

810-3-8-.04 Exchanges in Pursuance of a Plan of Reorganization.

(1) For transactions after December 31, 1984, federal interpretations pertaining to 26 U.S.C. §§ 354, 355, 356, 361, 371 and 374 will be followed in determining the amount of gain or loss recognized as the result of a reorganization specified in 26 U.S.C. § 368 or a distribution that qualifies under 26 U.S.C. § 355. For interpretation of federal statutes adopted by the Alabama Legislature see Rule 810-3-1.1-.01, Operating Rules.

(2) For transactions before January 1, 1985 -

(a) For the purpose of this rule the term "reorganization" means:

1. The merger of one or more corporations in accordance with statutory authority into another;

2. The consolidation pursuant to statutory authority of two or more corporations into a new corporation;

3. The acquisition by one corporation of at least a majority of the voting stock, or substantially all the properties of another corporation;

4. The transfer by one corporation of all or a part of its assets to another, if immediately after the transfer the first corporation or its stockholders, or both, are in control of the second corporation (control for this purpose being defined in §40-18-8(j), Code of Alabama, 1975, as the ownership by the first corporation or its stockholders, or both, of the second corporation to the extent of at least fifty-one percent of the voting stock and at least eighty percent of the total number of shares of all other classes thereof);

5. A recapitalization;

6. A mere change in identity, form or place of organization, however effected.

(b) No taxable income is received, nor is a deductible loss sustained, when a corporation exchanges property solely for stock or securities in another corporation, if

1. the exchange is in pursuance of a plan of reorganization, and

2. the corporation receiving the stock is a party to a plan of reorganization, and

3. the stock received is of a corporation which is a party to the same plan of reorganization.

(c) If in any transaction, which would fall within §40-18-8(b)(4) if the exchange were solely in kind, there is received by the taxpayer other property (in addition to property permitted to be received by the taxpayer without recognition of gain) and/or money, then -

1. if the corporation receiving such other property or money distributes it in accordance with the plan of reorganization, no gain from the exchange will be recognized to the corporation, or

2. if such distribution is not made, the gain to the corporation shall be recognized in an amount not in excess of the sum of money and the fair and reasonable market value of such other additional property received.

(d) If a shareholder in a corporation, in a reorganization, surrenders none of his stocks or securities but receives stocks or securities in any corporation which is a party of the reorganization no gain is recognized.

1. The distribution shall not be considered a distribution of earnings and profits within the meaning of §40-18-8(b)(4) for determining the taxability of subsequent distributions by the corporation.

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Authority: Sections 40-2A-7(a)(5) and 40-18-8, Code of Alabama 1975  
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