

810-3-8-.10. Gain or Loss on Certain Liquidations.

(1) For transactions after December 31, 1984, and before August 1, 1986 -

(a) If, within the twelve (12) month period beginning on the date on which a corporation adopts a plan of complete liquidation, all of the assets of the corporation are distributed in complete liquidation (except for assets retained to meet claims), then no gain or loss shall be recognized to such corporation from the sale or exchange of property within such twelve (12) month period.

1. For the purposes of this subparagraph (1)(a), the term "property" does not include -

(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, and property held by the corporation primarily for sales to customers in the ordinary course of its trade or business.

(ii) installment obligations acquired in respect to 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 this subparagraph (1)(a)), of stock in trade or other property described in subparagraph (1)(a)1.(i) above.

(iii) installment obligations acquired in respect of property (other than property described in subparagraph (1)(a)1.(ii) above) sold or exchanged before the date of the adoption of such plan of liquidation.

2. Notwithstanding subparagraph (1)(a)1. above, if substantially all of the property described in subparagraph (1)(a)1.(i) above, which is attributable to a trade or business of the corporation is sold or exchanged to one person in one transaction, then for purposes of this subparagraph (1)(a), the term "property" includes such property so sold or exchanged and installment obligations acquired in respect of such sale or exchange.

(b) Subparagraph (1)(a) above does not apply to the following liquidations described in this subparagraph (1)(b):

1. Any sale or exchange made by a collapsible corporation (as defined in 26 U.S.C. § 341(b)).

2. Any sale or exchange made by a corporation following the adoption of a plan of complete liquidation if §40-18-8(k), Code of Alabama 1975, (relating to election as to recognition of gain in certain liquidations as defined in 26 U.S.C. § 333) applies with respect to such liquidation.

3. In the case of any sale or exchange following the adoption of a plan of liquidation if §40-18-8(i) (relating to liquidation of subsidiaries pursuant to 26 U.S.C. § 332) applies to such liquidation.

4. This subparagraph (1)(b) shall not apply to a sale or exchange by a corporation (referred to herein as the "selling corporation"), if -

(i) within the twelve (12) month period beginning on the date of the adoption of a plan of complete liquidation by the selling corporation, the selling corporation and each distributee corporation is completely liquidated, and

(ii) none of the complete liquidations are liquidations to which §40-18-8(k) (and 26 U.S.C. § 333) applies.

(I) The term "distributee corporation" means a corporation in the chain of includable corporations to which the selling corporation or a corporation above the selling corporation in such chain makes a distribution in complete liquidation within the twelve (12) month period referred to in subparagraph (1)(a).

(II) The term "chain of includable corporations" includes, in the case of any distribution, any corporation which (at the time of such distribution) is in a chain of includable corporations for purposes of Reg. 810-3-6-.02(1)(k) 7.(x). Such term includes, where appropriate, the common parent corporation.

(c) If a corporation adopts a plan of complete liquidation, and if subparagraph (1)(a) of this rule does not apply to sales or exchanges of property by such corporation solely by reason of the application of subparagraph (1)(b)4.(i) of this rule (relating to liquidations of subsidiaries under §40-18-8(i) and 26 U.S.C. § 332), then for the first taxable year of any shareholder (other than a corporation which meets the eighty percent (80%) stock ownership requirement in paragraph (1) of this rule), in which he receives a distribution in complete liquidation -

1. the amount realized by such shareholder on the distribution shall be increased by his proportionate share of the amount by which the tax imposed by Chapter 18 of Title 40, Code of Alabama, 1975, on such corporation would have been reduced if subparagraph (1)(b)4.(ii) had not been applicable, and

2. for purposes of Chapter 18 of Title 40, such shareholder shall be deemed to have paid, on the last day prescribed by law for the payment of the tax imposed by said Chapter 18 on such shareholder, an amount of tax equal to the amount of the increase described in subparagraph (1)(c)1. above.

(d) If there is an involuntary conversion (within the meaning of §40-18-8(d) and 26 U.S.C. § 1033), and there is a complete liquidation of such corporation which qualifies under subparagraph (1)(a) above of this rule -

1. the disposition of the converted property occurs within the sixty (60) day period which ends on the last day before the first day of the twelve (12) month period, and

2. such corporation elects the application of §40-18-8(j) and this rule in accordance with regulations prescribed by the United States Secretary of the Treasury, then for purposes of §40-18-8(j) and this rule, such disposition shall be treated as a sale or exchange occurring within the twelve (12) month period specified in paragraph (1) above.

(e) In the case of a corporation inventorying goods under the LIFO (last-in, first-out) method, subparagraph (1)(a) above shall apply to gain from the sale or exchange of inventory assets only to the extent that such gain exceeds the LIFO recapture amount with respect to such assets.

1. The term "LIFO recapture amount", as used in this subparagraph (1)(e), means the amount, if any, by which the inventory amount of the inventory assets under the FIFO (first-in, first-out) method exceeds the inventory amount of such assets under the LIFO method.

(f) If a corporation completely liquidates pursuant to a plan of complete liquidation adopted in a federal bankruptcy case under Title 11, U.S.C., or a receivership, foreclosure, or similar proceeding in a federal or state court, then -

1. for the purpose of subparagraph (1)(a) above, the term "property" shall not include any item acquired on or after the date of the adoption of the plan of complete liquidation if such item is not property within the meaning of subparagraph (1)(b)2. above, and

2. subparagraph (1)(a) above shall apply to sales and exchanges by the corporation of property within the period beginning on the date of the adoption of the plan and ending on the date of the termination of the case in federal or state court.

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