

338(h)(10), see § 1.338-11(f) for the treatment of its capitalized amounts under section 848.

(iii) If, pursuant to a plan in existence at the time of the liquidation or reorganization, the acquiring corporation transfers any insurance or annuity contract it received in the liquidation or reorganization to another person, then, for purposes of paragraph (b)(13)(ii) of this section, that contract shall be deemed to have been transferred by the transferor to that other person after the adoption of the plan of liquidation or reorganization. If the transferor is an old target within the meaning of § 1.338(h)(10)-1(d)(2), any transfer by the acquiring corporation to the purchasing corporation (as defined in § 1.338-2(c)(11)) or to any person related to the purchasing corporation within the meaning of section 197(f)(9)(C) within two years of the transfer described in section 381(a) will be presumed to have been pursuant to a plan in existence at the time of the liquidation or reorganization.

(14) The special loss discount account, provided, however, that the acquiring corporation will succeed to the special loss discount account only to the extent that it is attributable to the portion of the transferor's insurance business acquired by the acquiring corporation in the section 381 transaction.

(c) *Effective dates*—(1) *In general*. This section applies to the acquisition of assets of an insurance company by another insurance company in a transaction to which section 381 applies for taxable years beginning after December 31, 1957.

(2) *Special rules for section 381 transactions*. Paragraphs (a), (b)(7), (b)(13), and (b)(14) of this section apply to the acquisition of assets of an insurance company by another insurance company in a transaction to which section 381 applies on or after April 10, 2006.

(3) *Joint retroactive election*. The distributor or transferor and the acquiring corporation may jointly make an irrevocable election to apply paragraphs (a), (b)(7), (b)(13), and (b)(14) of this section to a transaction to which section 381 applies occurring before April 10, 2006 provided that the taxable year that includes the acquisition and all subsequent affected taxable years of

both the distributor or transferor and the acquiring corporation are years for which an assessment of deficiency or a refund for overpayment is not prevented by any law or rule of law.

(4) *Time and manner of making the joint election*. The distributor or transferor and the acquiring corporation may make an election described in paragraph (c)(2) of this section by each attaching a statement to its original or amended income tax return for the taxable year that includes the acquisition of assets in a transaction to which section 381 applies. The statement must be entitled "Election to retroactively apply the rules of section 1.381(c)(22)-1 to a transaction completed before April 10, 2006" and must include the following information—

(i) The name and EIN of the distributor or transferor and the acquiring corporation; and

(ii) The following declaration (or a substantially similar declaration): The distributor or transferor and the acquiring corporation have each amended its income tax returns for the taxable year that includes the acquisition of assets in a transaction to which section 381 applies and for all affected subsequent years to reflect the rules in paragraphs (a), (b)(7), (b)(13), and (b)(14) of section 1.381(c)(22)-1.

[T.D. 6625, 27 FR 12541, Dec. 19, 1962, as amended by T.D. 9257, 71 FR 18004, Apr. 10, 2006; T.D. 9377, 73 FR 3873, Jan. 23, 2007]

§ 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 shall be computed without reference to any unused credit of a distributor or transferor corporation. The investment credit carryovers of a distributor or transferor corporation as of the close of the date of distribution or transfer shall be determined without reference to any unused credit of the acquiring corporation.

(b) *Carryback of unused credits.* An unused credit of the acquiring corporation for any taxable year ending after the date of distribution or transfer shall not be carried back in computing the credit allowed by section 38 to a distributor or transferor corporation. However, an unused credit of the acquiring corporation for any such taxable year shall be carried back in accordance with section 46(b)(1) in computing the credit allowed to the acquiring corporation for a taxable year ending on or before the date of distribution or transfer. If a distributor or transferor corporation remains in existence after the date of distribution or transfer, an unused credit sustained by it for any taxable year beginning after such date shall be carried back in accordance with section 46(b)(1) in computing the credit allowed by section 38 to such corporation for a taxable year ending on or before that date, but may not be carried back or over in computing the credit allowed by section 38 to the acquiring corporation.

