Accumulated earnings and profits of M as of Dec. 31, 1958, and also as of June 30, 1959	50,000
Accumulated earnings and profits of Z as of Dec. 31, 1958, and also as of June 30, 1959	90,100
Combined accumulated earnings and profits of M as of close of June 30, 1959, and also as of Dec. 31, 1959 ..	140,100

(c) *Distribution of earnings and profits pursuant to reorganization or liquidation.* (1) If, in a reorganization to which section 381(a)(2) applies, the transferor corporation pursuant to the plan of reorganization distributes to its stockholders property consisting not only of property permitted by section 354 to be received without recognition of gain, but also of other property or money, then the accumulated earnings and profits of the transferor corporation as of the close of the date of transfer shall be computed by taking into account the amount of earnings and profits properly applicable to the distribution, regardless of whether such distribution occurs before or after the close of the date of transfer.

(2) If, in a distribution to which section 381(a)(1) (relating to certain liquidations of subsidiaries) applies, the acquiring corporation receives less than 100 percent of the assets distributed by the distributor corporation, then the accumulated earnings and profits of the distributor corporation as of the close of the date of distribution shall be computed by taking into account the amount of earnings and profits properly applicable to the distributions to minority stockholders, regardless of whether such distributions occur before or after the close of the date of distribution.

(d) *Treatment of earnings and profits where assets are transferred to a corporation controlled by the acquiring corporation.* If, pursuant to the provisions of paragraph (b)(2) of §1.381(a)–1, a corporation is considered to be the acquiring corporation even though a part of the acquired assets is transferred to one or more corporations controlled by the acquiring corporation, or all the acquired assets are transferred to two or more corporations controlled by the acquiring corporation, then whether any portion of the earnings and profits received by the acquiring corporation under section 381(c)(2) is allocable to such controlled corporation or corporations shall be determined without regard to section 381. See paragraph (a) of §1.312–11.

[T.D. 6586, 26 FR 12550, Dec. 28, 1961, as amended by T.D. 6692, 28 FR 12817, Dec. 3, 1963]

§ 1.381(c)(3)–1 Capital loss carryovers.

(a) *Carryover requirement.* (1) Section 381(c)(3) requires the acquiring corporation in a transaction to which section 381(a) applies to succeed to, and take into account, the capital loss carryovers of the distributor or transferor corporation. To determine the amount of these carryovers as of the close of the date of distribution or transfer, and to integrate them with the capital loss carryovers of the acquiring corporation for purposes of determining the taxable income of the acquiring corporation for taxable years ending after the date of distribution or transfer, it is necessary to apply the provisions of section 1212 in accordance with the conditions and limitations of section 381(c)(3) and this section.

(2) The capital loss carryovers of the acquiring corporation as of the close of the date of distribution or transfer shall be determined without reference to any capital gains or capital losses of the distributor or transferor corporation. The capital loss carryovers of a distributor or transferor corporation as of the close of the date of distribution or transfer shall be determined without reference to any capital gains or capital losses of the acquiring corporation.

(3) This section contains rules applicable to capital loss carryovers determined without reference to the amendment of section 1212(a) made by section 7 of the Act of September 2, 1964 (Public Law 88–571, 78 Stat. 860) in respect of foreign expropriation capital losses. If the distributor, transferor, or acquiring corporation sustains a net capital loss in a taxable year ending after December 31, 1958, any portion of which is attributable to a foreign expropriation capital loss, such portion shall be carried over to each of the ten succeeding taxable years consistently with the rules prescribed in this section and paragraph (a)(2) of §1.1212–1.

(b) *First taxable year to which carryovers apply.* (1) The capital loss carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall first be carried to the first taxable year of the acquiring corporation ending after that date. This rule applies irrespective of whether the date of distribution or transfer is on the last day, or any other day, of the acquiring corporation's taxable year.

(2) The capital loss carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall be carried to the acquiring corporation without diminution by reason of the fact that the acquiring corporation does not acquire 100 percent of the assets of the distributor or transferor corporation.

