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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.

However, a net operating loss of the acquiring corporation for any such taxable year shall be carried back in accordance with section 172(b) in computing the taxable income of the acquiring corporation for a taxable year ending on or before the date of distribution or transfer. If a distributor or transferor corporation remains in existence after the date of distribution or transfer, a net operating loss sustained by it for any taxable year beginning after such date shall be carried back in accordance with section 172(b) in computing the taxable income of such corporation for a taxable year ending on or before that date, but may not be carried back or over in computing the taxable income of the acquiring corporation. This paragraph may be illustrated by the following examples:

*Example (1).* On December 31, 1954, X Corporation merged into Y Corporation in a statutory merger to which section 361 applies, and the charter of Y Corporation continued after the merger. Y Corporation sustained a net operating loss for the calendar year 1955. Y Corporation's net operating loss for 1955 may not be carried back in computing the taxable income of X Corporation but shall be carried back in computing the taxable income of Y Corporation.

*Example (2).* On December 31, 1954, X Corporation and Y Corporation transferred all their assets to Z Corporation in a statutory consolidation to which section 361 applies. Z Corporation sustained a net operating loss for the calendar year 1955. Z Corporation's net operating loss for 1955 may not be carried back in computing the taxable income of X Corporation or Y Corporation.

*Example (3).* On December 31, 1954, X Corporation ceased all operations (other than liquidating activities) and transferred substantially all its properties to Y Corporation in a reorganization qualifying under section 368(a)(1)(C). Such properties comprised all of X Corporation's properties which were to be transferred pursuant to the reorganization. In the process of liquidating its assets and winding up its affairs, X Corporation sustained a net operating loss for its taxable year beginning on January 1, 1955. This net operating loss of X Corporation shall be carried back in computing the taxable income of that corporation but may not be carried back or over in computing the taxable income of Y Corporation.

(c) *First taxable year to which carryovers apply.* (1) The net operating loss carryovers available to the distributor or transferor corporation as of

the close of the date of distribution or transfer shall first be carried to the first taxable year of the acquiring corporation ending after that date. This rule applies irrespective of whether the date of distribution or transfer is on the last day, or any other day, of the acquiring corporation's taxable year. Thus, such net operating loss carryovers shall first be used by the acquiring corporation with respect to the computation of its net operating loss deduction under section 172(a), and its taxable income determined under the provisions of section 172(b)(2), for such first taxable year. However, see paragraph (f) of this section.

(2) The net operating loss carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall be carried to the acquiring corporation without diminution by reason of the fact that the acquiring corporation does not acquire 100 percent of the assets of the distributor or transferor corporation. Thus, if a parent corporation owning 80 percent of all classes of stock of its subsidiary corporation were to acquire its share of the assets of the subsidiary corporation upon a complete liquidation described in paragraph (b)(1)(i) of § 1.381(a)-1, then, subject to the conditions and limitations of this section, 100 percent of the net operating loss carryovers available to the subsidiary corporation as of the close of the date of distribution would be carried over to the parent corporation.

(d) *Limitation on net operating loss deduction for first taxable year ending after date of distribution or transfer.* (1) That part of the acquiring corporation's net operating loss deduction, determined in accordance with sections 172(a) and 381(c)(1), for its first taxable year ending after the date of distribution or transfer which is attributable to the net operating loss carryovers of the distributor or transferor corporation, is limited by section 381(c)(1)(B) and this paragraph to an amount equal to the acquiring corporation's postacquisition part year taxable income. Such postacquisition part year taxable income is the amount which bears the same ratio to the acquiring corporation's taxable income for the

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first taxable year ending after the date of distribution or transfer (determined under section 63 without regard to any net operating loss deduction but taking into account other items to which the acquiring corporation succeeds under section 381) as the number of days in such first taxable year which follow the date of distribution or transfer bears to the total number of days in such taxable year. Thus, if the date of distribution or transfer is the last day of the acquiring corporation's taxable year, the net operating loss carryovers of the distributor or transferor are allowed in full in computing under section 172(a) the net operating loss deduction of the acquiring corporation for its first taxable year ending after that date. In such instance, the number of days in the first taxable year which follow the date of distribution or transfer is the total number of days in such taxable year.

(2) The limitation provided by section 381(c)(1)(B) applies solely for the purpose of computing the net operating loss deduction of the acquiring corporation under section 172(a) for the acquiring corporation's first taxable year ending after the date of distribution or transfer. The limitation does not apply for purposes of determining the portion of any net operating loss (whether of the distributor, transferor, or acquiring corporation) which may be carried to any taxable year of the acquiring corporation following its first taxable year ending after the date of distribution or transfer since such determination is made pursuant to section 172(b) and section 381(c)(1)(C). See paragraphs (e) and (f) of this section.

