions was used principally as a device for the distribution of earnings and profits, but such fact will be evidence that the transaction was used principally as such a device.

(2) A sale is pursuant to an arrangement agreed upon prior to the distribution when enforcible rights to buy or to sell exist before such distribution. In any case in which a sale or exchange was discussed by the buyer and the seller before the distribution, but enforcible rights to buy or to sell did not exist before such distribution, the question whether an arrangement was negotiated within the meaning of section 355 (a) (1) (B) shall be determined from all the facts and circumstances.

(3) In determining whether a transaction was used principally as a device for the distribution of the earnings and profits of the distributing corporation or of the controlled corporation or both, consideration will be given to all of the facts and circumstances of the transaction. In particular, consideration will be given to the nature, kind and amount of the assets of both corporations (and corporations controlled by them) immediately after the transaction. The fact that at the time of the transaction substantially all of the assets of each of the corporations involved are and have been used in the active conduct of trades or businesses which meet the requirements of section 355 (b) will be considered evidence that the transaction was not used principally as such a device.

(c) *Business purpose.* The distribution by a corporation of stock or securities of a controlled corporation to its shareholders with respect to its own stock or to its security holders in exchange for its own securities will not qualify under section 355 where carried out for purposes not germane to the business of the corporation. The principal reason for this requirement is to limit the application of section 355 to certain specified distributions or exchanges with respect to the stock or securities of controlled corporations incident to such readjustment of corporate structures as is required by business exigencies and which, in general, effect only a readjustment of continuing interests in property under modified corporate forms. Section 355 contemplates a continuity of the entire business enterprise under modified corporate forms and a continuity of interest in all or part of such business enterprise on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the distribution or exchange. All the requisites of business and corporate purposes described under § 1.368 must be met to exempt a transaction from the recognition of gain or loss under this section.

(d) *Stock and securities distributed.* The distributing corporation must distribute—

(1) All of the stock and securities of the controlled corporation which it owns, or

(2) At least an amount of the stock which constitutes control as defined in section 368 (c) In such case all, or any part, of the securities of the controlled corporation may be distributed.

Where a part of either the stock or securities is retained under (2), it must be established to the satisfaction of the Commissioner that such retention was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax. Ordinarily, the business reasons (as distinguished from the desire to make a distribution of the earnings and profits) which support a distribution of stock and securities of a controlled corporation under paragraph (c) of this section will require the distribution of all of the stock and securities. If the distribution of all of the stock and securities of a controlled corporation would be treated to any extent as a distribution of "other property" under section 356, this fact does not tend to establish that the retention of any of such stock and securities is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(e) *Principal amount of securities.* (1) Section 355 (a) (1) is not applicable if the principal amount of securities received exceeds the principal amount of securities surrendered or if securities are received and no securities are surrendered. In such cases, see section 356.

(2) If only stock is received in a transaction to which section 355 is applicable, the principal amount of securities surrendered, if any, and the par or stated value of stock is not relevant to the application of such section. For example: All of the stock of Corporation A is owned by X, an individual, and securities in the principal amount of $100,000 which were issued by Corporation A are owned by Y, an individual. Corporation A distributes all of the stock of a controlled corporation to Y in exchange for his securities. The par or stated value of the stock of the controlled corporation is $150,000. No gain

or loss is recognized to Y upon the receipt of the stock of the controlled corporation.

(f) *Period of ownership.* (1) For the purposes of determining whether gain or loss will be recognized upon a distribution, stock of a controlled corporation acquired (in a transaction in which gain or loss is recognized, in whole or in part) within five years of the date of the distribution of such stock is treated as "other property." Section 355 does not apply to a transaction which includes a distribution of such stock. See section 356. The stock so acquired is "stock", however, for the purpose of the requirements respecting the distribution of stock of such controlled corporation provided in section 355 (a) (1) (D)

(2) Paragraph (f) (1) of this section may be illustrated by the following example:

*Example.* Corporation A has held 85 of the 100 outstanding shares of the stock of Corporation B for more than five years on the date of distribution. Six months before such date, it purchased 10 shares of such stock. If all of the stock of the controlled corporation owned by Corporation A is distributed, section 355 is not applicable to such distribution since the 10 shares would represent "other property." See, however, section 356. If, however, for proper business reasons it is decided to retain some of the stock of Corporation B, then the determination of the amount of such stock which must be distributed under section 355 (a) (1) (D) in order to constitute a distribution to which section 355 is applicable must be made by reference to all of the stock of the controlled corporation including the 10 shares acquired six months before such date and the 5 shares owned by others. Similarly, if, by the use of any agency, the distributing corporation acquires stock of the controlled corporation within five years of the date of distribution, for example, where another subsidiary purchases such stock, such stock will be treated as "other property." If Corporation A had held only 75 of the 100 outstanding shares of stock of Corporation B for more than five years on the date of distribution and had purchased the remaining 25 shares six months before such date, neither section 355 nor section 356 would be applicable.

(g) *Active businesses.* The rules of section 355 (b) and § 1.355–4, relating to active businesses, must be satisfied.

§ 1.355–3 *Non pro rata distributions, etc.* (a) The rule of section 355 (a) (1) prescribing that gain or loss will not be recognized applies whether or not the distribution is pro rata with respect to the interests of all the shareholders in the distributing corporation provided all other requirements of section 355 are satisfied. For example, if two individuals, A and B, own all of the stock of Corporation X which operates two active businesses, one business may be transferred to a new corporation in exchange for all of its stock and such stock distributed to either A or B in exchange for all of his stock of Corporation X. Similarly, if, in the above example, only a part of the stock of the new corporation is transferred to one of the shareholders in exchange for all of his stock of Corporation X and the balance of such stock is distributed to the other shareholder (whether or not such other shareholder surrenders stock in Corporation X), no gain or loss will be recognized. The same rule will be applicable if the stock of an existing controlled corporation is distributed to the shareholders even though such distribution is not pursuant to a plan of reorganization. Section 355 does not apply, however, if the substance of the transaction is merely an exchange between shareholders or security holders of stock or securities in one corporation for stock or securities in another corporation. For example, if two individuals, C and D, each own directly fifty percent of the stock of Corporation M and fifty percent of the stock of Corporation N, section 355 would not apply to a transaction in which C and D transfer all of their stock in Corporation M and Corporation N to a new corporation, P, for all of the stock of Corporation P, and Corporation P then distributes the stock of Corporation M to C and the stock of Corporation N to D.

(b) The stock of the controlled corporation which is distributed may consist of either common or preferred stock. See, however, section 306 with respect to the receipt of preferred stock in a transaction to which section 355 is applicable.

(c) The rule of section 355 (a) (1) prescribing that gain or loss will not be recognized applies whether or not the shareholder surrenders stock in the distributing corporation and whether or not the distribution is in pursuance of a plan of reorganization (within the meaning of section 368 (a) (1) (D))

§ 1.355–4 *Active conduct of a trade or business.* (a) A distribution of stock or securities of a controlled corporation is subject to section 355 (a) only, if:

(1) The distributing corporation and the controlled corporation are each engaged in the active conduct of a trade or business immediately after the distribution of stock or securities of the controlled corporation; or

(2) 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 in the active conduct of a trade or business immediately after the distribution. In connection with the requirement of "no assets" a de minimis rule is applicable.

(3) These rules are illustrated by the following examples:

*Example (1).* Corporation A, prior to the distribution, operates an active business and owns all of the stock of Corporation B which also is engaged in the active conduct of a business. Corporation A distributes all of the stock of Corporation B to its shareholders, and both continue the operations of their separate businesses. The active business requirement of section 355 (b) (1) (A) is satisfied.

*Example (2).* The facts are the same as in example 1, except that Corporation A transfers all of its assets except the stock of Corporation B to a new corporation in exchange for all of its stock and transfers the stock of both controlled corporations to its shareholders. The active business requirement of section 355 (b) (1) (B) is satisfied.

(b) (1) Section 355 (b) (2) provides rules for determining whether any corporation is treated as engaged in the active conduct of a trade or business for purposes of ascertaining whether the distributing corporation and the controlled corporation meet the requirements of section 355 (b) (1) Under section 355 (b) (2) (A) a corporation is treated as engaged in the active conduct of a trade or business if it is itself engaged in such a trade or business or if substantially all of its assets consist of the stock and securities of a corporation or corporations controlled by it (immediately after the distribution) each of which is engaged in the active conduct of a trade or business. Regardless of whether the determination is based upon a corporation's own conduct of a trade or business or on the basis of its ownership of the stock of a corporation or corporations which conduct a trade or business, such trade or business must have been actively conducted for the five-year period ending on the date of distribution of the stock and securities of the controlled corporation the stock of which was distributed as provided in section 355 (b) (2) (B). Furthermore, such trade or business must not have been acquired by either corporation during such five-year period unless it was acquired in a transaction in which gain or loss was not recognized (section 355 (b) (2) (C)) In addition, under section 355 (b) (2) (D) such business must not have been indirectly acquired during such five-year period by means of the acquisition of control of another corporation in a transaction in which gain or loss was recognized. Thus, section 355 (b) (2) (D) requires that during the five-year period during which the trade or business must be actively conducted, such business cannot have been acquired, directly or indirectly, through another corporation by such other corporation or any of its predecessors in interest in a transaction in which gain or loss was recognized in whole or in part.

(2) Paragraph (b) (1) of this section may be illustrated by the following example:

*Example.* In 1956, Corporation B, having cash and other liquid assets and engaged in only one active business purchases all of the stock of Corporation A, also engaged in a single active business. Later in the same year, Corporation B in a "downstairs" statutory merger merges into Corporation A. In 1958, Corporation A places the assets of the active business formerly operated by Corporation B in a new subsidiary X. A distribution of the stock of Corporation X to the stockholders of Corporation A is not within the terms of section 355, since one of the active businesses had, in effect, been purchased less than five years prior to the distribution.

(3) For the purpose of determining whether such trade or business has been actively conducted throughout the five-year period described in section 355 (b) (2), the fact that during such five-year period such trade or business underwent change (for example, by the addition of new or the dropping of old products, changes in production capacity, and the like) shall be disregarded provided the changes are not of such a character as to constitute the acquisition of a new or different business.

§ 1.355-5 *Records to be kept and information to be filed.* (a) Every corporation that makes a distribution of stock or securities of a controlled corporation, as described in section 355, shall attach to its return for the year of the distribution a detailed statement setting forth such data as may be appriate in order to show compliance with the provisions of such section.

(b) Every taxpayer who receives a distribution of stock or securities of a corporation that was controlled by a corporation in which he holds stock or securities shall attach to his return for the year in which such distribution is received a detailed statement setting forth such data as may be appropriate in order to show the applicability of section 355. Such statement shall include, but shall not be limited to, a description of the stock and securities surrendered (if any) and received, and the names and addresses of all of the corporations involved in the transaction.

§ 1.356 *Statutory provisions; receipt of additional consideration.*

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, 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) *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.

(f) *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).

§ 1.356-1 *Receipt of additional consideration in connection with an exchange.* (a) If in any exchange to which the provisions of section 354 or section 355 would apply except for the fact that there is received by the shareholders or the security holders other property (in addition to property permitted to be received without recognition of gain, by such sections) or money, then—

(1) The gain, if any, to the taxpayer shall be recognized in an amount not in excess of the sum of the money and the fair market value of the other property, but,

(2) The loss, if any, to the taxpayer from the exchange or distribution shall not be recognized to any extent.

(b) If the distribution of such other property or money by or on behalf of a corporation has the effect of the distribution of a dividend, then there shall be chargeable to each distributee (either an individual or a corporation)—

(1) As a dividend, such an amount of the gain recognized as is not in excess of the distributee's ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913, and

(2) As a gain from the exchange of property, the remainder of the gain so recognized.

(c) The rules of this section may be illustrated by the following examples:

*Example (1).* In an exchange to which the provisions of section 356 apply and to which section 354 would apply but for the receipt of property not permitted to be received without the recognition of gain or loss, A (either an individual or a corporation), received the following in exchange for a share of stock having an adjusted basis to him of $85:

| | |
|---|---|
| One share of stock worth | $100 |
| Cash | 25 |
| Other property (basis $25) fair market value | 50 |
| Total fair market value of consideration received | 175 |
| Adjusted basis of stock surrendered in exchange | 85 |
| Total gain | 90 |
| Gain to be recognized, limited to cash and other property received | 75 |
| A's pro rata share of earnings and profits accumulated after February 28, 1913 (taxable dividend) | 30 |
| Remainder to be treated as a gain from the exchange of property | 45 |

*Example (2).* If, in example (1), A's stock had an adjusted basis to him of $200, he would have realized a loss of $25 on the exchange, which loss would not be recognized.

(d) Section 301 (b) (1) (B) and section 301 (d) (2) do not apply to a distribution of "other property" to a corporate shareholder if such distribution is within the provisions of section 356.

(e) See § 1.301-1 (l) for certain transactions which are not within the scope of section 356.

§ 1.356-2 *Receipt of additional consideration not in connection with an exchange.* (a) If, in a transaction to which section 355 would apply except for the fact that a shareholder (individual or corporate) receives property permitted by section 355 to be received without the recognition of gain, together with other property or money, without the surrender of any stock or securities of the distributing corporation, then the sum of the money and the fair market value of the other property as of the date of the distribution shall be treated as a distribution of property to which the rules of section 301 (other than section 301 (b) and section 301 (d)) apply. See section 358 for determination of basis of such other property.

(b) The rule under paragraph (a) of this section may be illustrated by the following examples:

*Example (1).* Individuals A and B each own 50 of the 100 outstanding shares of common stock of Corporation X. Corporation X owns all of the stock of Corporation Y, 100 shares. Corporation X distributes to each shareholder 50 shares of the stock of Corporation Y plus $100 cash without requiring the surrender of any shares of its own stock. The $100 cash received by each is treated as a distribution of property to which the rules of section 301 apply.

*Example (2).* If, in the above example, Corporation X distributes 50 shares of stock of Corporation Y to A and 30 shares of such stock plus $100 cash to B without requiring the surrender of any of its own stock, the amount of cash received by B is treated as a distribution of property to which the rules of section 301 apply.

§ 1.356-3 *Rules for treatment of securities as "other property."* (a) As a general rule, for purposes of section 356, the term "other property" includes securities. However, it does not include securities permitted under section 354 or section 355 to be received tax free. Thus, when securities are surrendered in a transaction to which section 354 or section 355 is applicable, the characterization of the securities received as "other property" does not include securities received where the principal amount of such securities does not exceed the principal amount of securities surrendered in the transaction. If a greater principal amount of securities is received in an exchange described in section 354 (other than subsection (c) thereof) or section 355 over the principal amount of securities surrendered, the term "other property" includes the fair market value of such excess principal amount as of the date of the exchange. If no securities are surrendered in exchange, the term "other property" includes the fair market value, as of the date of receipt, of the entire principal amount of the securities received.

(b) The following examples illustrate the application of the above rules:

*Example (1).* A, an individual, exchanged 100 shares of stock for 100 shares of stock and a security in the principal amount of $1,000 with a fair market value of $990. The amount of $990 is treated as "other property."

*Example (2).* B, an individual, exchanged 100 shares of stock and a security in the principal amount of $1,000 for 300 shares of stock and a security in the principal amount of $1,500. The security had a fair market value on the date of receipt of $1,575. The fair market value of the excess principal amount, or $525, is treated as "other property."

*Example (3).* C, an individual, exchanged a security in the principal amount of $1,000 for 100 shares of stock and a security in the principal amount of $900. No part of the security received is treated as "other property."

*Example (4).* D, an individual, exchanged a security in the principal amount of $1,000 for 100 shares of stock and a security in the principal amount of $1,200 with a fair market value of $1,100. The fair market value of the excess principal amount, or $183.33, is treated as "other property."

*Example (5).* E, an individual, exchanged a security in the principal amount of $1,000 for another security in the principal amount of $1,200 with a fair market value of $1,080. The fair market value of the excess principal amount, or $180, is treated as "other property."

*Example (6).* F, an individual, exchanged a security in the principal amount of $1,000 for two different securities each in the principal amount of $750. One of the securities had a fair market value of $750, the other had a fair market value of $600. One-third of the fair market value of each security ($250 and $200) is treated as "other property."

§ 1.356-4 *Exchanges for section 306 stock.* If, in a transaction to which section 356 is applicable, other property or money is received in exchange for section 306 stock, an amount equal to the fair market value of the property plus the money, if any, shall be treated as a distribution of property to which section 301 is applicable. The determination of whether section 306 stock is surrendered for other property (including money) is a question of fact to be decided under all of the circumstances of each case. Ordinarily, the other property (including money) received will first be treated as received in exchange for any section 306 stock owned by a shareholder prior to such transaction. For example, if a shareholder who owns a share of common stock (having a basis to him of $100) and a share of preferred stock which is section 306 stock (having a basis to him of $100) surrenders both shares in a transaction to which section 356 is applicable for one share of common stock having a fair market value of $80 and one $100 bond having a fair market value of $100, the bond will be deemed received in exchange for the section 306 stock and it will be treated as a distribution to which section 301 is applicable to the extent of its entire fair market value ($100).

§ 1.356-5 *Transactions involving gift or compensation.* With respect to transactions described in sections 354, 355, or 356, but which—

(a) Result in a gift, see section 2501 and following, and the regulations pertaining thereto, or

(b) Have the effect of the payment of compensation, see section 61 (a) (1), and the regulations pertaining thereto.

§ 1.357 *Statutory provisions; assumption of liability.*

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, 361, or 371 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, or acquires from the taxpayer property subject to a liability,

then such assumption or acquisition shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of section 351, 361, or 371, 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 or acquisition was made, it appears that the principal purpose of the taxpayer with respect to the assumption or acquisition 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 or acquisition (in the total amount of the liability assumed or acquired pursuant to such exchange) shall, for purposes of section 351, 361, or 371 (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

(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, plus the amount of the liabilities to which the property is subject, 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 to which—

(A) Subsection (b) (1) of this section applies, or

(B) Section 371 applies.

§ 1.357-1 *Assumption of liability*—(a) *General rule.* Section 357 (a) does not affect the rule that liabilities assumed are to be taken into account for the purpose of computing the amount of gain or loss realized under section 1001 upon an exchange. Section 357 (a) provides, subject to the exceptions and limitations specified in section 357 (b) and (c) that—

(1) Liabilities assumed are not to be treated as "other property or money" for the purpose of determining the amount of realized gain which is to be recognized under sections 351, 361, or 371, if the transactions would, but for the receipt of "other property or money" have been exchanges of the type described in any one of such sections; and

(2) If the only type of consideration received by the transferor in addition to that permitted to be received by sections 351, 361, or 371, consists of an assumption of liabilities, the transaction, if otherwise qualified, will be deemed to be within the provisions of sections 351, 361, or 371.

(b) *Application of general rule.* The application of paragraph (a) of this section may be illustrated by the following example:

*Example.* A, an individual, transfers to a controlled corporation property with an adjusted basis of $10,000 in exchange for stock of the corporation with a fair market value of $8,000, $3,000 cash, and the assumption by the corporation of indebtedness of A amounting to $4,000. A's gain is $5,000, computed as follows:

| | |
|---|---|
| Stock received, fair market value | $8,000 |
| Cash received | 3,000 |
| Liability assumed by transferee | 4,000 |
| Total consideration received | 15,000 |
| Less: Adjusted basis of property transferred | 10,000 |
| Gain realized | 5,000 |

Assuming that the exchange falls within section 351 as a transaction in which the gain to be recognized is limited to "other property or money" received, the gain recognized to A will be limited to the $3,000 cash received, since, under the general rule of section 357 (a), the assumption of the $4,000 liability does not constitute "other property."

(c) *Tax avoidance purpose.* The benefits of section 357 (a) do not extend to any exchange involving an assumption of liabilities where it appears that the principal purpose of the taxpayer with respect to such assumption was to avoid Federal income tax on the exchange, or, if not such purpose, was not a bona fide business purpose. In such cases, the total amount of liabilities assumed or acquired pursuant to such exchange (and not merely a particular liability with respect to which the tax avoidance purpose existed) shall, for the

purpose of determining the amount of gain to be recognized upon the exchange in which the liabilities are assumed or acquired, be treated as money received by the taxpayer upon the exchange. Thus, if in the example set forth in paragraph (b) of this section, the principal purpose of the assumption of the $4,000 liability was to avoid tax on the exchange, or was not a bona fide business purpose, then the amount of gain recognized would be $5,000. In any suit or proceeding where the burden is on the taxpayer to prove that an assumption of liabilities is not to be treated as "other property or money" under section 357, which is the case if the Commissioner determines that the taxpayer's purpose with respect thereto was a purpose to avoid Federal income tax on the exchange or was not a bona fide business purpose, and the taxpayer contests such determination by litigation, the taxpayer must sustain such burden by the clear preponderance of the evidence. Thus, the taxpayer must prove his case by such a clear preponderance of all the evidence that the absence of a purpose to avoid Federal income tax on the exchange, or the presence of a bona fide business purpose, is unmistakable.

§ 1.357–2 *Liabilities in excess of basis.* (a) Section 357 (c) provides in general that in an exchange to which section 351 (relating to a transfer to a corporation controlled by the transferor) is applicable, or to which section 361 (relating to the nonrecognition of gain or loss to corporations) is applicable by reason of a section 368 (a) (1) (D) reorganization, if the sum of the amount of liabilities assumed plus the amount of liabilities to which the property is subject, 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. Thus, if an individual transfers, under section 351, properties having a total basis in his hands of $20,000, one of which has a basis of $10,000 but is subject to a mortgage of $30,000, to a corporation controlled by him, such individual will be subject to tax with respect to $10,000, the excess of the amount of the liability over the total adjusted basis of all the properties in his hands. The same result will follow whether or not the liability is assumed by the transferee. The determination of whether a gain resulting from the transfer of capital assets is long or short-term capital gain shall be made by reference to the holding period to the transferor of the assets transferred. An exception to the general rule of section 357 (c) is made (1) for any exchange as to which under section 357 (b) (relating to assumption of liabilities for tax avoidance purposes) the entire amount of the liabilities is treated as money received, and (2) for an exchange to which section 371 (relating to reorganizations in certain receivership and bankruptcy proceedings) is applicable.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

*Example (1).* If all such assets transferred are capital assets and if half the assets (ascertained by reference to their fair market value at the time of the transfer) have been held for less than 6 months and the remaining half for more than 6 months, half the excess of the amount of the liability over the total of the adjusted basis of the property transferred pursuant to the exchange shall be treated as short-term capital gain, and the remaining half shall be treated as long-term capital gain.

*Example (2).* If half of the assets (ascertained by reference to their fair market value at the time of the transfer) transferred are capital assets and half are assets other than capital assets, then half of the excess of the amount of the liability over the total of the adjusted basis of the property transferred pursuant to the exchange shall be treated as capital gain, and the remaining half shall be treated as gain from the sale or exchange of assets other than capital assets.

§ 1.358 *Statutory provisions; basis to distributees.*

SEC. 358. *Basis to distributees*—(a) *General rule.* In the case of an exchange to which section 351, 354, 355, 356, 361 or 371 (b) 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, and

(ii) The amount of any money received by the taxpayer, 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 or his delegate, 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.

(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.* Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for purposes of this section, be treated as money received by the taxpayer on the exchange.

(e) *Exception.* This section shall not apply to property acquired by a corporation by the issuance of its stock or securities as consideration in whole or in part for the transfer of the property to it.

