

**§ 1.381(c)(1)-2 Net operating loss carryovers; two or more dates of distribution or transfer in the taxable year.**

(a) *In general.* If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer within one taxable year of the acquiring corporation, the limitation to be applied under section 381(c)(1)(B) to the aggregate of the net operating loss carryovers to that taxable year from all of the distributor or transferor corporations shall be determined by applying the rules prescribed in paragraph (b) of this section, and the taxable income of the acquiring corporation for that taxable year under sections 381(c)(1)(C) and 172(b)(2) shall be determined by applying the rules prescribed in paragraph (c) of this section. For purposes of this section, the term *postacquisition income* means postacquisition part year taxable income determined under paragraph (d)(1) of § 1.381(c)(1)-1 by treating the first date of distribution or transfer as though it were the only date of distribution or transfer during the taxable year of the acquiring corporation.

(b) *Determination of limitation under section 381(c)(1)(B)*—(1) *In general.* If the acquiring corporation succeeds to the net operating loss 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, and if the amount of the net operating loss carryovers acquired on the first date of distribution or transfer equals or exceeds the postacquisition income, then the limitation under section 381(c)(1)(B) shall be an amount equal to such postacquisition income. If the amount of the net operating loss carryovers acquired on the first date of distribution or transfer is less than such postacquisition income, then the limitation under section 381(c)(1)(B) shall be determined as provided in subparagraphs (2) through (5) of this paragraph.

(2) *Allocation of postacquisition income among partial postacquisition years.* That part of the taxable year of the acquiring corporation beginning on the day

following the first date of distribution or transfer and ending with the close of the taxable year of the acquiring corporation shall be divided into the same number of partial postacquisition years as the number of dates of distribution or transfer on which the acquiring corporation succeeds to net operating loss carryovers during its taxable year. The first partial postacquisition year shall begin with the day following the first date of distribution or transfer and shall end with the close of the second date of distribution or transfer. The second and succeeding partial postacquisition years shall begin with the day following the close of the preceding such partial year and shall end with the close of the succeeding date of distribution or transfer, or, if there is no such succeeding date, then with the close of the taxable year of the acquiring corporation. The postacquisition income of the acquiring corporation shall be allocated among the partial postacquisition years in proportion to the number of days in each such partial year.

(3) *Two dates of distribution or transfer.* If the acquiring corporation succeeds to the net operating loss carryovers of two distributor or transferor corporations on two dates of distribution or transfer during the same taxable year of the acquiring corporation, and if the amount of the net operating loss carryovers acquired on the first date equals or exceeds the income for the first partial postacquisition year, the limitation provided by section 381(c)(1)(B) shall be the amount of the postacquisition income. If the income for the first partial postacquisition year exceeds the net operating loss carryovers acquired on the first date of distribution or transfer, the limitation provided by section 381(c)(1)(B) shall be the amount of the postacquisition income reduced by the amount of such excess. The application of this subparagraph may be illustrated by the following example:

*Example.* (i) X Corporation has taxable income (computed without any net operating loss deduction) of \$36,500 for its calendar year 1955. During 1955, X Corporation acquires the assets of Y and Z Corporations in statutory mergers to each of which section 361 applies, the dates of transfer being January 1 and December 1, respectively. The net

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operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corp.	Carryovers	Income for partial years	Reduction
Y .....	\$1,000	\$33,400 (\$36,500×334/365)	\$32,400
Z .....	50,000	3,000 (\$36,500×30/365)	0
	51,000	36,400	32,400

(ii) The limitation provided by section 381(c)(1)(B) equals the postacquisition income of \$36,400 reduced by \$32,400, the excess of the income for the first partial year (\$33,400) over the net operating loss carryovers acquired on the first date of transfer (\$1,000). Accordingly, the limitation is \$4,000 (\$36,400 minus \$32,400). Therefore, although X Corporation acquired carryovers aggregating \$51,000 during 1955, it can utilize only \$4,000 of such carryovers in computing its net operating loss deduction for 1955.