(3) The limitation provided by section 381(c)(1)(B) shall be applied to the aggregate of the allowable net operating loss carryovers of the distributor or transferor corporation without reference to the taxable years in which the net operating losses were sustained by such corporation. If the acquiring corporation has acquired the assets of two or more distributor or transferor corporations on the same date of distribution or transfer, then the limitation provided by section 381(c)(1)(B) shall be applied to the aggregate of the net operating loss carryovers from all

of such distributor or transferor corporations.

(4) If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more different dates of distribution or transfer within one taxable year of the acquiring corporation, the limitation to be applied under section 381(c)(1)(B) to the aggregate of such carryovers shall be governed by the rules prescribed in paragraph (b) of § 1.381(c)(1)-2.

(5) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

*Example (1).* (i) X Corporation and Y Corporation were organized on January 1, 1956, and make their returns on the calendar year basis. On December 16, 1957, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and taxable income (computed without the net operating loss deduction) of the two corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

| Taxable year          | X Corporation (transferor) | Y Corporation (acquirer) |
|-----------------------|----------------------------|--------------------------|
| 1956 .....            | (\$35,000)                 | (\$5,000)                |
| Ending 12-16-57 ..... | (30,000)                   | xxx                      |
| 1957 .....            | xxx                        | 36,500                   |

(ii) The aggregate of the net operating loss carryovers of X Corporation carried under section 381(c)(1)(A) to Y Corporation's taxable year ending December 31, 1957, is \$65,000; but pursuant to section 381(c)(1)(B), only \$1,500 of such aggregate amount ( $\$36,500 \times 15/365$ ) may be used in computing the net operating loss deduction of Y Corporation for such taxable year under section 172(a). This limitation applies even though Y Corporation's own net operating loss carryover to such year is only \$5,000, with the result that Y Corporation has taxable income under section 63 of \$30,000 for its taxable year ending December 31, 1957, that is, \$36,500 less the sum of \$5,000 and \$1,500.

(iii) For rules determining the portion of any given loss of X Corporation or Y Corporation which may be carried to a taxable year of Y Corporation following its taxable year ending December 31, 1957, see sections 172(b)(2) and 381(c)(1)(C) and paragraph (f) of this section.

*Example (2).* (i) X Corporation was organized on January 1, 1954, and Y Corporation was organized on January 1, 1956. Each corporation makes its return on the basis of the

calendar year. On December 31, 1956, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income (computed without any net operating loss deduction) of the two corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

| Taxable year | X Corporation (transferor) | Y Corporation (acquirer) |
|--------------|----------------------------|--------------------------|
| 1954 .....   | (\$5,000)                  | xxx                      |
| 1955 .....   | (15,000)                   | xxx                      |
| 1956 .....   | (10,000)                   | \$20,000                 |
| 1957 .....   | xxx                        | 40,000                   |

(ii) The aggregate of the net operating loss carryovers of X Corporation carried under section 381(c)(1)(A) to Y Corporation's taxable year 1957 is \$30,000, and the full amount of such carryovers is allowed in such taxable year to Y Corporation as a deduction under section 172(a), since such amount does not exceed the limitation ( $\$40,000 \times 365/365$ ) for such taxable year under section 381(c)(1)(B).

*Example (3).* (i) X Corporation, Y Corporation, and Z Corporation were organized on January 1, 1954, and each corporation makes its return on the basis of the calendar year. On September 30, 1956, X Corporation and Y Corporation transferred all their assets to Z Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income (computed without any net operating loss deduction) of the three corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

| Taxable year         | X Corporation (transferor) | Y Corporation (transferor) | Z Corporation (acquirer) |
|----------------------|----------------------------|----------------------------|--------------------------|
| 1954 .....           | (\$5,000)                  | (\$3,000)                  | (\$40,000)               |
| 1955 .....           | (4,000)                    | (2,000)                    | 10,000                   |
| Ending 9-30-56 ..... | (1,000)                    | (9,000)                    | xxx                      |
| 1956 .....           | xxx                        | xxx                        | 73,200                   |

(ii) The aggregate of the net operating loss carryovers of X Corporation and Y Corporation carried under section 381(c)(1)(A) to Z Corporation's taxable year 1956 is \$24,000; but, pursuant to section 381(c)(1)(B), only \$18,400 of such aggregate amount ( $\$73,200 \times 92/366$ ) may be used in computing the net operating loss deduction of Z Corporation for such taxable year under section 172(a). For this purpose, Z Corporation may not use the total of the aggregate carryovers (\$10,000) from X Corporation plus the aggregate carryovers (\$14,000) from Y Corporation, even though each such aggregate of carryovers is separately less than the limitation (\$18,400) applicable under section 381(c)(1)(B) and this section.