(c) *Computation of carryovers and carrybacks.* (1) Subject to the modifications set forth in this paragraph, the provisions of § 1.46-2 shall apply in computing carryovers and carrybacks of unused credits to taxable years of the acquiring corporation.

(2)(i) The investment credit carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall first be carried to the first taxable year of the acquiring corporation ending after that date. This

rule applies whether the date of distribution or transfer is on the last day, or any other day, of the acquiring corporation's taxable year.

(ii) The investment credit carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall be carried 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.

(3) An unused credit of a distributor or transferor corporation for a taxable year which ends on or before the last day of a taxable year of the acquiring corporation shall be considered to be an unused credit for a year prior to such taxable year of the acquiring corporation. If the acquiring corporation has acquired the assets of two or more distributor or transferor corporations on the same date of distribution or transfer, the unused credit years of the distributor or transferor corporations shall be taken into account in the order in which such years terminate. If any one of the unused credit years of a distributor or transferor corporation ends on the same day as the unused credit year of another distributor or transferor corporation, either unused credit year may be taken into account before the other.

(4) The extent to which an investment credit carryover of a distributor or transferor corporation or of an acquiring corporation from an unused credit year ending before January 1, 1971, may be taken into account by the acquiring corporation for a taxable year beginning after December 31, 1970, shall be determined without regard to the credit earned by the acquiring corporation for such year. Thus, in such a case, the amount of unused credit from such unused credit years which may be taken into account in a taxable year of the acquiring corporation beginning after December 31, 1970, shall be determined solely with reference to the limitation based on amount of tax for such taxable year (without reduction for the credit earned for such year).

(d) *Computation of carryovers when date of distribution or transfer occurs on*

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last day of acquiring corporation's taxable year. The computation of the investment credit carryovers from the distributor or transferor corporation and from the acquiring corporation in a case where the date of distribution or transfer occurs on the last day of a taxable year of the acquiring corporation may be illustrated by the following example:

Example. X Corporation and Y Corporation were organized on January 1, 1971, and each corporation files its return on the calendar year basis. On December 31, 1972, X transfers all its assets to Y in a statutory merger to which section 361 applies. X's credit earned and its limitation based on amount of tax for its taxable years 1971 and 1972 are as follows:

X Corporation's taxable year	Credit earned	Limitation based on amount of tax
1971	\$10,000	\$5,000
1972	5,000	3,000

Y's credit earned and its limitation based on amount of tax for its taxable years 1971 through 1973 are as follows:

Y Corporation's	Credit earned	Limitation based on amount of tax
1971	\$6,000	\$5,000
1972	5,000	3,000
1973	3,000	10,000

The sequence for the allowance of unused credits of X Corporation and Y Corporation, and the computation of the carryovers to Y Corporation's calendar year 1974, may be illustrated as follows:

(1) *X Corporation's 1971 unused credit.* The carryover to Y 1974 is \$0, computed as follows:

Unused credit	\$5,000
Excess of X's 1972 limitation based on tax over credit earned	0
Carryover to Y's year 1973	5,000
Excess of Y's 1973 limitation based on tax over credit earned	7,000
Carryover to Y's year 1974	0

(2) *Y Corporation's 1971 unused credit.* The carryover to Y 1974 is \$0, computed as follows:

Unused credit	\$1,000
Excess of Y's 1972 limitation based on tax over credit earned	0
Carryover to Y's year 1973	1,000
Excess of Y's 1973 limitation based on tax over credit earned	7,000
Less: X's \$5,000 carryover from 1971	5,000

	2,000
Carryover to Y's year 1974	0

(3) *X Corporation's 1972 unused credit.* The carryover to Y 1974 is \$1,000, computed as follows:

Unused credit	\$2,000
Excess of Y's 1973 limitation based on tax over credit earned	7,000
Less: X's \$5,000 carryover from 1971 and Y's \$1,000 carryover from 1971	6,000
	1,000
Carryover to Y's year 1974	1,000

(4) *Y Corporation's 1972 unused credit.* The carryover to Y 1974 is \$2,000, computed as follows:

Unused credit	\$2,000
Excess of Y's 1973 limitation based on tax over credit earned	7,000
Less: X's \$5,000 carryover from 1971 Y's \$1,000 carryover from 1971 and X's \$1,000 carryover from 1972	7,000
	0
Carryover to Y's year 1974	2,000

(5) The aggregate of the investment credit carryovers to Y's year 1974 is \$3,000, computed as follows:

X's 1972 unused credit	\$1,000
Y's 1972 unused credit	2,000
Total	3,000

(e) *Computation of carryovers when date of distribution or transfer is not on last day of acquiring corporation's taxable year.* (1) If the date of distribution or transfer occurs on any day other than the last day of a taxable year of the acquiring corporation, the amount which may be added to the amount allowable as a credit by section 38 for the first taxable year of the acquiring corporation ending after the date of distribution or transfer (hereinafter called the "year of acquisition") shall be determined in the following manner. The year of acquisition shall be considered as though it were 2 taxable years. The first of such 2 taxable years shall be referred to in this paragraph as the preacquisition part year and shall begin with the beginning of the year of acquisition and end with the close of the date of distribution or transfer. The second of such 2 taxable years shall be referred to in this paragraph as the postacquisition part year and shall begin with the day following the date of distribution or transfer and shall

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end with the close of the year of acquisition.

(2) The excess limitation for the year of acquisition (i.e., the excess of the limitation based on the amount of tax for such year over the amount of credit earned for such year) shall be divided between the preacquisition part year and the postacquisition part year in proportion to the number of days in each. Thus, if in a statutory merger to which section 361 applies Y Corporation, a calendar year taxpayer, acquires the assets of X Corporation on June 30, 1975, and Y Corporation has an excess limitation of \$36,500 for its calendar year 1975, then the excess limitation for the preacquisition part year would be \$18,100 ($\$36,500 \times 181/365$) and the excess limitation for the postacquisition part year would be \$18,400 ($\$36,500 \times 184/365$).

(3) An unused credit of the acquiring corporation shall be carried to and applied against the excess limitation for the preacquisition part year and then carried to and applied against the excess limitation for the postacquisition part year, whereas an unused credit of the distributor or transferor corporation shall not be carried to the preacquisition part year but shall only be carried to and applied against the excess limitation for the postacquisition part year. For special rule relating to carryovers from taxable years ending before January 1, 1971, to taxable years beginning after December 31, 1970, see subparagraph (6) of this paragraph.

(4) Though considered as two separate taxable years for purposes of this paragraph, the preacquisition part year and the postacquisition part year are treated as one taxable year in determining the years to which an unused credit is carried under section 46(b)(1).

(5) The preceding subparagraphs may be illustrated by the following example:

Example. X Corporation and Y Corporation were organized on January 1, 1971, and each corporation files its return on the calendar year basis. On May 1, 1972, X transfers all its assets to Y in a statutory merger to which section 361 applies. X's credit earned and its limitation based on amount of tax for its taxable years 1971 and ending May 1, 1972, are as follows:

X Corporation's taxable year	Credit earned	Limitation based on amount of tax
1971	\$11,000	\$5,000
Ending 5-1-72	3,000	6,000

Y's credit earned and its limitation based on amount of tax for its taxable years 1971 and 1972 are as follows:

Y Corporation's taxable year	Credit earned	Limitation based on amount of tax
1971	\$7,000	\$3,000
1972	3,000	9,000

The sequence for the allowance of unused credits of X Corporation and Y Corporation, and the computation of carryovers to Y Corporation's calendar year 1973, may be illustrated as follows:

(i) *X Corporation's 1971 unused credit.* The carryover to Y 1973 is \$0, computed as follows:

Unused credit	\$6,000
Excess of X's 5-1-72 limitation based on tax over credit earned	3,000
Carryover to Y's postacquisition part year 1972 ...	3,000
Excess limitation for Y's postacquisition part year ($\$6,000 \times 244/366$)	4,000
Carryover to Y's year 1973	0

(ii) *Y Corporation's 1971 unused credit.* The carryover to Y 1973 is \$1,000, computed as follows:

Unused credit	\$4,000
Excess limitation for Y's preacquisition part year ($\$6,000 \times 122/366$)	2,000
Carryover to Y's postacquisition part year	2,000
Excess limitation for Y's postacquisition part year ($\$6,000 \times 244/366$)	4,000
Less: X's \$3,000 carryover from 1971	3,000
	1,000
Carryover to Y's year 1973	1,000

(iii) The aggregate of the investment credit carryovers to Y's year 1973 is \$1,000, computed as follows:

X's 1971 unused credit	0
Y's 1971 unused credit	\$1,000
Total	1,000

(6) If the year of acquisition is a taxable year beginning after December 31, 1970, and if there is an unused credit of the distributor or transferor corporation or of the acquiring corporation arising in an unused credit year ending before January 1, 1971, which may be carried to such year of acquisition (see paragraph (c)(4) of this section), then in applying subparagraphs (1), (2), and (3) of this paragraph, in lieu of dividing

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the excess limitation for the year of acquisition between the preacquisition and postacquisition part years, only the limitation based on the amount of tax for such year (i.e., without reduction for the credit earned) shall be divided between the preacquisition and postacquisition part years. If there is also an unused credit arising in an unused credit year ending after December 31, 1970, which may be carried to the year of acquisition, then for the purpose of determining the amount of such unused credit which may be taken into account for such year of acquisition, the credit earned for the year of acquisition shall first be applied against the limitation based on amount of tax for the preacquisition part year (reduced by any investment credit carryovers to such part year from unused credit years ending before January 1, 1971) and the excess, if any, shall then be applied against the limitation based on amount of tax for the postacquisition part year (also reduced by any investment credit carryovers to such part year from unused credit years ending before January 1, 1971).

(7) Subparagraph (6) of this paragraph may be illustrated by the following example:

Example. X Corporation and Y Corporation were organized on January 1, 1970, and each corporation files its return on the calendar year basis. On May 1, 1972, X transfers all its assets to Y in a statutory merger to which section 361 applies. X's credit earned and its limitation based on amount of tax for its taxable years 1970, 1971, and ending May 1, 1972, are as follows:

X Corporation's taxable year	Credit earned	Limitation based on amount of tax
1970	\$300	
1971	100	
Ending 5-1-72	200	

Y's credit earned and its limitation based on amount of tax for its taxable years 1970 through 1972 are as follows:

Y Corporation's taxable year	Credit earned	Limitation based on amount of tax
1970	\$100	
1971	200	
1972	300	\$900

The sequence for the allowance of unused credits of X Corporation and Y Corporation,

and the computation of carryovers to Y Corporation's calendar year 1973, may be illustrated as follows:

(i) *X Corporation's 1970 unused credit.* The carryover to Y 1973 is \$0, computed as follows:

Unused credit	\$300
X Corporation's 1971 limitation based on tax	0
X Corporation's 5-1-72 limitation based on tax	0
Carryover to Y's postacquisition part year 1972	300
Limitation based on tax for Y's postacquisition part year 1972 (\$900×244/366)	600

Carryover to Y's year 1973 0

(ii) *Y Corporation's 1970 unused credit.* The carryover to Y 1973 is \$0, computed as follows:

Unused credit	\$100
Y Corporation's 1971 limitation based on tax	0
Carryover to Y's preacquisition part year 1972	100
Limitation based on tax for Y's preacquisition part year 1972 (\$900×122/366)	300