(4) *Three dates of distribution or transfer.* If the acquiring corporation succeeds to the net operating loss carryovers of three distributor or transferor corporations on three dates of distribution or transfer during the same taxable year of the acquiring corporation, and if the amount of the net operating loss carryovers acquired on the first date equals or exceeds the income for the first and second partial postacquisition years, the limitation provided by section 381(c)(1)(B) shall be the amount of the postacquisition income. If the amount of the carryovers acquired on the first date equals or exceeds the income for the first partial postacquisition year but does not equal or exceed the income for the first and second partial postacquisition years,

the limitation shall be the amount of the postacquisition income reduced by the excess of the income for the first and second partial postacquisition years over the amount of carryovers acquired on the first and second dates of distribution or transfer. If the income for the first partial postacquisition year exceeds the carryovers acquired on the first date, the limitation shall be the postacquisition income reduced by the sum of the amount of such excess plus the amount, if any, by which the income for the second partial postacquisition year exceeds the carryovers acquired on the second date. This subparagraph may be illustrated by the following examples:

*Example 1.* (i) X Corporation has taxable income (computed without any net operating loss deduction) of \$36,500 for its calendar year 1955. During 1955, X Corporation acquires the assets of M, N, and Z Corporations in statutory mergers to each of which section 361 applies, the dates of transfer being January 1, January 31, and December 1, respectively. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corp.	Carryovers	Income for partial years	Reduction
M .....	\$4,000	\$3,000 (\$36,500× 30/365)	\$23,400
N .....	6,000	30,400 (\$36,500×304/365)	
Z .....	50,000	3,000 (\$36,500× 30/365)	0
	60,000	36,400	23,400

(ii) Since the carryovers of \$4,000 acquired on the first date of transfer exceed the income for the first partial year (\$3,000), the limitation provided by section 381(c)(1)(B) is the amount of the postacquisition income (\$36,400) reduced by the excess of the income for the first and second partial years (\$33,400) over the carryovers acquired on the first and

second dates of transfer (\$10,000). Therefore, the limitation is \$13,000 (\$36,400 less \$23,400).

*Example 2.* (i) Assume the same facts as in *Example (1)* except that the amount of the net operating loss carryovers acquired from M Corporation is \$1,000. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

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Corp.	Carryovers	Income for partial years	Reduction
M .....	\$1,000	\$3,000 (\$36,500×30/365)	\$2,000
N .....	6,000	30,400 (\$36,500×304/365)	24,400
Z .....	50,000	3,000 (\$36,500×30/365)	0
	57,000	36,400	26,400

(ii) Since the income for the first partial year (\$3,000) exceeds the \$1,000 of carryovers acquired on the first date by \$2,000, the limitation provided by section 381(c)(1)(B) is the postacquisition income of \$36,400 reduced by such excess and also reduced by the excess of the income for the second partial year (\$30,400) over the carryovers acquired on the second date of transfer (\$6,000). Therefore,

the limitation is \$10,000 (\$36,400 less the sum of \$2,000 and \$24,400).

*Example 3.* (i) Assume the same facts as in *Example (2)* except that the carryovers acquired from N Corporation are \$75,000. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corp.	Carryovers	Income for partial years	Reduction
M .....	\$1,000	\$3,000 (\$36,500× 30/365)	\$2,000
N .....	75,000	30,400 (\$36,500×304/365)	0
Z .....	50,000	3,000 (\$36,500× 30/365)	0
	126,000	36,400	2,000

(ii) Since the income for the first partial year (\$3,000) exceeds the \$1,000 of carryovers acquired on the first date by \$2,000, the limitation provided by section 381(c)(1)(B) is the postacquisition income of \$36,400 reduced by \$2,000, or \$34,400. No further reduction is made since the income for the second partial year (\$30,400) does not exceed the carryovers of \$75,000 acquired on the second date of transfer.

(5) *Four or more dates of distribution or transfer.* If the acquiring corporation succeeds to the net operating loss carryovers of four or more distributor or transferor corporations on four or more dates of distribution or transfer during the same taxable year of the acquiring corporation, the limitation

provided by section 381(c)(1)(B) shall be determined consistently with the methods prescribed in subparagraphs (3) and (4) of this paragraph. The application of this subparagraph may be illustrated by the following example:

*Example.* (i) X Corporation has taxable income (computed without any net operating loss deduction) of \$36,500 for its calendar year 1955. During 1955, X Corporation acquired the assets of M, N, O, Y, and Z Corporations in statutory mergers to each of which section 361 applied, the dates of transfer being, respectively, January 1, January 31, March 3, April 2, and December 1. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corp.	Carryovers	Income for partial years	Reduction
M .....	\$1,000	\$3,000 (\$36,500× 30/365)	\$2,000
N .....	4,000	3,100 (\$36,500× 31/365)	
O .....	1,000	3,000 (\$36,500× 30/365)	1,100
Y .....	10,000	24,300 (\$36,500×243/365)	14,300
Z .....	20,000	3,000 (\$36,500× 30/365)	0
	36,000	36,400	17,400