(iii) For rules determining the portion of any given loss of X Corporation, Y Corporation, or Z Corporation which may be carried to a taxable year of Z Corporation following its taxable year ending December 31, 1956, see sections 172(b)(2) and 381(c)(1)(C) and paragraph (f) of this section.

(e) *Computation of carryovers and carrybacks; general rule—(1) Sequence for applying losses and computation of taxable income.* The portion of any net operating loss which is carried back or carried over to any taxable year is the excess, if any, of the amount of the loss over the sum of the taxable income for each of the prior taxable years to which the loss may be carried under sections 172(b)(1) and 381. In determining the taxable income for each such prior taxable year for this purpose, the various net operating loss carryovers and carrybacks to such prior taxable year are considered to be applied in reduction of the taxable income in the order of the taxable years in which the net operating losses are sustained, beginning with the loss for the earliest taxable year. The application of this rule to the taxable income of the acquiring corporation for any taxable year ending after the date of distribution or transfer involves the use of carryovers of the distributor or transfer corporation, and of carryovers and carrybacks of the acquiring corporation. In such instance, the sequence for the use of loss years remains the same, and the requirement is to begin with the net operating loss of the earliest taxable year, whether or not it is a loss of the distributor, transferor, or acquiring corporation. The taxable income of the acquiring corporation for any taxable year ending after the date of distribution or transfer shall be determined in the manner prescribed by section 172(b)(2), except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation, the taxable income of such corporation for the taxable year which includes such date shall be computed in the special manner prescribed by section 381(c)(1)(C) and paragraph (f) of this section.

(2) *Loss year of transferor or distributor considered prior taxable year.* Section 381(c)(1)(C) provides that, for the purpose of determining the net operating

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loss carryovers under section 172(b)(2), a net operating loss for a loss year of a distributor or transferor corporation which ends on or before the last day of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. In a case where the acquiring corporation has acquired the assets of two or more distributor or transferor corporations on the same date of distribution or transfer, the loss years of the distributor or transferor corporations shall be taken into account in the order in which such loss years terminate; if any one of the loss years of a distributor or transferor corporation ends on the same day as the loss year of another distributor or transferor corporation, either loss year may be taken into account before the other.

(3) *Years to which losses may be carried.* The taxable years to which a net operating loss shall be carried back or carried over are prescribed by section 172(b)(1). Since the taxable year of the distributor or transferor corporation ends with the close of the date of distribution or transfer, such taxable year and the first taxable year of the acquiring corporation which ends after that date shall be considered two separate taxable years to which a net operating loss of the distributor or transferor corporation for any taxable year ending before that date may be carried over. This rule applies even though the taxable year of the distributor or transferor corporation which ends on the date of distribution or transfer is a period of less than twelve months. However, for the purpose of determining under section 172(b)(1) the taxable years to which a net operating loss of the acquiring corporation is carried over or carried back, the first taxable year of the acquiring corporation which ends after the date of distribution or transfer shall be treated as only one taxable year even though such taxable year is considered under section 381(c)(1)(C) and paragraph (f)(2) of this section as two taxable years. The application of this subparagraph may be illustrated by the following example:

*Example.* X Corporation was organized on January 1, 1954, and thereafter it sustained net operating losses in its calendar years

1954, 1955, and 1956. On June 30, 1957, X Corporation transferred all its assets to Y Corporation, which was organized on January 1, 1955, in a statutory merger to which section 361 applies. In its taxable year ending June 30, 1957, X Corporation sustained a net operating loss. Y Corporation sustained net operating losses in its calendar years 1955, 1956, and 1958, but had taxable income for the year 1957. The years to which these losses of X Corporation and Y Corporation shall be carried, and the sequence in which carried, are as follows:

| Loss year       |   |
|-----------------|---|
| X 1954 .....    | X 1955, X 1956, X 6/30/57, Y 1957, Y 1958.                      |
| X 1955 .....    | X 1954, X 1956, X 6/30/57, Y 1957, Y 1958, Y 1959.              |
| Y 1955 .....    | Y 1956, Y 1957, Y 1958, Y 1959, Y 1960.                         |
| X 1956 .....    | X 1954, X 1955, X 6/30/57, Y 1957, Y 1958, Y 1959, Y 1960.      |
| Y 1956 .....    | Y 1955, Y 1957, Y 1958, Y 1959, Y 1960, Y 1961.                 |
| X 6-30-57 ..... | X 1955, X 1956, Y 1957, Y 1958, Y 1959, Y 1960, Y 1961.         |
| Y 1958 .....    | Y 1955, Y 1956, Y 1957, Y 1959, Y 1960, Y 1961, Y 1962, Y 1963. |

