

the dividend is considered as paid when such deducting and withholding occur.

(b) *Methods of accounting.* The determination of whether a dividend has been paid to the shareholder by the corporation during its taxable year is in no way dependent upon the method of accounting regularly employed by the corporation in keeping its books or upon the method of accounting upon the basis of which the taxable income of the corporation is computed.

(c) *Records.* Every corporation claiming a deduction for dividends paid shall keep such permanent records as are necessary (1) to establish that the dividends with respect to which such deduction is claimed were actually paid during the taxable year and (2) to supply the information required to be filed with the income tax return of the corporation. Such corporation shall file with its return (i) a copy of the dividend resolution; and (ii) a concise statement of the pertinent facts relating to the payment of the dividend, clearly specifying (a) the medium of payment and (b) if not paid in money, the fair market value and adjusted basis (or face value, if paid in its own obligations) on the date of distribution of the property distributed and the manner in which such fair market value and adjusted basis were determined. Canceled dividend checks and receipts obtained from shareholders acknowledging payment of dividends paid otherwise than by check need not be filed with the return but shall be kept by the corporation as a part of its records.

§ 1.562-1 Dividends for which the dividends paid deduction is allowable.

(a) *General rule.* Except as otherwise provided in section 562 (b) and (d), the term *dividend*, for purposes of determining dividends eligible for the dividends paid deduction, refers only to a dividend described in section 316 (relating to definition of dividends for purposes of corporate distributions). No distribution, however, which is preferential within the meaning of section 562(c) and § 1.562-2 shall be eligible for the dividends paid deduction. Moreover, when computing the dividends paid deduction with respect to a U.S. person (as defined in section 957(d)), no

distribution which is excluded from the gross income of a foreign corporation under section 959(b) with respect to such person or from gross income of such person under section 959(a) shall be eligible for such deduction. Further, for purposes of the dividends paid deduction, the term *dividend* does not include a distribution in liquidation unless the distribution is treated as a dividend under section 316(b)(2) and paragraph (b)(2) of § 1.316-1, or under section 333(e)(1) and paragraph (c) of § 1.333-4 or paragraph (c)(2), (d)(1)(ii), or (d)(2) of § 1.333-5, or qualifies under section 562(b) and paragraph (b) of this section. If a dividend is paid in property (other than money) the amount of the dividends paid deduction with respect to such property shall be the adjusted basis of the property in the hands of the distributing corporation at the time of the distribution. See paragraph (b)(2) of this section for special rules with respect to liquidating distributions by personal holding companies occurring during a taxable year of the distributing corporation beginning after December 31, 1963. Also see section 563 for special rules with respect to dividends paid after the close of the taxable year.

(b) *Distributions in liquidation—(1) General rule—(i) In general.* In the case of amounts distributed in liquidation by any corporation during a taxable year of such corporation beginning before January 1, 1964, or by a corporation other than a personal holding company (as defined in section 542) or a foreign personal holding company (as defined in section 552) during a taxable year of such a corporation beginning after December 31, 1963, section 562(b) makes an exception to the general rule that a deduction for dividends paid is permitted only with respect to dividends described in section 316. In order to qualify under that exception, the distribution must be one either in complete or partial liquidation of a corporation pursuant to sections 331, 332, or 333. See subparagraph (2) of this paragraph for rules relating to the treatment of distributions in complete liquidation made by a corporation which is a personal holding company to

corporate shareholders during a taxable year of such distributing corporation beginning after December 31, 1963. As provided by section 346(a), for the purpose of section 562(b), a partial liquidation includes a redemption of stock to which section 302 applies. Amounts distributed in liquidation in a transaction which is preceded, or followed, by a transfer to another corporation of all or part of the assets of the liquidating corporation, may not be eligible for the dividends paid deduction.

(ii) *Amount of dividends paid deduction allowable—(a) General rule.* In the case of distributions in liquidation with respect to which a deduction for dividends paid is permissible under subdivision (i) of this subparagraph, the amount of the deduction is equal to the part of such distribution which is properly chargeable to the earnings and profits accumulated after February 28, 1913. To determine the amount properly chargeable to the earnings and profits accumulated after February 28, 1913, there must be deducted from the amount of the distribution that part allocable to capital account. The capital account, for the purposes of this subdivision, includes not only amounts representing the par or stated value of the stock with respect to which the liquidation distribution is made, but also that stock's proper share of the paid-in surplus, and such other corporate items, if any, which, for purposes of income taxation, are treated like capital in that they are not taxable dividends when distributed but are applied against and reduce the basis of the stock. The remainder of the distribution in liquidation is, ordinarily, properly chargeable to the earnings and profits accumulated after February 28, 1913. Thus, if there is a deficit in earnings and profits on the first day of a taxable year, and the earnings and profits for such taxable year do not exceed such deficit, no dividends paid deduction would be allowed for such taxable year with respect to a distribution in liquidation; if the earnings and profits for such taxable year exceed the deficit in earnings and profits which existed on the first day of such taxable year, then a dividends paid deduction

would be allowed to the extent of such excess.