§ 1.358–1 *Basis to distributees.* (a) In the case of an exchange or distribution to which section 354, 355, or 371 (b) applies in which, under the law applicable to the year in which the exchange is made, only nonrecognition property is received, the sum of the basis of all of the stock and securities in the corporation whose stock and securities are exchanged or with respect to which the distribution is made, held immediately after the transaction, plus the basis of all stock and securities received in the transaction shall be the same as the basis of all the stock and securities in such corporation held immediately before the transaction allocated in the manner described in section § 1.358–2. In the case of an exchange to which section 351 or 361 applies in which, under the law applicable to the year in which the exchange was made, only nonrecognition property is received, the basis of all the stock and securities received in the exchange shall be the same as the basis of all property exchanged therefor. If in an exchange or distribution to which section 351, 356, 361, or 371 (b) applies both nonrecognition property and "other property" are received, the basis of all the property except "other property" held after the transaction shall be determined as described in the preceding two sentences decreased by the sum of the money and the fair market value of the "other property" (as of the date of the transaction) and increased by the sum of the amount treated as a dividend (if any) and the amount of the gain recognized on the exchange, but the term "gain" as here used does not include any portion of the recognized gain that was treated as a dividend. The basis of the "other property" is its fair market value as of the date of the transaction.

(b) The application of paragraph (a) of this section may be illustrated by the following example:

*Example.* A purchased a share of stock in Corporation X in 1935 for $150. Since that date he has received distributions out of other than earnings and profits (as defined in section 316) totalling $60, so that his adjusted basis for the stock is $90. In a transaction qualifying under section 356, A exchanged this share for one share in Corporation Y, worth $100, cash in the amount of $10, and other property with a fair market value of $30. The exchange had the effect of the distribution of a dividend. A's ratable share of the earnings and profits of Corporation X accumulated after February 28, 1913, was $5. A realized a gain of $50 on the exchange, but the amount recognized is limited to $40, the sum of the cash received and the fair market value of the other property. Of the gain recognized, $5 is taxable as a dividend, and $35 as a gain from the exchange of property. The basis to A of the one share of stock of Corporation Y is $90, that is, the adjusted basis of the one share of stock of Corporation X ($90), decreased by the sum of the cash received ($10) and the fair market value of the other property received ($30) and increased by the sum of the amount treated as a dividend ($5) and the amount treated as a gain from the exchange of property ($35). The basis of the other property received is $30.

§ 1.358–2 *Allocation of basis among nonrecognition property.* (a) (1) As used in this paragraph the term "stock" means stock which is not "other property" under section 356 or 371 (b) stock with respect to which a distribution is made, and, in the case of a surrender of part of the stock of a particular class, the retained part of such stock. The term "securities" means securities (including, where appropriate, fractional parts of securities) which are not "other property" under section 356 or 371 (b) and in the case of a surrender of part of the securities of a particular class, the retained part of such securities. Stock, or securities, as the case may be, which differ either because they are in different corporations or because the rights attributable to them differ (although they are in the same corporation) are considered different classes of stock or securities, as the case may be, for purposes of this section.

(2) If as the result of an exchange or distribution under the terms of section 354, 355, 356 or 371 (b) a shareholder who owned stock of only one class before the transaction owns stock of two or more classes after the transaction, then the basis of all the stock held before the transaction (as adjusted under § 1.358–1) shall be allocated among the stock of all classes (whether or not such stock was received in the transaction) held immediately after the transaction in proportion to the fair market values of the stock of each class.

(3) If as the result of an exchange under the terms of section 354, 355, 356 or 371 (b) a security holder who owned only securities, all of one class, before the transaction, owns securities or stock of more than one class, or owns both stock and securities, then the basis of all the securities held before the transaction (as adjusted under § 1.358–1) shall be allocated among all the stock and securities (whether or not received in the transaction) held immediately after the transaction in proportion to the fair market values of the stock of each class and the securities of each class.

(4) In every case in which, before the transactions, a person owned stock of more than one class or securities of more than one class or owned both stock and securities, a determination must be made, upon the basis of all the facts, of the stock or securities received with respect to stock and securities of each class held (whether or not surrendered) The allocation described in subparagraph (2) of this paragraph shall be separately made as to the stock of each class with respect to which there is an exchange or distribution and the allocation described in subparagraph (3) of this paragraph shall be separately made with respect to the securities of each class, part or all of which are surrendered in the exchange.

(5) Notwithstanding the provisions of subparagraphs (2) (3) and (4) of this paragraph, in any case in which a plan of recapitalization under section 368 (a) (1) (E) provides that each holder of stock or securities of a particular class shall have an option to surrender some or none of such stock or securities in exchange for stock or securities, and a shareholder or security holder exchanges an identifiable part of his stock or securities, the basis of the part of the stock or securities retained shall remain unchanged and shall not be taken into account in determining the basis of the stock or securities received.

(b) (1) As used in this paragraph the term "stock" refers only to stock which is not "other property" under section 351 or 361 and the term "securities" refers only to securities which are not "other property" under section 351 or 361.

(2) If in an exchange to which section 351 or 361 applies property is transferred to a corporation and the transferor receives stock or securities of more than one class or receives both stock and securities, then the basis of the property transferred (as adjusted under § 1.358–1) shall be allocated among all of the stock and securities received in proportion to the fair market values of the stock of each class and the securities of each class.

(c) The application of paragraphs (a) and (b) of this section may be illustrated by the following examples:

*Example (1).* A, an individual, owns stock in Corporation X with an adjusted basis of $1,000. In a transaction qualifying under section 356 (so far as such section relates to section 354), he exchanged this stock for 20 shares of stock of Corporation Y worth $1,200 and securities of Corporation Y worth $400. A realizes a gain of $600 of which $400 is recognized. The adjusted basis in A's hands of each share of the stock of Corporation Y is $50 determined by allocating the basis of the stock of Corporation X ratably to the stock of Corporation Y received in the exchange. The securities of Corporation Y have a basis in the hands of A of $400.

*Example (2).* B, an individual, owns a security in the principal amount of $10,000 with a basis of $5,000. In a transaction to which section 354 is applicable, he exchanges this security for four securities in the principal amount of $750 each, worth $800 each, four securities in the principal amount of $750 each, worth $600 each, class A common stock worth $1,000, and class B common stock worth $400. B realizes a gain of $2,000 none of which is recognized. The basis of his original security, $5,000, will be allocated 32/70ths to the four securities worth $800, 24/70ths to the four securities worth $600, 10/70ths to the class A common stock, and 4/70ths to the class B common stock.

*Example (3).* C, an individual, owns stock of Corporation Y with a basis of $5,000 and owns a security issued by Corporation Y in the principal amount of $5,000 with a basis of $5,000. In a transaction to which section 354 is applicable, he exchanges the stock of Corporation Y for stock of Corporation Z with a value of $6,000, and he exchanges the security of Corporation Y for stock of Corporation Z worth $1,500 and a security of Corporation Z in the principal amount of $4,500 worth $4,500. No gain is recognized to C on either exchange. The basis of the stock of Corporation Z received for the stock of Corporation Y is $5,000. The bases of the stock and security of Corporation Z received in exchange for the security of Corporation Y are $1,250 and $3,750, respectively.

*Example (4).* D, an individual, owns stock in Corporation M with a basis of $15,000, worth $40,000, and owns a security issued by Corporation M in the principal amount of $5,000 with a basis of $4,000. In a transaction qualifying under section 356 (so far as such section relates to section 355), he exchanges the security of Corporation M for a security of Corporation O (a controlled corporation) in the principal amount of $5,000, worth $5,000, and exchanges one-half of his stock of Corporation M for stock of Corporation O worth $15,000 and a security of Corporation O in the principal amount of $5,000, worth $5,000. All of the stock and securities of Corporation O are distributed pursuant to the transaction. D realizes a gain of $12,500 on the exchange of the stock of Corporation M for the stock and security of Corporation O of which $5,000 is recognized. D also realizes a gain of $1,000 on the exchange of a security of Corporation M for a security of Corporation O, none of which is recognized. The basis of his stock of Corporation M held before the transaction is allocated 20/35ths to the stock of Corporation M held after the transaction and 15/35ths to the stock of Corporation O. The basis of the security of Corporation O received in exchange for his security of Corporation M is $4,000, the basis of the security of Corporation M exchanged. The basis of the security of Corporation O received with respect to D's stock of Corporation M is $5,000, its fair market value.

§ 1.358–3 *Treatment of assumption of liabilities.* (a) For purposes of section 358, where a party to the exchange assumes a liability of a distributee or acquires from him property subject to a liability, the amount of such liability is to be treated as money received by the distributee upon the exchange, whether or not the assumption of liabilities resulted in a recognition of gain or loss to the taxpayer under the law applicable to the year in which the exchange was made.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

*Example (1).* A, an individual, owns property with an adjusted basis of $100,000 on which there is a purchase money mortgage of $25,000. On December 1, 1954, A organizes Corporation X to which he transfers the property in exchange for all the stock of Corporation X and the assumption by Corporation X of the mortgage. The capital stock of the Corporation X has a fair market value of $150,000. Under sections 351 and 357, no gain or loss is recognized to A. The basis in A's hands of the stock of Corporation X is $75,000, computed as follows:

| | |
|---|---|
| Adjusted basis of property transferred | $100,000 |
| Less: Amount of money received (amount of liabilities assumed) | 25,000 |
| Basis of Corporation X stock to A | 75,000 |

*Example (2).* A, an individual, owns property with an adjusted basis of $25,000 on which there is a mortgage of $50,000. On December 1, 1954, A organizes Corporation X to which he transfers the property in exchange for all the stock of Corporation X and the assumption by Corporation X of the mortgage. The stock of Corporation X has a fair market value of $50,000. Under sections 351 and 357, gain is recognized to A in the amount of $25,000. The basis in A's hands of the stock of Corporation X is zero, computed as follows:

| | |
|---|---|
| Adjusted basis of property transferred | $25,000 |
| Less: Amount of money received (amount of liabilities) | −50,000 |
| Plus: Amount of gain recognized to taxpayer | 25,000 |
| Basis of Corporation X stock to A | 0 |

§ 1.358–4 *Exception.* Section 358 does not apply in determining the basis of property acquired by a corporation by the issuance of its stock or securities (or by the issuance of stock or securities of another corporation which is in control of such corporation) as the consideration in whole or in part for the transfer of the property to it. See section 362 and the regulations pertaining to that section for rules relating to basis to corporations of property acquired in such cases.

*Effects on Corporation*

§ 1.361 *Statutory provisions; nonrecognition of gain or loss to corporations.*

SEC. 361. *Nonrecognition of gain or loss to corporations*—(a) *General rule.* No gain or loss shall be recognized if a corporation a party to a reorganization 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) 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) 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, but in an amount not in excess of the sum of such money and the fair market value of such 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.

§ 1.361–1 *Nonrecognition of gain or loss to corporations.* Section 361 provides the general rule that no gain or loss shall be recognized if a corporation, a party to a reorganization, exchanges property in pursuance of the plan of reorganization solely for stock or securities in another corporation, a party to the reorganization. This provision includes only stock and securities received in connection with a reorganization defined in section 368 (a) It also includes nonvoting stock and securities in a corporation, a party to a reorganization, received in a transaction to which section 368 (a) (1) (C) is applicable only by reason of section 368 (a) (2) (B)

§ 1.362 *Statutory provisions; basis to corporations.*

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 issuance of stock or securities 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 or his delegate.

§ 1.362–1 *Basis to corporations.* Section 362 provides, as a general rule, that if property was acquired on or after June 22, 1954, by a corporation in connection with (a) a transaction to which section 351 (relating to transfer of property to corporation controlled by transferor) applies, (b) as paid-in surplus or as a contribution to capital, or (c) in connection with a reorganization to which Part III of Subchapter C 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. Section 362 does not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer. (See also § 1.362–2.)

§ 1.362–2 *Certain contributions to capital.* The following rules shall be used in the application of section 362 (c)

(a) Property deemed to be acquired with contributed money shall be that property, if any, the acquisition of which was the purpose motivating the contribution;

(b) In the case of an excess of the amount of money contributed over the cost of the property deemed to be acquired with such money (as defined in paragraph (a) of this section) such excess shall be applied to the reduction of the basis (but not below zero) of other properties held by the corporation, on the last day of the 12-month period beginning on the day the contribution is received, in the following order—

(1) All property of a character subject to an allowance for depreciation (not including any properties as to which a deduction for amortization is allowable)

(2) Property with respect to which a deduction for amortization is allowable,

(3) Property with respect to which a deduction for depletion is allowable under section 611 but not under section 613, and

(4) All other remaining properties.

The reduction of the basis of each of the properties within each of the above categories shall be made in proportion to the relative bases of such properties.

(c) With the consent of the Commissioner, the taxpayer may, however, have the basis of the various units of property within a particular category adjusted in a manner different from the general rule set forth in paragraph (b) of this section. Variations from such rule may, for example, involve adjusting the basis of only certain units of the taxpayer's property within a given category. A request for variations from the general rule should be filed by the taxpayer with its return for the taxable year for which the transfer of the property has occurred.

§ 1.363 *Statutory provisions; effect on earnings and profits.*

SEC. 363. *Effect on earnings and profits.* For rules relating to the effect on earnings and profits of transactions to which this part applies, see sections 312 and 381.

*Special Rule; Definitions*

§ 1.367 *Statutory provisions; foreign corporations.*

SEC. 367. *Foreign corporations.* In determining the extent to which gain shall be recognized in the case of any of the exchanges described in section 332, 351, 354, 355, 356, or 361, a foreign corporation shall not be considered as a corporation unless, before such exchange, it has been established to the satisfaction of the Secretary or his delegate that such exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes. 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.

§ 1.367–1 *Foreign corporations.* Whether any one of the exchanges or distributions described in section 332, 351, 354, 355, 356, or 361, involving a foreign corporation, is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax, is a question of fact. In any such case if a taxpayer desires to establish that an exchange or distribution is not in pursuance of such a plan, a statement under oath of the facts and circumstances relating to the plan under which the exchange or distribution is to be made, together with a copy of the

plan, shall be forwarded to the Commissioner of Internal Revenue, Washington 25, D. C., for a ruling. A letter setting forth the Commissioner's determination will be mailed to the taxpayer. If the Commissioner determines that the exchange or distribution is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax, the taxpayer should retain a copy of the Commissioner's letter as authority for treating the foreign corporation as a corporation in determining the extent to which gain is recognized from the exchange or distribution. If the transaction is not carried out in accordance with the plan submitted, the Commissioner's approval will not render the transaction tax-free.

§ 1.368 *Statutory provisions; definitions relating to corporate reorganizations.*

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, 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, or the fact that property acquired is subject to a liability, 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; or

(F) A mere change in identity, form, or place of organization, however effected.

(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, 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, and the amount of any liability to which any property acquired by the acquiring corporation is subject, shall be treated as money paid for the property.

(C) *Transfers of assets to subsidiaries in certain paragraph (1) (A) and (1) (C) cases.* A transaction otherwise qualifying under paragraph (1) (A) or paragraph (1) (C) shall not be disqualified by reason of the fact that part or all of the assets which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets.

(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) (C) of subsection (a), if the stock exchanged for the 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) or (1) (C) 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 are transferred.

(c) *Control.* For purposes of part I (other than section 304), part II, and this part, 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.

§ 1.368-1 *Purpose and scope of exception of reorganization exchanges*—(a) *Reorganizations.* As used in the regulations under Parts I, II, and III of subchapter C of the Internal Revenue Code of 1954 (§§ 1.301 to 1.368-3) the terms "reorganization" and "party to a reorganization" mean only a reorganization or a party to a reorganization as defined in subsections (a) and (b) of section 368. With respect to insolvency reorganizations, see part IV of subchapter C of the Internal Revenue Code of 1954.

(b) *Purpose.* Under the general rule, upon the exchange of property, gain or loss must be accounted for if the new property differs in a material particular, either in kind or in extent, from the old property. The purpose of the reorganization provisions of the Internal Revenue Code is to except from the general rule certain specifically described exchanges incident to such readjustments of corporate structures made in one of the particular ways specified in the Code, as are required by business exigencies and which effect only a readjustment of continuing interest in property under modified corporate forms. Requisite to a reorganization under the Code are a continuity of the business enterprise under the modified corporate form, and (except as provided in section 368 (a) (1) (D)) a continuity of interest therein on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the reorganization. The Code recognizes as a reorganization the amalgamation (occurring in a specified way) of two corporate enterprises under a single corporate structure if there exists among the holders of the stock and securities of either of the old corporations the requisite continuity of interest in the new corporation, but there is not a reorganization if the holders of the stock and securities of the old corporation are merely the holders of short-term notes in the new corporation. In order to exclude transactions not intended to be included, the specifications of the reorganization provisions of the law are precise. Both the terms of the specifications and their underlying assumptions and purposes must be satisfied in order to entitle the taxpayer to the benefit of the exception from the general rule. Accordingly, under the Code, a short-term purchase money note is not a security of a party to a reorganization, an ordinary dividend is to be treated as an ordinary dividend, and a sale is nevertheless to be treated as a sale even though the mechanics of a reorganization have been set up.

(c) *Scope.* The nonrecognition of gain or loss is prescribed for two specifically described types of exchanges, viz: The exchange that is provided for in section 354 (a) (1) in which stock or securities in a corporation, a party to a reorganization, are, in pursuance of a plan of reorganization, exchanged for the stock or securities in a corporation, a party to the same reorganization; and the exchange that is provided for in section 361 (a) in which a corporation, a party to a reorganization, exchanges property, in pursuance of a plan of reorganization, for stock or securities in another corporation, a party to the same reorganization. Section 368 (a) (1) limits the definition of the term "reorganization" to six kinds of transactions and excludes all others. From its context, the term "a party to a reorganization" can only mean a party to a transaction specifically defined as a reorganization by section 368 (a) Certain rules respecting boot received in either of the two types of exchanges provided for in section 354 (a) (1) and section 361 (a) are prescribed in sections 356, 357, and 361 (b) A special rule respecting a transfer of property with a liability in excess of its basis is prescribed in section 357 (c) Under section 367 a limitation is placed on all these provisions by providing that except under specified conditions foreign corporations shall not be deemed within their scope. The provisions of the Internal Revenue Code referred to in this paragraph are inapplicable unless there is a plan of reorganization. A plan of reorganization must contemplate the bona fide execution of one of the transactions specifically described as a reorganization in section 368 (a) and for the bona fide consummation of each of the requisite acts under which nonrecognition of gain is claimed. Such transaction and such acts must be an ordinary and necessary incident of the conduct

of the enterprise and must provide for a continuation of the enterprise. A scheme, which involves an abrupt departure from normal reorganization procedure in connection with a transaction on which the imposition of tax is imminent, such as a mere device that puts on the form of a corporate reorganization as a disguise for concealing its real character, and the object and accomplishment of which is the consummation of a preconceived plan having no business or corporate purpose, is not a plan of reorganization.

§ 1.368-2 *Definition of terms.* (a) The application of the term "reorganization" is to be strictly limited to the specific transactions set forth in section 368 (a) The term does not embrace the mere purchase by one corporation of the properties of another corporation, for it imports a continuity of interest on the part of the transferor or its shareholders in the properties transferred. If the properties are transferred for cash and deferred payment obligations of the transferee evidenced by short-term notes, the transaction is a sale and not an exchange in which gain or loss is not recognized.

(b) The words "statutory merger or consolidation" refer to a merger or consolidation effected pursuant to the corporation laws of the United States or a State or Territory or the District of Columbia.

(c) In order to qualify as a "reorganization" under section 368 (a) (1) (B) the acquisition by the acquiring corporation of stock of another corporation must be in exchange solely for all or a part of the voting stock of the acquiring corporation, and the acquiring corporation must be in control of the other corporation immediately after the transaction. If, for example, Corporation X, in one transaction exchanges nonvoting preferred stock or bonds in addition to all or a part of its voting stock in the acquisition of stock of Corporation Y, the transaction is not a reorganization under section 368 (a) (1) (B) The acquisition of stock of another corporation by the acquiring corporation solely for its voting stock is permitted tax-free even though the acquiring corporation already owns some of the stock of the other corporation. Such an acquisition is permitted tax-free in a single transaction or in a series of transactions taking place over a relatively short period of time such as 12 months. For example, Corporation A purchased 30 percent of the common stock of Corporation W (the only class of stock outstanding) for cash in 1939. On March 1, 1955, Corporation A offers to exchange its own voting stock for all the stock of Corporation W tendered within 6 months from the date of the offer. Within the 6 months' period Corporation A acquires an additional 60 percent of the stock of Corporation W solely for its own voting stock, so that it owns 90 percent of the stock of Corporation W No gain or loss is recognized with respect to the exchanges of stock of Corporation A for stock of Corporation W For this purpose, it is immaterial whether such exchanges occurred before Corporation A acquired control (80 percent) of Corporation W or after such control was acquired. If Corporation A had acquired 80 percent of the stock of Corporation W for cash in 1939, it could likewise acquire some or all of the remainder of such stock solely in exchange for its own voting stock without recognition of gain or loss.

(d) In order to qualify as a reorganization under section 368 (a) (1) (C) the transaction must be one described in subparagraph (1) or (2) below:

(1) One corporation must acquire substantially all the properties of another corporation solely in exchange for all or a part of its own voting stock, or solely in exchange for all or a part of the voting stock of a corporation which is in control of the acquiring corporation. For example, Corporation P owns all the stock of Corporation A. All the properties of Corporation W are transferred to Corporation A either solely in exchange for voting stock of Corporation P or solely in exchange for less than 80 percent of the voting stock of Corporation A. Either of such transactions constitutes a reorganization under section 368 (a) (1) (C) However, if the properties of Corporation W are acquired in exchange for voting stock of both Corporation P and Corporation A, the transaction will not constitute a reorganization under section 368 (a) (1) (C) In determining whether the exchange meets the requirement of "solely for voting stock" the assumption by the acquiring corporation of liabilities of the transferor corporation, or the fact that property acquired from the transferor corporation is subject to a liability, shall be disregarded. Though such an assumption does not prevent an exchange from being solely for voting stock for the purposes of the definition of a reorganization contained in section 368 (a) (1) (C), it may in some cases, however, so alter the character of the transaction as to place the transaction outside the purposes and assumptions of the reorganization provisions. Section 368 (a) (1) (C) does not prevent consideration of the effect of an assumption of liabilities on the general character of the transaction but merely provides that the requirement that the exchange be solely for voting stock is satisfied if the only additional consideration is an assumption of liabilities.

(2) One corporation—

(i) Must acquire substantially all of the properties of another corporation in such manner that the acquisition would qualify under (1) above, but for the fact that the acquiring corporation exchanges money, or other property in addition to such voting stock, and

(ii) Must acquire solely for voting stock (either of the acquiring corporation or of a corporation which is in control of the acquiring corporation) properties of the other corporation having a fair market value which is at least 80 percent of the fair market value of all the properties of the other corporation.