(c) *Limitation on capital loss carryovers for first taxable year ending after date of distribution or transfer.* (1) Any capital loss carryover of a distributor or transferor corporation which is available to the acquiring corporation as of the close of the date of distribution or transfer shall be a short-term capital loss of the acquiring corporation in each of the taxable years to which the net capital loss giving rise to such carryover may be carried to the extent provided in section 1212 and this section. However, in the first taxable year of the acquiring corporation ending after the date of distribution or transfer, the total capital loss carryovers of the distributor or transferor corporation which may be treated in that year as short-term capital losses of the acquiring corporation is limited by section 381(c)(3)(B) to an amount which bears the same ratio to the acquiring corporation's capital gain net income (net capital gain for taxable years beginning before January 1, 1977) for such first taxable year (determined without regard to any capital loss carryovers) as the number of days in such first taxable year which follow the date of distribution or transfer bears to the total number of days in such taxable year. Thus, if the date of distribution or transfer is the last day of the acquiring corporation's taxable year, there is no limitation under section 381(c)(3)(B) on the amount of such carryovers which may be treated as short-term capital losses of the acquiring corporation for its first taxable year ending after that date.

(2) The limitation provided by section 381(c)(3)(B) shall be applied to the aggregate of the capital loss carryovers of the distributor or transferor corporation without reference to the taxable years in which the net capital losses giving rise to the carryovers were sustained. If the acquiring corporation has acquired the assets of two or more distributor or transferor corporations on the same date of distribution or transfer, then the limitation provided by section 381(c)(3)(B) shall be applied to the aggregate of the capital loss carryovers from all of such distributor or transferor corporations.

(3) If the acquiring corporation succeeds to the capital 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, the limitation to be applied under section 381(c)(3)(B) to the aggregate of such carryovers shall be determined consistently with the rules prescribed in paragraph (b) of § 1.381(c)(1)–2.

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

Example. (i) X and Y Corporations are organized on January 1, 1954, and make their returns on the basis of the calendar year. On July 4, 1957, X Corporation transfers all its assets to Y Corporation in a statutory merger to which section 361 applies. The net capital losses and the net capital gains (capital gain net income for taxable years beginning after Dec. 31, 1976), (computed without regard to any capital loss carryovers) of the two corporations are as follows:

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1954	($5,000)	0
1955	(10,000)	$5,000
1956	(25,000)	(7,000)
Ending 7–4–57	(8,000)	
1957		36,500

(ii) The capital loss carryovers of X Corporation which are available to Y Corporation as of the close of July 4, 1957, amount to $48,000 in the aggregate; but only $18,000 ($36,500 × 180/365) of such amount may be treated as short-term capital losses of Y Corporation for 1957.

(d) *Computation of carryovers; general rule*—(1) *Sequence for applying losses and determination of capital gain net income.*

Section 1212 provides that a net capital loss sustained in any taxable year (hereinafter referred to as the ''loss year'') shall be carried over to each of the five succeeding taxable years and treated in each of such succeeding years as a short-term capital loss to the extent not allowed as a deduction against any capital gain net income (net capital gain for taxable years beginning before January 1, 1977) of any taxable years intervening between the loss year and the taxable year to which such loss is carried. For this purpose, the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) of any intervening taxable year is determined without regard to the net capital loss for the loss year or for any taxable year thereafter, and the various capital loss carryovers from taxable years preceding the loss year to any such intervening taxable year are considered to be applied in reduction of the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) for such year in the order of the taxable years in which the losses were sustained, beginning with the loss for the earliest preceding taxable year. The application of these rules to the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) of the acquiring corporation for any taxable year ending after the date of distribution or transfer involves the use of carryovers of the distributor or transferor corporation and of the acquiring corporation. In determining the order in which the capital loss carryovers of the distributor or transferor and acquiring corporations from taxable years ending on or before the date of distribution or transfer are considered to be applied in reduction of the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) of the acquiring corporation for any intervening taxable year ending after such date, the following rules shall apply:

(i) Each taxable year of the distributor or transferor and acquiring corporations which, with respect to the first taxable year of the acquiring corporation ending after the date of distribution or transfer, constitutes a first preceding taxable year, shall be treated as if each such year ended on the same day, whether or not such taxable years actually end on the same day. In like manner, each taxable year of the distributor or transferor and acquiring corporations which, with respect to such first taxable year of the acquiring corporation ending after the date of distribution or transfer, constitutes a second preceding taxable year, shall be treated as if each such year ended on the same day (whether or not such taxable years actually end on the same day), and a similar rule shall be applied with respect to those taxable years of the distributor or transferor and acquiring corporations which constitute third, fourth, and fifth preceding taxable years;

(ii) If in the same preceding taxable year both the distributor or transferor and acquiring corporations incurred a net capital loss which is a carryover to an intervening taxable year of the acquiring corporation ending after the date of distribution or transfer, then in applying such losses in reduction of the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) for such an intervening year, either such loss may be taken into account before the other; and

(iii) The rules of subdivisions (i) and (ii) of this subparagraph shall apply regardless of the number of distributor or transferor corporations the assets of which are acquired by the acquiring corporation on the same date of distribution or transfer.

(2) *Cross reference*. If the date of distribution or transfer is a day other than the last day of a taxable year of the acquiring corporation, then in determining the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) of the acquiring corporation for its first taxable year ending after the date of distribution or transfer, section 1212 and this paragraph shall be applied in the special manner set forth in paragraph (e) of this section.

(3) *Years to which losses may be carried*. The taxable years to which a net capital loss shall be carried are prescribed by section 1212. Since the taxable year of a distributor or transferor corporation ends with the close of the date of distribution or transfer, such

taxable year and the first taxable year of the acquiring corporation which ends after that date are considered two separate taxable years to which a net capital loss of the distributor or transferor corporation for any taxable year ending before that date shall be carried. This rule applies even though the taxable year of the distributor or transferor corporation which ends on the date of distribution or transfer is a period of less than twelve months. However, the distribution or transfer has no effect in determining under section 1212 the taxable years to which a net capital loss of the acquiring corporation is carried. For this purpose, the first taxable year of the acquiring corporation which ends after the date of distribution or transfer constitutes only one taxable year even though such taxable year is considered under paragraph (e) of this section as two taxable years for certain purposes. The application of this subparagraph may be illustrated by the following example:

Example. R and S Corporations are organized on January 1, 1954, and both corporations make their returns on the basis of the calendar year. R Corporation has net capital losses for its years 1954, 1955, and 1957, and S Corporation has net capital losses for its years 1954 and 1956. On June 30, 1958, R Corporation transfers all its assets to S Corporation in a statutory merger to which section 361 applies. The taxable years to which these losses of R and S Corporations may be carried are as follows:

Loss year	Carried to
R1954	R1955, R1956, R1957, R6/30/58, S1958.
S1954	S1955, S1956, S1957, S1958, S1959.
R1955	R1956, R1957, R6/30/58, S1958, S1959.
S1956	S1957, S1958, S1959, S1960, S1961.
R1957	R6/30/58, S1958, S1959, S1960, S1961.

(4) *Computation of carryovers in case where date of distribution or transfer occurs on last day of acquiring corporation's taxable year.* The computation of the capital loss carryovers from the distributor or transferor corporation and from the acquiring corporation in a case where the date of distribution or transfer occurs on the last day of a taxable year of the acquiring corporation may be illustrated by the following example:

Example. X and Y Corporations are organized on January 1, 1955, and make their returns on the basis of the calendar year. On December 31, 1956, X Corporation transfers all its assets to Y Corporation in a statutory merger to which section 361 applies. The net capital losses and the net capital gains (capital gain net income for taxable years beginning after December 31, 1976), (computed without regard to any capital loss carryovers) of the two corporations are as follows:

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1955	($20,000)	($2,000)
1956	(10,000)	(8,000)
1957	....	25,000
1958	....	10,000

