

(2) *Statute of limitations does not bar assessment and refund.* Except as provided in subparagraph (1) of this paragraph—

(i) If the date of distribution or transfer was before January 15, 1975, and the acquiring corporation has, for the taxable year which includes the date of distribution or transfer:

(a) Adopted or continued a method or methods of taking inventories consistent with the rules of this section,

(b) Been granted permission by the Commissioner, in accordance with section 446, 471, or 472 and the regulations thereunder, to use a method or methods of taking inventories, or

(c) Adopted a method or methods of taking inventories that, under section 446, 471, or 472 and the regulations thereunder may be adopted without the consent of the Commissioner,

then the method or methods of taking inventories adopted or continued in the manner described in (a), (b), or (c) of this subdivision, shall not be changed, by reason of the rules contained in this section, by the Commissioner or by the acquiring corporation for any taxable year ending after the date of distribution or transfer. However, the Commissioner or the acquiring corporation may change such method or methods of taking inventories for any such taxable year under the provisions of, and to the extent permitted by, section 446, 471, or 472 and the regulations thereunder.

(ii) If the date of distribution or transfer was before January 15, 1975, and the acquiring corporation has, for the taxable year which includes the date of distribution or transfer, adopted or continued a method or methods of taking inventories other than in the manner described in (a), (b), or (c) of subdivision (i) of this subparagraph, then the acquiring corporation may—

(a) Continue to use the method or methods of taking inventories so adopted or continued if such method or methods clearly reflect income and if proper adjustments were made to reflect the adoption of such method or methods, or

(b) Adopt the method or methods of taking inventories prescribed by this section.

Such method or methods of taking inventories shall be adopted by filing an

amended return (which includes the proper adjustments required by this section) for the taxable year of the acquiring corporation which includes the date of distribution or transfer, and by filing amended returns for all subsequent taxable years of the acquiring corporation for which returns have previously been filed. Such amended return or returns shall be accompanied by a copy of the statement described in paragraph (b)(3) of § 1.381(b)-1, and by a statement specifying the nature of the transaction which causes section 381 to apply; the difference in methods of taking inventories used by the corporation concerned; the method or methods of taking inventories originally adopted by the acquiring corporation; the method or methods of taking inventories adopted on the amended return or returns; and the computation of the amount of the adjustments and the resulting increase or decrease in tax.

(h) *Effective date.* This section is applicable with respect to taxable years beginning after January 15, 1975. However, if a taxpayer wishes to rely on the rules stated in this section for taxable years beginning before January 15, 1975 it may do so, subject to the provisions of paragraph (g) of this section.

(Sec. 381(c)(5) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 381(c)(5) and 7805))

[T.D. 7344, 40 FR 2684, Jan. 15, 1975]

§ 1.381(c)(6)-1 Depreciation method.

(a) *Carryover requirement—*(1) *Distributions in taxable years ending before July 25, 1969.* (i) Section 381(c)(6) provides that if, in a transaction in a taxable year which ends before July 25, 1969, to which section 381(a) applies, an acquiring corporation acquires depreciable property from a distributor or transferor corporation which computes its allowance for the depreciation of the property under section 167(b)(2), (3), or (4), the acquiring corporation shall compute its depreciation allowance by the same method used by the distributor or transferor corporation with respect to such property. Thus, if the distributor or transferor corporation used the sum of the years-digits method under section 167(b)(3) with respect to an asset distributed or transferred

to an acquiring corporation, the acquiring corporation will be required to use the sum of the years-digits method with respect to such asset acquired. The computation of the depreciation allowance with respect to the property acquired shall be made under the provisions of section 167 and the regulations thereunder.

(ii) The rules provided in section 381(c)(6) and subdivision (i) of this subparagraph will apply only with respect to that part or all of the basis of the property in the hands of the acquiring corporation immediately after the date of distribution or transfer as does not exceed the basis of the property in the hands of the distributor or transferor corporation on the date of the distribution or transfer. For this purpose, the basis of the property in the hands of the distributor or transferor corporation shall be the adjusted basis provided in section 1011 for the purpose of determining gain on the sale or other disposition of such property. For provisions defining the date of distribution or transfer see § 1.381(b)-1(b).

(2) *Distributions in taxable years ending after July 24, 1969.* (i) Section 381(c)(6) provides that if, in a transaction in a taxable year ending after July 24, 1969, to which section 381(a) applies, an acquiring corporation acquires depreciable property from a distributor or transferor corporation which computes its allowances for the depreciation of the property under subsection (b), (j), or (k) of section 167, the acquiring corporation shall compute its depreciation allowance by the same method used by the distributor or transferor corporation with respect to such property. Thus, if the distributor or transferor corporation used the straight line method under section 167(b)(1) with respect to an asset distributed or transferred to an acquiring corporation, the acquiring corporation will be required to use the straight line method with respect to such asset. Similarly, if the distributor or transferor corporation elected to compute depreciation under section 167(k) with respect to property attributable to rehabilitation expenditures, and such property is transferred to an acquiring corporation, the acquiring corporation will be required to compute depreciation under section

167(k) with respect to the property acquired. The computation of the depreciation allowance with respect to the property acquired shall be made under the provisions of section 167 and the regulations thereunder.