(3) For the purposes of subparagraph (2) (ii) only, a liability assumed or to which the properties are subject is considered money paid for the properties. For example, Corporation A has properties with a fair market value of $100,000 and liabilities of $10,000. In exchange for these properties, Corporation Y transfers its own voting stock, assumes the $10,000 liabilities, and pays $8,000 in cash. The transaction is a reorganization even though a part of the properties of Corporation A is acquired for cash. On the other hand, if the properties of Corporation A worth $100,000, were subject to $50,000 in liabilities, an acquisition of all the properties, subject to the liabilities, for any consideration other than solely voting stock would not qualify as a reorganization under this section since the liabilities alone are in excess of 20 percent of the fair market value of the properties. If the transaction would qualify under either (1) or (2) above and also under section 368 (a) (1) (D) such transaction shall not be treated as a reorganization under section 368 (a) (1) (C)

(e) A "recapitalization", and therefore a reorganization, takes place if, for example:

(1) A corporation with $200,000 par value of bonds outstanding, instead of paying them off in cash, discharges them by issuing preferred shares to the bondholders;

(2) There is surrendered to a corporation for cancellation 25 percent of its preferred stock in exchange for no par value common stock;

(3) A corporation issues preferred stock, previously authorized but unissued, for outstanding common stock;

(4) An exchange is made of a corporation's outstanding preferred stock, having certain priorities with reference to the amount and time of payment of dividends and the distribution of the corporate assets upon liquidation, for a new issue of such corporation's common stock having no such rights;

(5) An exchange is made of an amount of a corporation's outstanding preferred stock with dividends in arrears for a similar amount of a corporation's preferred stock plus an amount of stock (preferred or common) with respect to the amount of dividends in arrears. However, if such an exchange is made solely for the purpose of effecting the payment of dividends for the current and immediately preceding taxable years upon the preferred stock exchanged, an amount equal to the value of the stock issued in lieu of such dividends shall be treated as a distribution to which section 305 (b) (1) is applicable.

(f) The term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in a transaction qualifying as a reorganization where one corporation acquires stock or properties of another corporation. A corporation remains a party to the reorganization although it transfers all or part of the assets acquired to a controlled subsidiary. A corporation controlling an acquiring corporation is a party to the reorganization when the stock of such controlling corporation is used in the acquisition of properties. Both corporations are parties to the reorganization if, under statutory authority, Corporation A is merged

into Corporation B. All three of the corporations are parties to the reorganization if, pursuant to statutory authority, Corporation C and Corporation D are consolidated into Corporation E. Both corporations are parties to the reorganization if Corporation F transfers substantially all its assets to Corporation G in exchange for all or a part of the voting stock of Corporation G. All three corporations are parties to the reorganization if Corporation H transfers substantially all its assets to Corporation K in exchange for all or a part of the voting stock of Corporation L, which is in control of Corporation K. Both corporations are parties to the reorganization if Corporation M transfers all or a part of its assets to Corporation N in exchange for all or a part of the stock and securities of Corporation N, but only if (1) immediately after such transfer, Corporation M, or one or more of its shareholders (including persons who were shareholders immediately before such transfer) or any combination thereof, is in control of Corporation N, and (2) in pursuance of the plan, the stock and securities of Corporation N are transferred or distributed by Corporation M in a transaction in which gain or loss is not recognized under section 354 or 355, or is recognized only to the extent provided in section 356. Both Corporation O and Corporation P, but not Corporation S, are parties to the reorganization if Corporation O acquires stock of Corporation P from Corporation S in exchange solely for a part of the voting stock of Corporation O, if (1) the stock of Corporation P does not constitute substantially all of the assets of Corporation S, (2) Corporation S is not in control of Corporation O immediately after the acquisition, and (3) Corporation O is in control of Corporation P immediately after the acquisition.

(g) The term "plan of reorganization" has reference to a consummated transaction specifically defined as a reorganization under section 368 (a) The term is not to be construed as broadening the definition of "reorganization" as set forth in section 368 (a), but is to be taken as limiting the nonrecognition of gain or loss to such exchanges or distributions as are directly a part of the transaction specifically described as a reorganization in section 368 (a). Moreover, the transaction, or series of transactions, embraced in a plan of reorganization must not only come within the specific language of section 368 (a) but the readjustments involved in the exchanges or distributions effected in the consummation thereof must be undertaken for reasons germane to the continuance of the business of a corporation a party to the reorganization. Section 368 (a) contemplates genuine corporate reorganizations which are designed to effect a readjustment of continuing interests under modified corporate forms.

(h) As used in section 368, as well as in other provisions of the Internal Revenue Code, if the context so requires, the conjunction "or" denotes both the conjunctive and the disjunctive, and the singular includes the plural. For example, the provisions of the statute are complied with if "stock and securities" are received in exchange as well as if "stock or securities" are received.

§ 1.368-3 *Records to be kept and information to be filed with returns.* (a) The plan of reorganization must be adopted by each of the corporations parties thereto; and the adoption must be shown by the acts of its duly constituted responsible officers, and appear upon the official records of the corporation. Each corporation, a party to a reorganization, shall file as a part of its return for its taxable year within which the reorganization occurred a complete statement of all facts pertinent to the nonrecognition of gain or loss in connection with the reorganization, including:

(1) A certified copy of the plan of reorganization, together with a statement under oath or affirmation showing in full the purposes thereof and in detail all transactions incident to, or pursuant to, the plan.

(2) A complete statement of the cost or other basis of all property, including all stock or securities, transferred incident to the plan.

(3) A statement of the amount of stock or securities and other property or money received from the exchange, including a statement of all distributions or other disposition made thereof. The amount of each kind of stock or securities and other property received shall be stated on the basis of the fair market value thereof at the date of the exchange.

(4) A statement of the amount and nature of any liabilities assumed upon the exchange, and the amount and nature of any liabilities to which any of the property acquired in the exchange is subject.

(b) Every taxpayer, other than a corporation a party to the reorganization, who receives stock or securities and other property or money upon a tax-free exchange in connection with a corporate reorganization shall incorporate in his income tax return for the taxable year in which the exchange takes place a complete statement of all facts pertinent to the nonrecognition of gain or loss upon such exchange including:

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

(2) A statement in full of the amount of stock or securities and other property or money received from the exchange, including any liabilities assumed upon the exchange, and any liabilities to which property received is subject. 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.

(c) Permanent records in substantial form shall 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 on the exchange, or any liabilities to which any of the properties received were subject), 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.

INSOLVENCY REORGANIZATIONS

§ 1.371 *Statutory provisions; insolvency reorganizations; reorganization in certain receivership and bankruptcy proceedings.*

SEC. 371. *Reorganization in certain receivership and bankruptcy proceedings*—(a) *Exchanges by corporations*—(1) *In general.* No gain or loss shall be recognized if property of a corporation (other than a railroad corporation, as defined in section 77 (m) of the Bankruptcy Act (49 Stat. 922; 11 U. S. C. 205)) is transferred in pursuance of an order of the court having jurisdiction of such corporation—

(A) In a receivership, foreclosure, or similar proceeding, or

(B) In a proceeding under chapter X of the Bankruptcy Act (52 Stat. 883-905; 11 U. S. C., chapter 10) or the corresponding provisions of prior law,

to another corporation organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in exchange solely for stock or securities in such other corporation.

(2) *Gain from exchanges not solely in kind.* If an exchange would be within the provisions of paragraph (1) if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by paragraph (1) to be received without the recognition of gain, but also of other property or money, then—

(A) 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) 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, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(b) *Exchanges by security holders*—(1) *In general.* No gain or loss shall be recognized on an exchange consisting of the relinquishment or extinguishment of stock or securities in a corporation the plan of reorganization of which is approved by the court in a proceeding described in subsection (a), in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate such plan of reorganization.

(2) *Gain from exchanges not solely in kind.* If an exchange would be within the provisions of paragraph (1) if it were not for the fact that the property received in exchange consists not only of property permitted by paragraph (1) 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.

(c) *Loss from exchanges not solely in kind.* If an exchange would be within the provisions of subsection (a) (1) or (b) (1) if it were not for the fact that the property received in exchange consists not only of property permitted by subsection (a) (1) or (b) (1) 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.

(d) *Assumption of liabilities.* In the case of a transaction involving an assumption of a liability or the acquisition of property subject to a liability, the rules provided in section 357 shall apply.

§ 1.371–1 *Exchanges by corporations*—(a) *Exchange solely for stock or securities.* (1) Section 371 (a) (1) provides for the nonrecognition of gain or loss by a corporation upon certain exchanges made in connection with the reorganization of an insolvent corporation. The section does not apply to a railroad corporation as defined in section 77 (m) of the Bankruptcy Act (49 Stat. 922; 11 U. S. C. 205) In order to qualify as a section 371 (a) reorganization, the transaction must satisfy the express statutory requirements as well as the underlying assumptions and purposes for which the exchange is excepted from the general rule requiring the recognition of gain or loss upon the exchange of property.

(2) Section 371 (a) (1) applies only with respect to a reorganization effected in one of two specified types of court proceedings: (i) Receivership, foreclosure, or similar proceedings, or (ii) corporate reorganization proceedings under Chapter X of the Bankruptcy Act (52 Stat. 883–905; 11 U. S. C. c. 10). The specific statutory requirements are the transfer of property of a corporation, in pursuance of an order of the court having jurisdiction of the corporation in such proceeding, to another corporation organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in exchange solely for stock or securities in such other corporation. If the consideration for the transfer consists of other property or money as well as stock and securities, see sections 371 (a) (2) and 371 (c) As to the assumption of liabilities in an exchange described in section 371 (a) see section 371 (d)

(3) The application of section 371 (a) (1) is to be strictly limited to a transaction of the character set forth in such section. Hence, the section is inapplicable unless there is a bona fide plan of reorganization approved by the court having jurisdiction of the proceeding and the transfer of the property of the insolvent corporation is made pursuant to such plan. It is unnecessary that the transfer be a direct transfer from the insolvent corporation; it is sufficient if the transfer is an integral step in the consummation of the reorganization plan approved by the court. By its terms, the section has no application to a reorganization consummated by adjustment of the capital or debt structure of the insolvent corporation without the transfer of its assets to another corporation.

(4) As used in section 371 (a) (1), the term "reorganization" is not controlled by the definition of "reorganization" contained in section 368. However, certain basic requirements, implicit in the statute, which are essential to a reorganization under section 368, are likewise essential to qualify a transaction as a reorganization under section 371 (a) (1). Among these requirements are a continuity of the business enterprise under the modified corporate form and a continuity of interest therein on the part of those persons who were the owners of the enterprise prior to the reorganization. Thus, the nonrecognition accorded by section 371 (a) (1) applies only to a genuine reorganization as distinguished from a liquidation and sale of property to either new or old interests supplying new capital and discharging the obligations of the old corporation. For the purpose of determining whether the requisite continuity of interest exists, the interest of creditors who have, by appropriate legal steps, obtained effective command of the property of an insolvent corporation is considered as the equivalent of a proprietary interest. But the mere possibility of a proprietary interest is not its equivalent. In general, any transaction will be subject to nonrecognition of gain or loss as prescribed by section 371 (a) (1) where the property is transferred to a corporation and the stock and securities of such corporation are transferred to persons who were shareholders or creditors of the transferor corporation as if such stock or securities had been transferred to such persons as shareholders pursuant to the nonrecognition provisions of Part III of subchapter C. The determinative and controlling factors are the corporation's insolvency and the effective command by the creditors over its property. The term "insolvent" as used herein refers to insolvency at any time during the course of the proceeding referred to in section 371 (a) (1), either in the sense of excess of liabilities over assets or in the sense of inability to meet obligations as they mature.

(5) A short-term purchase money note is not a security within the meaning of this section, and the transfer of the properties of the insolvent corporation for cash and deferred payment obligations of the transferee evidenced by short-term notes is a sale and not an exchange.

(b) *Exchange for stock or securities and other property or money.* If an exchange would be within the provisions of section 371 (a) (1) if it were not for the fact that the consideration for the transfer of the property of the insolvent corporation consists not only of stock or securities but also of other property or money, then, as provided in section 371 (a) (2), if the other property or money received by the corporation is distributed by it pursuant to the plan of reorganization, no gain to the corporation will be recognized. Property is distributed within the meaning of this section if it is paid over or distributed to shareholders or creditors who have by appropriate legal steps obtained effective command of the property of the corporation. If the other property or money received by the corporation is not distributed by it pursuant to the plan of reorganization, the gain, if any, to the corporation from the exchange will be recognized in an amount not in excess of the sum of money and the fair market value of the other property so received which is not distributed. In either case no loss from the exchange will be recognized (see section 371 (c)).

(c) *Records to be kept and information to be filed.* (1) Each corporation a party to a section 371 (a) reorganization shall furnish a complete statement of all facts pertinent to the nonrecognition of gain or loss in connection with the exchange, including:

(i) A certified copy of the plan of reorganization approved by the court in the proceeding, together with a statement showing in full the purposes thereof and in detail all transactions incident, or pursuant, to the plan;

(ii) A complete statement of the cost or other basis of all property, including all stock or securities, transferred incident to the plan;

(iii) A statement of the amount of stock or securities and other property or money received in the exchange, including a statement of all distributions or other disposition made thereof. The amount of each kind of stock or securities or other property shall be stated on the basis of the fair market value thereof at the date of the exchange;

(iv) A statement of the amount and nature of any liabilities assumed upon the exchange.

The information required by this section shall be filed as a part of the corporation's return for its taxable year within which the reorganization occurred.

(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 Internal Revenue 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' reorgani-

zation 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 stock 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 *Statutory provisions; insolvency reorganization; basis in connection with certain receivership and bankruptcy proceedings.*

SEC. 372. *Basis in connection with certain receivership and bankruptcy proceedings*—(a) *Corporation.* If property was acquired by a corporation in a transfer to which—

(1) Section 371 (a) applies,

(2) So much of section 371 (c) as relates to section 371 (a) (1) applies, or

(3) The corresponding provisions of prior law apply,

then notwithstanding the provisions of section 270 of the Bankruptcy Act (54 Stat. 709; 11 U. S. C. 670), the basis in the hands of the acquiring corporation shall be the same as it would be in the hands of the corporation whose property was so acquired, increased in the amount of gain recognized to the corporation whose property was so acquired under the law applicable to the year in which the acquisition occurred, and such basis shall not be adjusted under section 1017 by reason of a discharge of indebtedness in pursuance of the plan of reorganization under which such transfer was made.

(b) *Stock or security holder.* For basis of stock or securities acquired under section 371 (b), see section 358.

§ 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 (54 Stat. 709; 11 U. S. C. 670) or section 1017 of the Internal Revenue Code of 1954, 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:

*Example (1).* On January 1, 1935, the Y Corporation, a taxpayer making its returns on the calendar year basis, acquired depreciable property from the X Corporation as the result of a transaction described in section 372 (a). On January 1, 1935, the property had, in the hands of the X Corporation, a basis of $200,000, an adjusted basis of $150,000, a fair market value as of January 1, 1935, of $80,000, and an estimated remaining life of 20 years. The 1935 transaction was treated as a taxable exchange and, accordingly, the Y Corporation claimed and was allowed depreciation in the amount of $4,000 for each of the eight taxable years 1935 through 1942, inclusive. For each of the twelve taxable years 1943 through 1954, inclusive, the Y Corporation claimed and was allowed depreciation in the amount of $7,500. On December 31, 1954, the property was sold for $10,000 cash. The amount of the gain realized upon the sale is computed as follows:

| | | |
|---|---|---|
| Basis to X Corporation | | $200,000 |
| Adjustment for depreciation in the hands of X Corporation (sec. 1016) | | 50,000 |
| Adjusted basis for depreciation in the hands of both X and Y Corporations (sec. 372 (b)) | | 150,000 |
| Deduct: | | |
| Depreciation allowable in amount of $7,500 per year (1/20 of $150,000) for 8 years, from Jan. 1, 1935, through Dec. 31, 1942 | $60,000 | |
| Depreciation allowable Jan. 1, 1943, to Dec. 31, 1954 (12 years at $7,500) | 90,000 | |
| | | 150,000 |
| Adjusted basis for computing gain or loss | | 0 |
| Sale price | | 10,000 |
| Gain realized | | 10,000 |

For the taxable year 1943 and succeeding taxable years, the Y Corporation is entitled to deductions for depreciation in respect of such property in the amounts of $7,500 in the determination of its tax liabilities for such years. But no change in the tax liability is authorized for preceding taxable years by reason of the difference between the $7,500 depreciation allowable and the $4,000 deduction previously allowed.

*Example* (2). Assume the same facts as in example (1), except that the property acquired by the Y Corporation had a fair market value as of January 1, 1935, of $180,000, instead of $80,000, and the Y Corporation claimed and was allowed depreciation in the amount of $9,000 for each of the eight taxable years 1935 to 1942, inclusive, and in the amount of $6,500 for the taxable years 1943 to 1954, inclusive. In such case, the amount of the gain realized upon the sale of the property would be computed as follows:

| | | |
|---|---|---|
| Adjusted basis for depreciation in the hands of Y Corporation as computed in example (1) | | $150,000 |
| Deduct: | | |
| Depreciation allowed in the amount of $9,000 per year for 8 years Jan. 1, 1935 to Dec. 31, 1942 | $72,000 | |
| Depreciation allowable Jan. 1, 1943, to Dec. 31, 1954, inclusive (12 times $6,500) | 78,000 | |
| | | 150,000 |
| Adjusted basis for computing gain or loss | | 0 |
| Sale price | | 10,000 |
| Gain realized | | 10,000 |

No change in the tax liability is authorized for taxable years preceding 1943 by reason of the difference between the $7,500 depreciation allowable and the $9,000 deduction previously allowed.

§ 1.373 *Statutory provisions; insolvency reorganizations; loss not recognized in certain railroad reorganizations.*

SEC. 373. *Loss not recognized in certain railroad reorganizations*—(a) *Nonrecognition of loss.* No loss shall be recognized if property of a railroad corporation, as defined in section 77 (m) of the Bankruptcy Act (49 Stat. 922; 11 U. S. C. 205), is transferred in pursuance of an order of the court having jurisdiction of such corporation—

(1) In a receivership proceeding, or

(2) In a proceeding under section 77 of the Bankruptcy Act,

to a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act) organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding.

(b) *Basis.* (1) *Railroad corporations.* If the property of a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act) was acquired after December 31, 1938, in pursuance of an order of the court having jurisdiction of such corporation—

(A) In a receivership proceeding, or

(B) In a proceeding under section 77 of the Bankruptcy Act, and the acquiring corporation is a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act) organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, the basis shall be the same as it would be in the hands of the railroad corporation whose property was so acquired.

(2) *Property acquired by street, suburban, or interurban electric railway corporation.* If the property of any street, suburban, or interurban electric railway corporation engaged as a common carrier in the transportation of persons or property in interstate commerce was acquired after December 31, 1934, in pursuance of an order of the court having jurisdiction of such corporation in a proceeding under section 77B of the Bankruptcy Act (48 Stat. 912), and the acquiring corporation is a street, suburban, or interurban electric railway engaged as a common carrier in the transportation of persons or property in interstate commerce, organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, then, notwithstanding the provisions of section 270 of the Bankruptcy Act (52 Stat. 904; 11 U. S. C. 670), the basis shall be the same as it would be in the hands of the corporation whose property was so acquired.

§ 1.373-1 *Nonrecognition of loss upon transfer of property of railroad corporation.* (a) For the purpose of section 373 (a) it is unnecessary that the transfer be a direct transfer by the corporation undergoing reorganization or that such reorganization constitute a reorganization within the meaning of section 368 (a) since that section does not apply to part IV of subchapter C. It is sufficient if the transfer is made in pursuance of an order of the court and is an integral step in the consummation of a plan of reorganization approved by the court having jurisdiction of the proceeding. If these conditions are satisfied, no loss is recognized to the transferor upon the ultimate transfer of the property, or to the transferor upon any intermediate transfer.

(b) Section 373 (a) applies only to a transfer resulting in a loss and has no application if the transfer therein described results in a gain.

(c) See section 354 (c) relative to exchanges by stock or security holders.

§ 1.373-2 *Property acquired by railroad corporation in a receivership or railroad reorganization proceeding.* (a) Section 373 (b) (1) sets forth certain conditions under which the basis of property acquired by a railroad corporation is the same as it would have been in the hands of the railroad corporation whose property was acquired. For the purpose of section 373 (b) (1) it is unnecessary that the acquisition in question be a direct transfer from the corporation undergoing reorganization or that such reorganization constitute a reorganization within the meaning of section 368 (a) since that section does not apply to part IV of subchapter C. It is sufficient if the acquisition is in pursuance of an order of the court and is an integral step in the consummation of a reorganization plan approved by the court having jurisdiction of the proceeding.

(b) If the conditions of section 373 (b) (1) are satisfied, then for the purpose of determining basis, the provisions of section 373 (b) (1) only shall apply, notwithstanding that the transaction might also fall within another basis provision.

§ 1.373-3 *Property acquired by electric railway corporation in corporate reorganization proceeding.* Subject to the limitations and conditions set forth in section 373 (b) (2), if the reorganization under section 77B of the Bankruptcy Act, 48 Stat. 912, of an electric railway corporation results in the acquisition of the property of such corporation by another corporate entity, the basis of such property in the hands of the acquiring corporation is the same as it would be in the hands of the old corporation. It is requisite to the application of the section that both corporations be street, suburban, or interurban electric railway corporations engaged in the transportation of persons or property in interstate commerce, and that the acquisition is in pursuance of an order of the court and is an integral step in the consummation of a reorganization plan approved by the court having jurisdiction of the proceeding. If section 373 (b) (2) applies, section 270 of the Bankruptcy Act (11 U. S. C. 670), relating to the adjustment of basis by reason of the cancellation or reduction of indebtedness in a corporate reorganization proceeding, is inapplicable. Moreover, if the transaction is within the provisions of section 373 (b) (2) and may also be considered to be within any other basis provision, then the provisions of section 373 (b) (2) only shall apply.

EFFECTIVE DATE OF SUBCHAPTER C

§ 1.391 *Statutory provisions; effective date of Part I.*

SEC. 391. *Effective date of Part I.* Except as otherwise provided in this subchapter, part I shall take effect on June 22, 1954. Section 306 shall apply only with respect to dispositions (or redemptions) occurring on or after June 22, 1954.

§ 1.391-1 *Effective date of part I of subchapter C.* Pursuant to section 395 and regulations thereunder, the provisions of part I of subchapter C shall be effective with respect to the described transactions which occur on or after June 22, 1954, and with respect to section 306 (relating to the disposition or redemption of "section 306 stock"), such section shall apply only to stock which is received in a transaction subject to the Internal Revenue Code of 1954, and which is disposed of or redeemed after June 22, 1954. Generally, stock issued after June 22, 1954, will be section 306 stock if such stock comes within the definition set forth in section 306 (c) However, stock which otherwise qualifies within the definition set forth in section 306 is not section 306 stock if it is issued pursuant to a reorganization which by reason of the application of section 393 (b) and section 395 is governed by the provisions of the Internal Revenue Code of 1939 without amendment by the Internal Revenue Code of 1954. In addition, stock which otherwise qualifies within the definition set forth in section 306 (c) is not section 306 stock if it is issued pursuant to a reorganization which by reason of an election under section 393 (b) (2) is governed by the provisions of the Internal Revenue Code of 1939 with-

out amendment by the Internal Revenue Code of 1954.

§ 1.392 *Statutory provisions; effective date of Part II.*

SEC. 392. *Effective date of Part II*—(a) *General rule.* Except as otherwise provided in this subchapter, part II shall apply with respect to a plan of liquidation only if the first distribution in pursuance of such plan occurs on or after June 22, 1954. Section 341 shall apply only with respect to sales, exchanges, and distributions on or after June 22, 1954.

(b) *Special rule for certain sales during 1954*—(1) *Nonrecognition of gain or loss.* If—

(A) All of the assets of a corporation (less assets retained to meet claims) are distributed before January 1, 1955, in complete liquidation of such corporation; and

(B) The corporation elects (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have this subsection apply,

then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property during the calendar year 1954.

(2) *Certain provisions of section 337 made applicable.* For purposes of paragraph (1)—

(A) The term "property" has the meaning given to such term by section 337 (b); except that any determination required by section 337 (b) to be made by reference to the date of the adoption of the plan of liquidation shall be made by reference to January 1, 1954; and

(B) The limitations of section 337 (c) shall apply.

