

TITLE 26 - INTERNAL REVENUE CODE

Subtitle A - Income Taxes

CHAPTER 1 - NORMAL TAXES AND SURTAXES

Subchapter O - Gain or Loss on Disposition of Property

PART IV - SPECIAL RULES

§ 1060. Special allocation rules for certain asset acquisitions

(a) General rule

In the case of any applicable asset acquisition, for purposes of determining both—

- (1) the transferee's basis in such assets, and
- (2) the gain or loss of the transferor with respect to such acquisition,

the consideration received for such assets shall be allocated among such assets acquired in such acquisition in the same manner as amounts are allocated to assets under section 338 (b)(5). If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.

(b) Information required to be furnished to Secretary

Under regulations, the transferor and transferee in an applicable asset acquisition shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary the following information:

- (1) The amount of the consideration received for the assets which is allocated to section 197 intangibles.
- (2) Any modification of the amount described in paragraph (1).
- (3) Any other information with respect to other assets transferred in such acquisition as the Secretary deems necessary to carry out the provisions of this section.

(c) Applicable asset acquisition

For purposes of this section, the term "applicable asset acquisition" means any transfer (whether directly or indirectly)—

- (1) of assets which constitute a trade or business, and
- (2) with respect to which the transferee's basis in such assets is determined wholly by reference to the consideration paid for such assets.

A transfer shall not be treated as failing to be an applicable asset acquisition merely because section 1031 applies to a portion of the assets transferred.

(d) Treatment of certain partnership transactions

In the case of a distribution of partnership property or a transfer of an interest in a partnership—

- (1) the rules of subsection (a) shall apply but only for purposes of determining the value of section 197 intangibles for purposes of applying section 755, and
- (2) if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of subsection (b).

(e) Information required in case of certain transfers of interests in entities

(1) In general

If—

- (A) a person who is a 10-percent owner with respect to any entity transfers an interest in such entity, and

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

(B) in connection with such transfer, such owner (or a related person) enters into an employment contract, covenant not to compete, royalty or lease agreement, or other agreement with the transferee,

such owner and the transferee shall, at such time and in such manner as the Secretary may prescribe, furnish such information as the Secretary may require.

(2) 10-percent owner

For purposes of this subsection—

(A) In general

The term “10-percent owner” means, with respect to any entity, any person who holds 10 percent or more (by value) of the interests in such entity immediately before the transfer.

(B) Constructive ownership

Section 318 shall apply in determining ownership of stock in a corporation. Similar principles shall apply in determining the ownership of interests in any other entity.

(3) Related person

For purposes of this subsection, the term “related person” means any person who is related (within the meaning of section 267 (b) or 707 (b)(1)) to the 10-percent owner.

(f) Cross reference

For provisions relating to penalties for failure to file a return required by this section, see section 6721.

(Added Pub. L. 99–514, title VI, § 641(a), Oct. 22, 1986, 100 Stat. 2282; amended Pub. L. 100–647, title I, § 1006(h)(1), (2), (3)(B), Nov. 10, 1988, 102 Stat. 3410; Pub. L. 101–508, title XI, § 11323(a), (b)(1), Nov. 5, 1990, 104 Stat. 1388–464; Pub. L. 103–66, title XIII, § 13261(e), Aug. 10, 1993, 107 Stat. 539.)

Prior Provisions

A prior section 1060 was renumbered section 1061 of this title.

Amendments

1993—Subsec. (b)(1). Pub. L. 103–66, § 13261(e)(1), substituted “section 197 intangibles” for “goodwill or going concern value”.

Subsec. (d)(1). Pub. L. 103–66, § 13261(e)(2), substituted “section 197 intangibles” for “goodwill or going concern value (or similar items)”.

1990—Subsec. (a). Pub. L. 101–508, § 11323(a), inserted at end “If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.”

Subsecs. (e), (f). Pub. L. 101–508, § 11323(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (b)(3). Pub. L. 100–647, § 1006(h)(1), substituted “deems” for “may find”.

Subsec. (d). Pub. L. 100–647, § 1006(h)(2), added subsec. (d).

Subsec. (e). Pub. L. 100–647, § 1006(h)(3)(B), added subsec. (e).

Effective Date of 1993 Amendment

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

Effective Date of 1990 Amendment

Amendment by Pub. L. 101–508 applicable to acquisitions after Oct. 9, 1990, but not applicable to any acquisition pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such acquisition, see section 11323(d) of Pub. L. 101–508, set out as a note under section 338 of this title.

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Effective Date of 1988 Amendment

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Effective Date of 1986 Amendment

Section 641(c) of Pub. L. 99-514 provided that: "The amendments made by this section [enacting this section and renumbering former section 1060 as 1061] shall apply to any acquisition of assets after May 6, 1986, unless such acquisition is pursuant to a binding contract which was in effect on May 6, 1986, and at all times thereafter."