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§ 1.381(c)(22)–1 Successor life insurance company.

(a) *Carryover requirement.* If in a taxable year beginning after December 31, 1957, a distributor or transferor corporation which is an insurance company is acquired by a corporation which is an insurance company in a transaction to which section 381(a) applies, section 381(c)(22) provides that the acquiring corporation shall take into account the appropriate items which the distributor or transferor corporation was required to take into account for purposes of part I, subchapter L, chapter 1 of the Internal Revenue Code. Furthermore, except as otherwise provided by this section, the acquiring corporation shall take into account the items described in paragraphs (2) through (21), other than paragraphs (14), (15), and (17), of section 381(c) and the regulations thereunder. For example, the acquiring corporation shall take into account the reserves described in section 810(c) distributed or transferred to it as of the close of the date of distribution or transfer by the distributor or transferor corporation in accordance with the provisions of section 381(c)(4) and the regulations thereunder. For provisions defining the date of distribution or transfer, see paragraph (b) of § 1.381(b)–1.

(b) *Items required to be taken into account by acquiring corporation.* If a transaction meets the requirements of paragraph (a) of this section, the acquiring corporation shall, except as otherwise provided, take into account as of the close of the date of distribution or transfer the following items of the distributor or transferor corporation:

(1) The operations loss carryovers (as determined under section 812), subject to conditions and limitations consistent with the conditions and limitations prescribed in section 381(c)(1) and the regulations thereunder. For example, a loss from operations for a loss year of a distributor or transferor corporation which ends on or before the last day of a loss year of the acquiring corporation shall be considered to be a loss from operations for a year prior to such loss year of the acquiring corporation. All references in section 381(c)(1) and the regulations thereunder to section 172 shall be construed as referring to the appropriate corresponding provisions of section 812. Thus, a reference to section 172(b) shall be construed as referring to section 812 (b) and (d). In determining the span of years for which a loss from operations may be carried, the number of taxable years for which the distributor or transferor corporation was authorized to do business as an insurance company shall be taken into account. For purposes of this determination, the taxable year of the distributor or transferor corporation which ends on the date of distribution or transfer shall be taken into account even though such taxable year is a period of less than 12 months.

(2)(i) The investment yield and the beginning of the year asset balance for the distributor or transferor corporation's taxable year ending with the close of the date of distribution or transfer. Such items shall be integrated with the investment yield and beginning of the year asset balance of the acquiring corporation for its first taxable year ending after such date of distribution or transfer for purposes of determining the current earnings rate of the acquiring corporation for such taxable year. Furthermore, for purposes of determining the average earnings rate of the acquiring corporation, the investment yield and mean of the assets of the distributor or transferor corporation for its 4 taxable years immediately preceding its taxable year which closes with the date of distribution or transfer shall be integrated with the investment yield and mean of the assets of the acquiring corporation for such corresponding taxable years.

(ii) The provisions of this subparagraph may be illustrated by the following examples:

Example 1. X qualified as a life insurance company in 1949. Y qualified as a life insurance company in 1951. On June 30, 1961, at which time both X and Y were life insurance companies (as defined in section 801(a)), X transferred all its assets to Y in a statutory merger to which section 361 applies. For its taxable year ending on June 30, 1961, X had investment yield of $15 and assets at the beginning of such taxable year of $450. For purposes of determining its current earnings rate for its taxable year ending on December

31, 1961, Y had investment yield of $45 (including the $15 of investment yield of X), assets at the beginning of such taxable year of $1,250 (including the $450 of X's assets at the beginning of its taxable year 1961), and assets at the end of such taxable year of $1,750 (after the application of section 806(a)). Under the provisions of subdivision (i) of this subparagraph, the current earnings rate of Y for the taxable year 1961 would be 3 percent, determined by dividing the investment yield of Y, $45, by the mean of the assets of Y, $1,500 ($1,250+$1,750÷2). In order to determine its average earnings rate and adjusted reserves rate for the taxable year 1961, Y would make up the following schedule:

Investment yield				Mean of assets			Current earnings rate of Y
Taxable year	Column 1—X	Column 2—Y	Column 3 (Col. 1 + Col. 2) integrated investment yield	Column 4—X	Column 5—Y	Column 6 (Col. 4 + Col. 5) integrated means of assets	Column 7 (Col. 3 ÷ Col. 6)
1960	$16	$26	$42	$400	$800	$1,200	3.5
1959	16	24	40	500	750	1,250	3.2
1958	17	22	39	650	650	1,300	3.0
1957	19	21	40	700	500	1,200	3.3

For the taxable year 1961, Y would have an average earnings rate of 3.2 percent, computed by taking into account the current earnings rates for the taxable year 1961 and each of the 4 taxable years immediately preceding such taxable year. The adjusted reserves rate for such taxable year would be 3 percent since the current earnings rate of 3 percent for 1961 is lower than the average earnings rate of 3.2 percent.