For purposes of section 453 (d) (4) (B) (relating to disposition of installment obligations), nonrecognition of gain or loss under paragraph (1) of this subsection shall be treated as nonrecognition of gain or loss under section 337.

(3) *Plans of liquidation adopted after December 31, 1953 and before June 22, 1954.* If the plan of complete liquidation was adopted after December 31, 1953, and before June 22, 1954, then, at the election of the corporation (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe)—

(A) The 12-month period beginning on the date of the adoption of such plan shall be (i) the period for distribution (in lieu of the requirement in paragraph (1) (A) of this subsection that the assets be distributed before January 1, 1955), and (ii) the period during which, by reason of paragraph (1) of this subsection, gain or loss to the corporation is not recognized (in lieu of nonrecognition of gain or loss during the calendar year 1954); and

(B) Notwithstanding paragraph (2) (A) of this subsection, any determination required by section 337 (b) to be made by reference to the date of the adoption of the plan of liquidation shall be made by reference to such date (and not by reference to January 1, 1954).

§ 1.392–1 *Effective date of part II of subchapter C*—(a) *General.* Section 392 provides the general rule that Part II of Subchapter C, relating to liquidations shall be applicable only if the first distribution in pursuance of any plan of liquidation occurs on or after June 22, 1954. For this purpose, the date of adoption of the plan of liquidation is not material, except as provided in such part.

(b) *Certain sales in 1954.* Section 392 (b) provides special rules with respect to nonrecognition of gain or loss upon certain sales or exchanges of property in connection with liquidations completed during the calendar year 1954 and in connection with plans of liquidation adopted after December 31, 1953, and before June 22, 1954.

(c) *Election.* Any election provided in section 392 (b) shall be made by attaching to the return of the liquidating corporation for the year in which falls the date of the final liquidating distribution, a statement indicating its election with respect to section 392 (b) or, in any case in which the final return of the corporation was filed on or before December 11, 1954, the date of publication of the notice of proposed rule making, within 90 days after the date of final promulgation of these regulations by filing such a statement with the proper district director of internal revenue for association with the final return. If such a statement is not attached to the return for such year or, in any case in which the final return of the corporation was filed on or before December 11, 1954, is not filed with the proper district director of internal revenue within the time prescribed herein, the provisions of section 392 (b) shall not be applicable.

§ 1.393 *Statutory provisions; effective dates of Parts III and IV*

SEC. 393. *Effective dates of Parts III and IV*—(a) *General rule.* Except as otherwise provided in this subchapter, parts III and IV shall take effect on June 22, 1954.

(b) *Special rules for plans of reorganization*—(1) *In general.* Except as provided in paragraphs (2) and (3), parts III and IV shall apply only in respect of plans of reorganization adopted on or after June 22, 1954. For purposes of this paragraph and paragraphs (2) and (3), a plan to make a transfer to a controlled corporation described in section 351, or a plan to make an exchange or distribution which is described in section 355 (or so much of section 356 as relates to section 355) shall be treated as a plan of reorganization.

(2) *Election to have 1939 Code apply.* If—

(A) A plan of reorganization was submitted to the Secretary or his delegate before June 22, 1954, but such plan was not adopted before such date,

(B) The Secretary or his delegate issues (whether before, on, or after such date) a ruling with respect to such plan, and

(C) The corporations which are parties to the reorganization elect (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have this paragraph apply,

then, if such reorganization is completed in accordance with the plan so submitted, the tax treatment of such reorganization (as to the corporations which are parties to the reorganization and as to their shareholders and security holders) shall be determined under the Internal Revenue Code of 1939 (in accordance with the contents of such ruling) and not under this Code.

(3) *Election to have 1954 Code apply.* If—

(A) A plan of reorganization—

(i) Was adopted after March 1, 1954, and before June 22, 1954, or

(ii) Was adopted before June 22, 1954, in pursuance of a court order and all distributions under the plan occur after March 1, 1954, and before July 1, 1954, and

(B) The corporations which are parties to the reorganization elect (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have this paragraph apply,

then the tax treatment of such reorganization (as to the corporations which are parties to the reorganization and as to their shareholders and security holders) shall be determined under this Code and not under the Internal Revenue Code of 1939.

§ 1.393–1 *Effective dates of parts III and IV of subchapter C.* Section 393 provides the general rule that Part III of Subchapter C, relating to corporate reorganizations, and Part IV of Subchapter C, relating to certain insolvency reorganizations, shall take effect on June 22, 1954.

§ 1.393–2 *Special rule with respect to certain plans of reorganization arising in 1954.* (a) For the purpose of section 393 (b) (1)—

(1) If a corporation has adopted a plan of reorganization as there described before June 22, 1954, it may, if no action has been taken with respect to such plan which would constitute a realization of income or loss (whether or not recognized), and if no conveyance, exchange or distribution has been made by the corporation, rescind by proper corporate action and adopt such plan or another plan of reorganization after June 22, 1954, if all other corporations, parties to such reorganization, likewise rescind and readopt after such date.

(2) A corporation shall be considered to have adopted a plan of reorganization on the date on which a resolution of the board of directors is passed, adopting such plan or recommending its adoption to the shareholders, or upon the date of adoption of the plan of reorganization by the shareholders of such corporation, whichever is earlier.

(b) For the purpose of section 393 (b) (2)—

(1) A plan of reorganization shall be deemed to have been submitted before June 22, 1954, if such plan was filed before such date, with any office of the Internal Revenue Service with a request for a ruling as to the tax treatment thereof,

(2) A ruling with respect to such plan shall be a ruling letter signed by an official authorized to issue rulings in the office of the Assistant Commissioner (Technical) in the National Office of the Internal Revenue Service,

(3) Any such ruling issued shall be conclusive as to the law applicable to the transaction under the Internal Revenue Code of 1939 and for this purpose such Code shall be deemed not to be amended by the provisions of Parts III and IV,

(4) A plan of reorganization shall be deemed to have been filed on the date it is placed in the mail as shown by the postmark on the envelope containing such request for ruling or as shown by other available evidence of the mailing date, if the envelope is properly addressed and the proper postage affixed.

(c) For the purpose of section 393 (b) (3), a plan of reorganization shall be considered to have been adopted by a corporation after March 1, 1954, and before June 22, 1954, if between such dates either the plan was adopted by the shareholders or a resolution of a board of directors was passed adopting the plan or recommending its adoption to the shareholders.

§ 1.393–3 *Making and filing of elections.* The elections provided for in sub-

section (b) (2) and (b) (3) of section 393 shall be executed in the same manner as is required in the case of the income tax returns of the taxpayers. Where more than one corporation is involved in the transaction, all such corporations shall join in making the election, except that a corporation which was not in existence on June 22, 1954, shall not be required to make an election (unless it is the only corporation involved in the transaction) It will be sufficient if the corporations in existence on June 22, 1954, make the election for themselves and for the corporation to be organized after that date pursuant to the plan of reorganization, but such election shall be binding on the new corporation when it is formed and on the holders of its stock and securities. The elections are to be filed with the district director of internal revenue in the district in which the returns of the corporations are filed. The filing is to be accomplished by attaching the election (or certified copy thereof if more than one corporation is involved) to the tax return for the year in which the transaction took place. Furthermore, a copy of such election is to be attached to the income tax return of each shareholder or security holder who made exchanges, or received distributions, pursuant to the plan, for the year in which the transaction took place or, in any case in which the copy of the election is not received by such shareholder or security holder until after the due date for filing the return for the year in which the transaction took place, the copy of the election shall be filed with the proper district director of internal revenue for association with the return of such shareholder or security holder. The elections filed with the corporation returns must be accompanied by all relevant data pertaining to the transaction and by certified copies of the resolution of the directors authorizing the election. An election once made and filed by the corporations that are parties to the reorganization shall be irrevocable both as to the corporations involved and as to the holders of their stock and securities. Permanent records of all relevant data shall be kept by every taxpayer for whom an election was filed under section 393 (b), in order to facilitate the determination of gain or loss from a subsequent disposition of stock or securities or other property acquired in the transaction in respect of which the election was filed.

§ 1.395 *Statutory provisions; special rules for application of subchapter C.*

SEC. 395. *Special rules for application of this subchapter*—(a) *Taxable years affected.* Any provision of this subchapter the applicability of which is stated in terms of a specific date shall apply with respect to taxable years ending after such date. Each provision shall, in the case of a taxable year subject to the Internal Revenue Code of 1939, be deemed to be included in the Internal Revenue Code of 1939, but shall apply only to taxable years ending after such specific date.

(b) *Repeal and continuance of Internal Revenue Code of 1939.* To the extent that the provisions of this subchapter supersede the provisions of the Internal Revenue Code of 1939, such provisions of the Internal Revenue Code of 1939 are hereby repealed. The provisions of the Internal Revenue Code of 1939 shall continue to apply with respect to transactions for which rules are provided in this subchapter until such rules take effect.

§ 1.395-1 *Special rules for application of subchapter C.* (a) In general, under section 7851, the provisions of subchapter C are applicable to any taxable year beginning after December 31, 1953, which ends after August 16, 1954, the date of the enactment of the Internal Revenue Code of 1954. The applicable date of each provision with respect to such year is stated either in connection therewith or in sections 391 through 394. The years to which this subchapter is applicable will include the calendar year 1954, and all fiscal years beginning in 1954 and ending after August 16, 1954. All years beginning before January 1, 1954, and ending either before, on or after August 16, 1954, are subject to the Internal Revenue Code of 1939. All taxable years beginning after December 31, 1953, and ending before August 16, 1954, are also subject to the Internal Revenue Code of 1939.

(b) If there is included in the return for a taxable year subject to the Internal Revenue Code of 1939 items to which the provisions of this subchapter would be applicable if such years were subject to the Internal Revenue Code of 1954, such items shall be reported pursuant to the requirements of this subchapter if the transactions giving rise to such items occurred after the applicable dates specified. The determination in this case of the proper tax treatment shall be made by substituting the applicable provisions of subchapter C for the provisions of the Internal Revenue Code of 1939 which would otherwise be applicable thereto. For example, if a complete liquidation of a corporation occurs and if such liquidation would have been subject to the provisions of section 332 had the Internal Revenue Code of 1954 been applicable then section 332 of this Code shall be deemed to have superseded section 112 (b) (6) of the Internal Revenue Code of 1939. If such transaction occurred prior to the applicable date, then the provisions of the Internal Revenue Code of 1939 alone are applicable. If there is included in the return for a taxable year subject to the Internal Revenue Code of 1954 items to which the provisions of this subchapter would be applicable, except for the applicable dates specified, such items shall be reported pursuant to the requirements of the Internal Revenue Code of 1939 applicable to such transactions. For example, the tax treatment of a complete liquidation of a corporation described in section 332 will be determined not by section 332 but pursuant to the rules of section 112 (b) (6) of the Internal Revenue Code of 1939. If such liquidation occurred after June 21, 1954, only section 332 shall be applicable.

[SEAL] O. GORDON DELK,
*Acting Commissioner of Internal Revenue.*

Approved: November 25, 1955.

H. CHAPMAN ROSE,
*Acting Secretary of the Treasury.*

[F. R. Doc. 55-9630; Filed, Dec. 2, 1955; 8:45 a. m.]

# TITLE 20—EMPLOYEES' BENEFITS

## Chapter V—Bureau of Employment Security, Department of Labor

PART 604—POLICIES OF THE UNITED STATES EMPLOYMENT SERVICE

SERVICE TO MINORITY GROUPS

Pursuant to the authority vested in me by section 12, 48 Stat. 117, as amended, 29 U. S. C. 49k, Reorganization Plan No. 2 of 1949 and by delegation from the Secretary of Labor, this part is amended in the manner set forth below. The amendment deletes the reference to Executive Order 9980 and substitutes a reference to the superseding Executive Order 10590.

1. Paragraph (c) of § 604.8 is amended to read as follows:

(c) To assist the United States Civil Service Commission in effectuating Executive Order 10590 by disregarding nonperformance factors of race, color, religion, or national origin in the recruitment, selection, and referral of workers on job orders from Federal establishments.

(Sec. 12, 48 Stat. 117; 29 U. S. C. 49k)

Signed at Washington, D. C., this 29th day of November 1955.

ROBERT C. GOODWIN,
*Director, Bureau of Employment Security.*

[F. R. Doc. 55-9745; Filed, Dec. 2, 1955; 8:50 a. m.]

# TITLE 25—INDIANS

## Chapter I—Bureau of Indian Affairs, Department of the Interior

Subchapter R—Leases and Sale of Minerals, Restricted Indian Lands

PART 183—LEASING OF RESTRICTED LANDS OF MEMBERS OF FIVE CIVILIZED TRIBES, OKLAHOMA, FOR MINING

PART 186—LEASING OF TRIBAL LANDS FOR MINING

PART 189—LEASING OF CERTAIN RESTRICTED ALLOTTED INDIAN LANDS FOR MINING

PART 195—LEASING OF LANDS IN CROW INDIAN RESERVATION, MONTANA, FOR MINING

ROYALTY RATES FOR MINERALS OTHER THAN OIL AND GAS

1. The regulations in this subchapter are amended as follows:

§ 183.23 *Royalty rates for minerals other than oil and gas.* Unless otherwise authorized by the Commissioner of Indian Affairs, the minimum rates for minerals other than oil and gas shall be as follows:

(a) For substances other than gold, silver, copper, lead, zinc, tungsten, coal, asphaltum and allied substances, oil, and gas, the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent of the value, at the nearest shipping point, of all ores, metals, or minerals marketed.

(b) For gold and silver the lessee shall pay quarterly or as otherwise provided in

the lease, a royalty of not less than 10 percent to be computed on the value of bullion as shown by mint returns after deducting forwarding charges to the point of sale; and for copper, lead, zinc, and tungsten, a royalty of not less than 10 percent to be computed on the value of ores and concentrates as shown by reduction returns after deducting freight charges to the point of sale. Duplicate returns shall be filed by the lessee with the Superintendent within 10 days after the ending of the quarter or other period specified in the lease within which such returns are made: *Provided however* That the lessee shall pay a royalty of not less than 10 percent of the value of the ore or concentrates sold at the mine unless otherwise provided in the lease.

(c) For coal the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds of mine run, or coal as taken from the mine, including what is commonly called "slack."

(d) For asphaltum and allied substances the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds on crude material or not less than 60 cents per ton on refined substances.

(Sec. 2, 35 Stat. 312, sec. 18, 41 Stat. 426, sec. 1, 45 Stat. 495, sec. 1, 47 Stat. 777; 25 U. S. C. 356)

§ 186.15 *Royalty rates for minerals other than oil and gas.* Unless otherwise authorized by the Commissioner of Indian Affairs, the minimum rates for minerals other than oil and gas shall be as follows:

(a) For substances other than gold, silver, copper, lead, zinc, tungsten, coal, asphaltum and allied substances, oil, and gas, the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent of the value, at the nearest shipping point, of all ores, metals, or minerals marketed.

(b) For gold and silver the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent to be computed on the value of bullion as shown by mint returns after deducting forwarding charges to the point of sale; and for copper, lead, zinc, and tungsten, a royalty of not less than 10 percent to be computed on the value of ores and concentrates as shown by reduction returns after deducting freight charges to the point of sale. Duplicate returns shall be filed by the lessee with the Superintendent within 10 days after the ending of the quarter or other period specified in the lease within which such returns are made; *Provided, however* That the lessee shall pay a royalty of not less than 10 percent of the value of the ore or concentrates sold at the mine unless otherwise provided in the lease.

(c) For coal the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds of mine run, or coal as taken from the mine, including what is commonly called "slack."

(d) For asphaltum and allied substances the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds on crude material or not less than 60 cents per ton on refined substances.

(Secs. 16, 17, 48 Stat. 987, 988, sec. 9, 49 Stat. 1968, sec. 4, 52 Stat. 348; 25 U. S. C. 396d, 476, 477, 509)

§ 189.18 *Royalty rates for minerals other than oil and gas.* Unless otherwise authorized by the Commissioner of Indian Affairs, the minimum rates for minerals other than oil and gas shall be as follows:

(a) For substances other than gold, silver, copper, lead, zinc, tungsten, coal, asphaltum and allied substances, oil, and gas, the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent of the value, at the nearest shipping point, of all ores, metals, or minerals marketed.

(b) For gold and silver the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent to be computed on the value of bullion as shown by mint returns after deducting forwarding charges to the point of sale; and for copper, lead, zinc, and tungsten, a royalty of not less than 10 percent to be computed on the value of ores and concentrates as shown by reduction returns after deducting freight charges to the point of sale. Duplicate returns shall be filed by the lessee with the Superintendent within 10 days after the ending of the quarter or other period specified in the lease within which such returns are made: *Provided, however* That the lessee shall pay a royalty of not less than 10 percent of the value of the ore or concentrates sold at the mine unless otherwise provided in the lease.

(c) For coal the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds of mine run, or coal as taken from the mine, including what is commonly called "slack."

(d) For asphaltum and allied substances the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds on crude material or not less than 60 cents per ton on refined substances.

(35 Stat. 783; 25 U. S. C. 396)

§ 195.17 *Royalty rates for minerals other than oil and gas.* Unless otherwise authorized by the Commissioner of Indian Affairs, the minimum rates for minerals other than oil and gas shall be as follows:

(a) For substances other than gold, silver, copper, lead, zinc, tungsten, coal, asphaltum and allied substances, oil, and gas, the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent of the value, at the nearest shipping point, of all ores, metals, or minerals marketed.

(b) For gold and silver the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent to be computed on the value of bullion as shown by mint returns after deducting forwarding charges to the point of sale; and for copper, lead, zinc, and tungsten, a royalty of not less than 10 percent to be computed on the value of ores and concentrates as shown by reduction returns after deducting freight charges to the point of sale. Duplicate returns shall be filed by the lessee with the Superintendent within 10 days after the ending of the quarter or other period specified in the lease within which such returns are made: *Provided, however,* That the lessee shall pay a royalty of not less than 10 percent of the value of the ore or concentrates sold at the mine unless otherwise provided in the lease.

(c) For coal the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds of mine run, or coal as taken from the mine, including what is commonly called "slack."

(d) For asphaltum and allied substances the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds on crude material or not less than 60 cents per ton on refined substances.

(Sec. 6, 41 Stat. 753; 44 Stat. 659)

DOUGLAS MCKAY,
*Secretary of the Interior.*

NOVEMBER 28, 1955.

[F. R. Doc. 55-9674; Filed, Dec. 2, 1955; 8:45 a. m.]

# TITLE 43—PUBLIC LANDS: INTERIOR

## Chapter I—Bureau of Land Management, Department of the Interior

### Appendix—Public Land Orders

[Public Land Order 1256]

[Oregon 03141]

OREGON

WITHDRAWING PUBLIC LANDS FOR USE OF DEPARTMENT OF THE ARMY IN CONNECTION WITH DALLES DAM PROJECT

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Oregon are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and the mineral-leasing laws, and reserved for use of the Department of the Army in connection with The Dalles Dam Project:

WILLAMETTE MERIDIAN

T. 2 N., R. 16 E.,
Sec. 7, lot 1;
Sec. 9, that part of lots 1 and 2 lying north of a line described as follows: Beginning at the point of intersection of the west line of said lot 2 with the south boundary of the right of way of the Oregon-Washington Railroad and Navigation Company, said point being 1,300 feet north of the southwest corner of said lot 2; thence northeasterly following the south boundary of said railroad right of way 150 feet to a point that is 65 feet northerly from the center line of the Columbia River Highway; thence northeasterly, parallel with and 65 feet northerly from the center line of said highway, 180 feet to a point opposite Engineer's Station 234+50 of said high-

way; thence S. 10° 53′ E. 25 feet to a point that is opposite and 40 feet northwesterly from Engineer's Station 234+50; thence northeasterly, parallel with and 40 feet northwesterly from the center line of said highway, 965 feet to a point on the south boundary of the right of way of the Oregon-Washington Railroad and Navigation Company; thence easterly, following the south boundary of the right of way of said railroad, a distance of 1,430 feet, more or less, to a point on the east line of said lot 1 from which point the quarter section corner common to Sections 9 and 10 in said township and range bears south 1,867 feet;

Sec. 10, that part of lot 2 lying north of a line described as follows: Beginning at the point of intersection of the west line of said lot 2 with the south boundary of the right of way of the Oregon-Washington Railroad and Navigation Company, said point being 1,867 feet north of the quarter section corner common to sections 9 and 10 in said township and range; thence easterly, following the south boundary of the right of way of said railroad, a distance of 185 feet, more or less, to a point approximately 90 feet southerly, when measured radially, from the center line survey for the relocation of the railroad of the Oregon-Washington Railroad and Navigation Company; thence S. 7° 46′ E. 10 feet, more or less, to a point opopsite and 100 feet distant southerly from said center line at Engineer's Station LR 3488+18.20 P. C. C., thence S. 42° 00′ E. 335 feet to a point that is 150 feet southerly, when measured at right angles, from the center line survey for the relocation of the Columbia River Highway at Engineer's Station LH 0+00 P. S., thence easterly, from a tangent which bears S. 88° 59′ 13″ E., concentric with and 150 feet southerly from the center line of said highway, said center line being an increasing Standard Highway spiral to the left (a–0.4), a distance of 382.37 feet through an angle of 2° 48′ 48″ to a point opposite Engineers' Station LH 3+75.00 P. S. C., thence easterly, concentric with and 150 feet southerly from said highway center line survey, on a curve to the left having a radius of 3,819.72 feet a distance of 600 feet more or less, to a point on the east line of said lot 2 from which point the southeast corner of said lot 2 bears south 453 feet more or less;

Sec. 18, that part of lots 4 and 5 described as follows: Beginning at a point that is 200 feet southeasterly, when measured at right angles, from the center line survey for the relocation of the Columbia River Highway at Engineer's Station LH7 1966+62.82 P. T., from which point a mound of stones in fence corner marking the quarter section corner common to Sections 17 and 18 in said township and range bears N. 70° 35′ 35″ E. a distance of 5,043.03 feet; thence N. 40° 07′ 57″ W. 50 feet to a point opposite and 150 feet distant southeasterly from Station LH7 1966+62.82 P T., thence southwesterly, from a tangent which bears S. 49° 52′ 03″ W., concentric with and 150 feet southeasterly from the center line survey, said center line being an increasing Standard Highway spiral to the left (a–0.2), a distance of 248.36 feet through an angle of 0° 37′ 30″ to a point opposite Station LH7 1964+12.82 P. C. S., thence southwesterly concentric with and 150 feet southeasterly from the said center line survey, on a curve to the left having a radius of 11,309.16 feet, a distance of 1,100 feet more or less, to a point on the west line of said lot 5; thence northerly on the said west line a distance of 615 feet, more or less, to a point on the line of ordinary high water on the left bank of the Columbia River; thence northeasterly along the line of ordinary high water on the said left bank a distance of 2,350 feet, more or less, to a point on the east line of said lot 4; thence southerly on the said east line a distance of 560 feet, more or less, to a point on a line which bears N. 49° 52′ 03″ E. from the point of beginning; thence S. 49° 52′ 03″ W., parallel with and 200 feet southeasterly from the center line survey for the relocation of the Columbia River Highway, a distance of 978 feet, more or less, to the point of beginning.

The tracts described contain 55.37 acres.

This order shall take precedence over but not otherwise affect the withdrawal for power purposes made by Power Site Classification No. 378 of February 10, 1948.

WESLEY A. D'EWART,
*Assistant Secretary of the Interior*

NOVEMBER 28, 1955.

