

prior mining from a distributor or transferor corporation in a transaction described in section 381(a) shall be entitled, after the date of distribution or transfer, to an allowance for depletion under section 611 in respect of ores or minerals extracted from such waste or residue if the distributor or transferor corporation would have been entitled to such an allowance for depletion in the absence of the distribution or transfer. See paragraph (f) of §1.613-4 to determine whether a distributor or transferor corporation is entitled to an allowance for depletion with respect to the waste or residue of prior mining.

(b) *Application of section 614 to waste or residue of prior mining.* If, in a transaction described in section 381(a), the acquiring corporation acquires waste or residue of prior mining from a distributor or transferor corporation, then the acquiring corporation shall be considered as though it were the distributor or transferor corporation for the purpose of applying section 614 and the regulations thereunder to the waste or residue so acquired. Thus, if the distributor or transferor corporation was required under paragraph (c) of §1.614-1 to treat the waste or residue as part of the mineral deposit from which it was extracted and if the acquiring corporation acquires both the waste or residue and the mineral deposit from which it was extracted in a transaction described in section 381(a), then such waste or residue shall be treated as a part of such mineral deposit in the hands of the acquiring corporation. On the other hand, if the waste or residue was required to be treated as a separate mineral deposit in the hands of the distributor or transferor corporation, such waste or residue shall be treated as a separate mineral deposit in the hands of the acquiring corporation.

[T.D. 6552, 26 FR 1991, Mar. 8, 1961, as amended by T.D. 7170, 37 FR 5373, Mar. 15, 1972]

**§ 1.381(c)(19)-1 Charitable contribution carryovers in certain acquisitions.**

(a) *Carryover requirement.* Section 381(c)(19) provides that, in computing taxable income for its taxable years which begin after the date of distribution or transfer to which section 381(a)

applies, the acquiring corporation shall take into account any charitable contributions made by a distributor or transferor corporation during the taxable year ending on the date of distribution or transfer, and in certain immediately preceding taxable years, which are in excess of the maximum amount deductible for those taxable years under section 170(b)(2) in the following manner:

(1) If the taxable year of the distributor or transferor corporation ending on the date of distribution or transfer begins before January 1, 1962, the acquiring corporation shall, in computing taxable income for its first 2 taxable years which begin after the date of such distribution or transfer, take into account the excess contributions made by the distributor or transferor corporation in the taxable year ending on the date of distribution or transfer and in the immediately preceding taxable year;

(2) If the taxable year of the distributor or transferor corporation ending on the date of distribution or transfer begins after December 31, 1961, the acquiring corporation shall, in computing taxable income for certain taxable years which begin after the date of distribution or transfer, take into account the excess contributions made by the distributor or transferor corporation in the taxable year ending on such date of distribution or transfer and in any of the four taxable years immediately preceding such taxable year but excluding any taxable year beginning before January 1, 1962 (see paragraph (c)(3) of this section). Notwithstanding the preceding sentence, if the taxable year of the distributor or transferor corporation ending on the date of distribution or transfer begins after December 31, 1961, and before January 1, 1963, the acquiring corporation shall, in computing taxable income for its first taxable year which begins after the date of distribution or transfer, also take into account the excess contributions made by the distributor or transferor corporation in the taxable year immediately preceding the taxable year of the distributor or transferor corporation ending on the date of distribution or transfer (see paragraph (c)(2) of this section).

To determine the amount of excess contributions made by a distributor or transferor corporation and to integrate them with contributions made by the acquiring corporation for the purpose of determining the charitable contributions deductible by the acquiring corporation for its taxable years beginning immediately after the date of distribution or transfer, it is necessary to apply the provisions of section 170(b)(2) and § 1.170-3 (or, if applicable, section 170(b)(2) and (d)(2) and § 1.170A-11) in accordance with the conditions and limitations of section 381(c)(19) and this section. For taxable years beginning before January 1, 1970, see section 170 for provisions of section 170(b)(2) as referred to in this section. For taxable years beginning after December 31, 1969, see section 170A for provisions of section 170(b)(2) or (d)(2) as referred to in this section. For special rules for applying section 170(d)(2) with respect to contributions paid, or treated as paid, in taxable years beginning before January 1, 1970, see paragraph (d) of § 1.170A-11.

(b) *Manner of computing excess charitable contribution carryovers.* (1) The amount of any charitable contribution made by a distributor or transferor corporation in any taxable year ending on or before the date of distribution or transfer, or made by the acquiring corporation in any taxable year before its taxable year beginning after the date of distribution or transfer, in excess of the amount allowable as a deduction to such corporation for such taxable year under section 170(b)(2) shall be determined by taking into account the taxable income of, and the contributions made by, that corporation only.