Example 2. The facts are the same as in *Example (1)*, except that the taxable year in issue is 1962, and the current earnings rate of Y for such taxable year was 3.8 percent. For the taxable year 1962, Y would have an average earnings rate of 3.3 percent, computed by taking into account only the current earnings rates for the taxable year 1962 and each of the 4 taxable years immediately preceding such taxable year. The adjusted reserves rate for such taxable year would be 3.3 percent since the average earnings rate of 3.3 percent is lower than the 1962 current earnings rate of 3.8 percent.

(3) To the extent there are any amounts accrued for discounts in the nature of interest which have not been included as interest paid under section 805(e)(3), the acquiring corporation shall be treated as the distributor or transferor corporation for purposes of including such amounts as interest paid.

(4) Any adjustment required by section 806(b) with respect to an item described in section 810(c) shall be made by the acquiring corporation in its first taxable year which begins after the date of distribution or transfer.

(5) The amount of the deduction provided by section 809(d)(6), as limited by section 809(f), for all taxable years of the distributor or transferor corporation which end on and before the date of distribution or transfer (irrespective of whether or not the distributor or transferor corporation claimed this deduction for such taxable years) for the purpose of determining the limitation under section 809(d)(6).

(6)(i) To the extent there are any remaining net increases or net decreases in reserves required to be taken into account by the distributor or transferor corporation under section 810(d)(1), the acquiring corporation shall be treated as the distributor or transferor corporation as of its first taxable year which begins after the date of distribution or transfer.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example. Assume that the amount of an item described in section 810(c) of X, a life insurance company, at the beginning of the taxable year 1959 is $100. Assume that at the end of the taxable year 1959, as a result of a change in the basis used in computing such item during the taxable year, the amount of the item (computed on the new basis) is $200 but computed on the old basis would have been $150. Since the amount of the item at the end of the taxable year computed on the new basis, $200, exceeds the amount of the item at the end of the taxable year computed on the old basis, $150, by $50, section 810(d)(1) provides that one-tenth of the amount of such excess, or $5, shall be taken into account by X as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of

§ 1.809–5 in determining gain or loss from operations for each of the 10 taxable years immediately following the taxable year 1959. Assume further that on June 30, 1961, X transferred all its assets to Y, a life insurance company, in a statutory merger to which section 361 applies. Under the provisions of section 810(d)(1), X would include $5 as a net increase under section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining gain or loss from operations for its taxable years 1960 and 1961. Thus, the remaining net increase to be taken into account by X under section 810(d)(1) is $40 (eight-tenths of $50). Accordingly, Y shall take into account $5 as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining gain or loss from operations for each of its 8 taxable years beginning in 1962 ($5×8=$40).

(7)(i) The dollar balances in the shareholders surplus account, policyholders surplus account, and other accounts provided, however, that the acquiring corporation is a stock life insurance company. The dollar balance in the policyholders surplus account shall reflect the amount (if any) treated as a subtraction from such account by reason of the application of the limitation provided under section 815(d)(4) immediately prior to the close of the date of distribution or transfer. To the extent that any amount must be added to the shareholders surplus account as a result of the application of the limitation provided under section 815(d)(4), the acquiring corporation shall be treated as the distributor or transferor corporation as of its first taxable year which begins after the date of distribution or transfer. However, any amounts attributable to money or other property not permitted to be received without the recognition of gain (*i.e.*, boot) distributed to a person other than the acquiring corporation under section 381(a) shall be treated as a distribution under section 815.

(ii) Notwithstanding paragraph (b)(7)(i) of this section, if the distributor or transferor corporation distributes or transfers less than 50 percent of its insurance business to the acquiring corporation, then the acquiring corporation shall succeed to a ratable portion of the dollar balances in the distributor's or transferor's shareholders surplus account, policyholders surplus account, and other accounts. The percentage of the accounts to which the acquiring corporation succeeds is determined by the ratio of the distributor's or transferor's insurance reserves for the contracts transferred to the acquiring corporation, as maintained under section 816(b), to the distributor's or transferor's reserves for all of its contracts maintained under section 816(b) immediately before the earlier of the distribution or transfer or the adoption of the plan of liquidation or reorganization. For transactions in which the distributor liquidates pursuant to an election under section 338(h)(10), see § 1.338–11(f) for the treatment of its remaining policyholders surplus account. For all other transactions subject to this paragraph, the distributor or transferor must take into account as income its remaining policyholders surplus account to the extent the fair market value of its assets (net of liabilities) distributed or transferred to the acquiring corporation or to the transferor's shareholders pursuant to the plan of liquidation or reorganization exceeds the distributor's or transferor's remaining shareholders surplus account.

