

disqualified by reason of the fact of the successive transfers of all of the acquired assets from S-1 to S-2, and from S-2 to S-3 because in each transfer, the transferee corporation is controlled by the transferor corporation. Control is defined under section 368(c).

Example 2. Transfers of acquired stock to controlled corporations. (i) *Facts.* The facts are the same as Example 1 except that S-1 acquires all of the T stock rather than the T assets, and as part of the plan of reorganization, S-1 transfers all of the T stock to S-2, and S-2 transfers all of the T stock to S-3.

(ii) *Analysis.* Under this paragraph (k), the transaction, otherwise qualifying as a reorganization under section 368(a)(1)(B), is not disqualified by reason of the fact of the successive transfers of all of the acquired stock from S-1 to S-2, and from S-2 to S-3 because in each transfer, the transferee corporation is controlled by the transferor corporation.

Example 3. Transfers of acquired stock to partnerships. (i) *Facts.* The facts are the same as in Example 2. However, as part of the plan of reorganization, S-2 and S-3 form a new partnership, PRS. Immediately thereafter, S-3 transfers all of the T stock to PRS in exchange for an 80 percent partnership interest, and S-2 transfers cash to PRS in exchange for a 20 percent partnership interest.

(ii) *Analysis.* This paragraph (k) describes the successive transfer of the T stock to S-3, but does not describe S-3's transfer of the T stock to PRS. Therefore, the characterization of this transaction must be determined under the relevant provisions of law, including the step transaction doctrine. See § 1.368-1(a). The transaction fails to meet the control requirement of a reorganization described in section 368(a)(1)(B) because immediately after the acquisition of the T stock, the acquiring corporation does not have control of T.

(4) This paragraph (k) applies to transactions occurring after January 28, 1998, except that it does not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter.

[T.D. 6500, 25 FR 11607, Nov. 26, 1960, as amended by T.D. 7281, 38 FR 18540, July 12, 1973; T.D. 7422, 41 FR 26570, June 28, 1976; T.D. 8059, 50 FR 42689, Oct. 22, 1985; 51 FR 6400, Feb. 24, 1986; T.D. 8760, 63 FR 4182, Jan. 28, 1998; T.D. 8885, 65 FR 31806, May 19, 2000]

§ 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 ap-

pear 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 copy of the plan of reorganization, together with a statement, executed under the penalties of perjury, 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.

[T.D. 6500, 25 FR 11607, Nov. 26, 1960, as amended by T.D. 6622, 27 FR 11918, Dec. 4, 1962]

INSOLVENCY REORGANIZATIONS

§ 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 (11 U.S.C. 205(m)). 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 (11 U.S.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 section 371(a)(2) and (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