(2) 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 170 and 381, the charitable contribution carryovers available to the first acquiring corporation under sections 170 and 381, including those derived by such first ac-

quiring corporation from its distributor or transferor corporation.

(3) The excess charitable contributions made by a distributor or transferor corporation in its taxable year ending on the date of distribution or transfer and in certain immediately preceding taxable years (see paragraph (c) of this section) which are not deductible by the distributor or transferor corporation because of the 5-percent limitation of section 170(b)(2) shall be available 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 excess contributions made by the subsidiary corporation would be available to the acquiring corporation.

(c) *Taxable years to which carryovers apply and amount deductible*—(1) *Taxable years beginning before January 1, 1962.* If the taxable year of the distributor or transferor corporation ending on the date of distribution or transfer begins before January 1, 1962:

(i) The excess charitable contributions made by a distributor or transferor corporation in its taxable year immediately preceding that ending on the date of distribution or transfer, to the extent not deductible by it because of the limitations of section 170(b)(2) in its taxable year ending on that date, shall be deductible by the acquiring corporation to the extent prescribed by section 170(b)(2) in its first taxable year beginning after the date of distribution or transfer. Any portion of such excess which is not deductible under this section by the acquiring corporation in such first taxable year shall not be deducted by that corporation in any other taxable year.

(ii) The excess charitable contributions made by a distributor or transferor corporation in its taxable year ending on the date of distribution or transfer shall first be deductible by the

acquiring corporation to the extent prescribed by section 170(b)(2) and this section in its first taxable year beginning after that date and then, to the extent prescribed by section 170(b)(2) and this section, in its second taxable year beginning after that date. Any portion of such excess which is not deductible under this section by the acquiring corporation in such first and second taxable years shall not be deducted by that corporation in any other taxable year.

(2) *Taxable years beginning in 1962.* If the taxable year of the distributor or transferor corporation ending on the date of distribution or transfer begins after December 31, 1961, and before January 1, 1963:

(i) The excess charitable contributions made by a distributor or transferor corporation in its taxable year immediately preceding that ending on the date of distribution or transfer, to the extent not deductible by it because of the limitations of section 170(b)(2) in its taxable year ending on that date, shall be deductible by the acquiring corporation to the extent prescribed by section 170(b)(2) in its first taxable year beginning after the date of distribution or transfer. Any portion of such excess which is not deductible under this section by the acquiring corporation in such first year shall not be deducted by that corporation in any other taxable year.

(ii) The excess charitable contributions made by a distributor or transferor corporation in its taxable year ending on the date of distribution or transfer and beginning after December 31, 1961, and before January 1, 1963, shall first be deductible by the acquiring corporation to the extent prescribed by section 170(b)(2) and this section in its first taxable year beginning after that date and then, to the extent prescribed by section 170(b)(2) and this section, in its second, third, fourth, and fifth taxable year, in order of time, beginning after that date. Any portion of such excess which is not deductible under this section by the acquiring corporation in such 5 taxable years shall not be deducted by that corporation in any other taxable year.

(3) *Taxable years beginning after December 31, 1962.* (i) If the taxable year of

the distributor or transferor corporation ending on the date of distribution or transfer begins after December 31, 1962, the excess charitable contributions made by a distributor or transferor corporation in its taxable year ending on the date of distribution or transfer and in each of its four immediately preceding taxable years (excluding any taxable year beginning before January 1, 1962), to the extent not deductible by it because of the limitations of section 170(b)(2) in its taxable year ending on the date of distribution or transfer or its prior taxable years, shall be deductible by the acquiring corporation to the extent prescribed by section 170(b)(2) (or, if applicable, section 170(d)(2)) and subdivision (ii) of this subparagraph, in its taxable years which begin after the date of distribution or transfer. However, any portion of the excess charitable contributions made by a distributor or transferor corporation in a particular taxable year, to which this subparagraph is applicable, which is not deductible under this section within the 5 taxable years immediately following the taxable year in which the contribution was paid by the distributor or transferor corporation shall not be deductible by the acquiring corporation in any other taxable year.

(ii) For purposes of determining the 5 taxable years in which the excess contributions may be deducted, all taxable years of the distributor or transferor corporation subsequent to the taxable year in which the excess contribution was made, including the taxable year ending on the date of distribution or transfer shall be treated as taxable years of the acquiring corporation.