[F. R. Doc. 55-9675; Filed, Dec. 2, 1955; 8:45 a. m.]

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[Public Land Order 1257]

[New Mexico 020780]

NEW MEXICO

WITHDRAWING RESERVED MINERALS IN PATENTED LANDS WITHIN SANDIA BASE OF THE DEPARTMENT OF THE ARMY

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the minerals reserved to the United States in patented lands in the following-described areas within the Sandia Base of the Department of the Army in New Mexico are hereby withdrawn from disposition under the mining and mineral-leasing laws:

NEW MEXICO PRINCIPAL MERIDIAN

T. 9 N., R. 3 E.,
Secs. 1 and 12;
Sec. 13, N½N½.
T. 9 N., R. 4 E.,
Secs. 1 to 32, inclusive;
Sec. 33, S½N½, S½,
Secs. 34, 35, and 36.
T. 10 N., R. 4 E.,
Sec. 29, S½S½N½, S½,
Sec. 30, S½S½NW¼, S½,
Sec. 31, E½, NW¼,
Sec. 32, all, except 3.67 acres in the NE¼NE¼SE¼ comprising water reservoir of the City of Albuquerque.

The areas described aggregate approximately 26,201.65 acres.

WESLEY A. D'EWART,
*Assistant Secretary of the Interior*

NOVEMBER 29, 1955.

[F. R. Doc. 55-9676; Filed, Dec. 2, 1955; 8:45 a. m.]

[Public Land Order 1258]

MONTANA

RESERVATION OF LANDS FOR USE OF FOREST SERVICE AS ADMINISTRATIVE SITE

By virtue of the authority vested in the President by the act of June 4, 1897 (30 Stat. 34, 36; 16 U.S. C. 473) and otherwise, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the following-described public lands are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, except for oil and gas, provided that no part of the surface of the lands shall be used in connection with prospecting, mining, and removal of the oil and gas, and reserved for use of the Forest Service, Department of Agriculture, as the Sheep Creek Administrative Site:

MONTANA PRINCIPAL MERIDIAN

T. 15 S., R. 10 W.,
Sec. 9, NE¼SE¼NW¼, W½SE¼NW¼, W½SE¼SE¼NW¼, NE¼SW¼.

The areas described aggregate 75 acres.

WESLEY A. D'EWART,
*Assistant Secretary of the Interior*

NOVEMBER 29, 1955.

[F. R. Doc. 55-9677; Filed, Dec. 2, 1955; 8:45 a. m.]

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# TITLE 49—TRANSPORTATION

## Chapter I—Interstate Commerce Commission

### Subchapter C—Carriers by Water

[Ex Parte No. 152]

PART 315—EXEMPTION OF CONTRACT CARRIER OPERATIONS

CHARTERING OF VESSELS TO UNITED STATES

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 18th day of November A. D. 1955.

It appearing that by order of April 17, 1942, 49 CFR 315.3, under section 302 (e) of the Interstate Commerce Act, the Commission, Division 4, upon representations made to it by the Administrator of the then War Shipping Administration, exempted persons engaged in the chartering of vessels to the United States Government or any department or agency thereof for use by the Government in the transportation of its own property in interstate or foreign commerce, from the requirements of part III of the act until further order of the Commission;

It further appearing that by order of May 18, 1955, the said division reopened the proceeding for further consideration and invited any interested party to file with the Commission a memorandum or brief containing its views on the question whether or not the exemption heretofore issued should be revoked, and whether a hearing with respect thereto is desired;

It further appearing that memoranda and briefs have been filed by Pacific American Steamship Association on behalf of certain intercoastal carriers, members thereof, by American Merchant Marine Institute, Inc., an association representing the owners of a majority of the privately owned ocean-going steamship vessels operated under the American Flag, by Luckenbach Steamship Company, Inc., and Pope & Talbot, Inc., intercoastal water carriers and by the United States Maritime Administration;

And it further appearing that upon consideration of the record in this proceeding, and of statements of fact and contentions advanced in the memoranda and briefs filed by the parties, the application of the second sentence of section 302 (e) of the act to persons engaged in furnishing for compensation (under charter, lease, or other agreement) vessels to the United States Government, or departments or agencies thereof, for use by said government in the transportation of its own property, is necessary in order to effectuate the national transportation policy as declared in the act; and that the exemption provided by the regulations embraced in said order of April 17, 1942, should be revoked and set aside; and good cause appearing therefor:

*It is ordered,* That:

Section 315.3 *Chartering of vessels to the United States* be, and it is hereby revoked and set aside. (Issued under authority of section 302 (e), 54 Stat. L. 932, 49 U. S. C. 903.)

*It is further ordered,* That this order shall take effect on March 6, 1956.

*And it is further ordered,* That copy of this order be served on the following:

Chief of Naval Operations,
Military Sea Transport Service,
Department of Defense,
Washington, D. C.

Maritime Administration,
Department of Commerce,
Washington, D. C.

and that notice of this order be given to the public by posting copies thereof in the office of the Secretary of the Interstate Commerce Commission, Washington, D. C., and by filing with the Division of the Federal Register.

(54 Stat. 933; 49 U. S. C. 904. Interprets or applies 54 Stat. 931, as amended; 49 U. S. C. 903)

By the Commission, Division 4.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F. R. Doc. 55-9688; Filed, Dec. 2, 1955; 8:47 a. m.]

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Subchapter D—Freight Forwarders

[Ex Parte No. 159]

## PART 405—SURETY BONDS AND POLICIES OF INSURANCE

MISCELLANEOUS AMENDMENTS

In the matter of security for protection of the public as provided in part IV of the Interstate Commerce Act, and of rules and regulations governing filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities and agreements by freight forwarders subject to part IV of the act.

At a session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 14th day of November A. D. 1955.

The matter of revision of certain sections contained in our rules and regulations governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities and agreements prescribed pursuant to sections 403 (c) and (d) of the Interstate Commerce Act (49 CFR Part 405) being under consideration, and

It appearing that a notice, dated August 24, 1955, to the effect that certain revisions of the said rules and regulations were to be given consideration, was published in the FEDERAL REGISTER on September 9, 1955 (20 F. R. 6661), pursuant to the provisions of section 4 of the Administrative Procedure Act; and that, no written arguments, opinions or statements of facts concerning the matter having been submitted, and no oral hearing being deemed necessary, revision of the said rules and regulations and of certain forms prescribed pursuant thereto is deemed justified and necessary;

*It is ordered,* That the titles and texts of §§ 405.8 (b-1), 405.8 (f) and 405.10 (c) be, and the same are hereby, deleted in their entirety.

*It is further ordered,* That § 405.6 *Insurance Companies* (b) *Financial Resources* be amended by inserting the words "and surety" following the second word, "insurance", therein.

*It is further ordered,* That §§ 405.2, 405.4, 405.6 (a), 405.8, (except for note at end) 405.9 and 405.10 be revised so as to read as follows:

§ 405.2 *General requirements*—(a) *Cargo.* No freight forwarder shall engage or continue in service subject to part IV of the Interstate Commerce Act unless and until there shall have been filed with and accepted by the Commission a surety bond, certificate of insurance, qualifications as a self-insurer or other securities or agreements, in the amounts hereinafter prescribed, for loss of or damage to property with respect to which said freight forwarder performs service subject to part IV of the Act.

(b) *Public liability and property damage.* No freight forwarder shall engage or continue in the performance of transfer, collection and delivery service subject to part IV of the Interstate Commerce Act unless and until there shall have been filed with and accepted by the Commission a surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts hereinafter prescribed, conditioned to pay any final judgment recovered against such freight forwarder on account of bodily injuries to or death of any person, or loss of or damage to property, except property referred to in paragraph (a) of this section, resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under its direction and control in the performance of transfer, collection or delivery service.

§ 405.4 *Surety bonds*—(a) *Surety companies.* Each surety bond filed with the Commission shall be for the full limits of liability provided in § 405.3. Only corporations or companies approved by the Commission may qualify to act as surety.

§ 405.6 *Insurance and surety companies*—(a) *State authority and designation of agent.* No certificate of insurance or surety bond will be accepted by the Commission under the rules and regulations in this part unless written or issued by an insurance or surety company legally authorized to issue policies of the type indicated by such certificate, or surety bonds, as the case may be, in each state in which the freight forwarder is authorized to perform service under part IV of the Interstate Commerce Act, and such company fully complies with paragraph (b) of this section: *Provided, however,* That in lieu of the licensing requirement with respect to any state except that in which the freight forwarder has its principal place of business or domicile, the insurance or surety company may file with the Commission a designation in writing of the name and post office address of a person in each state upon whom process issued by or under the authority of any court having jurisdiction of the subject matter may be served in any proceeding at law or equity brought against such company. Such designation may from time to time be changed by like designation similarly filed, but shall be maintained during the effectiveness of any certificate of insurance or surety bond issued by the company, and thereafter with respect to any claims arising during the effectiveness of such certificate or bond.

§ 405.8 *Forms and procedure*—(a) *Forms.* Endorsements for policies of insurance, surety bonds, certificates of insurance, applications to qualify as a self-insurer or for approval of other securities or agreements, notices of cancellation and notices to rescind cancellation or reinstate policies of insurance and surety bonds must be in accordance with any forms prescribed and approved by the Commission.

CROSS REFERENCE: For list of forms prescribed, see note following this section.

(b) *Procedure.* Certificates of insurance, surety bonds, notices of cancellation and notices to rescind cancellation or reinstate policies of insurance or surety bonds must be filed with the Commission in triplicate.

(c) *Names.* Certificates of insurance and surety bonds shall be issued in the full and correct name, including the trade name, if any, of the individual, partnership, corporation, or other person to whom or which the permit under part IV of the Interstate Commerce Act is issued or is to be issued. In the case of a partnership all partners shall be named.

(d) *Cancellation.* Certificates of insurance, surety bonds and other securities and agreements shall not be canceled or withdrawn until after 30 days' notice in writing has first been given by the insurance company or companies, surety or sureties, freight for-

warder, or other party thereto, as the case may be, to the Commission at its office in Washington, D. C., which period of 30 days shall commence to run from the date such notice is actually received at the office of the Commission. However, such certificates of insurance, surety bonds and other securities and agreements may be canceled prior to the expiration of the said 30 days if, on or before the date notice of cancellation is received, a replacement filing acceptable to the Commission shall have been received, such replacement being effective on or before the effective date of such cancellation. No cancellation may become effective before the date of receipt of such notice by the Commission.

(e) *Rescinder and reinstatement.* Surety bonds, certificates of insurance, and other securities and agreements on file with the Commission which have been canceled may be reinstated or a notice of cancellation may be rescinded by filing with the Commission a form prescribed for that purpose.

§ 405.9 *Acceptance and revocation by Commission.* The Commission may at any time refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer or other securities or agreements if, in its judgment, such security does not comply with these rules or, for any reason, fails to provide satisfactory or adequate protection for the public.

§ 405.10 *Fiduciaries*—(a) *Interpretations.* The terms "insured" and "principal" as used in certificates of insurance, surety bonds, notices of cancellation, and notices to rescind cancellation or reinstate policies of insurance and surety bonds filed by or on behalf of freight forwarders under these rules shall be construed to include not only the freight forwarder named in such certificate, bond or notice, but also the fiduciary of such freight forwarder. The coverage of fiduciaries herein provided for shall attach at the moment of succession of such fiduciaries.

(b) *Span of security coverage.* The coverage furnished under the provisions of this rule on behalf of a fiduciary shall not apply subsequent to the effective date of other insurance, or other security, filed with and accepted by the Commission in behalf of such fiduciary. After the coverage provided in this rule shall have been in effect 30 days, it may be canceled or withdrawn within the succeeding period of 30 days by the insurer, the insured, the surety, or the principal upon 10 days' notice in writing to the Commission at its office in Washington, D. C., which period of 10 days shall commence to run from the date such notice is actually received by the Commission. After such coverage has been in effect for a total of 60 days, it may be canceled or withdrawn only in accordance with § 405.8 (d)

*It is further ordered,* That, the list of prescribed forms appearing in the editorial note to § 405.8 be amended by deleting therefrom the following:

FF 35-B. Notice Reinstating Freight Forwarder Policy of Insurance;

FF 44. Notice Reinstating Freight Forwarder Surety Bond;

and by substituting in lieu of FF 35-A and FF 36-A the following:

FF 35-A (Revised). Notice to Rescind Cancellation or Reinstate Freight Forwarder Policy of Insurance;

FF 36-A (Revised). Notice to Rescind Cancellation or Reinstate Freight Forwarder Surety Bond;

and also that the orders of the Commission dated December 7, 1944, and June 5, 1951, be vacated insofar as they apply to the approval and use of Forms FF 35-B and FF 44; and that Forms FF 35-A (Revised) and FF 36-A (Revised) copies of which are attached hereto[1] and made a part hereof, be and they are hereby adopted and prescribed for appropriate use by or in behalf of freight forwarders subject to part IV of the act;

*And it is further ordered,* That this order shall be effective December 31, 1955, and shall continue in effect until the further order of the Commission.

Notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission, Washington, D. C., and by filing a copy with the Director, Division of the Federal Register.

(56 Stat. 285; 49 U. S. C. 1003)

By the Commission, Division 1.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 55-9689; Filed, Dec. 2, 1955; 8:47 a. m.]

# PROPOSED RULE MAKING

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### [ 7 CFR Part 55 ]

GRADING AND INSPECTION OF EGG PRODUCTS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the United States Department of Agriculture is considering the issuance of an amendment to the regulations governing the grading and inspection of egg products (7 CFR Part 55) issued pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.) The proposed amendment will implement Public Law 272, 84th Congress, 1st Session, approved August 9, 1955, amending the aforesaid act, by designating the certificates, memoranda, marks and other identifications and devices for making such marks or identifications, with respect to inspection, class, grade, quality size, or condition, that are official for the purposes of said act. The proposal also makes a minor change in the sanitary requirements dealing with the procedures for washing eggs prior to breaking.

All persons who desire to submit written data, views, or arguments in connection with this amendment should file the same in triplicate with the Chief of the Standardization and Marketing Practices Branch, Poultry Division, Agricultural Marketing Service, United States Department of Agriculture, Room 2095, South Building, Washington 25, D. C., not later than 10 days after publication hereof in the FEDERAL REGISTER.

The proposed amendment is as follows:

1. Delete paragraph (q) of § 55.2 *Terms defined:*

2. Add a new § 55.2a, to read as follows:

§ 55.2a *Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.* Subsection 203 (h) of the Agricultural Marketing Act of 1946, as amended by Public Law 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of the said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

(a) "Official certificate" means any form of certification, either written or printed, used under this part to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications)

(b) "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

(c) "Official mark" means the grade mark, inspection mark, combined form of inspection and grade mark, and any other mark, or any variations in such marks, approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate

[1] Filed as part of original document.

U. S. grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part, including but not limited to those set forth in §§ 55.36 through 55.38.

(d) "Official identification" means any United States (U. S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been officially graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

(e) "Official device" means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

3. Change the first sentence of paragraph (a) of § 55.30 *Denial of service*, to read as follows: "(a) The following acts or practices and those set forth in § 55.2a, or the causing thereof, may be deemed sufficient cause for the debarment, by the Administrator, of any person, including any agents, officers, subsidiaries, or affiliates of such person from any or all benefits of the act for a specified period, after notice and opportunity for hearing has been accorded him:"

4. Add the words "or the act" at the end of the first sentence of paragraph (a) (3) of § 55.30 *Denial of service*.

5. Change paragraph (b) of § 55.81 *Egg washing operations*, to read as follows:

(b) Shell eggs with adhering dirt shall be washed, rinsed with a water spray and dried. Such eggs may be immersed in or sprayed with a bactericidal solution immediately following the water rinse and thereafter dried prior to breaking: *Provided*, That, if other than hypochlorites are used for the bactericidal treatment, the eggs shall again be rinsed prior to drying and breaking.

(60 Stat. 1087; 7 U. S. C. 1621 et seq.)

Issued at Washington, D. C., this 30th day of November 1955.

[SEAL] ROY W. LENNARTSON,
*Deputy Administrator*
*Agricultural Marketing Service.*

[F. R. Doc. 55-9699; Filed, Dec. 2, 1955; 8:47 a. m.]

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## [ 7 CFR Part 56 ]

### GRADING AND INSPECTION OF SHELL EGGS AND UNITED STATES STANDARDS, GRADES AND WEIGHT CLASSES FOR SHELL EGGS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the United States Department of Agriculture is considering the issuance of an amendment to the regulations governing the grading and inspection of shell eggs and United States standards, grades and weight classes for shell eggs (7 CFR Part 56) issued pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat 1087; 7 U. S. C. 1621 et seq.). The proposed amendment will implement Public Law 272, 84th Congress, 1st Session, approved August 9, 1955, amending the aforesaid act by designating the certificates, memoranda, marks and other identifications, and devices for making such marks or identifications, with respect to inspection, class, grade, quality, size, or condition, that are official for the purposes of said act. The proposal also includes minor changes with respect to the information which is required in the grade mark, and changes the language in the U. S. wholesale grades for shell eggs in the interest of clarity.

All persons who desire to submit written data, views or arguments in connection with this amendment should file the same in triplicate with the Chief of the Standardization and Marketing Practices Branch, Poultry Division, Agricultural Marketing Service, United States Department of Agriculture, Room 2095, South Building, Washington 25, D. C., not later than ten days after publication hereof in the FEDERAL REGISTER.

The proposed amendment is as follows:

1. Delete paragraph (p) of §56.2 *Terms defined*.

2. Add a new § 56.2a, to read as follows:

§ 56.2a *Designation of official certificates, memoranda, marks, other identifications and devices for purposes of the Agricultural Marketing Act.* Subsection 203 (h) of the Agricultural Marketing Act of 1946, as amended by Public Law 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed in this section shall have the respective meanings specified:

(a) "Official certificate" means any form of certification, either written or printed, used under this part to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications)

(b) "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

(c) "Official mark" means the grade mark, inspection mark, combined form of inspection and grade mark, and any other mark, or any variations in such marks, approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U. S. grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part, including but not limited to, those set forth in § 56.38.

(d) "Official identification" means any United States (U. S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been officially graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

(e) "Official device" means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

3. Change the first sentence of paragraph (a) in § 56.31 *Denial of service*, to read as follows: "The following acts or practices and those set forth in § 56.2a or the causing thereof, may be deemed sufficient cause for the debarment, by the Administrator, of any person, including any agents, officers, subsidiaries, or affiliates of such person from any or all benefits of the act for a specified period after notice and opportunity for hearing has been accorded him:"

4. Add the words "or the act" at the end of the first sentence of paragraph (a) (3) of § 56.31 *Denial of service*.

5. Change § 56.38 *Form of grade mark*, with the exception of Figures 1 and 2, to read as follows:

§ 56.38 *Form of grade mark.* The grade mark permitted to be used to officially identify cartons containing one dozen shell eggs, which are graded pursuant to the regulations in this part, shall be contained in a shield of the form and design indicated in examples in Figures 1 and 2 of this section. The information (including the form and arrangement of its wording) which is to be included in such marks shall be: (1) The letters "U. S. D. A."; (2) the U. S. grade, such as, "U. S. A Grade"; (3) one of the following phrases: "Graded Under Federal-State Supervision" "Graded Under U. S. and State Supervision" or a term of similar import, and (4) the size or weight class of the product, such as, "Large"; *Provided*, That, the size may be omitted from the grade mark if it appears prominently on the main panel of the carton. The grade mark shall be printed on the carton or on a label used to seal the carton. When the size or weight class is included as a part of the grade mark the form of such mark shall be as indicated in Figure 1 of this section

and when the size or weight class designation is not included in the grade mark the form of the grade mark shall be as indicated in Figure 2 of this section. The grade mark shall also include the plant number of the official plant where the product was packed if the appropriate plant number does not appear elsewhere on the packaging material.

In addition, the date the eggs were graded shall be stamped either on the grade mark used to seal the carton or applied in a legible manner elsewhere on the carton. Such date of grading shall be expressed as the month and day or as the consecutive day of the year. The grade mark shall be not less than 1⅛ inches in height and should not exceed 1¾ inches in height. The size of the letters designating the grade shall be not less than ¼ inch in height. The size of the print and the arrangement of the other information within the shield shall be in approximately the same proportion as shown in the examples in Figures 1 and 2 of this section.

6. Change § 56.226 *Grades,* to read as follows:

§ 56.226 *Grades.* (a) "U. S. Specials __% AA Quality" shall consist of eggs of which at least 20 percent are AA Quality and the actual percentage of AA Quality eggs shall be stated in the grade name. Within the maximum of 80 percent which may be below AA Quality, not more than 7.5 percent may be B Quality, C Quality, Dirties or Checks in any combination and not more than 2.0 percent may be Loss.

(b) "U. S. Extras __% A Quality" shall consist of eggs of which at least 20 percent are not less than A Quality and the actual total percentage of A Quality and better quality eggs shall be stated in the grade name. Within the maximum of 80 percent which may be below A Quality, not more than 11.7 percent may be C Quality, Dirties, or Checks in any combination, and not more than 3.0 percent may be Loss.

(c) "U. S. Standards __% B Quality" shall consist of eggs of which at least 20 percent are not less than B Quality and the actual total percentage of B Quality and better quality eggs shall be stated in the grade name. Within the maximum of 80 percent which may be below B Quality not more than 11.7 percent may be Dirties or Checks in any combination, and not more than 4 percent may be Loss.

(d) "U. S. Trades __% C Quality" shall consist of eggs of which at least 83.3 percent are not less than C Quality and the actual total percentage of C Quality and better quality eggs shall be stated in the grade name. Within the maximum of 16.7 percent which may be below C Quality not more than 11.7 percent may be Dirties or Checks in any combination and not more than 5 percent may be Loss.

(e) "U. S. Dirties" shall consist of eggs that are Dirty and shall contain not more than 11.7 percent Checks and not more than 5 percent Loss.

(f) "U. S. Checks" shall consist of eggs that are Checks and shall contain not more than 5 percent Loss.

(g) "No grade" means eggs of possible edible quality that fail to meet the requirements of an official U. S. Grade or that have been contaminated by smoke, chemicals, or other foreign material that has seriously affected the character, appearance, or flavor of the eggs.

7. Change § 56.227 *Summary of grades,* to read as follows:

§ 56.227 *Summary of grades.* A summary of the United States Wholesale Grades for Shell Eggs follows as Table I of this section:

TABLE I—SUMMARY OF UNITED STATES WHOLESALE GRADES FOR SHELL EGGS

| Wholesale grade designation | Minimum percentage of eggs of specific qualities required [1] | | | | Maximum tolerance permitted (lot average) | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | AA Quality | A Quality or better | B Quality or better | C Quality or better | B Quality, C Quality, Dirties, and Checks | C Quality, Dirties, and Checks | Dirties and Checks | Checks | Loss |
| | | | | | *Percent* | *Percent* | *Percent* | *Percent* | *Percent* |
| U. S. Specials __% AA Quality. [2] | 20 | Balance | None permitted except for tolerances. | | 7.5 | | | | 2 |
| U. S. Extras __% A Quality [2] | | 20 | Balance | None permitted except for tolerances. | | 11.7 | | | 3 |
| U. S. Standards __% B Quality. [2] | | | 20 | Balance | | | 11.7 | | 4 |
| U. S. Trades __% C Quality. [2] | | | | 83.3 | | | 11.7 | | 5 |
| U. S. Dirties __% | | | | | | | | 11.7 | 5 |
| U. S. Checks | | | | | | | | | |

[1] Substitution of eggs possessing higher qualities for those possessing lower specified qualities is permitted.
[2] The actual total percentage must be stated in the grade name.