(4) *Computation of carryovers in a case where the date of distribution or transfer occurs on last day of acquiring corporation's taxable year.* The computation of the net operating loss carryovers from the distributor or transferor corporation and from the acquiring corporation in a case where the date of distribution or transfer occurs on the last day of a taxable year of the acquiring corporation may be illustrated by the following example:

*Example.* X Corporation and Y Corporation were organized on January 1, 1955, and each corporation makes its return on the basis of the calendar year. On December 31, 1956, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income (computed without any net operating loss deduction) of the two corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

| Taxable year | X Corporation (transferor) | Y Corporation (acquirer) |
|--------------|----------------------------|--------------------------|
| 1955 .....   | (\$2,000)                  | (\$11,000)               |
| 1956 .....   | (3,000)                    | 10,000                   |
| 1957 .....   | xxx                        | (15,000)                 |

The sequence in which the losses of X Corporation and Y Corporation are applied, and

the computation of the carryovers to Y Corporation's calendar year 1958, may be illustrated as follows:

(i) *X Corporation's 1955 loss.* The carryover to 1958 is \$2,000, computed as follows:

|                               |         |
|-------------------------------|---------|
| Net operating loss .....      | \$2,000 |
| Less:                         |         |
| X's 1956 taxable income ..... | 0       |
| Y's 1957 taxable income ..... | 0       |
|                               | 0       |
| Carryover .....               | 2,000   |

(ii) *Y Corporation's 1955 loss.* The carryover to 1958 is \$1,000, computed as follows:

|                               |          |
|-------------------------------|----------|
| Net operating loss .....      | \$11,000 |
| Less:                         |          |
| Y's 1956 taxable income ..... | \$10,000 |
| Y's 1957 taxable income ..... | 0        |
|                               | 10,000   |
| Carryover .....               | 1,000    |

(iii) *X Corporation's 1956 loss.* The carryover to 1958 is \$3,000, computed as follows:

|                               |         |
|-------------------------------|---------|
| Net operating loss .....      | \$3,000 |
| Less:                         |         |
| X's 1955 taxable income ..... | 0       |
| Y's 1957 taxable income ..... | 0       |
|                               | 0       |
| Carryover .....               | 3,000   |

(iv) *Y Corporation's 1957 loss.* The carryover to 1958 is \$15,000, computed as follows:

|  |          |
|--|----------|
| Net operating loss .....   | \$15,000 |
| Less:  |          |
| Y's 1955 taxable income .....  | 0        |
| Y's 1956 taxable income before net operating loss deduction .....            | \$10,000 |
| Minus Y's 1956 net operating loss deduction (i.e., Y's 1955 carryover) ..... | 11,000   |
|  | 0        |
| Carryover .....  | 15,000   |

(v) *Summary of carryovers to 1958.* The aggregate of the net operating loss carryovers to 1958 is \$21,000, computed as follows:

|                     |         |
|---------------------|---------|
| X's 1955 loss ..... | \$2,000 |
| Y's 1955 loss ..... | 1,000   |
| X's 1956 loss ..... | 3,000   |
| Y's 1957 loss ..... | 15,000  |
| Total .....         | 21,000  |

(f) *Computation of carryovers and carrybacks when date of distribution or transfer is not on last day of acquiring corporation's taxable year—(1) General rule.* Pursuant to the provisions of section 381(c)(1)(C), the taxable income of the acquiring corporation for its taxable year which is a prior taxable year for purposes of section 172(b)(2) and

paragraph (e) of this section shall be determined in the manner prescribed in this paragraph, if the date of distribution or transfer occurs within, but not on the last day of, such taxable year.

(2) *Taxable year considered as two taxable years.* Such taxable year of the acquiring corporation shall be considered as though it were two taxable years, but only for the limited purpose of applying section 172(b)(2). The first of such two taxable years shall be referred to in this section as the preacquisition part year; the second, as the postacquisition part year. For purposes of section 172(b)(2), a net operating loss of the acquiring corporation shall be carried to the preacquisition part year and then to the postacquisition part year, whereas a net operating loss of a distributor or transferor corporation shall be carried to the postacquisition part year and then to the acquiring corporation's subsequent taxable years. In determining under section 172(b)(2) and this paragraph the portion of any net operating loss of a distributor or transferor corporation which is carried to any taxable year of the acquiring corporation ending after the postacquisition part year, the taxable income (as determined under this paragraph) of the postacquisition part year shall be taken into account but the taxable income of the preacquisition part year (as so determined) shall not be taken into account. Though considered as two separate taxable years for purposes of section 172(b)(2), the preacquisition part year and the postacquisition part year are treated as one taxable year in determining the years to which a net operating loss is carried under section 172(b)(1). See paragraph (e)(3) of this section.

