

## Reg. Section 1.336-1

General principles, nomenclature, and definitions for a section 336(e) election.

### (a) Overview.

(1) In general. Section 336(e) authorizes the promulgation of regulations under which, in certain circumstances, a sale, exchange, or distribution of the stock of a corporation may be treated as an asset sale. This section and §§1.336-2 through 1.336-5 provide the rules for and consequences of making such election. This section provides the definitions and nomenclature. Generally, except to the extent inconsistent with section 336(e), the results of section 336(e) should coincide with those of section 338(h)(10). Accordingly, to the extent not inconsistent with section 336(e) or these regulations, the principles of section 338 and the regulations under section 338 apply for purposes of these regulations. For example, §1.338(h)(10)-1(d)(8), concerning the availability of the section 453 installment method, may apply with respect to section 336(e).

(2) Consistency rules. In general, the principles of §1.338-8, concerning asset and stock consistency, apply with respect to section 336(e). However, for this purpose, the application of §1.338-8(b)(1) is modified such that §1.338-8(b)(1)(iii) applies to an asset if the asset is owned, immediately after its acquisition and on the disposition date, by a person or by a related person (as defined in §1.336-1(b)(12)) to a person that acquires, by sale, exchange, distribution, or any combination thereof, five percent or more, by value, of the stock of target in the qualified stock disposition.

### (b) Definitions. For purposes of §§1.336-1 through 1.336-5 (except as otherwise provided):

(1) Seller. The term seller means any domestic corporation that makes a qualified stock disposition of stock of another corporation. Seller includes both a transferor and a distributor of target stock. Generally, all members of a consolidated group that dispose of target stock are treated as a single seller. See §1.336-2(g)(2).

(2) Purchaser. The term purchaser means one or more persons that acquire or receive the stock of another corporation in a qualified stock disposition. A purchaser includes both a transferee and a distributee of target stock.

(3) Target; S corporation target; old target; new target. The term target means any domestic corporation the stock of which is sold, exchanged, or distributed in a qualified stock disposition. An S corporation target is a target that is an S corporation immediately before the disposition date; any other target is a non-S corporation target. Except as the context otherwise requires, a reference to target includes a reference to an S corporation

target. In the case of a transaction not described in section 355(d)(2) or (e)(2), old target refers to target for periods ending on or before the close of target's disposition date and new target refers to target for subsequent periods. In the case of a transaction described in section 355(d)(2) or (e)(2), old target refers to target for periods ending on or before the disposition date as well as for subsequent periods.

(4)S corporation shareholders. S corporation shareholders are the S corporation target's shareholders. Unless otherwise provided, a reference to S corporation shareholders refers both to S corporation shareholders who dispose of and those who do not dispose of their S corporation target stock.

(5)Disposed of; disposition.

(i) In general. The term disposed of refers to a transfer of stock in a disposition. The term disposition means any sale, exchange, or distribution of stock, but only if--

(A) The basis of the stock in the hands of the purchaser is not determined in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom the stock is acquired, is not determined under section 1014(a) (relating to property acquired from a decedent), or is not determined under section 1022 (relating to the basis of property acquired from certain decedents who died in 2010);

(B) Except as provided in paragraph (b)(5)(ii) of this section, the stock is not sold, exchanged, or distributed in a transaction to which section 351, 354, 355, or 356 applies and is not sold, exchanged, or distributed in any transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized in the transaction; and

(C) The stock is not sold, exchanged, or distributed to a related person.

(ii) Exception for disposition of stock in certain section 355 transactions. Notwithstanding paragraph (b)(5)(i)(B) of this section, a distribution of stock to a person who is not a related person in a transaction in which the full amount of stock gain would be recognized pursuant to section 355(d)(2) or (e)(2) shall be considered a disposition.

(iii) Transactions with related persons. In determining whether stock is sold, exchanged, or distributed to a related person, the principles of section 338(h)(3)(C) and §1.338-3(b)(3) shall apply.

(iv) No consideration paid. Stock in target may be considered disposed of if, under general principles of tax law, seller is considered to sell, exchange, or distribute stock of target notwithstanding that no amount may be paid for (or allocated to) the stock.