(ii) The limitation provided by section 381(c)(1)(B) equals the postacquisition income of \$36,400 reduced by the sum of (a) the \$2,000 excess of the income for the first partial year (\$3,000) over the carryovers acquired from M Corporation (\$1,000), (b) the \$1,100 excess of the income for the second and third partial years (\$6,100) over the

carryovers acquired from N and O Corporations (\$5,000), and (c) the \$14,300 excess of the income for the fourth partial year (\$24,300) over the carryovers acquired from Y Corporation (\$10,000). Accordingly, the limitation is \$19,000 (\$36,400 minus \$17,400). Therefore, although X Corporation acquired carryovers aggregating \$36,000 during 1955, it

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can utilize only \$19,000 of such carryovers in computing its net operating loss deduction for 1955.

(c) *Determination of taxable income of acquiring corporation under section 381(c)(1)(C)*—(1) *In general.* If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer within one taxable year of the acquiring corporation, then pursuant to section 381(c)(1)(C) the taxable income of the acquiring corporation for its taxable year which is a prior taxable year for purposes of section 172(b)(2) and paragraph (e) of § 1.381(c)(1)-1 shall be determined as provided in this paragraph.

(2) *Division of taxable income.* The taxable income of the acquiring corporation (computed with the modifications specified in section 172(b)(2)(A) but without any net operating loss deduction) shall be allocated proportionately on a daily basis among a preacquisition part year (determined under paragraph (f)(3) of § 1.381(c)(1)-1 by treating the first date of distribution or transfer as though it were the only date of distribution or transfer during the taxable year of the acquiring corporation) and two or more partial postacquisition years (determined as provided in paragraph (b)(2) of this section). The preacquisition part year and each partial postacquisition year shall be considered a separate taxable year, but only for the limited purpose of applying sections 172(b)(2) and 381(c)(1)(C).

(3) *Net operating loss deduction.* The net operating loss deduction of the preacquisition part year and the partial postacquisition years shall be determined consistently with the manner described in paragraph (f)(6) of § 1.381(c)(1)-1 but by taking into account, in the case of any partial postacquisition year, only the net operating loss carryovers and carrybacks of the acquiring corporation and those net operating loss carryovers from a distributor or transferor corporation which become available to the acquiring corporation as of the close of those dates of distribution or transfer which occur before the beginning of that specific partial postacquisition year. The sequence in which the net operating

losses of the distributor or transferor and acquiring corporations shall be applied for this purpose shall be determined in the manner described in paragraph (e) of § 1.381(c)(1)-1. Subject to the preceding sentence, the net operating loss carryovers to any specific partial postacquisition year, whether from a distributor, transferor, or acquiring corporation, shall be taken into account in the order of the taxable years in which the net operating losses arose, beginning with the loss for the earliest taxable year.

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

*Example.* (i) *Facts.* X Corporation, which was organized on January 1, 1957, sustained a net operating loss of \$20,000 for its calendar year 1957 and had taxable income (computed without any net operating loss deduction) of \$36,500 for its calendar year 1958. During 1958, X Corporation acquired the assets of Y and Z Corporations in statutory mergers to each of which section 361 applied, the dates of transfer being June 30 and September 30, respectively. None of the modifications specified in section 172(b)(2)(A) apply to any of the corporations for any taxable year. The taxable income (computed without any net operating loss deduction) and net operating losses of Y and Z Corporations (which were organized on January 1, 1957, and January 1, 1954, respectively) are set forth below:

Taxable year	Acquiring corporation X	Transferor corporation Y	Transferor corporation Z
1954 .....	xxx	xxx	(\$30,000)
1955 .....	xxx	xxx	1,000
1956 .....	xxx	xxx	1,000
1957 .....	(\$20,000)	(\$25,000)	1,000
Ending 6-30-58 .....	xxx	1,000	xxx
Ending 9-30-58 .....	xxx	xxx	1,000
1958 .....	36,500	xxx	xxx

The sequence in which the losses of the acquiring corporation and the transferor corporations are applied and the computation of the carryovers to X Corporation's calendar year 1959 are illustrated in the following subdivisions of this example.