(3) *Preacquisition part year.* The preacquisition part year shall begin with the beginning of such taxable year of the acquiring corporation and shall end with the close of the date of distribution or transfer.

(4) *Postacquisition part year.* The postacquisition part year shall begin with the day following the date of distribution or transfer and shall end with the close of such taxable year of the acquiring corporation.

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(5) *Division of taxable income.* The taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)(A) but without any net operating loss deduction) of the acquiring corporation shall be divided between the preacquisition part year and the postacquisition part year in proportion to the number of days in each. Thus, if in a statutory merger to which section 361 applies Y Corporation acquires the assets of X Corporation on June 30, 1960, and Y Corporation has taxable income (computed in the manner so prescribed) of \$36,600 for its calendar year 1960, then the preacquisition part year taxable income would be \$18,200 ( $\$36,600 \times 182/366$ ) and the postacquisition part year taxable income would be \$18,400 ( $\$36,600 \times 184/366$ ).

(6) *Net operating loss deduction.* After obtaining the taxable income of the preacquisition part year and of the postacquisition part year in the manner described in subparagraph (5) of this paragraph, it is necessary to compute the net operating loss deduction for each such part year. This deduction shall be determined in the manner prescribed by section 172(b)(2)(B) but subject to the provisions of this subparagraph. The net operating loss deduction for the preacquisition part year shall, for purposes of section 172(b)(2) only, be determined in the same manner as that prescribed by section 172(b)(2)(B) but shall be computed without taking into account any net operating loss of the distributor or transferor corporation. Therefore, only net operating loss carryovers and carrybacks of the acquiring corporation to the preacquisition part year shall be taken into account in computing the net operating loss deduction for such part year. The net operating loss deduction for the post-acquisition part year shall, for purposes of section 172(b)(2) only, be determined in the same manner as that prescribed by section 172(b)(2)(B) and shall be computed by taking into account all the net operating loss carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer, as well as the net operating loss carryovers and carrybacks of the acquiring corporation to the

postacquisition part year. The sequence in which the net operating losses of the two corporations shall be applied for purposes of this subparagraph shall be determined in the manner prescribed in paragraph (e) of this section.

(7) *Limitation on taxable income.* In no case shall the taxable income of the preacquisition part year or the postacquisition part year, as computed under this paragraph, be considered to be less than zero.

(8) *Cross reference.* If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributors or transferor corporations on two or more dates of distribution or transfer during the same taxable year of the acquiring corporation, the determination of the taxable income of the acquiring corporation for such year pursuant to section 381(c)(1)(C) shall be governed by the rules prescribed in paragraph (c) of § 1.381(c)(1)-2.

(9) *Illustration.* The application of this paragraph may be illustrated by the following example:

*Example—* (i) *Facts.* X Corporation was organized on January 1, 1955, and Y Corporation was organized on January 1, 1954. Each corporation makes its return on the basis of the calendar year. On June 30, 1956, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income (computed without any net operating loss deduction) of the two corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

| Taxable year               | X Corporation (transferor) | Y Corporation (acquirer) |
|----------------------------|----------------------------|--------------------------|
| 1954 .....                 | xxx                        | (\$5,000)                |
| 1955 .....                 | (\$65,000)                 | (20,000)                 |
| Ending June 30, 1956 ..... | 1,000                      | xxx                      |
| 1956 .....                 | xxx                        | 36,600                   |

(ii) *Y Corporation's 1954 loss.* The carryover to 1957 is \$0, computed as follows:

|   |          |
|---|----------|
| Net operating loss .....  | \$5,000  |
| Less:   |          |
| Y's 1955 taxable income .....   | 0        |
| Carryover to Y's preacquisition part year .....   | 5,000    |
| Less:   |          |
| Y's preacquisition part year taxable income computed under subparagraph (5) of this paragraph ( $\$36,600 \times 182/366$ ) ..... | \$18,200 |