(ii) The rules provided in section 381(c)(6) and subdivision (i) of this subparagraph shall apply only with respect to that part or all of the basis of the property in the hands of the acquiring corporation immediately after the date of distribution or transfer as does not exceed the basis of the property in the hands of the distributor or transferor corporation on the date of the distribution or transfer. For this purpose, the basis of the property in the hands of the distributor or transferor corporation shall be the adjusted basis provided in section 1011 for the purpose of determining gain on the sale or other disposition of such property. For provisions defining the date of distribution or transfer see § 1.381(b)-1(b).

(b) *Portion in excess of distributor or transferor corporation's basis—(1) General rule.* With respect to that part of the basis of the depreciable property (other than certain section 1250 property described in subparagraph (2) of this paragraph) which in the hands of the acquiring corporation exceeds the adjusted basis to the distributor or transferor corporation, the acquiring corporation may use any reasonable method of computing depreciation, other than the methods provided in section 167(b)(2), (3), or (4). See paragraph (b) of § 1.167(b)-0 for methods which are acceptable under section 167(a) with respect to such property. See also sections 334(b)(1) and 362(b) for the determination of basis of property in the hands of the acquiring corporation in connection with a transaction to which section 381(a) applies.

(2) *Section 1250 property.* With respect to that part of the basis of section 1250 property acquired after July 24, 1969, which in the hands of the acquiring corporation exceeds the adjusted basis to the distributor or transferor corporation, the acquiring corporation shall be subject to the limitations contained in section 167(j)(4) (relating to used section 1250 property) or 167(j)(5) (relating to used residential rental property). Thus, for example, if section

1250 property which is not residential rental property is acquired in a section 381(a) transaction after July 24, 1969, the straight line method of depreciation (or other method allowable under section 167(j)(4)(B)) is the only acceptable method with respect to that portion of the basis of the property which, in the hands of the acquiring corporation, exceeds the adjusted basis to the transferor or distributor corporation.

(c) *Records required.* Records shall be maintained in sufficient detail to identify any depreciable property to which this section applies, and to establish the basis thereof.

(d) *Agreement under section 167(d).* To the extent not inconsistent with paragraph (b) of this section, an acquiring corporation shall be treated as the distributor or transferor corporation in the case of an agreement between the distributor or transferor corporation and the district director under section 167(d) and §1.167(d)-1 with respect to property to which section 381(c)(6) and this section apply. Thus, in the case where the basis of an asset in the hands of an acquiring corporation exceeds the basis of such asset in the hands of the distributor or the transferor corporation, such an agreement will not have the effect of permitting the acquiring corporation to compute its depreciation allowance with respect to such excess basis under the methods provided in section 167(b)(2), (3), or (4). However, the provisions of the agreement will continue to apply with respect to the useful life of the asset.

(e) *Change of method of depreciation.* Although the acquiring corporation is required to use the method of computing depreciation used by the distributor or transferor with respect to depreciable property to which this section applies, such acquiring corporation may use another method with respect to such property if consent of the Commissioner is obtained in accordance with paragraph (e) of §1.446-1. Further, subject to the provisions of paragraph (b) of §1.167(e)-1 the acquiring corporation may change from the declining balance method described in section 167(b)(2) to the straight line method without consent of the Commissioner.

(f) *Successive transactions to which section 381(a) applies.* The provisions of this section shall apply in the case of successive transactions to which section 381(a) applies. Thus, for example, if X Corporation, a transferor corporation, used the sum of the years-digits method under section 167(b)(3) with respect to an asset transferred to Y Corporation, an acquiring corporation, in a transaction to which section 381(a) applies, and subsequently Y Corporation, using the same method, transfers such asset to Z Corporation in a transaction to which section 381(a) also applies, then Z Corporation shall be required to use the sum of the years-digits method with respect to such asset.

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

Example. M and N Corporations compute their taxable incomes on the basis of the calendar year. On December 31, 1959, M Corporation transfers all of its assets to N Corporation in a transaction to which section 381(a) applies. Included among these assets is an item of depreciable property which on that date has an adjusted basis (for determining gain) of \$800,000 after M Corporation takes into account for 1959 its allowance for depreciation under section 167(b)(2). The basis attributable to the asset under section 362(b) is determined to be \$900,000 in the hands of N Corporation. Under the provisions of section 381(c)(6) and paragraph (a) of this section, N Corporation is required to compute its allowance for the depreciation of the asset under section 167(b)(2) for 1960 and subsequent years but only in respect of \$800,000 of its basis. N Corporation may use any reasonable method other than the methods provided in section 167(b)(2), (3), or (4) in computing its depreciation allowance of the remaining \$100,000.

[T.D. 6559, 26 FR 2983, Apr. 7, 1961, as amended by T.D. 7166, 37 FR 5246, Mar. 11, 1972; 37 FR 6400, Mar. 29, 1972]

§ 1.381(c)(8)-1 Installment method.

(a) *Carryover requirement.* (1) Section 381(c)(8) provides that if, in a transaction to which section 381(a) applies, an acquiring corporation acquires installment obligations, the income from which the distributor or transferor corporation has elected under section 453 and the regulations thereunder to report on the installment method, then the acquiring corporation shall be treated as the distributor or transferor