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

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

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

(b) Date of distribution or transfer. (1) The date of distribution or transfer shall be that day on which all properties to be distributed or transferred were actually transferred or carried out, as applicable. If the transferee corporation has elected to use the same method of inventorying with respect to that property shall be determined without regard to section 381.

(c) Foreign corporations. For additional rules involving foreign corporations, see §§1.367(b)-7 through 1.367(b)-9.

(d) Internal Revenue Code of 1939. Any reference in the regulations under section 381 to any provision of the Internal Revenue Code of 1954 shall, where appropriate, be deemed also to refer to the corresponding provision of the Internal Revenue Code of 1939.

or preserve the corporation’s legal existence. A corporation shall be considered to have ceased all operations, other than liquidating activities, when it ceases to be a going concern and its activities are merely for the purpose of winding up its affairs, paying its debts, and distributing any remaining balance of its money or other properties to its shareholders.

(3) Election—(i) Content of statements. The statements referred to in paragraph (b)(2) of this section must be entitled, “ELECTION OF DATE OF DISTRIBUTION OR TRANSFER PURSUANT TO §1.381(b)–1(b)(2),” and must include: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF DISTRIBUTOR OR TRANSFEROR CORPORATION] AND [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ACQUIRING CORPORATION] ELECT TO DETERMINE THE DATE OF DISTRIBUTION OR TRANSFER UNDER §1.381(b)–1(b)(2). SUCH DATE IS [INSERT DATE (mm/dd/yyyy)].

(ii) Filing of statements. One statement must be included on or with the timely filed Federal income tax return of the distributor or transferor corporation for its taxable year ending with the date of distribution or transfer. An identical statement must be included on or with the timely filed Federal income tax return of the acquiring corporation for its first taxable year ending after that date. If the distributor or transferor corporation, or the acquiring corporation, is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return.

(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.

(e) Effective/applicability date. Paragraph (b)(3) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (b)(3) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.381(b)–1 as contained in 26 CFR part 1 in effect on April 1, 2006.