

§ 1.381(c)(15)-1

26 CFR Ch. I (4-1-10 Edition)

are T Corporation's taxable year ending December 31, 1959, and U Corporation's taxable year ending June 30, 1960. The dividend carryover from taxable years of T Corporation and U Corporation is \$1,500 computed as follows, assuming the dividends paid deduction before dividend carryovers, and the taxable income after section 545(b) adjustments, to be as stated in the computation:

Second preceding taxable year	U Corporation	T Corporation
Dividends paid deduction	\$7,000	\$17,000
Taxable income	5,000	16,000
Separate excess of dividends paid deduction over taxable income ..	2,000	1,000

The aggregate excess of dividends paid deduction over taxable income for the second preceding taxable year is \$3,000, the sum of \$2,000 (separate excess from U Corporation) and \$1,000 (separate excess from T Corporation). Such aggregate is increased by the excess dividends paid deduction, or is reduced by the excess of taxable income, for the first preceding taxable year as follows:

	T Corporation
Aggregate excess of dividends paid deduction for second preceding taxable year	\$3,000
First preceding taxable year:	
Dividends paid deduction of T Corporation	\$21,000
Taxable income of T Corporation	22,500
Excess taxable income	(1,500)
Separate dividend carryover (without regard to V Corporation)	1,500

(b) *Application of paragraph (b)(3)(i) of this section.* With respect to T Corporation's taxable year 1961, V Corporation's taxable year ending June 30, 1961, is a first preceding taxable year, and its taxable year ending December 31, 1960, is a second preceding taxable year. The separate dividend carryover from V Corporation is \$8,000 computed as follows, assuming the dividends paid deduction before dividend carryovers, and the taxable income after section 545(b) adjustments, to be as stated in the computation:

Second preceding taxable year	V Corporation
Dividends paid deduction	\$11,000
Taxable income	6,000
Excess	\$5,000
First preceding taxable year:	
Dividends paid deduction	\$9,000
Taxable income	6,000
Excess	3,000
Separate dividend carryover from V Corporation	8,000

(c) *Dividend carryover.* The dividend carryover to T Corporation's taxable year 1961 is \$9,500, the sum of \$8,000 (the separate dividend carryover from V Corporation) and \$1,500 (the aggregate dividend carryover from T Corporation and U Corporation).

(d) *Successive carryovers.* The provisions of this section shall apply for the purpose of determining a dividend carryover to an acquiring corporation which, in a distribution or transfer to which section 381(a) applies, acquires the assets of a distributor or transferor corporation which has previously acquired the assets of another corporation in a transaction to which section 381(a) applies; even though, in computing the dividend carryover to such second acquiring corporation, it is necessary to take into account the deduction for dividends paid, and the adjusted taxable income, of the first distributor or transferor corporation.

(e) *Acquiring corporation not receiving all the assets.* The dividend carryover acquired from a distributor or transferor corporation by an acquiring corporation in a transaction to which section 381(a) applies is not reduced by reason of the fact that the acquiring corporation does not acquire 100 percent of the assets of the distributor or transferor corporation.

(f) *Dividends paid after the close of taxable year.* A transaction to which section 381(a) applies does not prevent the application of section 563(b) to a dividend paid by a distributor or transferor corporation after the close of its taxable year ending with the date of distribution or transfer but on or before the 15th day of the third month following the close of such taxable year. However, dividends paid by the acquiring corporation may not be taken into account under section 563(b) for the purpose of determining the dividends paid deduction of the distributor or transferor corporation for its taxable year ending with the date of distribution or transfer.

[T.D. 6532, 26 FR 406, Jan. 19, 1961]

§ 1.381(c)(15)-1 **Indebtedness of certain personal holding companies.**

(a) *Qualified indebtedness—(1) Carryover requirement.* If, in a transaction to which section 381(a) applies, the acquiring corporation assumes liability for

any indebtedness which was qualified indebtedness (as defined in section 545(c) and § 1.545-3) in the hands of the distributor or transferor corporation immediately before the assumption of such indebtedness, then, under section 381(c)(15), in computing its undistributed personal holding company income for any taxable year beginning after December 31, 1963, and ending after the date of distribution or transfer, the acquiring corporation shall be considered the distributor or transferor corporation for purposes of computing the deduction under section 545(c) and § 1.545-3. Such deduction shall be allowed to the acquiring corporation in accordance with section 545(c) and § 1.545-3.

(2) *Successive transactions to which section 381(a) applies.* If in a transaction to which section 381(a) applies, an acquiring corporation assumes liability for qualified indebtedness, such acquiring corporation shall be deemed to have incurred such qualified indebtedness for the purpose of applying section 381(c)(15) to any subsequent transaction in which such acquiring corporation is the distributor or transferor corporation.

(b) *Pre-1934 indebtedness—(1) Carryover requirement.* If, in a transaction to which section 381(a) applies, the acquiring corporation assumes liability for any indebtedness incurred, or assumed, before January 1, 1934, by a distributor or transferor corporation, then under section 381(c)(15) the acquiring corporation shall be allowed, in computing its undistributed personal holding company income for any taxable year ending after the date of distribution or transfer, a deduction under section 545(b)(7) for amounts used or irrevocably set aside to pay or to retire such indebtedness. Such deduction shall be allowed to the acquiring corporation in accordance with section 545(b)(7) and paragraph (g) of § 1.545-2 as though the indebtedness had been incurred, or assumed, by the acquiring corporation before January 1, 1934.

(2) *Successive transactions to which section 381(a) applies.* If, in a transaction to which section 381(a) applies, an acquiring corporation assumes liability for indebtedness described in subparagraph (1) of this paragraph, such acquiring corporation shall be deemed to

have incurred the indebtedness before January 1, 1934, for the purpose of applying section 381(c)(15) to any subsequent transaction in which such acquiring corporation is the distributor or transferor corporation.

(c) *Special rule.* For purposes of this section, if, in a transaction otherwise described in this section, an acquiring corporation acquires real estate—(1) of which the distributor or transferor corporation is the legal or equitable owner immediately before the acquisition, and (2) which is subject to indebtedness that, with respect to the distributor or transferor corporation, is indebtedness described in this section immediately before the acquisition, then the acquiring corporation will be treated as having assumed such indebtedness, provided it shows to the satisfaction of the Commissioner that under all the facts and circumstances it bears the burden of discharging such indebtedness.

[T.D. 6949, 33 FR 5524, Apr. 9, 1968; 33 FR 6091, Apr. 20, 1968]

§ 1.381(c)(16)-1 Obligations of distributor or transferor corporation.

(a) *Deduction allowed to acquiring corporation.* (1) If, in a transaction to which section 381(a) applies, the acquiring corporation assumes an obligation of a distributor or transferor corporation which gives rise to a liability after the date of distribution or transfer and if the distributor or transferor corporation would be entitled to deduct such liability in computing taxable income were it paid or accrued after that date by such corporation, then, under the provisions of section 381(c)(16) and this section, the acquiring corporation shall be entitled to deduct such liability as if it were the distributor or transferor corporation. However, in the case of a transaction to which section 381(a)(2) applies, section 381(c)(16) shall not apply to an obligation which is reflected in the amount of consideration, that is, the stock, securities, or other property, transferred by the acquiring corporation to a transferor corporation or its shareholders in exchange for the property of that transferor corporation. An obligation which is so reflected in the amount of consideration will be treated as an item or tax attribute not specified in section