

### § 1.338(i)-1

(h) *Effective date.* This section is applicable to stock acquisitions occurring on or after July 9, 2003.

[T.D. 9071, 68 FR 40768, July 9, 2003]

#### § 1.338(i)-1 Effective dates.

(a) *In general.* The provisions of §§ 1.338-1 through 1.338-7, 1.338-10 and 1.338(h)(10)-1 apply to any qualified stock purchase occurring after March 15, 2001. For rules applicable to qualified stock purchases on or before March 15, 2001, see §§ 1.338-1T through 1.338-7T, 1.338-10T, 1.338(h)(10)-1T and 1.338(i)-1T in effect prior to March 16, 2001 (see 26 CFR part 1 revised April 1, 2000).

(b) *Section 338(h)(10) elections for S corporation targets.* The requirements of §§ 1.338(h)(10)-1T(c)(2) and 1.338(h)(10)-1(c)(2) that S corporation shareholders who do not sell their stock must also consent to an election under section 338(h)(10) will not invalidate an otherwise valid election made on the September 1997 revision of Form 8023, "Elections Under Section 338 For Corporations Making Qualified Stock Purchases," not signed by the nonselling shareholders, provided that the S corporation and all of its shareholders (including nonselling shareholders) report the tax consequences consistently with the results under section 338(h)(10).

[T.D. 8940, 66 FR 9954, Feb. 13, 2001]

COLLAPSIBLE CORPORATIONS; FOREIGN  
PERSONAL HOLDING COMPANIES

#### § 1.341-1 Collapsible corporations; in general.

Subject to the limitations contained in § 1.341-4 and the exceptions contained in § 1.341-6 and § 1.341-7(a), the entire gain from 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

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property, shall be considered as ordinary income.

[T.D. 7655, 44 FR 68459, Nov. 29, 1979]

#### § 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 paragraph (d) of § 1.341-5 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