(b) *Special rule.* Section 562(b)(1)(B) provides that in the case of a complete liquidation occurring within 24 months after the adoption of a plan of liquidation the amount of the deduction is equal to the earnings and profits for each taxable year in which distributions are made. Thus, if there is a distribution in liquidation pursuant to section 333, or a distribution in complete liquidation pursuant to section 331(a)(1) or 332 which occurs within a 24-month period after the adoption of a plan of liquidation, a dividends paid deduction will be allowable to the extent of the current earnings and profits for the taxable year or years even though there was a deficit in earnings and profits on the first day of such taxable year or years. In computing the earnings and profits for the taxable year in which the distributions are made, computation shall be made with the inclusion of capital gains and without any deduction for capital losses.

(c) *Examples.* The application of this subparagraph may be illustrated by the following examples:

Example 1. The Y Corporation, which makes its income tax returns on the calendar year basis, was organized on January 1, 1910, with an authorized and outstanding capital stock of 2,000 shares of common stock of a par value of \$100 each and 1,000 shares of participating preferred stock of a par value of \$100 each. The preferred stock was to receive annual dividends of \$7 per share and \$100 per share on complete liquidation of the corporation in priority to any payments on common stock, and was to participate equally with the common stock in either instance after the common stock had received a similar amount. However, the preferred stock was redeemable in whole or in part at the option of the board of directors at any time at \$106 per share plus its proportion of the earnings of the company at the time of such redemption. In 1910 the preferred stock was issued at \$106 per share, for a total of \$106,000 and the common stock was issued, at \$100 per share, for a total of \$200,000. On July 15, 1954, the company had a paid-in surplus of \$6,000, consisting of the premium received on the preferred stock; earnings and profits of \$30,000 accumulated prior to March 1, 1913; and earnings and profits accumulated since February 28, 1913, of \$75,000. On July 15, 1954, the option with respect to the preferred stock was exercised and the entire amount of such stock was redeemed at \$141 per share or

a total of \$141,000 in a transaction upon which gain or loss to the distributees resulting from the exchange was determined and recognized under section 302(a). The amount of the distribution allocable to capital account was \$116,000 (\$100,000 attributable to par value, \$6,000 attributable to paid-in surplus, and \$10,000 attributable to earnings and profits accumulated prior to March 1, 1913). The remainder, \$25,000 (\$141,000, the amount of the distribution, less \$116,000, the amount allocable to capital account) is properly chargeable to the earnings and profits accumulated since February 28, 1913, and is deductible as dividends paid.

Example 2. The M Corporation, a calendar year taxpayer, is completely liquidated on November 1, 1955, pursuant to a plan of liquidation adopted April 1, 1955. On January 1, 1955, the M Corporation has a deficit in earnings and profits of \$100,000. During the period January 1, 1955, to the date of liquidation, November 1, 1955, it has earnings and profits of \$10,000. The M Corporation is entitled to a dividends paid deduction in the amount of \$10,000 as a result of its distribution in complete liquidation on November 1, 1955.

Example 3. The N Corporation, a calendar year taxpayer, is completely liquidated on July 1, 1958, pursuant to a plan of liquidation adopted February 1, 1955. No distributions in liquidation were made pursuant to the plan of liquidation adopted February 1, 1955, until the distribution in complete liquidation on July 1, 1958. On January 1, 1958, N Corporation had a deficit in earnings and profits of \$30,000. During the period January 1, 1958, to the date of liquidation, July 1, 1958, the N Corporation has earnings and profits of \$5,000. The N Corporation is not entitled to any deduction for dividends paid as a result of the distribution in complete liquidation on July 1, 1958. If the earnings and profits for the period January 1, 1958, to July 1, 1958, had been \$32,000, the N Corporation would have been entitled to a deduction for dividends paid in the amount of \$2,000.