(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)(7)(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.

(iv) If the acquiring corporation is a mutual life insurance company, the dollar balances in the shareholders surplus account, policyholders surplus account, and other accounts shall not be

taken into account by such acquiring corporation and the distributor or transferor corporation shall be subject to the provisions of section 815(d)(2)(A) as of the close of the date of distribution or transfer.

(v) The provisions of this paragraph (b)(7) are illustrated by the following examples:

Example 1. P buys the stock of insurance company target, T, from S for $16, and P and S make a section 338(h)(10) election for T. T transfers no insurance contracts to S, or any related party, in connection with the transaction. Further, assume that T had $10 in its policyholders surplus account and no balance in its shareholders surplus account or other accounts. Immediately before the deemed asset sale, old T is required to include as ordinary income the $10 in the policyholders surplus account.

Example 2. Assume the same facts as in *Example 1*, except that T holds a block of life insurance contracts P does not wish to acquire, and, immediately before the sale of T stock, S causes T to distribute the unwanted block of insurance contracts to S. Further, assume that S is an insurance company, that the distribution of contracts is one of series of distributions in complete cancellation or redemption of all of its stock (the others occurring under §1.338(h)(10)-1(d)(4)(i)) that qualifies as a complete liquidation under section 332, and that old T's tax reserves with respect to the distributed contracts represent one-tenth of old T's tax reserves with respect to all of its life insurance contracts. Because T transfers less than 50 percent of its life insurance business to S in a transaction to which section 381(a) applies, S succeeds to a ratable portion of old T's policyholders surplus account ($1), and old T includes as ordinary income the remaining $9 of that account.

Example 3. Assume the same facts as in *Example 2*, except that 14 months after the deemed asset sale, S and X, a person related to new T under section 197(f)(9)(C), engage in an indemnity reinsurance transaction involving the contracts transferred to S from old T. Because X is related to the purchasing corporation (P) under section 197(f)(9)(C), and X receives contracts from the acquiring corporation (S) that S acquired from old T within two years of the transfer from old T to S, the contracts are presumed to have been transferred pursuant to a plan in existence at the time of old T's liquidation. If S cannot establish otherwise, old T is treated as having distributed the remainder of its policyholders surplus account. In that case, in the taxable year of the indemnity reinsurance transaction, S takes into account as ordinary income the portion of the old T's accounts ($1) that old T or S has not previously taken into account as income.

(8) To the extent that any amount must be added to the shareholders surplus account as a result of an election made under section 815(d)(1) by the distributor or transferor corporation, the acquiring corporation shall be treated as the distributor or transferor corporation as of its first taxable year which begins after the date of distribution or transfer.

(9) The amount of the life insurance reserves at the end of 1958, but only for the purpose of applying the limitation provided under section 815(d)(4)(B).

(10) To the extent there are amounts subject to the provisions of section 817(d), the acquiring corporation shall be treated as the distributor or transferor corporation.

(11) To the extent there are any installments of tax imposed by section 818(e)(3)(A) remaining to be paid, the acquiring corporation shall be treated as the distributor or transferor corporation for the purpose of paying such installments.

(12) The capital loss carryovers, subject to conditions and limitations consistent with the conditions and limitations prescribed in section 381(c)(3) and the regulations thereunder, except that any net capital loss of the distributor or transferor corporation for a taxable year beginning before January 1, 1959, shall not be taken into account. See section 817(c).

(13)(i) The transferor's unamortized policy acquisition expenses or positive or negative capitalization requirements on its specified insurance contracts.

(ii) Notwithstanding paragraph (b)(13)(i) of this section, if the distributor or transferor corporation transfers less than 50 percent of its insurance business to the acquiring corporation, then the acquiring corporation shall succeed to a ratable portion of the transferor's unamortized policy acquisition expenses or positive or negative capitalization requirements on its specified insurance contracts. The percentage of such acquisition expenses or positive or negative capitalization requirements to which the acquiring corporation succeeds is determined by the ratio of the distributor's

or transferor's insurance reserves for the contracts transferred to the acquiring corporation, as maintained under section 816(b), to the distributor's or transferor's reserves for all of its contracts maintained under section 816(b) immediately before the earlier of the distribution or transfer or the adoption of the plan of liquidation or reorganization. For amounts of the distributor's or transferor's unamortized policy acquisition expenses or positive or negative capitalization requirements on its specified insurance contracts to which the acquirer does not succeed to under this paragraph, and, for transactions in which the transferor liquidates pursuant to an election under section 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.

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