

**§ 1.381(c)(22)-1 Successor life insurance company.**

(a) *Carryover requirement.* If in a taxable year beginning after December 31, 1957, a distributor or transferor corporation which is a life insurance company (as defined in section 801(a)) is acquired by a corporation which is a life insurance company (as defined in section 801(a)), in a transaction to which section 381(a) applies, section 381(c)(22) provides that the acquiring corporation shall take into account the appropriate items which the distributor or transferor corporation was required to take into account for purposes of part I, subchapter L, chapter 1 of the Code. Furthermore, except as otherwise provided by this section, the acquiring corporation shall take into account the items described in paragraphs (2) through (21), other than paragraphs (14), (15), and (17), of section 381(c) and the regulations thereunder. For example, the acquiring corporation shall take into account the reserves described in section 810(c) distributed or transferred to it as of the close of the date of distribution or transfer by the distributor or transferor corporation in accordance with the provisions of section 381(c)(4) and the regulations thereunder. For provisions defining the date of distribution or transfer, see paragraph (b) of § 1.381(b)-1.

(b) *Items required to be taken into account by acquiring corporation.* If a transaction meets the requirements of paragraph (a) of this section, the acquiring corporation shall, except as otherwise provided, take into account as of the close of the date of distribution or transfer the following items of the distributor or transferor corporation:

(1) The operations loss carryovers (as determined under section 812), subject to conditions and limitations consistent with the conditions and limitations prescribed in section 381(c)(1) and the regulations thereunder. For example, a loss from operations 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 loss from operations for a year prior to such loss year of the acquiring corporation. All references in section 381(c)(1)

and the regulations thereunder to section 172 shall be construed as referring to the appropriate corresponding provisions of section 812. Thus, a reference to section 172(b) shall be construed as referring to section 812 (b) and (d). In determining the span of years for which a loss from operations may be carried, the number of taxable years for which the distributor or transferor corporation was authorized to do business as an insurance company shall be taken into account. For purposes of this determination, the taxable year of the distributor or transferor corporation which ends on the date of distribution or transfer shall be taken into account even though such taxable year is a period of less than 12 months.

(2)(i) The investment yield and the beginning of the year asset balance for the distributor or transferor corporation's taxable year ending with the close of the date of distribution or transfer. Such items shall be integrated with the investment yield and beginning of the year asset balance of the acquiring corporation for its first taxable year ending after such date of distribution or transfer for purposes of determining the current earnings rate of the acquiring corporation for such taxable year. Furthermore, for purposes of determining the average earnings rate of the acquiring corporation, the investment yield and mean of the assets of the distributor or transferor corporation for its 4 taxable years immediately preceding its taxable year which closes with the date of distribution or transfer shall be integrated with the investment yield and mean of the assets of the acquiring corporation for such corresponding taxable years.

(ii) The provisions of this subparagraph may be illustrated by the following examples:

*Example (1).* X qualified as a life insurance company in 1949. Y qualified as a life insurance company in 1951. On June 30, 1961, at which time both X and Y were life insurance companies (as defined in section 801(a)), X transferred all its assets to Y in a statutory merger to which section 361 applies. For its taxable year ending on June 30, 1961, X had investment yield of \$15 and assets at the beginning of such taxable year of \$450. For purposes of determining its current earnings rate for its taxable year ending on December

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31, 1961, Y had investment yield of \$45 (including the \$15 of investment yield of X), assets at the beginning of such taxable year of \$1,250 (including the \$450 of X's assets at the beginning of its taxable year 1961), and assets at the end of such taxable year of \$1,750 (after the application of section 806(a)). Under the provisions of subdivision (i) of this

subparagraph, the current earnings rate of Y for the taxable year 1961 would be 3 percent, determined by dividing the investment yield of Y, \$45, by the mean of the assets of Y, \$1,500  $(\$1,250 + \$1,750 \div 2)$ . In order to determine its average earnings rate and adjusted reserves rate for the taxable year 1961, Y would make up the following schedule:

Taxable year	Investment yield			Mean of assets			Current earnings rate of Y
	Column 1— X	Column 2— Y	Column 3 (Col. 1 + Col. 2) inte- grated in- vestment yield	Column 4— X	Column 5— Y	Column 6 (Col. 4 + Col. 5) inte- grated means of assets	Column 7 (Col. 3 + Col. 6)
1960 .....	\$16	\$26	\$42	\$400	\$800	\$1,200	3.5
1959 .....	16	24	40	500	750	1,250	3.2
1958 .....	17	22	39	650	650	1,300	3.0
1957 .....	19	21	40	700	500	1,200	3.3

For the taxable year 1961, Y would have an average earnings rate of 3.2 percent, computed by taking into account the current earnings rates for the taxable year 1961 and each of the 4 taxable years immediately preceding such taxable year. The adjusted reserves rate for such taxable year would be 3 percent since the current earnings rate of 3 percent for 1961 is lower than the average earnings rate of 3.2 percent.

