

1. On December 31, 1957, on which date the undeducted part of the cost amounted to \$280,000, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. Y Corporation, which also makes its return on the basis of the calendar year, had a qualified pension plan and trust which also had an anniversary date of January 1. Since Y Corporation had many more employees than X Corporation on the date of transfer, it covered the former employees of X Corporation under its own plan. Y Corporation is entitled to deductions under section 404(a)(1)(D) and this section in 1958 and succeeding taxable years, in order of time, with respect to the undeducted balance of \$280,000, to the extent of the difference between the amount paid and deductible by that corporation in each such taxable year and the maximum amount deductible by that corporation for such taxable year in accordance with the applicable limitations of section 404(a)(1). In computing the maximum amount deductible by Y Corporation for 1958 and 1959 under section 404(a)(1)(C), that corporation may include \$40,000 for each year, the amount that X Corporation could have included for each of those years in computing the maximum amount that would have been deductible by X Corporation under section 404(a)(1)(C) if the merger had not occurred. Thus, assuming that Y Corporation's appropriate limitation so computed under section 404(a)(1)(C) is \$1,000,000 (including the \$40,000 carried over from X Corporation under this section) for each of those taxable years, and that Y Corporation contributed \$925,000 to its trust in 1958 and \$975,000 in 1959, then Y Corporation is entitled under section 404(a)(1)(D) and this section to deduct in 1958 \$75,000, and in 1959 \$25,000, of the amount (\$280,000) carried over from X Corporation. The undeducted balance of such amount (\$180,000) available to Y Corporation on December 31, 1959, would be deductible by that corporation in succeeding taxable years in accordance with section 404(a)(1)(D) and this section.

[T.D. 6556, 26 FR 2405, Mar. 22, 1961, as amended by T.D. 7168, 37 FR 5024, Mar. 9, 1972]

**§ 1.381(c)(12)-1 Recovery of bad debts, prior taxes, or delinquency amounts.**

(a) *Carryover requirement.* (1) If, as a result of a distribution or transfer to which section 381(a) applies, the acquiring corporation is entitled to the recovery of a bad debt, prior tax, or delinquency amount on account of which a deduction or credit was allowed to a distributor or transferor corporation for a prior taxable year, and such debt, tax, or amount is recovered by the ac-

quiring corporation after the date of distribution or transfer, then under the provisions of section 381(c)(12) the acquiring corporation is required to include in its gross income for the taxable year of recovery the same amount of income attributable to the recovery as the distributor or transferor corporation would have been required to include under section 111 and the regulations thereunder had the distribution or transfer not occurred.

(2) The rule prescribed by paragraph (a)(1) of this section and by section 381(c)(12) with respect to bad debts, prior taxes, and delinquency amounts applies equally with respect to the recovery by the acquiring corporation of all other losses, expenditures, and accruals made on the basis of deductions from the gross income of a distributor or transferor corporation for prior taxable years, including war losses referred to in section 127 of the Internal Revenue Code of 1939, but not including deductions with respect to depreciation, depletion, amortization, or amortizable bond premiums. An item which is not a "section 111 item" for purposes of the regulations under section 111 is not subject to the provisions of section 381(c)(12). The provisions of section 111(c) shall be applied with respect to a recovery by the acquiring corporation in the same manner as they would have been applied by the distributor or transferor corporation.

(b) *Amount of recovery exclusion allowable for year of recovery.* For the year of any recovery by the acquiring corporation, the amount of the recovery exclusion for the original taxable year shall be determined in accordance with paragraph (b) of § 1.111-1. For the purpose of this paragraph and section 381(c)(12), the recovery exclusion for any year with respect to section 111 items of the acquiring corporation shall be kept separate from the recovery exclusion for any year with respect to section 111 items of each distributor or transferor corporation. The recovery by the acquiring corporation of any section 111 item of such corporation after the date of the distribution or transfer shall be considered separately from recoveries by the acquiring corporation of any

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such item which was deducted or credited by a distributor or transferor corporation. Any recovery by the acquiring corporation of a section 111 item shall be excluded from the gross income of the acquiring corporation to the extent of the recovery exclusion (1) determined for the original year for which that item was deducted or credited by the specific corporation which claimed the deduction or credit and (2) reduced by the excludable recoveries (whether made by the acquiring corporation, or by the distributor or transferor corporation) in intervening years with respect to the recovery exclusion of such corporation for such original year. There shall be taken into account the effect of net operating loss carryovers and carrybacks or capital loss carryovers.

(c) *Illustration of carryover of recovery exclusion*—(1) *Facts.* (i) The application of section 381(c)(12) may be illustrated by the following example. M and N Corporations are both organized on January 1, 1957, and both corporations compute their taxable income on the basis of the calendar year. On December 31, 1959, M Corporation transfers all its assets to N Corporation in a reorganization to which section 381(a) applies.