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

*Example.* X Corporation and Y Corporation both compute taxable income on the calendar year basis. X Corporation has excess charitable contributions for 1962 and 1964. On December 31, 1966, X Corporation distributes all its assets to Y Corporation in a complete liquidation to which section 381(a) applies. The excess 1962 charitable contributions of X Corporation (to the extent not deductible by X because of the limitations of section 170(b)(2) in its taxable years 1963 through 1966) may be deducted by Y Corporation only in 1967. Y Corporation's taxable year 1967 is

the fifth taxable year succeeding the taxable year 1962 (the year in which the excess contributions were made), and the portion of such excess contributions which is not deductible in the 5 taxable years immediately succeeding 1962 (1963 through 1967) is not deductible by Y Corporation in any other taxable year. Any excess charitable contributions for 1964 to which Y Corporation may be entitled must be deducted by Y Corporation (if deductible at all) in 1967, 1968, and 1969 since such years are the third, fourth, and fifth taxable years succeeding the taxable year 1964 (the year in which the excess contributions were paid).

(4) *General rules.* No excess charitable contributions made by a distributor or transferor corporation shall be deductible by the acquiring corporation in its taxable year which includes the date of distribution or transfer. In addition, an excess charitable contribution made by a distributor or transferor corporation in a taxable year prior to the taxable year of the transfer is only deductible by the distributor or transferor corporation, subject to the limitations of section 170(b)(2) (or, if applicable, section 170(d)(2)), in its subsequent taxable years which begin on or before the date of distribution or transfer, and by the acquiring corporation in its taxable year or years beginning after the date of distribution or transfer.

(d) *Rules governing amounts deductible by acquiring corporations.* (1) In applying the provisions of section 170(b)(2) (or, if applicable, section 170(d)(2)) for the purpose of determining the amount of excess charitable contributions which are deductible by the acquiring corporation in its taxable years beginning after the date of distribution or transfer, all taxable years of the distributor or transferor and acquiring corporations which, with respect to a particular taxable year beginning after the date of distribution or transfer, constitute the same numbered preceding taxable year shall together be considered as a 1 taxable year even though the taxable years involved may not end on the same date. Thus, for example, all taxable years of the distributor or transferor and acquiring corporations which, with respect to the first taxable year of the acquiring corporation beginning after the date of distribution or transfer, constitutes the second preceding taxable year shall together be consid-

ered as 1 taxable year even though the taxable years involved may not end on the same date. Any excess charitable contributions carried over from preceding taxable years which are considered as 1 taxable year shall be taken into account by the acquiring corporation as one amount, without regard to the extent to which the contributions were made by a distributor or transferor corporation or the acquiring corporation.

(2) For purposes of this paragraph, each taxable year of the distributor or transferor corporation beginning on or before the date of distribution or transfer shall be treated as a preceding taxable year with reference to the acquiring corporation's taxable years beginning after such date. For example, the taxable year of a distributor or transferor corporation which ends on the date of distribution or transfer shall be considered a first preceding taxable year with reference to the acquiring corporation's first taxable year beginning after that date, a second preceding taxable year with reference to the acquiring corporation's second taxable year beginning after that date, and so forth with respect to succeeding taxable years of the acquiring corporation. Also, for example, the taxable year of a distributor or transferor corporation which immediately precedes its taxable year ending on the date of distribution or transfer shall be considered a second preceding taxable year with reference to the acquiring corporation's first taxable year beginning after that date.

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

*Example.* (i) X Corporation is organized on April 1, 1956, and computes its taxable income on the basis of the fiscal year ending March 31. Y Corporation is organized on July 1, 1955, and computes its taxable income on the basis of the fiscal year ending June 30. Z Corporation is organized on January 1, 1956, and computes its taxable income on the basis of the calendar year. On June 30, 1957, X Corporation distributes all its assets to Y Corporation in a complete liquidation to which section 381(a) applies. On November 30, 1957, Y Corporation transfers all its assets to Z Corporation in a statutory merger to which section 381(a) applies.