*Example (2).* The facts are the same as in *Example (1)*, except that the taxable year in issue is 1962, and the current earnings rate of Y for such taxable year was 3.8 percent. For the taxable year 1962, Y would have an average earnings rate of 3.3 percent, computed by taking into account only the current earnings rates for the taxable year 1962 and each of the 4 taxable years immediately preceding such taxable year. The adjusted reserves rate for such taxable year would be 3.3 percent since the average earnings rate of 3.3 percent is lower than the 1962 current earnings rate of 3.8 percent.

(3) To the extent there are any amounts accrued for discounts in the nature of interest which have not been included as interest paid under section 805(e)(3), the acquiring corporation shall be treated as the distributor or transferor corporation for purposes of including such amounts as interest paid.

(4) Any adjustment required by section 806(b) with respect to an item described in section 810(c) shall be made by the acquiring corporation in its first taxable year which begins after the date of distribution or transfer.

(5) The amount of the deduction provided by section 809(d)(6), as limited by section 809(f), for all taxable years of

the distributor or transferor corporation which end on and before the date of distribution or transfer (irrespective of whether or not the distributor or transferor corporation claimed this deduction for such taxable years) for the purpose of determining the limitation under section 809(d)(6).

(6)(i) To the extent there are any remaining net increases or net decreases in reserves required to be taken into account by the distributor or transferor corporation under section 810(d)(1), the acquiring corporation shall be treated as the distributor or transferor corporation as of its first taxable year which begins after the date of distribution or transfer.

(ii) The provisions of this subparagraph may be illustrated by the following example:

*Example.* Assume that the amount of an item described in section 810(c) of X, a life insurance company, at the beginning of the taxable year 1959 is \$100. Assume that at the end of the taxable year 1959, as a result of a change in the basis used in computing such item during the taxable year, the amount of the item (computed on the new basis) is \$200 but computed on the old basis would have been \$150. Since the amount of the item at the end of the taxable year computed on the new basis, \$200, exceeds the amount of the item at the end of the taxable year computed on the old basis, \$150, by \$50, section 810(d)(1) provides that one-tenth of the amount of such excess, or \$5, shall be taken into account by X as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of

§ 1.809-5 in determining gain or loss from operations for each of the 10 taxable years immediately following the taxable year 1959. Assume further that on June 30, 1961, X transferred all its assets to Y, a life insurance company, in a statutory merger to which section 361 applies. Under the provisions of section 810(d)(1), X would include \$5 as a net increase under section 809(d)(2) and paragraph (a)(2) of § 1.809-5 in determining gain or loss from operations for its taxable years 1960 and 1961. Thus, the remaining net increase to be taken into account by X under section 810(d)(1) is \$40 (eight-tenths of \$50). Accordingly, Y shall take into account \$5 as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of § 1.809-5 in determining gain or loss from operations for each of its 8 taxable years beginning in 1962 (\$5×8=\$40).

(7)(i) The dollar balances in the shareholders surplus account, policyholders surplus account, and other accounts provided, however, that the acquiring corporation is a stock life insurance company. The dollar balance in the policyholders surplus account shall reflect the amount (if any) treated as a subtraction from such account by reason of the application of the limitation provided under section 815(d)(4) immediately prior to the close of the date of distribution or transfer. To the extent that any amount must be added to the shareholders surplus account as a result of the application of the limitation provided under section 815(d)(4), the acquiring corporation shall be treated as the distributor or transferor corporation as of its first taxable year which begins after the date of distribution or transfer.

(ii) If the acquiring corporation is a mutual life insurance company, the dollar balances in the shareholders surplus account, policyholders surplus account, and other accounts shall not be taken into account by such acquiring corporation and the distributor or transferor corporation shall be subject to the provisions of section 815(d)(2)(A) as of the close of the date of distribution or transfer.

(8) To the extent that any amount must be added to the shareholders surplus account as a result of an election made under section 815(d)(1) by the distributor or transferor corporation, the acquiring corporation shall be treated as the distributor or transferor corporation as of its first taxable year

which begins after the date of distribution or transfer.

(9) The amount of the life insurance reserves at the end of 1958, but only for the purpose of applying the limitation provided under section 815(d)(4)(B).

(10) To the extent there are amounts subject to the provisions of section 817(d), the acquiring corporation shall be treated as the distributor or transferor corporation.

(11) To the extent there are any installments of tax imposed by section 818(e)(3)(A) remaining to be paid, the acquiring corporation shall be treated as the distributor or transferor corporation for the purpose of paying such installments.

(12) The capital loss carryovers, subject to conditions and limitations consistent with the conditions and limitations prescribed in section 381(c)(3) and the regulations thereunder, except that any net capital loss of the distributor or transferor corporation for a taxable year beginning before January 1, 1959, shall not be taken into account. See section 817(c).

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**§ 1.381(c)(23)-1 Investment credit carryovers in certain corporate acquisitions.**

(a) *Carryover requirement.* (1) Section 381(c)(23) requires the acquiring corporation in a transaction to which section 381 applies to succeed to and take into account under such regulations as may be prescribed by the Secretary or his delegate, the investment credit 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 amount of credit allowed by section 38 to the acquiring corporation for taxable years ending after the date of distribution or transfer, it is necessary to apply the provisions of sections 46, 47, and 48 in accordance with the conditions and limitations of this section.

(2) The investment credit carryovers and carrybacks of the acquiring corporation determined as of the close of the date of distribution or transfer