(v) Disposed of stock reacquired by certain persons. Stock disposed of by seller to another person under this section that is reacquired by seller or a member of seller's consolidated group during the 12-month disposition period shall not be considered as disposed of. Similarly, stock disposed of by an S corporation shareholder to another person under this section that is reacquired by the S corporation shareholder or by a person related (within the meaning of paragraph (b)(12) of this section) to the S corporation shareholder during the 12-month disposition period shall not be considered as disposed of.

(6) Qualified stock disposition.

(i) In general. The term qualified stock disposition means any transaction or series of transactions in which stock meeting the requirements of section 1504(a)(2) of a domestic corporation is either sold, exchanged, or distributed, or any combination thereof, by another domestic corporation or by the S corporation shareholders in a disposition, within the meaning of paragraph (b)(5) of this section, during the 12-month disposition period.

(ii) Overlap with qualified stock purchase.

(A) In general. Except as provided in paragraph (b)(6)(ii)(B) of this section, a transaction satisfying the definition of a qualified stock disposition under paragraph (b)(6)(i) of this section, which also qualifies as a qualified stock purchase (as defined in section 338(d)(3)), will not be treated as a qualified stock disposition.

(B) Exception. If, as a result of the deemed sale of old target's assets pursuant to a section 336(e) election, there would be, but for paragraph (b)(6)(ii)(A) of this section, a qualified stock disposition of the stock of a subsidiary of target, then paragraph (b)(6)(ii)(A) shall not apply to the disposition of the stock of the subsidiary.

(7) 12-month disposition period. The term 12-month disposition period means the 12-month period beginning with the date of the first sale, exchange, or distribution of stock included in a qualified stock disposition.

(8) Disposition date. The term disposition date means, with respect to any corporation, the first day on which there is a qualified stock disposition with respect to the stock of such corporation.

(9)Disposition date assets. Disposition date assets are the assets of target held at the beginning of the day after the disposition date (but see §1.338-1(d) (regarding certain transactions on the disposition date)).

(10)Domestic corporation. The term domestic corporation has the same meaning as in §1.338-2(c)(9).

(11)Section 336(e) election. A section 336(e) election is an election to apply section 336(e) to target. A section 336(e) election is made by making an election for target under §1.336-2(h).

(12)Related persons. Two persons are related if stock of a corporation owned by one of the persons would be attributed under section 318(a), other than section 318(a)(4), to the other. However, neither section 318(a)(2)(A) nor section 318(a)(3)(A) apply to attribute stock ownership from a partnership to a partner, or from a partner to a partnership, if such partner owns, directly or indirectly, interests representing less than five percent of the value of the partnership.

(13)Liquidation. Any reference to a liquidation is treated as a reference to the transfer described in §1.336-2(b)(1)(iii) notwithstanding its ultimate characterization for Federal income tax purposes.

(14)Deemed asset disposition. The deemed sale of old target's assets is, without regard to its characterization for Federal income tax purposes, referred to as the deemed asset disposition.

(15)Deemed disposition tax consequences. Deemed disposition tax consequences refers to, in the aggregate, the Federal income tax consequences (generally, the income, gain, deduction, and loss) of the deemed asset disposition. Deemed disposition tax consequences also refers to the Federal income tax consequences of the transfer of a particular asset in the deemed asset disposition.

(16)80-percent purchaser. An 80-percent purchaser is any purchaser that, after application of the attribution rules of section 318(a), other than section 318(a)(4), owns 80 percent or more of the voting power or value of target stock.

(17)Recently disposed stock. The term recently disposed stock means any stock in target that is not held by seller, a member of seller's consolidated group, or an S corporation shareholder immediately after the close of the disposition date and that was disposed of by seller, a member of seller's consolidated group, or an S corporation shareholder during the 12-month disposition period.

(18) Nonrecently disposed stock. The term nonrecently disposed stock means stock in target that is held on the disposition date by a purchaser or a person related (as described in §1.336-1(b)(12)) to the purchaser who owns, on the disposition date, with the application of section 318(a), other than section 318(a)(4), at least 10 percent of the total voting power or value of the stock of target and that is not recently disposed stock.

(c) Nomenclature. For purposes of §§1.336-1 through 1.336-5, except as otherwise provided, Parent, Seller, Target, Sub, S Corporation Target, and Target Subsidiary are domestic corporations and A, B, C, and D are individuals, none of whom are related to Parent, Seller, Target, Sub, S Corporation Target, Target Subsidiary, or each other.