(60 Stat. 1087; 7 U. S. C. 1621 et seq.)

Issued at Washington, D. C., this 30th day of November 1955.

[SEAL] ROY W LENNARTSON,
*Deputy Administrator*
*Agricultural Marketing Service.*

[F. R. Doc. 55-9700; Filed, Dec. 2, 1955; 8:47 a. m.]

## FEDERAL COMMUNICATIONS COMMISSION

### [ 47 CFR Part 16 ]

[Docket No. 11549; FCC 55-1146]

LAND TRANSPORTATION RADIO SERVICES

NOTICE OF PROPOSED RULE MAKING

In the matter of amendment to part 16 of the Commission's rules and regulations to effectuate the Commission's CONELRAD Plan for the Land Transportation Radio Services.

1. The Commission has before it the approved CONELRAD Plan for the Land Transportation Radio Services. This plan was developed in cooperation with licensees, the Department of Defense and the Office of Defense Mobilization and representatives of government and industry concerned. In order to put this plan into effect it is necessary to modify Part 16 of the Commission's rules and regulations as set forth below.

2. These proposed amendments are promulgated by authority of sections 303 (r) and 606 (c) of the Communications Act of 1934 as amended and Executive Order No. 10312 signed by the President December 10, 1951.

3. Any interested party who is of the opinion that the proposed amendment should not be adopted or should not be adopted in the form set forth herein may file on or before December 30, 1955, a written statement or brief setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed within one week from the last day for filing said original comments or briefs. No additional comments may be filed unless (1) specifically requested by the Commission, or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments that are submitted before taking action in this matter, and, if any comments appear to warrant the holding of a hearing or oral argument, a notice of the time and place of such hearing or oral argument will be given.

4. In accordance with the provisions of § 1.764 of the Commission's rules and regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: November 23, 1955.

Released: November 28, 1955.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

It is proposed to amend Part 16 of the Commission's rules by adding the following new subpart.

SUBPART L—CONELRAD

§ 16.601 *Scope and objective.* (a) This subpart applies to all radio stations in the Land Transportation Radio Services located within the Continental United States, and is for the purpose of providing for the alerting and operation of radio stations in these services during periods of air attack or imminent threat thereof.

(b) The objective of these CONELRAD rules is to minimize the navigational aid that an enemy might obtain from the electromagnetic radiations from radio stations in the Land Transportation Radio Services, while simultaneously pro-

viding for a continued radio service under controlled conditions when such operation is essential to the public welfare.

§ 16.602 *Alerting.* (a) All radio stations in the Land Transportation Radio Services licensed by the Federal Communications Commission are responsible for making provisions to receive the CONELRAD Radio Alert and the CONELRAD Radio All Clear: (As used herein the term "licensed by" includes every form of authority issued by FCC pursuant to which a radio station may be operated, including construction permits, station licenses, temporary authorizations, etc.)

(b) The CONELRAD Radio Alert will be initiated by the Commanding Officer of the Air Division (Defense) or higher military authority.

(c) A Land Transportation mobile radio system, including fixed stations associated therewith, and fixed service systems where applicable, may, if desired, be alerted at a single point, normally the control point or the control center of the system. The control point thus receiving the Radio Alert will be responsible for the dissemination of the CONELRAD Radio Alert to all stations integrated into the single radio system and insuring that all associated stations execute CONELRAD requirements immediately.

(d) The provision of an adequate receiver to monitor a standard, FM or TV broadcast station, either by aural or by automatic means, during the hours of service of the radio station in the Land Transportation Radio Service, will be considered compliance with the requirements of paragraph (a) of this section. Other means of receiving the CONELRAD Radio Alert may be authorized by the Federal Communications Commission in special cases.

(e) Base, fixed or mobile stations in the Land Transportation Radio Services not directly receiving the CONELRAD Radio Alert must use caution in returning to the air after an "out of service" period, to insure that a CONELRAD Radio Alert is not in progress before making any transmissions.

NOTE: Every standard, FM and TV broadcast station will be notified of the Radio Alert by telephone calls or by radio broadcasts. Immediately upon receipt of the Radio Alert, each standard, FM and TV broadcast station will proceed as follows on its normally assigned frequency:

(1) Discontinue the normal program in progress.

(2) Cut the transmitter carrier for approximately five seconds. (Sound carrier only for TV stations.)

(3) Return the carrier to the air for approximately five seconds.

(4) Cut the transmitter carrier for approximately five seconds.

(5) Return carrier to the air.

(6) Broadcast 1,000 cycle (approximately) steady state tone for fifteen seconds.

(7) Broadcast the CONELRAD Radio Alert message as follows: "We interrupt our normal program to cooperate in security and Civil Defense measures as requested by the United States Government. This is a CONELRAD Radio Alert. Normal broadcasting will now be discontinued for an indefinite period. Civil Defense information will be broadcast in most areas at 640 and 1240 on your regular radio receiver."

(8) The CONELRAD Radio Alert message will then be repeated.

§ 16.603 *Operation during a CONELRAD Radio Alert.* (a) Radio stations in the Land Transportation Radio Services, upon receipt of a CONELRAD Radio Alert, will interrupt any communications in progress, may make a brief announcement, leave the air and maintain radio silence for the duration of the Radio Alert, except for limited transmissions handled in accordance with the following restrictions unless otherwise ordered by the Federal Communications Commission:

(1) No transmissions shall be made unless they are of extreme emergency affecting the national safety or the safety of people and property.

(2) All transmissions shall be as short as possible and the stations' carrier shall be removed from the air during periods of no message transmission.

(3) No station identification shall be given either by announcement of regularly assigned call signals or by announcement of geographical location. If identification is necessary to carry on a specially authorized service, the use of tactical calls or codes will be authorized.

§ 16.604 *Special conditions.* Certain radio stations or systems, licensed in the Land Transportation Radio Services, may be specially authorized by the Federal Communications Commission to operate in a manner not provided in these rules, if such operation is essential to the public welfare.

§ 16.605 *Radio all clear* The Radio All Clear will be initiated only by the Air Division (Defense) Commander or higher military authority and will be disseminated over the same channels as the CONELRAD Radio Alert. Broadcast stations will transmit the CONELRAD "All Clear" message on normally assigned frequencies as follows:

"CONELRAD Radio All Clear, Resume normal operation.

I repeat—

"CONELRAD Radio All Clear. Resume normal operation."

Radio stations and systems licensed in the Land Transportation Radio Services may resume normal operations when the Radio All Clear message is received, unless otherwise restricted by order of the Federal Communications Commission.

§ 16.606 *Tests.* Tests of the CONELRAD alerting and operating systems of the Land Transportation Radio Services may be conducted at appropriate intervals. Reports of the results of such tests may be required in a form to be prescribed by the Commission.

§ 16.607 *Log entries.* Appropriate entries of all CONELRAD tests, drills and operations shall be made in the station log.

[F. R. Doc. 55-9681; Filed, Dec. 2, 1955; 8:46 a. m.]

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## [ 47 CFR Part 18 ]

[Docket No. 11442]

### INDUSTRIAL, SCIENTIFIC AND MEDICAL SERVICE

ACCEPTANCE PROCEDURE FOR INDUSTRIAL HEATING EQUIPMENT

In the matter of amendment of Part 18 to establish a type acceptance procedure for industrial heating equipment and in general to reorganize the regulations applicable to industrial heating equipment.

The Commission having under consideration a Notice of Proposed Rule Making in the above-entitled matter adopted on July 6, 1955, providing that written comments in connection therewith be filed by interested parties on or before August 15, 1955; and

It appearing that as a result of a petition filed by Westinghouse Electric Corporation the time for filing comments was extended to November 15, 1955; and

It further appearing that the Commission, having received several requests for additional time within which to submit comments to Item 6 of the Appendix to the above-entitled proposed rule making, issued an order on November 4, 1955, extending the date for filing comments with respect to this item from November 15, 1955, to May 15, 1956; and

It further appearing that the General Electric Company has submitted a petition requesting that the time for filing replies to the comments which were submitted on or before November 15, 1955, in the above-entitled proceeding be extended from November 30, 1955, to December 10, 1955. The General Electric Company stated that it would be unable to secure adequate review of the comments filed in opposition to the Commission's proposal and prepare a considered reply in the time allotted; and

It further appearing that the public interest would be served by granting the additional time requested by the petitioner;

*It is ordered,* This 29th day of November 1955 that the General Electric Company petition is granted and the date for filing replies to the comments with respect to Items 1-5 of the Appendix of the above-entitled proposed rule making is hereby extended to December 10, 1955.

Released: November 29, 1955.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 55-9712; Filed, Dec. 2, 1955; 8:49 a. m.]

# NOTICES

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

[No. 57]

KLAMATH PROJECT, OREGON AND CALIFORNIA TULE LAKE DIVISION, PARTS 1 AND 2

NOTICE EXTENDING DEVELOPMENT PERIOD AND THE DATE FOR PAYMENT OF CERTAIN CHARGES

NOVEMBER 28, 1955.

In connection with this Public Notice, the following should be noted:

A. Since the issuance on August 25, 1955, of Public Notice No. 56, Tule Lake Division, Part 1, the negotiation of a joint liability repayment contract with the Tule Lake Irrigation District which District includes most of the entered and unentered public lands of the Tule Lake Division, has been intensified and brought to a successful conclusion. The proposed contract will supersede and take the place of the individual water right contracts referred to in Public Notice No. 56.

B. The Secretary of the Interior on November 9, 1955, approved as to form a draft of repayment contract. (Draft 10/17/55; Rev. W O. 11/4/55) proposed to be entered into with the Tule Lake Irrigation District.

C. The Board of Directors of the Tule Lake Irrigation District has approved the form of the proposed contract referred to in B above, and has indicated that it will submit the contract for approval of the District landowners at an election to be held for that purpose in the immediate future and further will urge the Ditrict landowners to vote favorably on the contract.

D. Before the proposed contract can be executed on behalf of the District, the landowners must vote favorably on the contract and, pursuant to California law, certain other legal processes must be completed. Before the contract can be executed on behalf of the United States, the contract must be submitted to the Congress for legislative approval pursuant to Section 7 of the Reclamation Project Act of 1939.

E. Inasmuch as District Board action approving the form of the proposed contract has greatly enhanced the possibility of there being a valid executed repayment contract with the Tule Lake Irrigation District before the end of the 1956 irrigation season and in order to permit adequate time to complete the actions prerequisite to obtaining such an executed contract, and to provide a basis for the continuance of water deliveries to certain lands of the Tule Lake Division, it is desirable that Public Notices Nos. 55 and 56 be amended by the issuance of the Public Notice which follows:

1. Public Notice No. 56, dated August 25, 1955, establishes a date of December 1, 1955, for the payment of certain construction charges. The date for the initial installment due under this Notice is advanced from December 1, 1955, to December 1, 1956, and all other dates are accordingly advanced 1 year.

2. The development period established for certain lands of Tule Lake Division, Parts 1 and 2 in Public Notice No. 55, which is to expire on December 31, 1955, is hereby extended to November 30, 1956.

[SEAL] FRED G. AANDAHL,
*Assistant Secretary of the Interior*

[F. R. Doc. 55-9679; Filed, Dec. 2, 1955; 8:45 a. m.]

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### Office of the Secretary

[Order No. 2583, Amdt. 13]

LANDS AND RESOURCES: BUREAU OF LAND MANAGEMENT

DELEGATION OF AUTHORITY

NOVEMBER 28, 1955.

Order No. 2583, as amended (15 F R. 5643, 6997 16 F R. 6805; 17 F R. 7513, 10486; 18 F R. 161, 3446, 5715; 19 F R. 1021, 1937, 2555, 5919, and 6126), is further amended as follows:

1. Section 2.13 is amended to read:

SEC. 2.13 *Roads.* Matters involving the acquisition of rights-of-way and roads under the Act of July 26, 1955 (69 Stat. 374) including purchases after clearance with the Department of Justice but not including recommendations to the Attorney General for condemnation proceedings; also the approval of projects for the construction of roads to provide access to the timber on public lands subject to that act.

2. Section 2.45 is amended to read:

SEC. 2.45 *Mining claims.* Claims pursuant to the General Mining Laws and laws supplemental thereto, and 43 CFR Parts 69, 185, and 186.

3. Paragraph (a) of section 2.72 is amended to read:

SEC. 2.72 *Rights-of-way.* (a) Right-of-way permits and easements over public and acquired lands, including revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in Oregon, and over reservations other than Indian reservations, when authorized by law, and rights-of-way over the Outer Continental Shelf pursuant to 43 CFR Part 202. However, only the Secretary of the Interior may issue an order, pursuant to 43 CFR 244.9 (m) requiring the discontinuance, without liability or expense to the United States, of the use of a right-of-way for the purpose granted.

[SEAL] DOUGLAS MCKAY,
*Secretary of the Interior*

[F. R. Doc. 55-9680; Filed, Dec. 2, 1955; 8:45 a. m.]

[1375265]

COLORADO, WYOMING, UTAH

MODIFYING DEPARTMENTAL ORDERS OF MAY 29, 1930, WHICH CONSTRUED OIL SHALE WITHDRAWALS MADE BY EXECUTIVE ORDER NO. 5327 OF APRIL 15, 1930

The three orders of the Secretary of the Interior dated May 29, 1930, construing Executive Order No. 5327 of April 15, 1930, entitled "Withdrawal of Public Oil Shale Deposits and Lands Containing Same for Classification", in part to apply to all lands which were indicated upon maps of the States of Colorado, Utah, and Wyoming, as oil shale lands, upon the margin of which maps the said orders were endorsed, are hereby modified to the extent necessary to provide that a classification by the Geological Survey, heretofore or hereafter made, of any of the lands delineated upon the maps, as being in fact non-oil shale in character, shall constitute an amendment, as of the date of the classification, of the order or orders of May 29, 1930, and an exclusion of the lands from the area or areas delineated upon such maps.

[SEAL] DOUGLAS MCKAY,
*Secretary of the Interior*

NOVEMBER 28, 1955.

[F. R. Doc. 55-9678; Filed, Dec. 2, 1955; 8:45 a. m.]

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

TRANSFER OF CERTAIN FUNCTIONS AMONG DEPARTMENTAL AGENCIES

Pursuant to the authority contained in section 161, Revised Statutes (5 U. S. C. 22) and Reorganization Plan No. 2 of 1953, sections 200, 300, and 400 of the Secretary's order of December 24, 1953 (19 F R. 74), are amended and supplemented (1) to assign to the Agricultural Research Service the use, administration and disposition under Title III of the Bankhead-Jones Farm Tenant Act (7 U. S. C. 1010-1012) and the related provisions of Title IV thereof of lands heretofore transferred or hereafter transferred with the approval of the Assistant Secretary; (2) to except the administration of the Brooksville Nursery in Hernando County, Florida, from the Title III functions assigned to the Soil Conservation Service; and (3) to exclude the administration of the Title III lands heretofore or hereafter transferred to the Agricultural Research Service from the functions assigned to the Forest Service, and to read as follows:

1. SEC. 200. *Assignment of functions.* * * *

1. The use, administration and disposition under Title III of the Bankhead-Jones Farm Tenant Act (7 U. S. C. 1010-1012) and the related provisions of Title IV thereof of lands which have heretofore been transferred or which hereafter may be transferred by agreement

between the interested agencies with the approval of the Assistant Secretary.

2. SEC. 300. *Assignment of functions.* * * *

h. The use, administration and disposition under Title III of the Bankhead-Jones Farm Tenant Act (7 U. S. C. 1010–1012) of lands under the administration of this Department including the custodianship of lands under lease to States and local agencies, except as otherwise assigned in 9 AR 200–1 and 400–e.

3. SEC. 400. *Assignment of functions.* * * *

e. The use, administration and disposition under Title III of the Bankhead-Jones Farm Tenant Act (7 U. S. C. 1010–1012) and the related provisions of Title IV thereof of the nursery projects designated and described in Executive Order No. 10516 of January 26, 1954 (19 F. R. 467)

Done at Washington, D. C., this 29th day of November 1955.

[SEAL] E. L. PETERSON,
*Assistant Secretary of Agriculture.*

[F. R. Doc. 55-9741; Filed, Dec. 2, 1955; 8:50 a. m.]

# DEPARTMENT OF COMMERCE

## Office of the Secretary

### EDWARD ABBOTT

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Edward Abbott.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: November 18, 1955.
4. Title of position: Consultant.
5. Name of private employer: Abbotts Dairies, Inc., Philadelphia, Pa.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointmnet has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

A. Abbotts Dairies, Inc., Bank deposits.

Dated: November 18, 1955.

EDWARD ABBOTT.

[F. R. Doc. 55-9713; Filed, Dec. 1, 1955; 1:00 p. m.]

### FRANK R. BAILEY

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Frank R. Bailey.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: March 30, 1954 (December 3, 1951, Assistant Chief, Nickel Section).
4. Title of position: Advisor, Nickel.
5. Name of private employer: International Nickel Co., 67 Wall Street, New York, N. Y.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

6. a. International Nickel Co., Banks-Miller Supply Co., Huntington, W. Va., Bank deposits.

Dated: November 16, 1955.

FRANK R. BAILEY.

[F. R. Doc. 55-9714; Filed, Dec. 1, 1955; 1:00 p. m.]

### ROBERT W CLARK

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Robert W Clark.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: May 26, 1955, Consultant; June 27, 1955, Deputy Director, Scientific, Motion Picture & Photographic Products Division.
4. Title of position.
5. Name of private employer: Powers Regulator Company.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

Powers Regulator Company; Bank deposits; Building and Loan Association deposits.

Dated: November 16, 1955.

ROBERT WARREN CLARK.

[F. R. Doc. 55-9715; Filed, Dec. 1, 1955; 1:00 p. m.]

### JOHN L. CROSS

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Mr. John L. Cross.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: August 15, 1955.
4. Title of position: Director, Electrical Equipment Division.
5. Name of private employer: Westinghouse Electric Corporation.

[SEAL] JOHN F. LUKENS,
*Dep. Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned any similar interest.

Bank deposits. Add November 21, 1955; Westinghouse Electric Corp.

Dated: August 15, 1955.

J. L. CROSS.

Redated: November 21, 1955.

J. L. CROSS.

[F. R. Doc. 55-9716; Filed, Dec. 1, 1955; 1:00 p. m.]

COURTLANDT F. DENNEY

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Courtlandt F. Denney.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: August 15, 1955.
4. Title of position: Director, Power Equipment Division.
5. Name of private employer: Foster Wheeler Corporation.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—
a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;
b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and
c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

Foster Wheeler Corp. stock; Bank deposits; B & L deposits.

Dated: August 18, 1955.

COURTLANDT F. DENNEY.

Redated: November 16, 1955.

COURTLANDT F. DENNEY.

[F. R. Doc. 55-9717; Filed, Dec. 1, 1955; 1:00 p. m.]

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WILLIAM J. EDMUNDS, JR.

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Mr. William J. Edmunds, Jr.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: August 15, 1955.
4. Title of position: Director, Aluminum & Magnesium Division.
5. Name of private employer: Kaiser Aluminum & Chemical Corporation.

[SEAL] JOHN F LUKENS,
*Dep. Director of Personnel.*

*Statement of Financial Interests*

6. Names of—
a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;
b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and
c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

(a) Appointee owns common stock in the following corporations: (1) Kaiser Aluminum & Chemical Corporation; (2) ACF Industries; (3) Avco Manufacturing.
(b) None.
(c) None.
Bank deposits.

Dated: August 16, 1955.

WILLIAM J. EDMUNDS, JR.

[F. R. Doc. 55-9718; Filed, Dec. 1, 1955; 1:00 p. m.]

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PAUL E. FLOYD

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Paul E. Floyd.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: May 13, 1953; June 4, 1954, Chief, Ferroalloys Branch
4. Title of position: Assistant Director Iron & Steel Division, for Ferroalloys.
5. Name of private employer: Allegheny Ludlum Steel Corporation.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—
a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;
b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and
c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

a. Allegheny Ludlum Steel Corporation; International Harvester Company; American Bosch Arma Corp., Affiliated Fund Inc., Timken Roller Bearing Co., Sinclair Oil Co., Bank deposits; Income from mortgage.

Dated: November 16, 1955.

P E. FLOYD.

[F. R. Doc. 55-9719; Filed, Dec. 1, 1955; 1:00 p. m.]

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LAWRENCE J. HALDERMAN

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Lawrence J. Halderman.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: November 9, 1955.
4. Title of position: Director, General Components Division.
5. Name of private employer: The Timken Roller Bearing Company.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—
a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;
b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and
c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

a. General Motors Corp., Timken Roller Bearing Co.; Southern California Building and Loan; Bank deposits.
b. and c. None.

Dated: November 22, 1955.

LAWRENCE J. HALDERMAN.

[F. R. Doc. 55-9720; Filed, Dec. 1, 1955; 1:00 p. m.]

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THEODORE S. HODGINS

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Theodore S. Hodgins.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: June 28, 1955.
4. Title of position: Director, Chemical and Rubber Division.
5. Name of private employer: Reichhold Chemicals, Inc., 525 Broadway, White Plains, N. Y.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

6. a. 1. Reichhold Chemicals, Inc., White Plains, N. Y. Vice President in charge of Research & Development. Stockholder.
2. Reichhold Chemicals (Canada) Ltd., Toronto, Ontario. Vice President. Member of the Board of Directors. Stockholder.
3. Reichhold Chemicals Industries (Australia) Ltd. Rosebery (Sydney) N. S. W. Australia. Stockholder.
4. Hoppi-Copters, Inc., Seattle, Wash. Stockholder.
5. Cornucopia Gold Mines, Inc., Spokane, Wash. Stockholder.
6. b. None.
6. c. 1. Real Estate, King County, Seattle, Wash.
2. Real Estate, Kitsap County, Hansville, Wash.
3. Insurance—New York Life, Travelers, Northwestern Mutual.
4. Bank deposits.

Dated: November 21, 1955.

THEODORE S. HODGINS.

[F. R. Doc. 55-9721; Filed, Dec. 1, 1955; 1:00 p. m.]

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JOHN A. HUNTER, JR.

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: John A. Hunter, Jr.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: May 23, 1955.
4. Title of position: Chief, Business Research and Analysis Branch.
5. Name of private employer: Tennessee Coal & Iron Division, U. S. Steel, Fairfield, Ala.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

6. (a). Carrier Corporation; Cincinnati Gas & Electric Corporation; Jas. Dole Engineering Corporation; Motorola, Inc.; Pfizer, Chas. Co., Pittsburgh Consolidation Coal Corporation; Shell Oil Company; Square D Company; United States Steel Corporation; Westinghouse Electric Corporation; Bank deposits.

Dated: November 17, 1955.

JOHN A. HUNTER, JR.

[F. R. Doc. 55-9722; Filed, Dec. 1, 1955; 1:00 p. m.]

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GEORGE IRELAND

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Mr. George Ireland.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of Appointment: August 15, 1955.
4. Title of position: Director, Communications Equipment Division.
5. Name of private employer: Bell Telephone Company of Pennsylvania.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

American Telephone & Telegraph Co., Bank deposits; Bell Telephone Company of Pennsylvania.

Dated: August 15, 1955.

GEORGE IRELAND.

Redated: November 16, 1955.

GEORGE IRELAND.

[F. R. Doc. 55-9723; Filed, Dec. 1, 1955; 1:00 p. m.]

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WILLIAM J. JONES

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: William J. Jones.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: September 30, 1955.
4. Title of position: Director, Automotive Division.
5. Name of private employer: Chrysler Corporation.