|   |          |          |
|---|----------|----------|
| Minus Y's net operating loss deduction for preacquisition part year .....   | xxx      | 18,200   |
| Carryover to Y's postacquisition part year and also to Y 1957 .....   |          | 0        |
| <b>(iii) X Corporation's 1955 loss.</b> The carryover to 1957 is \$45,600, computed as follows:   |          |          |
| Net operating loss .....  |          | \$65,000 |
| Less:   |          |          |
| X's 6/30/56 year taxable income .....   |          | 1,000    |
| Carryover to Y's postacquisition part year .....  |          | 64,000   |
| Less:   |          |          |
| Y's postacquisition part year taxable income computed under subparagraph (5) of this paragraph (\$36,600×184/366) .....   | \$18,400 |          |
| Minus Y's net operating loss deduction for postacquisition part year (i.e., Y's 1954 carryover of \$0 to such part year) .....                                      |          | \$18,400 |
| Carryover to Y 1957 .....   |          | 45,600   |
| <b>(iv) Y Corporation's 1955 loss.</b> The carryover to 1957 is \$6,800, computed as follows:   |          |          |
| Net operating loss .....  |          | \$20,000 |
| Less:   |          |          |
| Y's 1954 taxable income .....   |          | 0        |
| Carryover to Y's preacquisition part year .....   |          | 20,000   |
| Less:   |          |          |
| Y's preacquisition part year taxable income computed under subparagraph (5) of this paragraph .....   | \$18,200 |          |
| Minus Y's net operating loss deduction for preacquisition part year (i.e., Y's 1954 carryover to such part year) ....   |          | 5,000    |
|   |          | 13,200   |
| Carryover to Y's postacquisition part year .....  |          | 6,800    |
| Less:   |          |          |
| Y's postacquisition part year taxable income computed under subparagraph (5) of this paragraph .....  | \$18,400 |          |
| Minus Y's net operating loss deduction for postacquisition part year (i.e., Y's 1954 carryover of \$0, and X's 1955 carryover of \$64,000, to such part year) ..... |          | 64,000   |
|   |          | 0        |
| Carryover to Y 1957 .....   |          | 6,800    |
| <b>(v) Summary of carryovers to 1957.</b> The aggregate of the net operating loss carryovers to 1957 is \$52,400, determined as follows:                            |          |          |
| Y's 1954 loss .....   |          | 0        |
| X's 1955 loss .....   | \$45,600 |          |
| Y's 1955 loss .....   |          | 6,800    |
| Total .....   |          | 52,400   |

(g) *Successive acquiring corporations.* An acquiring corporation which, in a distribution or transfer to which section 381(a) applies, acquires the assets of a distributor or transferor corporation which previously acquired the assets of another corporation in a transaction to which section 381(a) applies, shall succeed to and take into account, subject to the conditions and limitations of sections 172 and 381, the net operating loss carryovers available to the first acquiring corporation under sections 172 and 381.

(h) *Illustration.* The application of this section may be further illustrated by the following example:

*Example— (1) Facts.* X Corporation was organized on January 1, 1954, and Y Corporation was organized on January 1, 1955. Each corporation makes its return on the basis of the calendar year. On August 31, 1957, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income of the two corporations for the taxable years involved are set forth in the tabulation below. The taxable income so shown is computed without the modifications required by section 172(b)(2)(A) and without the benefit of any net operating loss deduction. In its calendar year 1957, Y Corporation had a deduction of \$365 which is disallowed by section 172(b)(2)(A).

| Taxable year         | X Corporation (transferor) | Y Corporation (acquirer) |
|----------------------|----------------------------|--------------------------|
| 1954 .....           | (\$7,000)                  | xxx                      |
| 1955 .....           | (10,000)                   | (\$10,000)               |
| 1956 .....           | (25,000)                   | (15,000)                 |
| Ending 8-31-57 ..... | 1,000                      | xxx                      |
| 1957 .....           | xxx                        | 54,750                   |
| 1958 .....           | xxx                        | (5,000)                  |
| 1959 .....           | xxx                        | 50,000                   |

(2) *Computation of carryovers and carrybacks.* The sequence in which the losses of X Corporation and Y Corporation are applied and the computation of the carryovers to Y Corporation's calendar year 1959 may be illustrated as follows:

(i) *X Corporation's 1954 loss.* The carryover to 1958, which is the last year to which this loss may be carried, is \$0, computed as follows:

|                                     |         |
|-------------------------------------|---------|
| Net operating loss .....            | \$7,000 |
| Less:                               |         |
| X's 1955 taxable income .....       | 0       |
| X's 1956 taxable income .....       | 0       |
|                                     | 0       |
| Carryover to X's 8/31/57-year ..... | 7,000   |



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|  |          |  |
|--|----------|--|
| Less:  |          |  |
| X's 8/31/57-year taxable income .....  | 1,000    |  |
| Carryover to Y's postacquisition part year .....   | 6,000    |  |
| Less:  |          |  |
| Y's postacquisition part year taxable income computed under paragraph (f)(5) of this section (( $\$54,750 + \$365$ ) $\times$ 122/365) ..... | \$18,422 |  |
| Minus Y's net operating loss deduction for postacquisition part year .....   | xxx      |  |
|  | 18,422   |  |
| Carryover to Y 1958 .....  | 0        |  |