Carryover to Y's postacquisition part year 1972 ... 0

(iii) *Y Corporation's credit earned for 1972.* The carryover to Y 1973 is \$0, computed as follows:

Credit earned	\$300
Limitation based on tax for preacquisition part year 1972 (\$900×122/366)	300
Less: Y's \$100 carryover from 1970	100
	\$200
Carryover to Y's postacquisition part year 1972 ...	100
Limitation based on tax for postacquisition part year 1972 (\$900×244/366)	600
Less: X's \$300 carryover from 1970	\$300
	300

Carryover to Y's year 1973 0

(iv) *X Corporation's 1971 unused credit.* The carryover to Y 1973 is \$0, computed as follows:

Unused credit	\$100
Excess of X's 1972 limitation based on tax over credit earned	0
Carryover to Y's postacquisition part year 1972 ...	100
Limitation based on tax for postacquisition part year 1972 (\$900×244/366)	600

Less:
X's \$300 carryover from 1970 300
Y's 1972 credit earned for postacquisition part year 100

400
200

Carryover to Y's year 1973 0

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(v) *Y Corporation's 1971 unused credit.* The carryover to Y 1973 is \$100, computed as follows:

Unused credit	\$200
Limitation based on tax for preacquisition part year 1972 (\$900×122/366)	300
Less:	
Y's \$100 carryover from 1970	100
Y's 1972 credit earned for preacquisition part year 1972	200
	300
	0
Carryover to Y's postacquisition part year	200
Limitation based on tax for postacquisition part year 1972 (\$900×244/366)	600
Less:	
X's \$300 carryover from 1970	300
Y's 1972 credit earned for postacquisition part year 1972	100
X's \$100 carryover from 1971	100
	500
	100
Carryover to Y's year 1973	100

(vi) *X Corporation's 5-1-72 unused credit.* The carryover to Y 1973 is \$200, computed as follows:

Unused credit	\$200
Limitation based on tax for postacquisition part year 1972 (\$900×244/366)	600
Less:	
X's \$300 carryover from 1970	300
Y's 1972 credit earned for postacquisition part year 1972	100
X's \$100 carryover from 1971, and Y's \$100 carryover from 1971	200
	600
	0
Carryover to Y's year 1973	200

(vii) The aggregate of the investment credit carryovers to Y 1973 is \$300, computed as follows:

Y's 1971 unused credit	\$100
X's 1972 unused credit	200
Total	300

(8) If the year of acquisition is a taxable year to which the limitation provided in §1.46-2(b)(2) (relating to 20-percent limitation on carryovers and carrybacks to certain taxable years) applies, then for purposes of applying such limitation the preacquisition part year and the postacquisition part year shall each be considered a fractional part of a year, but, if the date of dis-

tribution or transfer is not on the last day of a month, the entire month in which the date of distribution or transfer occurs shall be considered as included in the preacquisition part year and no portion thereof shall be considered as included in the postacquisition part year.

(9) If the acquiring corporation succeeds to the investment credit carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer during the same taxable year of the acquiring corporation, the manner in which the unused credits of the distributor or transferor corporations shall be applied shall be determined consistently with the rules prescribed in paragraph (c) of §1.381(c)(1)-2.

(f) *Successive acquiring corporations.* 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 §1.46-2 and this section, the investment credit carryovers available to the first acquiring corporation under §1.46-2 and this section.

(g) *Recomputation of credit allowed by section 38 on certain property of acquiring corporation.* If section 38 property acquired by an acquiring corporation in a transaction to which section 381(a) applies is disposed of, or otherwise ceases to be section 38 property (or becomes public utility property) with respect to the acquiring corporation, before the close of the estimated useful life which was taken into account in computing the distributor or transferor corporation's qualified investment, see paragraph (e) of §1.47-3.

