

upon the facts and circumstances. Intent to combine books and records of the trades or businesses may be demonstrated by contemporaneous records and documents or by other objective evidence that reflects the acquiring corporation's ultimate plan of operation, even though the actual combination of the books and records may extend beyond the end of the taxable year that includes the date of distribution or transfer.

(8) *Establishing an inventory method.* An inventory method used by the distributor or transferor corporation immediately prior to the date of distribution or transfer that continues to be used by the acquiring corporation after the date of distribution or transfer is an established method of accounting for purposes of section 446(e), whether or not such method is proper or is permitted under the Internal Revenue Code or any applicable Income Tax Regulations.

(9) *Other applicable provisions.* This section does not preempt any other provision of the Internal Revenue Code or the Income Tax Regulations that is applicable to the acquiring corporation's circumstances. Section 381(c)(5) and this § 1.381(c)(5)-1 determine only the inventory method to be used after a section 381(a) transaction. If other paragraphs of section 381(c) apply for purposes of determining the methods of accounting to be used following the date of distribution or transfer, section 381(c)(5) and this § 1.381(c)(5)-1 will not apply to the tax treatment of the items. Specifically, section 381(c)(5) and this § 1.381(c)(5)-1 do not apply to assets other than inventory that an acquiring corporation obtains in a transaction to which section 381(a) applies.

(10) *Use of the cash receipts and disbursements method of accounting.* If immediately prior to the date of distribution or transfer, an acquiring corporation or a distributor or transferor corporation uses the cash receipts and disbursements method of accounting within the meaning of section 446(c)(1) and § 1.446-1(c)(1)(i), or is not required to use an inventory method for its goods, section 381(c)(5) and § 1.381(c)(5)-1 do not apply. Instead, section 381(c)(4) and § 1.381(c)(4)-1 must be applied to de-

termine the methods of accounting that continue after the transaction.

(11) *Character of items of income and deduction.* After the date of distribution or transfer, items of income and deduction have the same character in the hands of the acquiring corporation as they would have had in the hands of the distributor or transferor corporation if no distribution or transfer had occurred.

(12) *Impermissible inventory method.* This section does not limit the Commissioner's ability under section 446(b) to determine whether a taxpayer's inventory method is an impermissible method or otherwise fails to clearly reflect income. For example, an acquiring corporation may not use the method of accounting determined under paragraph (a)(2) of this section if the method fails to clearly reflect the acquiring corporation's income within the meaning of section 446(b).

(f) *Effective/applicability date.* This section applies to corporate reorganizations and tax-free liquidations described in section 381(a) that occur on or after August 31, 2011.

[T.D. 9534, 76 FR 45682, Aug. 1, 2011; 76 FR 53820, Aug. 30, 2011]

#### § 1.381(c)(6)-1 Depreciation method.

(a) *Carryover requirement*—(1) *Distributions in taxable years ending before July 25, 1969.* (i) Section 381(c)(6) provides that if, in a transaction in a taxable year which ends before July 25, 1969, to which section 381(a) applies, an acquiring corporation acquires depreciable property from a distributor or transferor corporation which computes its allowance for the depreciation of the property under section 167(b)(2), (3), or (4), the acquiring corporation shall compute its depreciation allowance by the same method used by the distributor or transferor corporation with respect to such property. Thus, if the distributor or transferor corporation used the sum of the years-digits method under section 167(b)(3) with respect to an asset distributed or transferred to an acquiring corporation, the acquiring corporation will be required to use the sum of the years-digits method with respect to such asset acquired. The computation of the depreciation allowance with respect to the property

acquired shall be made under the provisions of section 167 and the regulations thereunder.

(ii) The rules provided in section 381(c)(6) and subdivision (i) of this subparagraph will apply only with respect to that part or all of the basis of the property in the hands of the acquiring corporation immediately after the date of distribution or transfer as does not exceed the basis of the property in the hands of the distributor or transferor corporation on the date of the distribution or transfer. For this purpose, the basis of the property in the hands of the distributor or transferor corporation shall be the adjusted basis provided in section 1011 for the purpose of determining gain on the sale or other disposition of such property. For provisions defining the date of distribution or transfer see § 1.381(b)-1(b).

(2) *Distributions in taxable years ending after July 24, 1969.* (i) Section 381(c)(6) provides that if, in a transaction in a taxable year ending after July 24, 1969, to which section 381(a) applies, an acquiring corporation acquires depreciable property from a distributor or transferor corporation which computes its allowances for the depreciation of the property under subsection (b), (j), or (k) of section 167, the acquiring corporation shall compute its depreciation allowance by the same method used by the distributor or transferor corporation with respect to such property. Thus, if the distributor or transferor corporation used the straight line method under section 167(b)(1) with respect to an asset distributed or transferred to an acquiring corporation, the acquiring corporation will be required to use the straight line method with respect to such asset. Similarly, if the distributor or transferor corporation elected to compute depreciation under section 167(k) with respect to property attributable to rehabilitation expenditures, and such property is transferred to an acquiring corporation, the acquiring corporation will be required to compute depreciation under section 167(k) with respect to the property acquired. The computation of the depreciation allowance with respect to the property acquired shall be made under the provisions of section 167 and the regulations thereunder.