(2) *Special rule—(i) Distributions to corporate shareholders.* In the case of amounts distributed in complete liquidation of a personal holding company (as defined in section 542) within 24 months after the adoption of a plan of liquidation, section 562(b)(2) makes a further exception to the general rule that a deduction for dividends paid is permitted only with respect to dividends described in section 316. The exception referred to in the preceding sentence applies only to distributions made in any taxable year of the distributing corporation beginning after December 31, 1963. Under the exception, the amount of any distribution within

the 24-month period pursuant to the plan shall be treated as a dividend for purposes of computing the dividends paid deduction, but:

(a) Only to the extent that such amount is distributed to corporate distributees, and

(b) Only to the extent that such amount represents such corporate distributees' allocable share of undistributed personal holding company income for the taxable year of such distribution (computed without regard to section 316(b)(2)(B) and section 562(b)(2)).

Amounts distributed in liquidation in a transaction which is preceded, or followed, by a transfer to another corporation of all or part of the assets of the liquidating corporation, may not be eligible for the dividends paid deduction.

(ii) *Corporate distributees' allocable share.* For purposes of subdivision (i)(b) of this subparagraph:

(a) Except as provided in (b) of this subdivision, the corporate distributees' allocable share of undistributed personal holding company income for the taxable year of the distribution (computed without regard to sections 316(b)(2)(B) and 562(b)(2)) shall be determined by multiplying such undistributed personal holding company income by the ratio which the aggregate value of the stock held by all corporate shareholders immediately before the record date of the last liquidating distribution in such year bears to the total value of all stock outstanding on such date. For rules applicable in a case where the distributing corporation has more than one class of stock, see (c) of this subdivision (ii).

(b) If more than one liquidating distribution was made during the year, and if, after the record date of the first distribution but before the record date of the last distribution, there was a change in the relative shareholdings as between corporate shareholders and noncorporate shareholders, then the corporate distributees' allocable share of undistributed personal holding company income for the taxable year of the distributions (computed without regard to sections 316(b)(2)(B) and 562(b)(2)) shall be determined as follows:

(1) First, allocate the corporation's undistributed personal holding company income for the taxable year among the distributions made during such year by reference to the ratio which the aggregate amount of each distribution bears to the total amount of all distributions during such year;

(2) Second, determine the corporate distributees' allocable share of the corporation's undistributed personal holding company income for each distribution by multiplying the amount determined under (1) of this subdivision (b) for each distribution by the ratio which the aggregate value of the stock held by all corporate shareholders immediately before the record date of such distribution bears to the total value of all stock outstanding on such date; and

(3) Last, determine the sum of the corporate distributees' allocable share of the corporation's undistributed personal holding company income for all such distributions.

For rules applicable in a case where the distributing corporation has more than one class of stock, see (c) of this subdivision (ii).

(c) Where the distributing corporation has more than one class of stock:

(1) The undistributed personal holding company income for the taxable year in which, or in respect of which, the distribution was made shall be treated as a fund from which dividends may properly be paid and shall be allocated between or among the classes of stock in a manner consistent with the dividend rights of such classes under local law and the pertinent governing instruments, such as, for example, the distributing corporation's articles or certificate of incorporation and bylaws;

(2) The corporate distributees' allocable share of the undistributed personal holding company income for each class of stock shall be determined separately in accordance with the rules set forth in (a) and (b) of this subdivision (ii) as if each class of stock were the only class of stock outstanding; and

(3) The sum of the corporate distributees' allocable share of the undistributed personal holding company income for the taxable year in which, or in respect of which, the distribution was made shall be the sum of the cor-

porate distributees' allocable share of the undistributed personal holding company income for all classes of stock.

(d) For purposes of this subdivision (ii), in any case where the record date of a liquidating distribution cannot be ascertained, the record date of the distribution shall be the date on which the liquidating distribution was actually made.

(iii) *Example.* The application of this subparagraph may be illustrated by the following example:

Example. O Corporation, a calendar year taxpayer is completely liquidated on December 31, 1964, pursuant to a plan of liquidation adopted July 1, 1964. No distributions in liquidation were made pursuant to the plan of liquidation adopted July 1, 1964, until the distribution in complete liquidation on December 31, 1964. O Corporation has undistributed personal holding company income of \$300,000 for the year 1964 (computed without regard to section 316(b)(2)(B) and section 562(b)(2)). On December 31, 1964, immediately before the record date of the distribution in complete liquidation, P Corporation owns 100 shares of O Corporation's outstanding stock and individual A owns the remaining 200 shares. All shares are equal in value. The amount which represents P Corporation's allocable share of undistributed personal holding company income is \$100,000 (100 shares ÷ 300 shares × \$300,000), and for purposes of computing the dividends paid deduction, such amount is treated as a dividend under section 562(b)(2) provided that the liquidating distribution to P Corporation equals or exceeds \$100,000. P Corporation does not treat the \$100,000 distributed to it as a dividend to which section 301 applies. For an example of the treatment of the distribution to individual A see example 5 of paragraph (e) of § 1.316-1.