(ii) The 5-percent limitation (computed in the manner prescribed by section 170(b)(2)),

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the charitable contributions actually paid, and the excess contributions with respect to each such corporation during the taxable years involved are as follows:

Name of corporation	X	X	
Taxable year ending	3-31-57	6-30-57	
5-percent limitation .....	\$20,000	\$9,000	
Current contributions .....	32,000	15,000	
(Excess contributions)	(12,000)	(6,000)	

  

Name of corporation	Y	Y	Y
Taxable year ending	6-30-56	6-30-57	11-30-57
5-percent limitation .....	\$15,000	\$10,000	\$18,000
Current contributions .....	29,000	0	17,000
(Excess contributions)	(14,000)		
Balance of 5-percent limitation .....		10,000	1,000

  

Name of corporation	Z	Z	Z
Taxable year ending	12-31-56	12-31-57	12-31-58
5-percent limitation .....	\$10,000	\$30,000	\$58,000
Current contributions .....	40,000	28,000	92,000
(Excess contributions)	(30,000)		
Balance of 5-percent limitation .....		2,000	56,000

(iii) X Corporation was in existence for two taxable years, in each of which it made charitable contributions in excess of the maximum amount deductible for those years under section 170(b)(2). The excess contributions made in the year ending March 31, 1957, of \$12,000, are deductible by X Corporation in its short taxable year ending June 30, 1957, and then by Y Corporation in its short taxable year ending November 30, 1957, in each instance in the manner and to the extent prescribed by section 170(b)(2) and this section. The excess contributions made by X Corporation in the year ending June 30, 1957, of \$6,000, are deductible by Y Corporation in its short taxable year ending November 30, 1957, and then by Z Corporation in its taxable year 1958, in each instance in the manner and to the extent prescribed by section 170(b)(2) and this section.

(iv) Y Corporation was in existence for three taxable years. In the year ended June 30, 1956, its contributions in excess of the amount deductible for that year under section 170(b)(2) amounted to \$14,000. Such excess is deductible by Y Corporation in its taxable year ending June 30, 1957, and, together with X Corporation's excess contributions of \$18,000, in its short taxable year ending November 30, 1957, in each instance in the manner and to the extent prescribed by section 170(b)(2) and this section. Accordingly, since Y Corporation made no contributions in its taxable year ending June 30, 1957, its deduction for that year on account of excess contributions carried over is \$10,000, an amount equal to the 5-percent limitation of section 170(b)(2). The deduction is attributable to excess contributions made by Y Corporation in the taxable year ended June

30, 1956; thus, the excess of those contributions over \$10,000, namely, \$4,000, is deductible by Y Corporation in its short taxable year ending November 30, 1957, in the manner and to the extent prescribed by section 170(b)(2) and this section. With respect to the short taxable year ending November 30, 1957, the excess contributions of the second preceding year are X Corporation's excess contributions of \$12,000 made in the year ending March 31, 1957, and Y Corporation's excess contributions of \$4,000 made in the year ending June 30, 1956, which were not deductible by Y Corporation in the taxable year ending June 30, 1957, because of the 5-percent limitation prescribed by section 170(b)(2), an aggregate of \$16,000. Inasmuch as Y Corporation's limitation for the short taxable year ended November 30, 1957, exceeds the contributions made in that year by \$1,000, the excess contributions of the second preceding taxable year are deductible in the taxable year ending November 30, 1957, to the extent of \$1,000 and the remainder (\$15,000) is not deductible by any corporation in any taxable year. The excess contributions of the first preceding taxable year, namely, X Corporation's excess contributions made in the short taxable year ending June 30, 1957, are deductible by Z Corporation in its taxable year 1958, in the manner and to the extent prescribed in section 170(b)(2) and this section.

(v) Z Corporation has been in existence for 3 taxable years. The contributions made in 1956 in excess of the amount deductible for that year under section 170(b)(2) amounted to \$30,000. Such excess is deductible by Z Corporation in its taxable year 1957 and, together with X Corporation's excess contributions of \$6,000 (derived through Y Corporation) made in the taxable year ending June 30, 1957, in the taxable year 1958, in each instance in the manner and to the extent prescribed by section 170(b)(2) and this section. Thus, \$2,000 of the \$30,000 excess contributions made in the year 1956 are deducted in 1957 and the remainder (\$28,000), together with X Corporation's excess contributions of \$6,000 made in the short taxable year ending June 30, 1957, are deducted in 1958 since the aggregate of such amounts plus the contributions actually made in that year does not exceed the 5-percent limitation prescribed by section 170(b)(2).

[T.D. 6552, 26 FR 1992, Mar. 8, 1961, as amended by T.D. 6900, 31 FR 14642, Nov. 17, 1966; T.D. 7207, 37 FR 20795, Oct. 5, 1972]

**§ 1.381(c)(21)-1 Pre-1954 adjustments resulting from change in method of accounting.**

(a) *Carryover requirement.* Section 381(c)(21) provides that, in a transaction to which section 381(a) applies, an acquiring corporation shall take