(ii) X Corporation's 1955 loss. The carryover to 1959 is \$0, computed as follows:

|  |          |
|--|----------|
| Net operating loss .....   | \$10,000 |
| Less:  |          |
| X's 1954 taxable income .....  | 0        |
| X's 1956 taxable income .....  | 0        |
|  | 0        |
| Carryover to X's 8/31/57-year .....  | 10,000   |
| Less:  |          |
| X's 8/31/57-year taxable income before net operating loss deduction .....                | \$1,000  |
| Minus X's net operating loss deduction for 8/31/57-year (i.e., X's 1954 carryover) ..... | 7,000    |
|  | 0        |
| Carryover to Y's postacquisition part year .....   | 10,000   |

|   |          |  |
|---|----------|--|
| Less:   |          |  |
| Y's postacquisition part year taxable income computed under paragraph (f)(5) of this section .....                      | \$18,422 |  |
| Minus Y's net operating loss deduction for postacquisition part year (i.e., X's 1954 carryover to such part year) ..... | 6,000    |  |
|   | 12,422   |  |
| Carryover to Y 1958 and Y 1959 .....  | 0        |  |

(iii) Y Corporation's 1955 loss. The carryover to 1959 is \$0, computed as follows:

|   |          |
|---|----------|
| Net operating loss .....                        | \$10,000 |
| Less:   |          |
| Y's 1956 taxable income .....                   | 0        |
| Carryover to Y's preacquisition part year ..... | 10,000   |

|   |          |  |
|---|----------|--|
| Less:   |          |  |
| Y's preacquisition part year taxable income computed under paragraph (f)(5) of this section (( $\$54,750 + \$365$ ) $\times$ 243/365) ..... | \$36,693 |  |
| Minus Y's net operating loss deduction for preacquisition part year .....   | xxx      |  |

|  |  |        |
|--|--|--------|
|  |  | 36,693 |
| Carryover to Y's postacquisition part year, to Y 1958, and to Y 1959 ..... |  | 0      |

(iv) X Corporation's 1956 loss. The carryover to 1959 is \$22,578, computed as follows:

|  |          |
|--|----------|
| Net operating loss .....   | \$25,000 |
| Less:  |          |
| X's 1954 taxable income .....  | 0        |
| X's 1955 taxable income .....  | 0        |
| X's 8/31/57-year taxable income before net operating loss deduction .....  | \$1,000  |
| Minus X's net operating loss deduction for 8/31/57-year (i.e., X's 1954 carryover of \$7,000 and X's 1955 carryover of \$10,000) ..... | \$17,000 |
|  | 0        |
|  | 0        |
| Carryover to Y's postacquisition part year .....   | \$25,000 |

|   |          |  |
|---|----------|--|
| Less:   |          |  |
| Y's postacquisition part year taxable income computed under paragraph (f)(5) of this section .....  | \$18,422 |  |
| Minus Y's net operating loss deduction for postacquisition part year (i.e., X's 1954 carryover of \$6,000, X's 1955 carryover of \$10,000 and Y's 1955 carryover of \$0, to such part year) ..... | 16,000   |  |
|   | 2,422    |  |
| Carryover to Y 1958 .....   | 22,578   |  |

|                               |        |  |
|-------------------------------|--------|--|
| Less:                         |        |  |
| Y's 1958 taxable income ..... | 0      |  |
| Carryover to Y 1959 .....     | 22,578 |  |

(v) Y Corporation's 1956 loss. The carryover to 1959 is \$0, computed as follows:

|   |          |
|---|----------|
| Net operating loss .....                        | \$15,000 |
| Less:   |          |
| Y's 1955 taxable income .....                   | 0        |
| Carryover to Y's preacquisition part year ..... | 15,000   |

|  |          |  |
|--|----------|--|
| Less:  |          |  |
| Y's preacquisition part year taxable income computed under paragraph (f)(5) of this section .....                      | \$36,693 |  |
| Minus Y's net operating loss deduction for preacquisition part year (i.e., Y's 1955 carryover to such part year) ..... | 10,000   |  |
|  | 26,693   |  |

|  |   |
|--|---|
| Carryover to Y's postacquisition part year, to Y 1958, and to Y 1959 ..... | 0 |
|--|---|

(vi) Y Corporation's 1958 loss. The carryover to 1959 is \$0, computed as follows:

|  |         |
|--|---------|
| Net operating loss .....                   | \$5,000 |
| Less:                                      |         |
| Y's 1955 taxable income <sup>1</sup> ..... | 0       |
| Y's 1956 taxable income .....              | 0       |

|   |          |
|---|----------|
|   | 0        |
| Carryback to Y's preacquisition part year   | \$5,000  |
| Less:   |          |
| Y's preacquisition part year taxable income computed under paragraph (f)(5) of this section   | \$36,693 |
| Minus Y's net operating loss deduction for preacquisition part year (i.e., Y's 1955 carryover of \$10,000, and Y's 1956 carryover of \$15,000, to such part year) | 25,000   |
|   | 11,693   |
| Carryback to Y's postacquisition part year and carryover to Y 1959  | 0        |

<sup>1</sup> Three-year carryback in case of loss years ending after December 31, 1957.