[SEAL] JOHN F. LUKENS,
*Acting Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

Chrysler Corp. Bank deposits.

Dated: October 3, 1955.

WILLIAM J. JONES.

Redated: November 16, 1955.

WILLIAM J. JONES.

[F. R. Doc. 55-9724; Filed, Dec. 1, 1955; 1:00 p. m.]

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ELMER L. LAGRELIUS

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Elmer L. La Grelius.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: April 12, 1955.
4. Title of position: Chief, Stainless Steel Branch.
5. Name of private employer: Eastern Stainless Steel, Box 1975, Baltimore 2, Md.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days pre-

ceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

Eastern Stainless Steel; United Light and Power; American Steel Foundries; Deere and Company; Bank deposits; Building and Loan deposits; Rents.

Dated: November 16, 1955.

ELMER L. LAGRELIUS.

[F. R. Doc. 55-9725; Filed, Dec. 1, 1955; 1:01 p. m.]

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ROBERT D. JAMES

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Robert D. James.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: July 11, 1955.
4. Title of position: Director, Forest Products Division.
5. Name of private employer: American Box Board Company.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointed owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

Bank deposits; American Box Board Co., American Box Board Profit Sharing Plan (Trust); American Box Board Retirement Income Plan (Trust).

Dated: November 17, 1955.

ROBERT D. JAMES.

[F. R. Doc. 55-9726; Filed, Dec. 1, 1955; 1:01 p. m.]

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L. G. LEA

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: L. G. Lea.
2. Employing agency: Department of Commerce. Business and Defense Services Administration.
3. Date of appointment: June 28, 1955.
4. Title of position: Deputy Director, Containers and Packaging Division.
5. Name of private employer: Kieckhefer Container Company.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

a. Kieckhefer Container Co., Camden, N. J. Vice President. Stockholder.
Elgin Paper Company, Elgin, Ill. Vice President. Stockholder.
c. Standard Oil Company, Ind. Stockholder.
Great Northern Railway. Stockholder.
Eddy Paper Corporation. Stockholder.
Dresser Industries. Stockholder.
Douglas Aircraft. Stockholder.
The Lea Company. Stockholder.
Bank deposits.

Dated: November 16, 1955.

L. G. LEA.

[F. R. Doc. 55-9727; Filed, Dec. 1, 1955; 1:01 p. m.]

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EDWARD F. LICKEY

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Edward F Lickey.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: October 14, 1955.
4. Title of position: Consultant.
5. Name of private employer: Retired from Motch & Merryweather Machine Company.

[SEAL] JOHN F LUKENS,
*Acting Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

U. S. Steel Corp., Excello Corp., General Motors Corp., General Foods; Massachusetts Investment Trust; American Bus. Shares; Cerro De Pasco Copper Corp., National Bank of Detroit; Shamut Bank of Boston; Transcontinental Pipeline; Southern Production; American T. & T.; Consumers Power Co., Cities Service Co., Detroit Edison Co., Carborundum Co., General Telephone; Kellogg Co., Kresge S. S., Phillips Petroleum; Toledo Edison; Southern Natural Gas; Gerber Products (Baby Food); Bank deposits; Retirement Benefit From Motch & Merryweather Machine Co.

Dated: October 14, 1955.

EDWARD F LICKEY.

Redated: November 17, 1955.

EDWARD F LICKEY.

[F. R. Doc. 55-9728; Filed, Dec. 1, 1955; 1:01 p. m.]

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CLIFFORD G. POMMER

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Clifford G. Pommer.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: November 14, 1955.
4. Title of position: Director, Shipbuilding, Railroad, Ordnance and Aircraft Division.
5. Name of private employer: General Electric Company.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

General Electric Co., American Airlines; Garfinckel; Van Curler Hotel; State Loan and Finance; General Electric Elfun Trust Fund; Economy Auto Stores; International

Bank of Washington; Three States Natural Gas; Colorado Oil & Gas; American Can Co., Niskayuna Co-operative; Schenectady A & O Employees Credit Union; Bank deposits.

Dated: November 17, 1955.

CLIFFORD G. POMMER.

[F. R. Doc. 55-9729; Filed, Dec. 1, 1955; 1:01 p. m.]

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NORVAL W. POSTWEILER

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Norval W. Postweiler.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: January 26, 1955, Deputy Director, Construction and Packing Division.
4. Title of position: June 28, 1955, Assistant Administrator.
5. Name of private employer: Riegel Paper Corp.

[SEAL] CARLTON HAYWARD, *Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

Wheeling Steel; Riegel Paper Corp., Riegel Textile Corp., Bethlehem Steel; National Biscuit Co., American Telephone and Telegraph Co., General Motors; Bank deposits; Building and Loan deposits.

Dated: November 16, 1955.

N. W POSTWEILER.

[F. R. Doc. 55-9730; Filed, Dec. 1, 1955; 1:01 p. m.]

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ROBERT L. SEBASTIAN

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Robert L. Sebastian.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: September 20, 1954.
4. Title of position: Consultant.
5. Name of private employer: Retired.

[SEAL] CARLTON HAYWARD, *Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests; none.

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and none.

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest, none.

d. Owner of Maryland farm.

e. Bank deposits.

Dated: November 21, 1955.

ROBERT L. SEBASTIAN.

[F. R. Doc. 55-9731; Filed, Dec. 1, 1955; 1:01 p. m.]

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LOUIS A. SCHLUETER

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Louis A. Schlueter.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: September 16, 1953.
4. Title of position: Advisor (Chemical and Rubber Industries)
5. Name of private employer: American Coke and Coal Chemicals Institute.

[SEAL] CARLTON HAYWARD, *Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

Susquehanna Chemical Corp., Bradford, Pa., Bank deposits; Income from Rental Property (Residential); American Coke and Coal Chemicals Institute (Present Employer); Interest on Real Estate Mortgage.

Dated: November 17, 1955.

L. A. SCHLUETER.

[F. R. Doc. 55-9732; Filed, Dec. 1, 1955; 1:01 p. m.]

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CLARENCE W. SEELEY

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Clarence W. Seeley.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: November 2, 1955.
4. Title of position: Director, Copper Division.
5. Name of private employer: Scovill Manufacturing Company, Waterbury, Conn.

[SEAL] CARLTON HAYWARD, *Director of Personnel.*

*Statement of Financial Interests*

6. Names of—

a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;

b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and

c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

Scovill Manufacturing Company; U. S. Bonds; Bank deposits.

Dated: November 2, 1955.

CLARENCE W. SEELEY.

Redated: November 16, 1955.

CLARENCE W. SEELEY.

[F. R. Doc. 55-9733; Filed, Dec. 1, 1955; 1:01 p. m.]

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CHARLES M. STUART

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Charles M. Stuart.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.

3. Date of appointment: October 27, 1955.
4. Title of position: Director, General Industrial Equipment Division.
5. Name of private employer: Carrier Corporation, Syracuse, N. Y.

[SEAL] JOHN F LUKENS,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—
a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;
b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and
c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

Carrier Corporation; Niagara Mohawk Power Company; British Petroleum Corporation; Bank deposits.

Dated: November 1, 1955.

CHARLES M. STUART.

[F. R. Doc. 55-9734; Filed, Dec. 1, 1955; 1:01 p. m.]

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WILLIAM H. THOMAS

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: William H. Thomas.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: May 31, 1955, Director of General Industrial Equipment Division.
4. Title of position: Assistant Administrator (as of July 28, 1955)
5. Name of private employer: Air Products, Inc., Allentown, Pa.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—
a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;
b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and
c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

Air Products, Incorporated; Bank deposits.

Dated: November 16, 1955.

WILLIAM H. THOMAS.

[F. R. Doc. 55-9735; Filed, Dec. 1, 1955; 1:01 p. m.]

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CARL M. VUCKEL

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Carl M. Vuckel.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: September 16, 1955.
4. Title of position: Consultant.
5. Name of private employer: Swift & Company.

[SEAL] JOHN F LUKENS,
*Acting Director of Personnel.*

*Statement of Financial Interests*

6. Names of—
a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;
b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and
c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

Acme Steel Co., City Products Co., Swift and Co., Sylvania Electric Products; Louisiana Land & Exploration Co., United Elastic Co., Farm; Bank deposits.

Dated: September 19, 1955.

C. M. VUCKEL.

Redated: November 22, 1955.

C. M. VUCKEL.

[F. R. Doc. 55-9736; Filed, Dec. 1, 1955; 1:01 p. m.]

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JOEL B. WARE

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

*Report of Appointment*

1. Name of appointee: Joel B. Ware.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: October 31, 1955.
4. Title of position: Consultant.
5. Name of private employer: Great Northern Paper Company.

[SEAL] CARLTON HAYWARD,
*Director of Personnel.*

*Statement of Financial Interests*

6. Names of—
a. Any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests;
b. Any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and
c. Any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

A. Great Northern Paper Company; The Mead Corporation; Curtis Publishing Company; Crowell-Collier Publishing Company; Bank deposits.
B. None.
C. None.

Dated: October 31, 1955.

JOEL B. WARE.

Redated: November 22, 1955.

JOEL B. WARE.

[F. R. Doc. 55-9737; Filed, Dec. 1, 1955; 1:01 p. m.]

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# DEPARTMENT OF LABOR

## Wage and Hour Division

[Administrative Order 452]

REPRESENTATIVE OF EMPLOYEES ON SPECIAL INDUSTRY COMMITTEES

NOTICE OF RESIGNATION AND APPOINTMENT

Lewis C. Harkins of Silver Spring, Maryland, having resigned as representative of the employees on Special Industry Committees Nos. 18-C and 18-D for Puerto Rico, the Secretary of Labor, pursuant to authority under the Fair Labor Standards Act of 1938, as amended, (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.) hereby appoints Samuel Baron of Washington, D. C., to serve in his stead as a representative of the employees on such Committees.

Signed at Washington, D. C., this 30th day of November 1955.

JAMES P MITCHELL,
*Secretary of Labor*

[F. R. Doc. 55-9706; Filed, Dec. 2, 1955; 8:48 a. m.]

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# FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 11526; FCC 55M-992]

ELYRIA-LORAIN BROADCASTING CO. (WEOL)

ORDER SCHEDULING HEARING

In re application of Elyria-Lorain Broadcasting Co. (WEOL), Elyria, Ohio, Docket No. 11526, File No. BR-2173; for renewal of license.

*It is ordered,* This 25th day of November 1955, that Herbert Sharfman will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on January 18, 1956, in Washington, D. C.

Released: November 29, 1955.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 55-9682; Filed, Dec. 2, 1955; 8:46 a. m.]

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[Docket Nos. 11551, 11552; FCC 55-1156]

RADIO KYNO, VOICE OF FRESNO (KYNO) AND WRATHER-ALVAREZ BROADCASTING, INC. (KFMB)

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Amelia Schuler, Lester Eugene Chenault and Bert Williamson, d/b as Radio KYNO, The Voice of Fresno (KYNO) Fresno, California, Docket No. 11551, File No. BP-9511, Wrather-Alvarez Broadcasting, Inc. (KFMB) San Diego, California, Docket No. 11552, File No. BP-9794; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 23d day of November 1955;

The Commission having under consideration the above-entitled applications for construction permits by Radio KYNO, The Voice of Fresno, to change the facilities of Station KYNO, Fresno, California, from operation on 1300 kilocycles with a power of 1 kilowatt, directional antenna, unlimited time, to operation on 540 kilocycles with a power of 1 kilowatt, directional antenna, daytime only; and by Wrather-Alvarez Broadcasting, Inc. to change the facilities of Station KFMB, San Diego, California, from operation with a directional antenna day and night to operation with a directional antenna nighttime only on 540 kilocycles with a power of 5 kilowatts, unlimited time;

It appearing that each of the applicants is legally, technically, financially and otherwise qualified, except as may appear from the issues specified below, to operate its station as proposed, but that operation by both stations as proposed would involve mutual interference; that the operation of Station KYNO as proposed would involve interference to Station KSFO, San Francisco, California, and the proposed directional antenna system may not meet the minimum efficiency requirements of the Commission's Standards of Good Engineering Practice, and the site photograph does not show sufficient detail from which a determination can be made of whether the proposed site is satisfactory; and the proposed operation of Station KFMB would cause interference to Station KBAK, Bakersfield, California; and

It further appearing that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the subject applicants were advised by letters dated December 10, 1954, and August 23, 1955, of the aforementioned deficiencies and that the Commission was unable to conclude that a grant of either application would serve the public interest; and

It further appearing that a timely reply was filed by each of the applicants; and

It further appearing that in a letter dated July 27, 1955, Station KBAK, Bakersfield, California, agreed to accept the interference which would be caused to it by the proposed operation of Station KFMB, in consideration of KFMB's accepting from any future proposal of KBAK interference not in excess of that which would result from 1 kilowatt, nondirectional operation of KBAK, however this agreement cannot operate to preclude the Commission from considering the effect of this interference in its evaluation of the KFMB proposal; and

It further appearing that in a letter dated September 6, 1955, Station KSFO requested that the application of Station KYNO be designated for hearing on grounds of the above-described interference; and

It further appearing that while Station KFMB in letters dated September 22, October 7 and October 27, 1955, requested an extension of time to November 28, 1955, in which to reply to the Commission's letter of August 23, 1955, and complete a projected agreement with Station KYNO whereby it would accept the interference caused to it by KFMB's proposal, such an agreement, upon proper motion, can be made a part of the record in the proceeding herein provided for; and

It further appearing that the Commission, after consideration of the foregoing, is of the opinion that a hearing is necessary;

*It is ordered,* That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the said applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Stations KYNO and KFMB and the availability of other primary service to such areas and populations.

2. To determine whether the proposed operations of Stations KYNO and KFMB would involve mutual interference and, if so, the nature and extent thereof, the areas and populations affected thereby and the availability of other primary service to such areas and populations.

3. To determine whether the proposed operation of Station KYNO would involve objectionable interference with Station KSFO, San Francisco, California, or any other existing station, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

4. To determine whether the directional antenna system proposed by Station KYNO would meet the minimum efficiency requirements of the Commission's Standards of Good Engineering Practice.

5. To determine whether the site proposed by Station KYNO would be satisfactory.

6. To determine whether the proposed operation of Station KFMB would cause interference to Station KBAK, Bakersfield, California, or any other existing station, and, if so, the nature and extent thereof, the areas and populations affected thereby and the availability of other primary service to such areas and populations.

7. To determine in light of section 307 (b) of the Communications Act of 1934, as amended, which of the operations proposed in the above-entitled applications would better provide a fair, efficient and equitable distribution of radio service.

8. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

*It is further ordered,* That the issues in the above-entitled proceeding may be enlarged by the Examiner on his own motion or on petition properly filed by a party to the proceeding and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether funds available to the applicant will give reasonable assurance that the proposal set forth in the application will be effectuated.

*It is further ordered,* That San Francisco Broadcasters, Inc., and Bakersfield Broadcasting Co., licensees of Stations KSFO, San Francisco, California, and KBAK, Bakersfield, California, respectively, are made parties to the proceeding.[1]

*It is further ordered,* That the above-described request by Station KFMB for extension of time to November 28, 1955, in which to further reply to the Commission's letter of August 23, 1955, is denied.

Released: November 28, 1955.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 55-9683; Filed, Dec. 2, 1955; 8:46 a. m.]

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[Docket Nos. 11553, 11554; FCC 55-1157]

HAZARD BROADCASTING CORP. AND PERRY COUNTY BROADCASTING CO.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Hazard Broadcasting Corporation, Hazard, Kentucky, Docket No. 11553, File No. BP-9726; Claude P. Stephens and Frank L. Jones, d/b as Perry County Broadcasting Company, Hazard, Kentucky, Docket No. 11554, File No. BP-9840; for construction permits.

At a session of the Federal Communications Commission held at its offices in

[1] The licence of Station KBAK has been assigned to Paschall, Tullis and Hearne, and the call letters have been changed from KBAK to KAFY.

Washington, D. C., on the 23d day of November 1955;

The Commission having under consideration the above-entitled applications of the Hazard Broadcasting Corporation and Claude P Stephens and Frank L. Jones, d/b as Perry County Broadcasting Company, each for a construction permit for a new standard broadcast station to operate on 1390 kilocycles with a power of 5 kilowatts, daytime only, at Hazard, Kentucky; and

It appearing that each of the applicants is legally technically, financially and otherwise qualified, except as may appear from the issues specified below, to construct and operate its proposed station but that operation of both stations as proposed would result in mutually destructive interference; and that the operation proposed by the Perry County Broadcasting Company may be in contravention of the provisions of § 3.35 of the Commission's Rules on multiple ownership; and

It further appearing that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the subject applicants were advised by letters dated July 5 and September 29, 1955, of the aforementioned deficiencies and that the Commission was unable to conclude that a grant of either application would be in the public interest; and

It further appearing that timely replies were received from each of the applicants; and

It further appearing that in pleadings filed on August 31 and October 18, 1955, by the Hazard Broadcasting Corporation it was contended that the proposal of the Perry County Broadcasting Company would be in contravention of the provisions of § 3.35 of the Commission's rules on multiple ownership because Frank L. Jones, a partner in the latter company, was an officer, director and stockholder of Station WTCW Whitesburg, Kentucky until February, 1955 and is a brother-in-law of Kenneth J. Crosthwait, the majority stockholder of the KY-VA Broadcasting Corp., licensee of Station WTCW and that Frank L. Jones is employed by WCTW as a salesman; that the 2 mv/m contours of the operation proposed by the Perry County Broadcasting Company and Station WTCW would overlap; and that the application was in fact filed on behalf of Kenneth J. Crosthwait; and

It further appearing that in a letter filed on October 28, 1955, by the Perry County Broadcasting Company it was stated that "There will be no joint operations of any nature [with WTCW], and except to the extent that Frank L. Jones may on occasion wish the benefit of his brother-in-law's counsel on operating problems, there will be no direct or indirect association between the two and the operation or control of their respective stations" and that accordingly no contravention of § 3.35 of the Commission's Rules would obtain; and that the application was not filed on behalf of Kenneth J. Crosthwait; and

It further appearing that after consideration of the foregoing the Commission is of the opinion that a hearing is necessary;

*It is ordered,* That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the said applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the proposed operations, and the availability of other primary service to such areas and populations.

2. To determine whether a grant of the application of the Perry County Broadcasting Company would be in contravention of the provision of § 3.35 of the Commission's Rules on multiple ownership because of overlap with Station WTCW Whitesburg, Kentucky; and WKYV Harlan, Kentucky.

3. To determine which of the operations proposed in the above-entitled applications would better serve the public interest in the light of the evidence adduced under the foregoing issues and record made with respect to the significant differences between the applicants as to:

(a) The background and experience of each of the above-named applicants to own and operate its proposed station.

(b) The proposals of each of the above-named applicants with respect to the management and operation of the proposed stations.

(c) The programming service proposed in each of the above-mentioned applications.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either of the applications should be granted.

*It is further ordered,* That the issues in the above-entitled proceeding may be enlarged by the Examiner on his own motion or on petition properly filed by a party to the proceeding and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether funds available to the applicant will give reasonable assurance that the proposal set forth in the application will be effectuated.

Released: November 28, 1955.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 55-9684; Filed, Dec. 2, 1955; 8:46 a. m.]

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[Docket Nos. 11555, 11556; FCC 55-1158]

JOHN F SHEA AND GREENVILLE BROADCASTING CORP. (WGYV)

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of John F Shea, Montgomery, Alabama, Docket No. 11555, File No. BP-9947; Greenville Broadcasting Corporation (WGYV) Greenville, Alabama, Docket No. 11556, File No. BP-9953; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 23d day of November 1955;

The Commission having under consideration the above-entitled applications of John F Shea for a construction permit for a new standard broadcast station to operate on 1370 kilocycles with a power of one kilowatt, daytime only, at Montgomery, Alabama, and Greenville Broadcasting Corporation to change the facilities of Station WGYV, Greenville, Alabama, from operation on 1400 kilocycles with a power of 250 watts, unlimited time, to operate on 1380 kilocycles with a power of one kilowatt daytime only;

It appearing that each of the applicants is legally, technically, financially and otherwise qualified, except as may appear from the issues specified below, to operate its proposed station, but that the operation of both stations as proposed would result in mutually prohibitive interference; and

It further appearing that, pursuant to section 309 (b) of the Communications Act of 1934, as amended, the subject applicants were advised by letter dated October 3, 1955, of the aforementioned deficiency and that the Commission was unable to conclude that a grant of either application would serve the public interest; and

It further appearing that a timely reply was filed by each of the applicants; and

It further appearing that the Commission, after consideration of the replies, is of the opinion that a hearing is necessary;

*It is ordered,* That, pursuant to section 309 (b) of the Communications Act of 1934, as amended, the said applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from the proposed operation of John F Shea and the availability of other primary service to such areas and populations.

2. To determine areas and populations that would gain or lose service from the proposed operation of Station WGYV and the availability of other primary service to such areas and populations.

3. To determine in the light of section 307 (b) of the Communications Act of 1934, as amended, which of the operations proposed in the above-entitled applications would better provide a fair, efficient and equitable distribution of radio service.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

*It is further ordered,* That the issues in the above-entitled proceeding may be enlarged by the Examiner on his own motion or on petition properly filed by a party to the proceeding and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether funds available to the applicant will give reasonable assurance that the proposal set

forth in the application will be effectuated.

Released: November 29, 1955.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 55-9685; Filed, Dec. 2, 1955; 8:46 a. m.]

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[Docket No. 11527; FCC 55M-999]

RICHLAND, INC. (WMAN)

NOTICE OF PREHEARING CONFERENCE

In re application of Richland, Inc. (WMAN), Mansfield, Ohio, Docket No. 11527, File No. BR-1037; for renewal of license.

Pursuant to Rule 1.813, a prehearing conference is scheduled for Thursday, December 8, 1955, at 10:00 a. m., in the offices of the Commission, Washington, D. C.

Dated: November 29, 1955.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 55-9707; Filed, Dec. 2, 1955; 8:48 a. m.]

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[Docket No. 11526; FCC 55M-998]

ELYRIA-LORAIN BROADCASTING CO., INC. (WEOL)

NOTICE OF PREHEARING CONFERENCE

In re application of Elyria-Lorain Broadcasting Co., Inc. (WEOL) Elyria, Ohio, Docket No. 11526, File No. BR-2173; for renewal of license.

Pursuant to Rule 1.813, a prehearing conference is scheduled for Monday, December 5, 1955, at 10:00 a. m., in the offices of the Commission, Washington, D. C.

Dated: November 29, 1955.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 55-9708; Filed, Dec. 2, 1955; 8:48 a. m.]

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[Docket Nos. 11444, 11445; FCC 55M-996]

COLUMBIA-MT. PLEASANT AND SPRING HILL RADIO CORP. AND SAVANNAH BROADCASTING CO.

ORDER CONTINUING HEARING

In re applications of Columbia-Mt. Pleasant and Spring Hill Radio Corporation, Columbia, Tennessee, Docket No. 11444, File No. BP-9557; S. Q. Hanna, tr/as The Savannah Broadcasting Company, Savannah, Tennessee, Docket No. 11445, File No. BP-9697; for construction permits.

