

§ 1.381(b)-1 Operating rules applicable to carryovers in certain corporate acquisitions.

(a) *Closing of taxable year*—(1) *In general.* Except in the case of certain reorganizations qualifying under section 368(a)(1)(F), the taxable year of the distributor or transferor corporation shall end with the close of the date of distribution or transfer. With regard to the closing of the taxable year of the transferor corporation in certain reorganizations under section 368(a)(1)(F) involving a foreign corporation after December 31, 1986, see §§ 1.367(a)-1T(e) and 1.367(b)-2(f).

(2) *Reorganizations under section 368(a)(1)(F).* In the case of a reorganization qualifying under section 368(a)(1)(F) (whether or not such reorganization also qualifies under any other provision of section 368(a)(1)), the acquiring corporation shall be treated (for purposes of section 381) just as the transferor corporation would have been treated if there had been no reorganization. Thus, the taxable year of the transferor corporation shall not end on the date of transfer merely because of the transfer; a net operating loss of the acquiring corporation for any taxable year ending after the date of transfer shall be carried back in accordance with section 172(b) in computing the taxable income of the transferor corporation for a taxable year ending before the date of transfer; and the tax attributes of the transferor corporation enumerated in section 381(c) shall be taken into account by the acquiring corporation as if there had been no reorganization.

(b) *Date of distribution or transfer.* (1) The date of distribution or transfer shall be that day on which are distributed or transferred all those properties of the distributor or transferor corporation which are to be distributed or transferred pursuant to a liquidation or reorganization described in paragraph (b)(1) of § 1.381(a)-1. If the distribution or transfer of all such properties is not made on one day, then, except as provided in subparagraph (2) of this paragraph, the date of distribution or transfer shall be that day on which the distribution or transfer of all such properties is completed.

(2) If the distributor or transferor and acquiring corporations file the statements described in subparagraph (3) of this paragraph, the date of distribution or transfer shall be that day as of which (i) substantially all of the properties to be distributed or transferred have been distributed or transferred, and (ii) the distributor or transferor corporation has ceased all operations (other than liquidating activities). Such day also shall be the date of distribution or transfer if the completion of the distribution or transfer is unreasonably postponed beyond the date as of which substantially all the properties to be distributed or transferred have been distributed or transferred and the distributor or transferor corporation has ceased all operations other than liquidating activities. A corporation shall be considered to have distributed or transferred substantially all of its properties to be distributed or transferred even though it retains money or other property in a reasonable amount to pay outstanding debts or preserve the corporation's legal existence. A corporation shall be considered to have ceased all operations, other than liquidating activities, when it ceases to be a going concern and its activities are merely for the purpose of winding up its affairs, paying its debts, and distributing any remaining balance of its money or other properties to its shareholders.

(3) The statements referred to in subparagraph (2) of this paragraph shall specify the day considered to be the date of distribution or transfer and shall specify, as of such date (i) the nature and amount of the total assets which were distributed or transferred and the dates so distributed or transferred, (ii) the nature and amount of the assets not distributed or transferred and the purpose for which they were retained, and (iii) the date on which the distributor or transferor corporation ceased all operations other than liquidating activities. Such statements shall be attached to the timely filed income tax return of the distributor or transferor corporation for its taxable year ending with such date of distribution or transfer and to the timely filed income tax return of the

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acquiring corporation for its first taxable year ending after such date, except that, with respect to any income tax return filed before October 11, 1960, any such statement shall be filed before October 11, 1960, with the district director with whom such return is filed.

(4) If—

(i) The last day of the acquiring corporation's taxable year is a Saturday, Sunday, or legal holiday, and

(ii) The day specified in subparagraph (1) or (2) of this paragraph as the date of distribution or transfer is the last business day before such Saturday, Sunday, or holiday,

then the last day of the acquiring corporation's taxable year shall be the date of distribution or transfer for purposes of section 381(b) and this section. For purposes of this subparagraph, the term *business day* means a day which is not a Saturday, Sunday, or legal holiday, and also means a Saturday, Sunday, or legal holiday if the date of distribution or transfer determined under subparagraph (1) or (2) of this paragraph is such Saturday, Sunday, or holiday.

(c) *Return of distributor or transferor corporation.* The distributor or transferor corporation shall file an income tax return for the taxable year ending with the date of distribution or transfer described in paragraph (b) of this section. If the distributor or transferor corporation remains in existence after such date of distribution or transfer, it shall file an income tax return for the taxable year beginning on the day following the date of distribution or transfer and ending with the date on which the distributor or transferor corporation's taxable year would have ended if there had been no distribution or transfer.

(d) *Carryback of net operating losses.* For provisions relating to the carryback of net operating losses of the acquiring corporation, see paragraph (b) of § 1.381(c)(1)-1.

[T.D. 6500, 25 FR 11607, Nov. 26, 1960, as amended at T.D. 8280, 55 FR 1417, Jan. 16, 1990; T.D. 8862, 65 FR 3609, Jan. 24, 2000]

§ 1.381(c)(1)-1 **Net operating loss carryovers in certain corporate acquisitions.**

(a) *Carryover requirement.* (1) Section 381(c)(1) requires the acquiring corporation to succeed to, and take into account, the net operating loss carryovers of the distributor or transferor corporation. To determine the amount of these carryovers as of the close of the date of distribution or transfer, and to integrate them with any carryovers and carrybacks of the acquiring corporation for purposes of determining the taxable income of the acquiring corporation for taxable years ending after the date of distribution or transfer, it is necessary to apply the provisions of section 172 in accordance with the conditions and limitations of section 381(c)(1) and this section. See also section 382(b) and the regulations thereunder.

(2) The net operating loss carryovers and carrybacks of the acquiring corporation determined as of the close of the date of distribution or transfer shall be computed without reference to any net operating loss of a distributor or transferor corporation. The net operating loss carryovers of a distributor or transferor corporation as of the close of the date of distribution or transfer shall be determined without reference to any net operating loss of the acquiring corporation.

(3) For purposes of the tax imposed under section 56, the acquiring corporation succeeding to and taking into account any net operating loss carryovers of the distributor or transferor corporation shall also succeed to and take into account along with such net operating loss carryforward any deferred tax liability under section 56(b) and the regulations thereunder attributable to such net operating loss carryover.

(b) *Carryback of net operating losses.* A net operating loss of the acquiring corporation for any taxable year ending after the date of distribution or transfer shall not be carried back in computing the taxable income of a distributor or transferor corporation.