

Corporation in exchange for the assets of X Corporation. The deductibility of the payment is accordingly governed by the provisions of section 381(c)(4) and the regulations thereunder. Similarly, if in this case Y Corporation had transferred \$10,000 less in consideration for the assets of X Corporation because of this particular claim, Y Corporation would not be entitled to any deduction for the \$3,000 paid in 1955 under section 381(c)(16) and this section, and the deductibility of the payment would be governed by the provisions of section 381(c)(4) and the regulations thereunder. If the date of transfer of X Corporation's assets had occurred prior to the effective date of subchapter C, chapter 1 of the Internal Revenue Code of 1954, applicable to a reorganization, no deduction would be allowed to Y Corporation under that section.

[T.D. 6750, 29 FR 11267, Aug. 5, 1964]

§ 1.381(c)(17)-1 Deficiency dividend of personal holding company.

(a) *Carryover requirement.* If a determination (as defined in section 547(c)) establishes that a distributor or transferor corporation in a transaction to which section 381(a) applies is liable for personal holding company tax imposed by section 541 (or by a corresponding provision of prior income tax law) for any taxable year ending on or before the date of distribution or transfer, then in computing such tax the deduction described in section 547 shall be allowed pursuant to section 381(c)(17) 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 547 and the regulations thereunder apply with respect to a deficiency dividend deduction allowable pursuant to section 381(c)(17).

(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 is a distribution that would satisfy the definition of a deficiency dividend under section 547(d)(1) if paid by the distributor or transferor corporation to its own shareholders except that it shall be paid by the acquiring corporation to its own shareholders and 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 claim under paragraph (c) of this section.

(c) *Claim for deduction.* A claim for a 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 paragraph (b)(2) of § 1.547-2 in sufficient detail to properly identify the facts with the distributor or transferor corporation and the acquiring corporation. The statement required with respect to the shareholders on the date of payment of the deficiency dividend shall relate to the shareholders of the acquiring corporation, and the required certified copy of the resolution authorizing the payment of the dividend shall be that of the 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 for the internal revenue district in which the return of the distributor or transferor corporation to which such claim relates was filed.

(d) *Effect on dividends paid deduction.* A deficiency dividend paid by the acquiring corporation, which is allowable as a deduction to a distributor or transferor corporation pursuant to section 381(c)(17), shall not become a part of the dividends paid deduction of the acquiring corporation under section 561 for any taxable year.

(e) *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, if X Corporation transfers its assets to Y Corporation in a transaction to which section 381(a) applies and if Y Corporation transfers its assets to Z Corporation in a subsequent transaction to which section 381(a) applies, then, subject to the provisions of this section, X Corporation may take a deficiency dividend deduction for the amount of deficiency dividends paid by Z Corporation with respect to X Corporation.

(f) *Example.* The provisions of this section may be illustrated by the following example:

Example. M Corporation, a personal holding company, computes its taxable income on the basis of the calendar year. On December 31, 1956, N Corporation acquires the assets of M Corporation in a transaction to which section 381(a) applies. On July 31, 1958, a determination (as defined in section 547(c)) establishes that M Corporation is liable for the taxable year 1955 for personal holding company tax in the amount of \$35,500 based on undistributed personal holding company income of \$42,000 for such taxable year. N Corporation complies with the provisions of this section and on September 30, 1958, distributes \$42,000 to its shareholders as deficiency dividends with respect to M Corporation's taxable year 1955. The distribution of \$42,000 by N Corporation is a taxable dividend under section 316(b)(2) regardless of whether N Corporation is a personal holding company for the taxable year 1958 or whether it had any current or accumulated earnings and profits. See *Example (3)* in paragraph (e) of §1.316-1. Because N Corporation has paid deficiency dividends of \$42,000 in accordance with this section, M Corporation is entitled to a deficiency dividend deduction of \$42,000 for the taxable year 1955 and is thus relieved of its liability for personal holding company tax of \$35,500 for such taxable year. To prevent a duplication of deductions, the amount distributed by N Corporation in 1958 does not become a part of N Corporation's dividends paid deduction under section 561 for any taxable year.

[T.D. 6532, 26 FR 409, Jan. 19, 1961, as amended by T.D. 7604, 44 FR 18661, Mar. 29, 1979; T.D. 7767, 45 FR 11264, Feb. 6, 1981]

§ 1.381(c)(18)-1 Depletion on extraction of ores or minerals from the waste or residue of prior mining.

(a) *Carryover requirement.* Section 381(c)(18) provides that the acquiring corporation in a transaction described in section 381(a) shall be considered as though it were the distributor or transferor corporation after the date of distribution or transfer for the purpose of determining the applicability of section 613(c)(3) (relating to extraction of ores or minerals from the ground). Thus, an acquiring corporation which has acquired the waste or residue of 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