(ii) The rules provided in section 381(c)(6) and subdivision (i) of this subparagraph shall apply only with respect to that part or all of the basis of the property in the hands of the acquiring corporation immediately after the date of distribution or transfer as does not exceed the basis of the property in the hands of the distributor or transferor corporation on the date of the distribution or transfer. For this purpose, the basis of the property in the hands of the distributor or transferor corporation shall be the adjusted basis provided in section 1011 for the purpose of determining gain on the sale or other disposition of such property. For provisions defining the date of distribution or transfer see § 1.381(b)-1(b).

(b) *Portion in excess of distributor or transferor corporation's basis—(1) General rule.* With respect to that part of the basis of the depreciable property (other than certain section 1250 property described in subparagraph (2) of this paragraph) which in the hands of the acquiring corporation exceeds the adjusted basis to the distributor or transferor corporation, the acquiring corporation may use any reasonable method of computing depreciation, other than the methods provided in section 167(b)(2), (3), or (4). See paragraph (b) of § 1.167(b)-0 for methods which are acceptable under section 167(a) with respect to such property. See also sections 334(b)(1) and 362(b) for the determination of basis of property in the hands of the acquiring corporation in connection with a transaction to which section 381(a) applies.

(2) *Section 1250 property.* With respect to that part of the basis of section 1250 property acquired after July 24, 1969, which in the hands of the acquiring corporation exceeds the adjusted basis to the distributor or transferor corporation, the acquiring corporation shall be subject to the limitations contained in section 167(j)(4) (relating to used section 1250 property) or 167(j)(5) (relating to used residential rental property). Thus, for example, if section 1250 property which is not residential rental property is acquired in a section 381(a) transaction after July 24, 1969, the straight line method of depreciation (or other method allowable under

section 167(j)(4)(B)) is the only acceptable method with respect to that portion of the basis of the property which, in the hands of the acquiring corporation, exceeds the adjusted basis to the transferor or distributor corporation.

(c) *Records required.* Records shall be maintained in sufficient detail to identify any depreciable property to which this section applies, and to establish the basis thereof.

(d) *Agreement under section 167(d).* To the extent not inconsistent with paragraph (b) of this section, an acquiring corporation shall be treated as the distributor or transferor corporation in the case of an agreement between the distributor or transferor corporation and the district director under section 167(d) and § 1.167(d)-1 with respect to property to which section 381(c)(6) and this section apply. Thus, in the case where the basis of an asset in the hands of an acquiring corporation exceeds the basis of such asset in the hands of the distributor or the transferor corporation, such an agreement will not have the effect of permitting the acquiring corporation to compute its depreciation allowance with respect to such excess basis under the methods provided in section 167(b)(2), (3), or (4). However, the provisions of the agreement will continue to apply with respect to the useful life of the asset.

(e) *Change of method of depreciation.* Although the acquiring corporation is required to use the method of computing depreciation used by the distributor or transferor with respect to depreciable property to which this section applies, such acquiring corporation may use another method with respect to such property if consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.146-1. Further, subject to the provisions of paragraph (b) of § 1.167(e)-1 the acquiring corporation may change from the declining balance method described in section 167(b)(2) to the straight line method without consent of the Commissioner.

(f) *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, for example, if X Corporation, a transferor corpora-

tion, used the sum of the years-digits method under section 167(b)(3) with respect to an asset transferred to Y Corporation, an acquiring corporation, in a transaction to which section 381(a) applies, and subsequently Y Corporation, using the same method, transfers such asset to Z Corporation in a transaction to which section 381(a) also applies, then Z Corporation shall be required to use the sum of the years-digits method with respect to such asset.

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

*Example.* M and N Corporations compute their taxable incomes on the basis of the calendar year. On December 31, 1959, M Corporation transfers all of its assets to N Corporation in a transaction to which section 381(a) applies. Included among these assets is an item of depreciable property which on that date has an adjusted basis (for determining gain) of \$800,000 after M Corporation takes into account for 1959 its allowance for depreciation under section 167(b)(2). The basis attributable to the asset under section 362(b) is determined to be \$900,000 in the hands of N Corporation. Under the provisions of section 381(c)(6) and paragraph (a) of this section, N Corporation is required to compute its allowance for the depreciation of the asset under section 167(b)(2) for 1960 and subsequent years but only in respect of \$800,000 of its basis. N Corporation may use any reasonable method other than the methods provided in section 167(b)(2), (3), or (4) in computing its depreciation allowance of the remaining \$100,000.

[T.D. 6559, 26 FR 2983, Apr. 7, 1961, as amended by T.D. 7166, 37 FR 5246, Mar. 11, 1972; 37 FR 6400, Mar. 29, 1972]

#### § 1.381(c)(8)-1 Installment method.

(a) *Carryover requirement.* (1) Section 381(c)(8) provides that if, in a transaction to which section 381(a) applies, an acquiring corporation acquires installment obligations, the income from which the distributor or transferor corporation has elected under section 453 and the regulations thereunder to report on the installment method, then the acquiring corporation shall be treated as the distributor or transferor corporation would have been treated under section 453 had it not transferred the installment obligations. Thus, if the distributor or transferor corporation had properly elected to return income from the sale or other disposition