(ii) The section 111 items of the two corporations for the following taxable years are as follows, identification of such items being made by an appropriate letter:

Taxable year of deduction or credit	M Corporation (transferor)	N Corporation (acquirer)
1957 .....	\$500(g)	\$200(h)
1958 .....	300(i)	400(j)
1959 .....	600(k)	100(m)

(iii) The recovery exclusions in respect of such taxable years, computed in accordance with §1.111-1(b)(2), are assumed to be as follows:

Taxable year	M Corporation (transferor)	N Corporation (acquirer)
1957 .....	\$400	\$150
1958 .....	200	300
1959 .....	500	75

(iv) The recoveries of the above-mentioned section 111 items by the two corporations are as follows:

Taxable year of recovery	M Corporation (transferor)	N Corporation (acquirer)
1958 .....	\$25 (g)	\$50 (h)
1959 .....	50 (g)	20 (h)
	30 (i)	15 (j)
1960 .....		350 (g)
		225 (i)
		550 (k)
		100 (h)
		350 (j)
		85 (m)

**(2) M Corporation's 1958 recovery.**

Total recovery of section 111 items for 1957 .....	\$25
Less: Recovery exclusion for 1957 .....	400
Amount included in gross income of M Corporation for 1958 .....	0

**(3) M Corporation's 1959 recoveries.**

(i) Total recovery of section 111 items for 1957 .....	\$50
Less: Recovery exclusion for 1957 .....	\$400
Minus excludable recovery .....	25
Amount included in gross income of M Corporation for 1959 .....	0
(ii) Total recovery of section 111 items for 1958 .....	30
Less: Recovery exclusion for 1958 .....	200
Amount included in gross income of M Corporation for 1959 .....	0

**(4) N Corporation's 1958 recovery.**

Total recovery of section 111 items for 1957 .....	\$50
Less: Recovery exclusion for 1957 .....	150
Amount included in gross income of N Corporation for 1958 .....	0

**(5) N Corporation's 1959 recoveries.**

(i) Total recovery of section 111 items for 1957 .....	\$20
Less: Recovery exclusion for 1957 .....	\$150
Minus excludable recovery in 1958 .....	50
Amount included in gross income of N Corporation for 1959 .....	0
(ii) Total recovery of section 111 items for 1958 .....	15
Less: Recovery exclusion for 1958 .....	300
Amount included in gross income of N Corporation for 1959 .....	0

**(6) N Corporation's 1960 recoveries.**

(i) Total recovery of section 111 items of M Corporation for 1957 .....	\$350
Less: Recovery exclusion of M Corporation for 1957 .....	\$400
Minus:	
Excludable recovery in 1959 .....	\$50
Excludable recovery in 1958 .....	25
Amount included in gross income of N Corporation for 1960 .....	75
(ii) Total recovery of section 111 items of M Corporation for 1958 .....	225
Less: Recovery exclusion of M Corporation for 1958 .....	\$200

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Minus excludable recovery in 1959 .....	30	
Amount included in gross income of N Corporation for 1960 .....		170
(iii) Total recovery of section 111 items of M Corporation for 1959 .....		55
Less: Recovery exclusion of M Corporation for 1959 .....		550
		500
Amount included in gross income of N Corporation for 1960 .....		50
(iv) Total recovery of section 111 items of N Corporation for 1957 .....		100
Less: Recovery exclusion of N Corporation for 1957 .....	\$150	
Minus:		
Excludable recovery in 1959 .....	\$20	
Excludable recovery in 1958 .....	50	
		70
Amount included in gross income of N Corporation for 1960 .....		80
(v) Total recovery of section 111 items of N Corporation for 1958 .....		20
Less: Recovery exclusion of N Corporation for 1958 .....	\$300	
Minus excludable recovery in 1959 .....	15	
		285
Amount included in gross income of N Corporation for 1960 .....		65
(vi) Total recovery of section 111 items of N Corporation for 1959 .....		85
Less: Recovery exclusion of N Corporation for 1959 .....		75
Amount included in gross income of N Corporation for 1960 .....		10
<b>(7) Summary of recoveries included in gross income of N Corporation for 1960.</b>		
(i) Recovery of M Corporation items for:		
1957 .....	\$25	
1958 .....	55	
1959 .....	50	
		\$130
(ii) Recovery of N corporation items for:		
1957 .....	20	
1958 .....	65	
1959 .....	10	
		95
Total amount included in gross income .....		225

[T.D. 6559, 26 FR 2984, Apr. 7, 1961]

§ 1.381(c)(13)-1 **Involuntary conversions.**

(a) *Carryover requirement*—(1) *General rule.* Section 381(c)(13) requires that after the date of distribution or transfer the acquiring corporation, in a transaction to which section 381(a) applies, shall be treated as the distributor or transferor corporation for purposes of applying section 1033, relat-

ing to involuntary conversions. This rule shall apply even though the property similar or related in service or use to the property converted, or the stock of a corporation owning such similar property, is purchased by the acquiring corporation after the date of distribution or transfer and is not received from the distributor or transferor corporation in the transaction to which section 381(a) applies. Accordingly, if any factor essential to the application of section 1033 occurs on or before the date of distribution or transfer and any other such factor also occurs after that date, then, in accordance with section 381(c)(13) and this section, the provisions of section 1033 shall apply to the acquiring corporation in the same manner that they would have applied to the distributor or transferor corporation in the absence of the distribution or transfer. For purposes of this section, the terms *involuntary conversion* and *disposition of the converted property* shall have the meaning ascribed to them by the regulations under section 1033.

(2) *Application to other transactions.* The provisions of this section shall apply to any transaction which, under provisions of the Internal Revenue Code of 1954, is treated as though it were an involuntary conversion within the meaning of section 1033. See, for example, section 1071, relating to gain from a sale or exchange to effectuate the policies of the Federal Communications Commission; and sections 1332(b)(3) and 1333(3), relating to war loss recoveries.

(b) *Conversion into similar property.* Section 1033(a)(1) provides that no gain shall be recognized if property is involuntarily converted only into property which is similar or related in service or use to the property so converted. If there is a disposition of property of a distributor or transferor corporation and, subsequent to the date of distribution or transfer, property similar or related in service or use to the property disposed of is received by the acquiring corporation as compensation for the property so disposed of, then no gain shall be recognized to the acquiring corporation, provided that no gain would have been recognized under section 1033(a)(1) if the similar property