(h) *Electing small business corporation.* An unused credit of a distributor or transferor corporation arising in an unused credit year for which such corporation is not an electing small business corporation (as defined in section 1371(b)) may not be carried over in a transaction to which section 381 applies to a taxable year of the acquiring corporation for which such corporation

is an electing small business corporation and may not be added to the amount allowable as a credit under section 38 to the shareholders of the acquiring corporation for such taxable year. However, in such a case, a taxable year for which the acquiring corporation is an electing small business corporation shall be counted as a taxable year for purposes of determining the taxable years to which such unused credit may be carried.

(i) [Reserved]

(j) *Carryover of operating capacity for qualified intercity bus.* For rules for determining an acquiring corporation's qualified investment for the energy credit for a qualified intercity bus, see § 1.48-9(q)(11).

(Sec. 38(b) (76 Stat. 963, 26 U.S.C. 38(b)), 48(l)(16) (94 Stat. 264, 26 U.S.C. 48(l)(16)), and 7805 (68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7289, 38 FR 30554, Nov. 6, 1973, as amended by T.D. 7982, 49 FR 39544, Oct. 9, 1984; 49 FR 41246, Oct. 22, 1984]

§ 1.381(c)(24)-1 Work incentive program credit carryovers in certain corporate acquisitions.

The computation of carryovers and carrybacks of unused WIN credits in a transaction to which section 381 applies shall be made under the principles of § 1.381(c)(23)-1 (relating to the computation of carryovers and carrybacks of unused investment credits), except that the provisions of paragraph (c)(4) and paragraph (e)(6), (7), and (8) of such section shall not apply.

(Secs. 381(c)(23), 76 Stat. 971 (26 U.S.C. 381(c)(23), 381(c)(24)) 85 Stat. 557 (26 U.S.C. 381(c)(24)), 7805, 68A Stat. 917 (26 U.S.C. 7805))

[T.D. 7289, 38 FR 30557, Nov. 6, 1973]

§ 1.381(c)(25)-1 Deficiency dividend of a qualified investment entity.

(a) *Carryover requirement.* If a distributor or transferor corporation in a transaction to which section 381(a) applies—

(1) Was a qualified investment entity (within the meaning of section 860(b)) for any taxable year ending on or before the date of distribution or transfer, and

(2) A determination (as defined in section 860(e)) establishes that the transferor or distributor corporation is

liable for the tax imposed by section 11(a), 56(a), 852(b), 857(b)(1), 857(b)(3)(A), or 1201(a) for such taxable year, then in determining the liability for such tax the deduction described in section 860 shall be allowed pursuant to section 381(c)(25) to such corporation for the amount of deficiency dividends paid by the acquiring corporation with respect to the distributor or transferor corporation. Except as otherwise provided in this section, the provisions of section 860 and the regulations thereunder apply with respect to a deficiency dividend deduction allowable pursuant to section 381(c)(25).

(b) *Deficiency dividends paid by the acquiring corporation with respect to the distributor or transferor corporation.* A deficiency dividend paid by the acquiring corporation with respect to the distributor or transferor corporation must be a distribution that would satisfy the definition of a deficiency dividend under section 860(f) if paid by the distributor or transferor corporation to its own shareholders. The distribution, however, shall be paid by the acquiring corporation to its own shareholders. The distribution also shall be paid after the date of distribution or transfer and on, or within 90 days after, the date of the determination but before the acquiring corporation files a claim under paragraph (c) of this section.

(c) *Claim for deduction.* A claim for deduction under this section shall be made by the acquiring corporation on Form 976 and shall be filed within 120 days after the date of the determination. The form shall contain, or be accompanied by, the information required under § 1.860-2(b)(2) in sufficient detail to properly identify the facts with respect to the distributor or transferor corporation and the acquiring corporation. The required certified copy of the resolution authorizing the payment of the dividend shall be that of the trustees, board of directors, or other authority, of the acquiring corporation. Necessary changes may be made in Form 976 in order to carry out the provisions of this paragraph. The claim shall be filed with the district director, or director of the internal revenue service center, with whom the return of the distributor or transferor