The sequence in which the net capital losses of X and Y Corporations are applied, and the computation of the capital loss carryovers to Y Corporation's taxable year 1959, may be illustrated as follows. (For purposes of this example, the carryover from a preceding taxable year of the transferor corporation will be applied before the carryover from the same preceding taxable year of the acquiring corporation):

(i) *X Corporation's 1955 loss.* The carryover to 1959 is $0, computed as follows:

Net capital loss	$20,000
Less: Y's 1957 net capital gain (computed without regard to any capital loss carryovers)	25,000
Carryover to Y 1958 and Y 1959	0

(ii) *Y Corporation's 1955 loss.* The carryover to 1959 is $0, computed as follows:

Net capital loss		$2,000
Less:		
Y's 1957 net capital gain (computed without regard to any capital loss carryovers)	$25,000	
Minus capital loss carryovers to Y 1957 (i.e., carryover of $20,000 from X 1955)	20,000	
		5,000
Carryover to Y 1958 and Y 1959		0

(iii) *X Corporation's 1956 loss.* The carryover to 1959 is $0, computed as follows:

Net capital loss		$10,000
Less:		
Y's 1957 net capital gain (computed without regard to any capital loss carryovers)	$25,000	
Minus capital loss carryovers to Y 1957 (i.e., carryovers of $20,000 from X 1955 and $2,000 from Y 1955)	22,000	
		3,000
Carryover to Y 1958		7,000
Less:		
Y's 1958 net capital gain (computed without regard to any capital loss carryovers)	$10,000	

Minus capital loss carryovers to Y 1958	0	
		10,000
Carryover to Y 1959		0

(iv) *Y Corporation's 1956 loss.* The carryover to 1959 is $5,000, computed as follows:

Net capital loss		$8,000
Less:		
Y's 1957 net capital gain (computed without regard to any capital loss carryovers)	$25,000	
Minus capital loss carryovers to Y 1957 (i.e., carryovers of $20,000 from X 1955, $2,000 from Y 1955, and $10,000 from X 1956)	32,000	
		0
Carryover to Y 1958		8,000
Less:		
Y's 1958 net capital gain (computed without regard to any capital loss carryovers)	$10,000	
Minus capital loss carryovers to Y 1958 (i.e., carryover of $7,000 from X 1956)	7,000	
		3,000
Carryover to Y 1959		5,000

(e) *Computation of carryovers when date of distribution or transfer is not on last day of acquiring corporation's taxable year*—(1) *General rule.* If, in determining under paragraph (d) of this section the portion of a net capital loss for any taxable year which is carried over to a succeeding taxable year, an intervening taxable year is a taxable year of the acquiring corporation which includes, but does not end on, the date of distribution or transfer, the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) of such intervening year shall be determined by applying section 1212 in the special manner provided by this paragraph.

(2) *Taxable year considered as two taxable years.* Such intervening taxable year of the acquiring corporation shall be considered as though it were two taxable years, but only for the limited purpose of computing capital loss carryovers to subsequent taxable years. The first of such two taxable years shall be referred to in this paragraph as the preacquisition part year; the second, as the postacquisition part year. Though considered as two separate taxable years for purposes of this paragraph, the preacquisition part year and the postacquisition part year are treated as one taxable year in determining the years to which a net capital loss is carried under section 1212. See paragraph (d)(3) of this section.

(3) *Preacquisition part year.* The preacquisition part year shall begin with the beginning of such taxable year of the acquiring corporation and shall end with the close of the date of distribution or transfer.

(4) *Postacquisition part year.* The postacquisition part year shall begin with the day following the date of distribution or transfer and shall end with the close of such taxable year of the acquiring corporation.