(vii) *Summary of carryovers to 1959.* The aggregate of the net operating loss carryovers to 1959 is \$22,578, computed as follows:

|               |          |
|---------------|----------|
| X's 1955 loss | 0        |
| Y's 1955 loss | 0        |
| X's 1956 loss | \$22,578 |
| Y's 1956 loss | 0        |
| Y's 1958 loss | 0        |
| Total         | 22,578   |

(3) *Net operating loss deduction for 1957.* (i) The net operating loss deduction available to Y Corporation under section 172(a) for the calendar year 1957, determined in accordance with paragraph (d) of this section, is \$48,300, computed as follows:

|   |          |
|---|----------|
| Aggregate of the net operating loss carryovers available to the transferor corporation as of the close of August 31, 1957, but limited by paragraph (d) of this section to \$18,300 (Y's 1957 taxable income of \$54,750, computed without any net operating loss deduction, multiplied by 122/365) |          |
| Carryover of X's 1954 loss  | \$6,000  |
| Carryover of X's 1955 loss  | 10,000   |
| Carryover of X's 1956 loss  | 25,000   |
|   | \$41,000 |
| Aggregate of carryovers, limited as above   | \$18,300 |
| Carryover of Y's 1955 loss  | 10,000   |
| Carryover of Y's 1956 loss  | 15,000   |
| Carryback of Y's 1958 loss  | 5,000    |
|   | 48,800   |
| Net operating loss deduction  | 48,800   |

(ii) The taxable income under section 63 for 1957 is \$6,450, computed as follows:

|   |          |
|---|----------|
| Taxable income determined without any net operating loss deduction                              | \$54,750 |
| Less:   |          |
| Net operating loss deduction for 1957, as determined under subdivision (i) of this subparagraph | 48,300   |
| Taxable income under section 63   | 6,450    |

(4) *Net operating loss deduction for 1959.* The taxable income under section 63 for 1959 is \$27,422, computed as follows:

|   |          |
|---|----------|
| Taxable income determined without any net operating loss deduction  | \$50,000 |
| Less:   |          |
| Net operating loss deduction for 1959 (i.e., the aggregate carryovers determined under subparagraph (2)(vii) of this paragraph) | 22,578   |
| Taxable income under section 63   | 27,422   |

(5) *Years to which losses may be carried.* The taxable years to which the losses of X Corporation and Y Corporation may be carried, and the sequence in which carried, are as follows:

| Loss year | Carried to  |
|-----------|---|
| X 1954    | X 1955, X 1956, X 8/31/57, Y 1957, Y 1958.                      |
| X 1955    | X 1954, X 1956, X 8/31/57, Y 1957, Y 1958, Y 1959.              |
| Y 1955    | Y 1956, Y 1957, Y 1958, Y 1959, Y 1960.                         |
| X 1956    | X 1954, X 1955, X 8/31/57, Y 1957, Y 1958, Y 1959, Y 1960.      |
| Y 1956    | Y 1955, Y 1957, Y 1958, Y 1959, Y 1960, Y 1961.                 |
| Y 1958    | Y 1955, Y 1956, Y 1957, Y 1959, Y 1960, Y 1961, Y 1962, Y 1963. |

[T.D. 6500, 25 FR 11607, Nov. 26, 1960, as amended by T.D. 7564, 43 FR 40493, Sept. 12, 1978]

**§ 1.381(c)(1)-2 Net operating loss carryovers; two or more dates of distribution or transfer in the taxable year.**

(a) *In general.* If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer within one taxable year of the acquiring corporation, the limitation to be applied under section 381(c)(1)(B) to the aggregate of the net operating loss carryovers to that taxable year from all of the distributor or transferor corporations shall be determined by applying the rules prescribed in paragraph (b) of this section, and the taxable income of the acquiring corporation for that taxable year under sections 381(c)(1)(C) and 172(b)(2) shall be determined by applying the rules prescribed in paragraph (c) of this section. For purposes of this section, the term *postacquisition income* means postacquisition part year taxable income determined under paragraph (d)(1) of § 1.381(c)(1)-1 by treating the first date of distribution or transfer as though it were the only date of distribution or transfer during the taxable year of the acquiring corporation.