The Hearing Examiner having under consideration the applications in the above-entitled proceeding, on which a hearing is now scheduled to be held on December 5, 1955; and

It appearing that there are now pending before the Commission en banc (1) a petition by the Chief of the Broadcast Bureau requesting the dismissal with prejudice of the application of S. Q. Hanna tr/as The Savannah Broadcasting Company, and a reply in opposition thereto by that applicant; and (2) a petition by Columbia-Mt. Pleasant and Spring Hill Radio Corporation for reconsideration and grant of its application, a motion to strike the said petition by The Savannah Broadcasting Company, and related pleadings; and

It further appearing that a grant of either of the above petitions would obviate the necessity for the presently scheduled hearing;

*It is ordered,* This 28th day of November 1955, by the Hearing Examiner, on his own motion, that the hearing in the above-entitled proceeding be, and it is hereby, continued without date.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 55-9709; Filed, Dec. 2, 1955; 8:49 a. m.]

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[Docket No. 11404; FCC 55M-995]

NIAGARA BROADCASTING SYSTEM (WNIA)

ORDER CONTINUING HEARING

In re application of Gordon P. Brown, tr/as Niagara Broadcasting System (WNIA), Cheektowaga, New York, Docket No. 11404, File No. BMP-6773; for modification of permit to extend completion date.

The Hearing Examiner having under consideration a petition, filed by applicant on November 23, 1955, for continuance of the hearing now scheduled for November 29, 1955, until January 10, 1956, on the grounds that petitioner's co-counsel and prospective witness in the matter is ill, and that there is now pending before the Commission a further petition for reconsideration of the Commission's action designating for hearing petitioner's application for modification of construction permit;

It appearing that counsel for the Broadcast Bureau does not oppose the requested continuance;

*It is ordered,* This 28th day of November 1955, that the petition for continuance is granted and the hearing is continued from November 29, 1955 to Tuesday, January 10, 1956 at 10:00 a.m. in the offices of the Commission, Washington, D. C.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 55-9710; Filed, Dec. 2, 1955; 8:49 a. m.]

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[Docket Nos. 8730, 8840; FCC 55-1166]

WWSW, INC., AND PITTSBURGH RADIO SUPPLY HOUSE, INC.

MEMORANDUM OPINION AND ORDER REOPENING RECORD AND DESIGNATING FOR FURTHER HEARING ON SPECIFIED ISSUES

In re applications of WWSW Inc., Pittsburgh, Pennsylvania, Docket No. 8730, File No. BPCT-254; Pittsburgh Radio Supply House, Inc., Pittsburgh, Pennsylvania, Docket No. 8840, File No. BPCT-345; for television construction permits.

1. Following the grant of WWSW's application herein, Telecasting filed with the Commission on August 22, 1955 a document entitled Petition Protesting Grant and for Reconsideration and Rehearing. WWSW, Pittsburgh Radio Supply House, the Broadcast Bureau and petitioner have filed numerous documents[1] treating on the points raised by the petition. The protest has already been disposed of by denial for the reasons detailed in our Memorandum Opinion and Order released September 23, 1955 (FCC 55-968, Mimeo No. 22964) The petition for reconsideration and rehearing and for a stay of the effective date of the grant to WWSW remain to be decided.[2] For the reasons which we will set forth, we propose to grant reconsideration and rehearing, to allow Telecasting to participate in the hearing, and to deny the request for a stay.

2. Our reconsideration of the grant, particularly in the light of the merger contract, convinces us that further hearing on issues which we will specify is necessary. Embodied in the merger contract are provisions which indicate that there may have been an unauthorized transfer of control and other violations of the Communications Act and of the rules and policies of the Commission. Telecasting has called attention to various provisions and aspects of the merger agreement which are alleged to be either contrary to law or not in the public interest, and the Broadcast Bureau has detailed the objectionable nature of certain of the contractual provisions. In reply, WWSW and Pittsburgh Radio Supply have stated that certain of the aforementioned provisions have been deleted by amendment and that the remaining provisions furnish no ground for rehearing.

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[1] Petition protesting grant and for reconsideration or rehearing filed by Telecasting August 22, 1955; Broadcast Bureau Comment filed September 1, 1955; Motion to dismiss and opposition filed by Pittsburgh Radio Supply House, Inc., on September 1, 1955; Motion to dismiss filed by WWSW, Inc., on August 23, 1955; Brief in support of motion to dismiss re petition for rehearing filed by WWSW, Inc., on August 24, 1955; Reply to motion to dismiss filed by Telecasting on September 6, 1955; Reply to Broadcast Bureau comment filed by Pittsburgh Radio Supply House and WWSW on September 6, 1955; Response to comments of Broadcast Bureau filed by Telecasting on September 7, 1955.

[2] In this Opinion we are not considering the Supplement to Petition for Reconsideration and Petition to Designate BMPCT-3486 For Hearing, filed by Telecasting on November 3, 1955.

3. The parties to the June 2, 1955, merger contract are P. G. Publishing Company (hereinafter sometimes referred to as P G. Publishing) which owns all the capital stock of WWSW WWSW Inc., Pittsburgh Radio Supply House, Inc. (hereinafter sometimes referred to as Supply House) and the Supply House Stockholders (H. Kenneth Brennen, Margaret M. Brennen and Mary Thelma Bregenser) who own 55 percent of the stock of Supply House. In broad terms, the merger agreement contemplates equal ownership in WWSW television station by P. G. Publishing and the Supply House group. The present broadcast operations of WWSW are to be transferred to a new corporation still under the control of P. G. Publishing, and Supply House is to dispose of WJAS (AM) and FM, its stations.

4. In the reorganization of WWSW which is specified by the agreement various corporate actions in addition to transfer of the existing WWSW broadcast operations are to be taken by WWSW preparatory to consummation of the merger. Notes in the amount of $500,000 are to be issued in the form specified by an exhibit to the contract and 2,500 shares each of Class A and Class B stock ($100 par value) are to be authorized. P G. Publishing will buy all of the notes, all of the Class B stock, and 1,500 of the 2,500 shares of Class A,[3] depositing in escrow the purchase price of $900,000 ($500,000 for the notes, $250,000 for the Class B shares, and $150,000 for the 1,500 shares of Class A) The 2,500 Class B shares and $250,000 of the notes are also to be deposited in escrow to be held in trust for the Supply House stockholders. Ten days after deposit of the sum of $900,000 by P G. Publishing, Supply House is to deposit with the escrow agent $500,000 for the stock and notes being held in trust for Supply House by the escrow agent. Upon transfer of specified assets and liabilities of WWSW (primarily those reflecting existing broadcast operations) to the new corporation to be formed, the $900,000 deposit made by P G. Publishing is to be delivered by the escrow agent to WWSW in full payment for the subscription to the Class A and Class B stock and the notes. This sum is to finance construction of the television station. However, the $500,000 deposited by Supply House and the stock and notes held by the escrow agent for Supply House are not to be transferred at this time.

5. Supply House's anticipated disposition of WJAS (AM) and FM requires Commission approval, and upon the filing of an application covering such a transfer P. G. Publishing is to file an application to permit the sale and transfer to the Supply House stockholders of the stock and notes held in escrow. Approval for the latter transfer must be secured within three years. When disposition of WJAS (AM) and FM and transfer of the stock and notes have been approved by the Commission, the escrow agent will deliver the stock and notes to the Supply House stockholders and the $500,000 to P G. Publishing.

6. Although approval of the transfer of the stock and notes may be delayed as much as three years from the date of the agreement (i. e., until June 1958) several provisions of the June 2 contract suggest the exercise of a degree of control by Supply House stockholders before then. Section 3.03 of the contract states that upon transfer of WWSW's existing broadcast assets to the new corporation, WWSW will enter into employment contracts with six named persons at specified salaries. Three of these persons appear to be presently affiliated with Supply House as directors, officers or stockholders. The contract with H. Kenneth Brennen, who is president, assistant treasurer, director and stockholder of Supply House, provides for five years employment at a minimum annual salary of $25,000, although his employment is not to commence until final consummation of the merger agreement. Two of the contracts are to take effect upon final consummation of the merger "or the time when WWSW begins transmitting regular television programs, whichever is earlier." The two persons involved are H. H. Stehman who is vice president, secretary and director of Supply House and who is to be employed for four years at an annual salary of $11,000 and Caley Augustine who is a director of Supply House and is to be paid $10,000 a year. The merger contract makes no provision for severance by these three individuals of their connections with Supply House.

7. The merger agreement contemplates amendment of WWSW's by-laws to provide for seven directors, three of whom are to be elected by Supply House after the merger is consummated. In the interim, other arrangements are prescribed. Immediately after Supply House has deposited $500,000 with the escrow agent,[4] P G. Publishing is to cause the WWSW board of directors to be increased to seven. Four vacancies are to be created, and three of these four vacancies are to be filled by specifically named persons who appear to be nominees of Supply House and will act as if they were the owners of the Class B stock to which Supply House is entitled upon consummation of the merger. P G. Publishing promises that during the interim period it will vote its stock in favor of the three named persons or their nominees.

8. By terms of the agreement, restrictions are placed upon the activities which may be conducted by WWSW prior to consummation of the merger. Until the interim directors are elected, WWSW may conduct no business and will incur no liabilities other than those provided for or contemplated by the agreement. During the same period Supply House stockholders are to have access to the books, records and accounts of WWSW in order to assure themselves that the provisions of the agreement have been and are being met. From the date of agreement until consummation, no amendments to the articles of incorporation or by-laws of WWSW other than those provided for in the contract shall be made without the prior written consent of the Supply House stockholders. The corporate proceedings whereby the by-laws are amended to provide for additional directors shall be in a form and substance satisfactory to counsel for the Supply House stockholders.

9. In the foregoing discussion it has been noted that the occurrence of one or the other of two events is the condition precedent to the ripening of various rights and obligations of the parties. One of these events, designated in the agreement as the first effective date, is the date when the transfer of existing station assets and liabilities of WWSW to the new corporation takes place. On July 13, 1955, the Commission consented to the assignment of licenses from WWSW, Inc. to WWSW Radio, Inc. According to advice received from WWSW, the actual transfer took place on August 1, 1955. The other conditioning event is the deposit in escrow of $500,000 by Supply House within ten days after deposit in escrow of $900,000 by P G. Publishing. The latter deposit was to take place within 10 days after WWSW had amended its articles of incorporation to provide for recapitalization in the manner heretofore described. This amendment was to take place within 10 days after the date of the agreement, June 2, 1955. Thus, by July 2 at the latest the $500,000 deposit should have been made, this date being prior to finalization of the grant to WWSW

10. One further matter related to the foregoing concerns the possibility of overlap between WWSW and WHJB. Supply House is the licensee of the latter station which is situated at Greensburg, Pennsylvania. According to data in the Commission's files, there appears to be a substantial daytime overlap of the 2.0 mv/m contours of WWSW and WHJB as well as some overlap of primary nighttime service areas of the two.

11. From the foregoing discussion it appears not only that the agreement contains provisions which may involve unauthorized transfer of control of WWSW to Supply House, violation of Section 3.35 of the Rules, and violations of Commission policy, but also that by the terms of the agreement various of these provisions are now operative. That some of them became effective prior to the time our finalization of the grant took place is also apparent. The Commission's attention has been directed to the fact that on or about August 31, 1955, amendments to the contract were filed by the parties thereto, the purport of which was to delete the provision for the selection by Supply House of some of the interim directors of WWSW and to alter the employment contract provisions so that no person involved in any potential employment agreement may simultaneously be connected with WWSW and Supply House. Nevertheless, the Commission is not satisfied that the problems described above have been resolved altogether by the submission of the amendments. The latter are not part of the record in the case; the amendments were not filed until nearly two months after several of the questionable provisions could have gone into effect; and even with the elimination of the provisions which were the

[3] WWSW retains 1,000 shares of Class A stock.

[4] See paragraph 4, supra.

subject of amendment, there are other provisions, such as those giving veto power to Supply House, which raise questions of the degree of control exercised by Supply House. Having the foregoing in mind, it is our considered opinion that a rehearing is necessary to determine all the facts and circumstances relative to the possible unauthorized transfer of control to Supply House and to the possible violations of Section 3.35 of the Rules and of Commission policy.

12. Problems concerning financial qualification also arise. In the amendment to its application which WWSW filed in February 1954, a total estimated cost of construction of $1,909,348.70 was stated, this sum to be financed out of $350,000 of existing WWSW capital, a loan from the New York Trust Company in the amount of $1,500,000 guaranteed by P. G. Publishing, and $520,000 in deferred credit payments to RCA. Our examination of the record has revealed no change in the estimated cost of construction although the new financing arrangement described in the merger agreement shows financing of $1,000,000. This sum plus the $520,000 of deferred payments (assuming these to be still available) leaves a shortage in finances of $389,348.70. Whereas prior to merger WWSW planned to rely upon existing capital of $350,000, that sum, except for $100,000 included in the $1,000,000 figure above, is no longer available, having been transferred to the new corporation to which the AM and FM licenses were assigned. No indication is given that any funds will now be supplied by New York Trust, and the changes in financing anticipated by the merger agreement leave it unclear how the sums for which each party is obligated will be raised. Thus, an issue on financial qualifications must be included in the rehearing hereinafter to be ordered.

13. Telecasting's petition for rehearing contains allegations and proposed issues on various other matters, but our appraisal of them persuades us that their consideration in the hearing is not warranted. Thus, no new arguments are offered which require that we disturb our previous action in dismissing the Supply House application. Likewise, we are not moved by Telecasting's reiterated contention that the policy we have followed in this and other merger cases of retaining the remaining television applicant in hearing status is incorrect. The reasons why we refused to designate Telecasting's application for the same channel for a comparative hearing against the remaining WWSW application after Supply House was dismissed have not been attacked by any new arguments not previously weighed and rejected by the Commission.

14. Telecasting asserts that the Commission should specify an issue in the further hearing to determine whether "it is in the public interest to grant an additional VHF channel in Pittsburgh until pending de-intermixture rulemaking proceedings have been decided and the future policy of the Commission on de-intermixture has been enunciated." A related issue concerning the effect a second VHF commercial grant in Pittsburgh will have on existing UHF operations is also requested.

15. In view of the actions taken by us on November 10, 1955 in connection with the de-intermixture rule-making proceedings and petitions,[5] we believe inclusion of the requested issue is clearly inappropriate. To add such issue could lead to an inappropriate interposition in an adjudicatory proceeding of matters essentially rule-making in nature. Moreover, if such an intermingling of rule-making matters with adjudicatory matters were appropriate, Telecasting's request for an issue in these regards is tardy. Unlike the questions raised by the merger agreement, questions which could not be raised earlier because the facts of the agreement were not previously known, the UHF–VHF problem and the related possibility of economic injury to UHF stations in Pittsburgh have been known for some time. No showing has been made by Telecasting why inclusion of issues relating to these matters was not sought by appropriate petition filed at an earlier stage of the proceeding in the manner provided by the Commission's Rules.[6] The tardiness of the request is particularly applicable to the proposed "economic injury" issue, for the fact that Telecasting would ultimately be subjected to the economic effects of competition from an additional VHF station in Pittsburgh has been apparent for at least as long as the applications for the instant television channel have been on file.

16. Telecasting has requested that it be made a party to any rehearing ordered. With respect to those matters which are being placed in issue hereinafter participation is warranted. Petitioner called these matters to the Commission's attention thereby raising the questions as to the propriety of the grant to WWSW It is apparent that it was not possible for petitioner to raise these matters until the final stages of the proceeding. Thus, good cause for allowing Telecasting to participate in this phase of the proceeding has been shown.

17. The issuance of an order temporarily staying the effectiveness of the grant to WWSW until completion of the rehearing proceeding is not, in our opinion, desirable. It has not been shown how the public interest would be injured by allowing construction authorized by the permit to continue, for the use of the material and equipment so constructed, of course, will be subject to the outcome of the rehearing. No irreparable injury to petitioner has been shown to justify the stay.

18. In view of the foregoing: *It is ordered*, This 25th day of November 1955, that to the extent hereinafter indicated by the issues specified the petition for rehearing and reconsideration is granted, that Telecasting, Inc., is made a party to the rehearing ordered, that the petition for stay of the effective date of the grant to WWSW is denied, and that the record is reopened and designated for further hearing on the following issues:

1. To ascertain the effect of the June 2, 1955 agreement, the provisions of any amendments thereto either formal or informal and their effect if any upon such agreement, and whether there are any understandings between the parties to the agreement affecting said agreement.

2. To determine the extent to which the terms and provisions of the June 2 agreement have been or will be effectuated and the dates upon which such effectuations have taken or will take place.

3. To determine whether implementation of the terms of the June 2 agreement or any amendments or understandings in relation thereto have resulted or will result in transfer of control from WWSW to Supply House and whether such transfer of control, if any, is contrary to the provisions of section 310 (b) of the Communications Act of 1934, as amended, and the Commission's rules and policies thereunder.

4. To determine whether, pending disposition of WJAS (AM) and FM by Supply House, the relationship of the parties to the June 2 agreement as expressed in said agreement and any amendments or understandings with respect thereto results in a violation of Commission policy expressed in Macon Television Co., 7 Pike & Fischer RR 703 and 897.

5. To determine the extent of overlap between Station WWSW and Station WHJB and whether such overlap results or will result in a violation of Commission policy expressed in Macon Television Co., supra.

6. To determine the effect of the June 2 agreement upon WWSW's financial qualifications and whether WWSW remains financially qualified to construct, own and operate the station as proposed in its application as amended.

7. To determine in the light of the evidence adduced under the foregoing issues whether the grant to WWSW, Inc. should be set aside.

Released: November 28, 1955.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
*Secretary.*

[F. R. Doc. 55-9711; Filed, Dec. 2, 1955; 8:49 a. m.]

[5] (a) In the Matter of Amendment of Section 3.606, Dockets Nos. 11238 et al., (FCC 55-1125); (b) Notice of Proposed Rule Making, Docket No. 11532 (FCC 55-1124); and (c) In the Matter of Amendment of Part 3 of the Commission's Rules (FCC 55-1126).

[6] Telecasting's reliance on isolated language in the Notice of Further Rule Making in Docket No. 11238 (Vail Mills-Albany) released April 21, 1955 (FCC 55-492) is no excuse for Telecasting's delay.

## GENERAL SERVICES ADMINISTRATION

### CHINESE HOG BRISTLES

#### DISPOSITION OF THOSE HELD IN NATIONAL STOCK PILE

Pursuant to the provisions of section 3 (e) of the Strategic and Critical Materials Stock Piling Act, 60 Stat. 597, 50 U. S. C. 98b (e) notice is hereby given of a proposed disposition of approximately 2,000,000 pounds of Chinese hog

bristles now held in the National Stock Pile.

This quantity of Chinese hog bristles is no longer needed in the Stock Pile because of a revised determination by the Office of Defense Mobilization that Chinese hog bristles are obsolescent for use in time of war because of the development of new non-strategic substitute materials.

The Chinese hog bristles to be disposed of will be offered for sale in lots of the quantity and composition sold in the usual markets. It is believed that this plan will protect the United States againt avoidable loss and also protect producers, processors and consumers against avoidable disruption of their usual markets.

This material will be available for disposition on and after June 4, 1956.

Dated: November 29, 1955.

R. A. HEDDLESTON,
*Acting Commissioner*
*Emergency Procurement Service.*

[F. R. Doc. 55-9705; Filed, Dec. 2, 1955; 8:48 a. m.]

## FEDERAL POWER COMMISSION

[Docket No. G-5165 etc.]

WESTERN OIL CO. ET AL.

NOTICE OF FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

NOVEMBER 29, 1955.

In the matters of Western Oil Company, Docket No. G-5165, Samedan Oil Corporation et al., Docket Nos. G-5169, G-5170, G-5171, Martin Gas Company Docket No. G-7587 John Gas Company, Docket No. G-7588; Woodall and Jackson Gas Company, Docket No. G-7589; Laurel Hill Gas Company, Docket No. G-7590; Sue Gas Company, Docket No. G-7591, Emery Gas Company, Docket No. G-7592; Triangle Gas Company, Docket No. G-7593; Templeton Gas Company, Docket No. G-7594, Houston Gas Company, Docket No. G-7595; R. H. Adkins, Trustee for Pridemore, et al., Docket No. G-7596; Hill Gas Company, Docket No. G-7597· Tincher Gas Company, Docket No. G-7598; Stockton Gas Company, Docket No. G-7599· Muriel Gas Company, Docket No. G-7600; Hoover Gas Company, Docket No. G-7601, Hamilton Creek Gas Company, Docket No. G-7602; Ethel Gas Company, Docket No. G-7603; McComas Gas Company, Docket No. G-7604, Harts Gas Company, Docket No. G-7605; Charley's Branch Gas Company, Docket No. G-7606; Elkins Branch Gas Company, Docket No. G-7607· Watson Gas Company, Docket No. G-7608; Juda Gas Company, Docket No. G-7609; Wolf Pen Gas Company, Docket No. G-7610; Barcamp Gas Company, Docket No. G-7611, Cooper Gas Company, Docket No. G-7612; Dean Gas Company, Docket No. G-7613; Toms Creek Gas Company, Docket No. G-7614; Edsel Gas Company, Docket No. G-7615; Midland Gas Company, Docket No. G-7616; Jenny's Creek Gas Company, Docket No. G-7617 Ranger Gas Company, Docket No. G-7618; Hall Gas Company, Docket No. G-7620; R. F. Turley, Agent, Docket No. G-7621, Morris Mizel, Docket No. G-8038; Graokla Gas Corporation, Docket No. G-8045; H. H. Coffield, Docket No. G-8046; Texas Gas Corporation, Docket No. G-8048; R. E. Hibbert, Docket No. G-8049; Rusky Oil Company, Docket Nos. G-8052 and G-8053.

Notice is hereby given that on November 15, 1955, the Federal Power Commission issued its findings and order adopted November 9, 1955, issuing certificates of public convenience and necessity in the above-entitled matters.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 55-9686; Filed, Dec. 2, 1955; 8:47 a. m.]

[Docket Nos. G-8600, G-8610]

CENTRAL KENTUCKY NATURAL GAS CO. AND UNION LIGHT, HEAT AND POWER CO.

NOTICE OF FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

NOVEMBER 29, 1955.

Notice is hereby given that on November 14, 1955, the Federal Power Commission issued its findings and order adopted November 9, 1955, issuing certificates of public convenience and necessity and permitting abandonment of facilities in the above-entitled matters.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 55-9701; Filed, Dec. 2, 1955; 8:47 a. m.]

[Docket No. G-9100]

TEXAS EASTERN TRANSMISSION CORP.

NOTICE OF FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NOVEMBER 29, 1955.

Notice is hereby given that on November 14, 1955, the Federal Power Commission issued its findings and order adopted November 9, 1955, issuing a certificate of public convenience and necessity in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 55-9702; Filed, Dec. 2, 1955; 8:48 a. m.]

[Docket No. G-6505]

DORCHESTER CORP.

NOTICE OF ORDER REVERSING INITIAL DECISION

NOVEMBER 29, 1955.

Notice is hereby given that on November 14, 1955, the Federal Power Commission issued its order adopted November 10, 1955, reversing initial decision of Presiding Examiner issued September 14, 1955, in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 55-9703; Filed, Dec. 2, 1955; 8:48 a. m.]

[Docket No. G-8819 etc.]

MRS. TOM J. MOFFITT ET AL.

NOTICE OF ORDERS MAKING EFFECTIVE PROPOSED RATE CHANGES

NOVEMBER 29, 1955.

In the matters of Mrs. Tom J. Moffitt et al., Docket No. G-8819; Phillips Petroleum Company Docket No. G-8883; Blackwell Oil & Gas Company, Docket No. G-8970.

Notice is hereby given that on November 10, 1955, the Federal Power Commission issued its orders adopted November 9, 1955, making effective proposed rate changes upon filing of bond to assure refund of excess charges in the above-entitled matters.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F R. Doc. 55-9704; Filed, Dec. 2, 1955; 8:48 a. m.]