(ii) *Computation of taxable income.* X Corporation's taxable income, determined in the manner described in subparagraph (2) of this paragraph, for the preacquisition part year and for the partial postacquisition years is as follows:

Year	Taxable income	Computation
Preacquisition part year ..	\$18,100	\$36,500×181/365
Partial No. 1 .....	9,200	36,500×92/365

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Year	Taxable income	Computation
Partial No. 2 .....	9,200	36,500×92/365

(iii) *Z Corporation's 1954 loss.* The carryover to 1959 is \$0, computed as follows:

Net operating loss .....	\$30,000
Less:	
Z's 1955, 1956, 1957, and 9/30/58-3 year income .....	4,000
Net operating loss carryover to Partial No. 2 year .....	26,000
Less:	
Partial No. 2 year taxable income .....	9,200
	16,800

The balance of \$16,800 is not carried over to 1959 since X Corporation's taxable year 1958 is the last of the five years to which Z's 1954 loss may be carried under section 172(b)(1).

(iv) *Y Corporation's 1957 loss.* The carryover to 1959 is \$14,800, computed as follows:

Net operating loss .....	\$25,000
Less:	
Y's 6/30/58-year income .....	1,000
Net operating loss carryover to Partial No. 1 year .....	24,000
Less:	
Partial No. 1 year taxable income .....	9,200
Carryover to Partial No. 2 year .....	14,800
Less:	
X's Partial No. 2 year taxable income .....	\$9,200
Minus X's net operating loss deduction for Partial No. 2 year (i.e., Z's 1954 carryover of \$26,000 to such partial year) ..	26,000
	0
Carryover to 1959 .....	14,800

(v) *X Corporation's 1957 loss.* The carryover to 1959 is \$1,900, computed as follows:

Net operating loss .....	\$20,000
Less:	
X's preacquisition part year taxable income ..	18,100
Carryover to Partial No. 1 year .....	1,900
Less:	
Partial No. 1 year taxable income .....	\$9,200
Minus X's net operating loss deduction for Partial No. 1 year (i.e., Y's 1957 carryover of \$24,000 to such partial year) ..	24,000
	0
Carryover to Partial No. 2 year .....	1,900
Less:	
Partial No. 2 year taxable income .....	\$9,200
Minus X's net operating loss deduction for Partial No. 2 year (i.e., Z's 1954 carryover of \$26,000, and Y's 1957 carryover of \$14,800, to such partial year .....	40,800

	0
Carryover to 1959 .....	\$1,900
(vi) <i>Summary of carryovers to 1959.</i> The aggregate of the net operating loss carryovers to 1959 is \$16,700, computed as follows:	
Z's 1954 loss .....	xxx
Y's 1957 loss .....	\$14,800
X's 1957 loss .....	91,900
Total .....	16,700

**§ 1.381(c)(2)-1 Earnings and profits.**

(a) *In general.* (1) Section 381(c)(2) requires the acquiring corporation in a transaction to which section 381(a) applies to succeed to, and take into account, the earnings and profits, or deficit in earnings and profits, of the distributor or transferor corporation as of the close of the date of distribution or transfer. In determining the amount of such earnings and profits, or deficit, to be carried over, and the manner in which they are to be used by the acquiring corporation after such date, the provisions of section 381(c)(2) and this section shall apply. For purposes of section 381(c)(2) and this section, if the distributor or transferor corporation accumulates earnings and profits, or incurs a deficit in earnings and profits, after the date of distribution or transfer and before the completion of the reorganization or liquidation, such earnings and profits, or deficit, shall be deemed to have been accumulated or incurred as of the close of the date of distribution or transfer.

(2) If the distributor or transferor corporation has accumulated earnings and profits as of the close of the date of distribution or transfer, such earnings and profits shall (except as hereinafter provided in this section) be deemed to be received by, and to become a part of the accumulated earnings and profits of, the acquiring corporation as of such time. Similarly, if the distributor or transferor corporation has a deficit in accumulated earnings and profits as of the close of the date of distribution or transfer, such deficit shall (except as hereinafter provided in this section) be deemed to be incurred by the acquiring corporation as of such time. In no event, however, shall the accumulated earnings and profits, or deficit, of the distributor or transferor corporation be taken into account in determining earnings and profits of the acquiring