(5) *Division of capital gain net income.* The capital gain net income (net capital gain for taxable years beginning before January 1, 1977) for such intervening taxable year (computed without regard to any capital loss carryovers) of the acquiring corporation shall be divided between the preacquisition part year and the postacquisition part year in proportion to the number of days in each. Thus, if in a statutory merger to which section 361 applies Y Corporation acquires the assets of X Corporation on June 30, 1956, and Y Corporation has net capital gain (computed in the manner so prescribed) of $36,600 for its calendar year 1956, then the preacquisition part year capital gain net income (net capital gain for taxable years beginning before January 1, 1977) would be $18,200 ($36,600×182/366) and the postacquisition part year capital gain net income (net capital gain for taxable years beginning before January 1, 1977) would be $18,400 ($36,600×184/366).

(6) *Application of capital loss carryovers.* After obtaining the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) of the preacquisition part year and postacquisition part year in the manner described in subparagraph (5) of this paragraph, it is necessary to determine the capital loss carryovers which are taken into account with respect to each such part year. The carryovers to be taken into account and the sequence in which such carryovers are applied, shall be determined in accordance with paragraph (d)(1) of this section but subject to the

provisions of this subparagraph. With respect to the preacquisition part year, no capital loss carryovers of the distributor or transferor corporation shall be taken into account; that is, only capital loss carryovers of the acquiring corporation shall be taken into account. With respect to the postacquisition part year, capital loss carryovers of both the distributor or transferor corporation and the acquiring corporation shall be taken into account.

(7) *Cross reference.* If an intervening taxable year is a taxable year of the acquiring corporation during which the acquiring corporation succeeds to the capital loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer, the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) of the acquiring corporation for such intervening taxable year shall be determined consistently with the rules prescribed in paragraph (c) of §1.381(c)(1)–2, except that the sequence in which the capital loss carryovers of the distributor or transferor and acquiring corporations shall be applied shall be determined under paragraph (d)(1) of this section.

(8) *Illustration.* The application of this paragraph may be illustrated as follows:

Example. X Corporation is organized on April 1, 1959, and makes its return on the basis of the fiscal year ending March 31. Y Corporation is organized on January 1, 1959, and makes its return on the basis of the calendar year. On June 30, 1961, X Corporation transfers all its assets to Y Corporation in a statutory merger to which section 361 applies. The net capital losses and the net capital gains (capital gain net income for taxable years beginning after December 31, 1976) (computed without regard to any capital loss carryovers) of the two corporations are as follows:

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1959	....	($24,000)
Ending 3–31–60	($19,000)	
1960	....	(6,000)
Ending 3–31–61	(5,000)	
Ending 6–30–61	0	
1961	....	36,500
1962	....	12,000

The following table shows those taxable years of the transferor and acquiring corporations which, with respect to Y Corporation's calendar year 1961, are first, second, and third preceding taxable years:

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
First preceding year	Ending June 30, 1961	1960
Second preceding year	Ending March 31, 1961	1959
Third preceding year	Ending March 31, 1960.	

The sequence in which the net capital losses of X and Y Corporations are applied, and the computation of the capital loss carryovers to Y Corporation's calendar year 1963, may be illustrated as follows. (For purposes of this example, the carryover from a preceding taxable year of the acquiring corporation will be applied before the carryover from the same preceding taxable year of the transferor corporation):

(i) *X Corporation's 3/31/60 loss.* The carryover to 1963 is $0, computed as follows:

Net capital loss	$19,000
Less: Y's postacquisition part year net capital gain computed under subparagraph (5) of this paragraph ($36,500× 184/365)	18,400
Carryover to Y 1962	600
Less: Y's 1962 net capital gain (computed without regard to any capital loss carryovers)	12,000
Carryover to Y 1963	0

(ii) *Y Corporation's 1959 loss.* The carryover to 1963 is $0, computed as follows:

Net capital loss		$24,000
Less: Y's preacquisition part year net capital gain computed under subparagraph (5) of this paragraph ($36,500× 181/365)		18,100
Carryover to Y's postacquisition part year		5,900
Less:		
Y's postacquisition part year net capital gain computed under subparagraph (5) of this paragraph	$18,400	
Minus capital loss carryovers to postacquisition part year (i.e., carryover of $19,000 from X 3/31/60)	19,000	0
Carryover to Y 1962		5,900
Less:		
Y's 1962 net capital gain (computed without regard to any capital loss carryovers)	$12,000	
Minus capital loss carryovers to Y 1962 (i.e., carryover of $600 from X 3/31/60)	600	11,400
Carryover to Y 1963		0

