Section 351 is not applicable to the transaction.

Did the TRANSFEROR(S) who engaged in the post-exchange transfer at the time that they received the stock have the legal right to decide whether to keep the stock?

Immediately after the exchange, were the TRANSFEROR(S) in control (as defined in section 368(c)) of the corporation? (To be in control of the transferee corporation, such person or persons must own immediately after the transfer stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of such corporation.)

The person or persons who transferred property in exchange for stock in the corporation are referred to as the “TRANSFEROR(S)”. Do not include this term persons who were issued stock of a relatively small value if the primary purpose of the transfer was to qualify under section 351. See Rev. Rul. 77-37.

Was the fair market value of the boot received by the shareholder in excess of the gain realized by the shareholder?

Boot > Gain

Gain Equal to Boot

The transferor recognizes the full amount of the gain.

Sec. 351(b), 1001(c)

No Gain or Loss

No gain or loss is recognized on the transfer.

Sec. 351(a)

Disclaimer
This flowchart has been extensively reviewed to be as complete and accurate as possible. However, due to the complexity of these rules, this flowchart undoubtedly includes errors and omissions. You should consult a tax professional for individual advice regarding your own situation. This flowchart is not updated for changes in the tax laws and should not be relied upon for any purpose whatsoever.