(iv) *Distributions to noncorporate shareholders.* For the rules for determining the extent to which distributions in complete liquidation made to noncorporate shareholders by a personal holding company are dividends within the meaning of section 562(a), see section 316(b)(2)(B) and paragraph (b)(2) of § 1.316-1.

(c) *Special definition of dividend for nonliquidating distributions by personal holding companies.* Section 316(b)(2)(A) provides that in the case of a corporation which, under the law applicable to the taxable year in which or in respect of which a distribution is made, is a personal holding company, the term

dividend (in addition to the general meaning set forth in section 316(a)) also means a nonliquidating distribution to its shareholders to the extent of the corporation's undistributed personal holding company income (determined under section 545 without regard to such distributions) for the taxable year in which or in respect of which the distribution is made. See paragraph (b)(1) of § 1.316-1.

[T.D. 6949, 33 FR 5529, Apr. 9, 1968, as amended by T.D. 7767, 46 FR 11265, Feb. 6, 1981]

§ 1.562-2 Preferential dividends.

(a) Section 562(c) imposes a limitation upon the general rule that a corporation is entitled to a deduction for dividends paid with respect to all dividends which it actually pays during the taxable year. Before a corporation may be entitled to any such deduction with respect to a distribution regardless of the medium in which the distribution is made, every shareholder of the class of stock with respect to which the distribution is made must be treated the same as every other shareholder of that class, and no class of stock may be treated otherwise than in accordance with its dividend rights as a class. The limitation imposed by section 562(c) is unqualified, except in the case of an actual distribution made in connection with a consent distribution (see section 565), if the entire distribution composed of such actual distribution and consent distribution is not preferential. The existence of a preference is sufficient to prohibit the deduction regardless of the fact (1) that such preference is authorized by all the shareholders of the corporation or (2) that the part of the distribution received by the shareholder benefited by the preference is taxable to him as a dividend. A corporation will not be entitled to a deduction for dividends paid with respect to any distribution upon a class of stock if there is distributed to any shareholder of such class (in proportion to the number of shares held by him) more or less than his pro rata part of the distribution as compared with the distribution made to any other shareholder of the same class. Nor will a corporation be entitled to a deduction for dividends paid in the case of any distribution upon a class of stock if there

is distributed upon such class of stock more or less than the amount to which it is entitled as compared with any other class of stock. A preference exists if any rights to preference inherent in any class of stock are violated. The disallowance, where any preference in fact exists, extends to the entire amount of the distribution and not merely to a part of such distribution. As used in this section, the term *distribution* includes a dividend as defined in subchapter C, chapter 1 of the Code, and a distribution in liquidation referred to in section 562(b).

(b) The application of the provisions of section 562(c) may be illustrated by the following examples:

Example 1. A, B, C, and D are the owners of all the shares of class A common stock in the M Corporation, which makes its income tax returns on a calendar year basis. With the consent of all the shareholders, the M Corporation on July 15, 1954, declared a dividend of \$5 a share payable in cash on August 1, 1954, to A. On September 15, 1954, it declared a dividend of \$5 a share payable in cash on October 1, 1954, to B, C, and D. No allowance for dividends paid for the taxable year 1954 is permitted to the M Corporation with respect to any part of the dividends paid on August 1, 1954, and October 1, 1954.

Example 2. The N Corporation, which makes its income tax returns on the calendar year basis, has a capital of \$100,000 (consisting of 1,000 shares of common stock of a par value of \$100) and earnings or profits accumulated after February 28, 1913, in the amount of \$50,000. In the year 1954, the N Corporation distributes \$7,500 in cancellation of 50 shares of the stock owned by three of the four shareholders of the corporation. No deduction for dividends paid is permissible under section 562(c) and paragraph (a) of this section with respect to such distribution.

Example 3. The P Corporation has two classes of stock outstanding, 10 shares of cumulative preferred, owned by E, entitled to \$5 per share and on which no dividends have been paid for two years, and 10 shares of common, owned by F. On December 31, 1954, the corporation distributes a dividend of \$125, \$50 to E, and \$75 to F. The corporation is entitled to no deduction for any part of such dividend paid, since there has been a preference to F. If, however, the corporation had distributed \$100 to E and \$25 to F, it would have been entitled to include \$125 as a dividend paid deduction.