(iii) *X Corporation's 3/31/61 loss.* The carryover to 1963 is $0, computed as follows:

Net capital loss		$5,000
Less:		
Y's postacquisition part year net capital gain computed under subparagraph (5) of this paragraph	$18,400	

Minus capital loss carryovers to postacquisition part year (i.e., carryovers of $19,000 from X 3/31/60 and $5,900 from Y 1959)	24,900	
		0
Carryover to Y 1962		5,000
Less:		
Y's 1962 net capital gain (computed without regard to any capital loss carryovers)	$12,000	
Minus capital loss carryovers to Y 1962 (i.e., carryovers of $600 from X 3/31/60 and $5,900 from Y 1959)	6,500	
		5,500
Carryover to Y 1963		0

(iv) *Y Corporation's 1960 loss.* The carryover to 1963 is $5,500, computed as follows:

Net capital loss		$6,000
Less:		
Y's preacquisition part year net capital gain computed under subparagraph (5) of this paragraph	$18,100	
Minus capital loss carryovers to preacquisition part year (i.e., carryover of $24,000 from Y 1959)	24,000	
		0
Carryover to Y's postacquisition part year		6,000
Less:		
Y's postacquisition part year net capital gain computed under subparagraph (5) of this paragraph	$18,400	
Minus capital loss carryovers to postacquisition part year (i.e., carryovers of $19,000 from X 3/31/60, $5,900 from Y 1959, and $5,000 from X 3/31/61)	29,900	0
		0
Carryover to Y 1962		6,000
Less:		
Y's 1962 net capital gain (computed without regard to any capital loss carryovers)	$12,000	
Minus capital loss carryovers to Y 1962 (i.e., carryovers of $600 from X 3/31/60, $5,900 from Y 1959, and $5,000 from X 3/31/61)	11,5000	
		$500
Carryover to Y 1963		5,500

(f) *Successive acquiring corporations.* An acquiring corporation which, in a transaction to which section 381(a) applies, acquires the assets of a distributor or transferor corporation which previously acquired the assets of another corporation in a transaction to which section 381(a) applies, shall succeed to and take into account, subject to the conditions and limitations of sections 1212 and 381, the capital loss carryovers available to the first acquiring corporation under sections 1212 and 381.

[T.D. 6552, 26 FR 1985, Mar. 8, 1961, as amended by T.D. 6867, 30 FR 15094, Dec. 12, 1965; T.D. 7728, 45 FR 72650, Nov. 3, 1980]

§ 1.381(c)(4)–1 Method of accounting.

(a) *Carryover requirement*—(1) *General rule.* (i) Section 381(c)(4) provides that, in a transaction to which section 381(a) applies, an acquiring corporation shall use the same method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods of accounting were used on that date by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods of accounting were used, the acquiring corporation shall use the method or combination of methods of accounting adopted pursuant to this section.

(ii) The acquiring corporation shall take into its accounts the dollar balances of those accounts of the distributor or transferor corporation representing items of income or deduction which, because of its method of accounting, were not required or permitted to be included or deducted by the distributor or transferor corporation in computing taxable income for taxable years ending on or before the date of distribution or transfer. The acquiring corporation shall similarly take into its accounts the dollar balances of those accounts of the distributor or transferor corporation which represents reserves in respect of which the distributor or transferor corporation has taken a deduction for taxable years ending on or before the date of distribution or transfer. The acquiring corporation shall also take into its accounts the dollar balance of that account of the distributor or transferor corporation which represents a suspense account established by the distributor or transferor corporation under section 166(f)(4) in taxable years ending on or before the date of distribution or transfer. Items of income and deduction shall have the same