undergo a reorganization under 368(a)(1)(F), S1 and LLC2 undergo the following two state law conversions. First, under state law LLC2 converts into S2, a corporation. Second, under state law S1 converts into LLC1, a domestic limited liability company. Under §301.7701–3 of this chapter, LLC1 is disregarded as an entity separate from its owner, P. As a result of the two conversions, S1 is deemed to transfer its assets to S2 in exchange for all of the stock in S2 and then distribute the S2 stock to P in complete liquidation of S1. The two conversions, viewed as a potential F reorganization, constitute a mere change of S1, and that potential F reorganization qualifies as a reorganization under section 368(a)(1)(F). The result would be the same if, instead of converting into S2 pursuant to state law, LLC2 elected under §301.7701–3(c) to change its classification for federal tax purposes and be treated as an association taxable as a corporation, provided the effective date of the election (and its resulting deemed transactions) occurs before the conversion of S1.

Example 12. Other acquiring corporation—no mere change. The facts are the same facts as in *Example 11*, except that S1 converts into LLC1 prior to the conversion of LLC2 into S2. As a result of these conversions, S1 is deemed to distribute all of its assets to P in exchange for all of P's S1 stock, and P is deemed to transfer all of those assets to S2 in exchange for all of the stock in S2. The transaction does not qualify as a complete liquidation of S1 under section 332 (because of the reincorporation of S1's assets), but does qualify as a reorganization under section 368(a)(1)(C) by reason of section 368(a)(2)(C) and paragraph (k) of this section. Under paragraph (m)(1)(v) of this section, the potential F reorganization in which the former assets of S1 are deemed transferred, first by S1 to P, and then by P to S2, is not a mere change of S1 because section 381(a) applies to P's acquisition of property held by S1 immediately before the potential F reorganization. Furthermore, the corporation in control of S2, within the meaning of section 368(c), is a party to the reorganization within the meaning of section 368(b). Thus, the indirect transfer of property from S1 to S2 does not qualify under section 368(a)(1)(F).

Example 13. Series of related transactions—no mere change. X owns all of the stock of T. P acquires all of the stock of T in exchange for consideration consisting of $50 cash and P voting stock with $50 value. No election is made under section 338. Immediately thereafter and as part of the same plan, P forms S as a wholly-owned subsidiary, and T is merged into S. Viewed in isolation as a potential F reorganization, the merger of T into S appears to constitute a mere change of T. However, the acquisition of the T stock by P and the merger of T into S, viewed together, qualify as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D). The step transaction doctrine is applied treat the transaction as a statutory merger of T into S in exchange for $50 cash and $50 of P's voting stock (and S's assumption of T's liabilities), P's momentary ownership of T stock is disregarded. Under paragraph (m)(3)(iv)(A) of this section, P, the corporation in control of S, is a party to the reorganization within the meaning of section 368(b). Thus, the transfer of property from T to S does not qualify under section 368(a)(1)(F).

Example 14. Multiple transferor corporations—no mere change. P owns all the stock of S1 and S2. The management of P determines it would be in the best interest of S1 and S2 to operate as a single corporation. P forms S3 and, under applicable corporate law, S1 and S2 simultaneously merge into S3. Immediately after the merger, P owns all the stock of S3. Each of the mergers can be tested as a potential F reorganization. However, immediately after the simultaneous mergers, the resulting corporation, S3, holds property acquired from a corporation other than the transferor corporation, and section 381(a) would apply to the acquisition of such property. Therefore, under paragraph (m)(1)(vi) of this section, neither potential F reorganization is a mere change, and neither merger into S3 qualifies as a reorganization under section 386(a)(1)(F). The result would be different if the mergers were not simultaneous. If S1 completed its merger into S3 before S2 began its merger into S3, the merger of S1 into S3 would qualify as a reorganization under section 368(a)(1)(F), but the merger of S2 into S3 would not so qualify (although it would qualify as a reorganization under sections 368(a)(1)(A) and 368(a)(1)(D)).

(5) *Effective/Applicability Date.* This paragraph (m) applies to transactions occurring on or after September 21, 2015.

[T.D. 6500, 25 FR 11607, Nov. 26, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.368–2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§1.368–3 Records to be kept and information to be filed with returns.

(a) *Parties to the reorganization.* The plan of reorganization must be adopted by each of the corporations that are parties thereto. Each such corporation must include a statement entitled, ''STATEMENT PURSUANT TO §1.368–3(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER

(IF ANY) OF TAXPAYER], A CORPORATION A PARTY TO A REORGANIZATION,'' on or with its return for the taxable year of the exchange. If any such corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. However, it is not necessary for any taxpayer to include more than one such statement on or with the same return for the same reorganization. The statement must include—

(1) The names and employer identification numbers (if any) of all such parties;

(2) The date of the reorganization;

(3) The value and basis of the assets, stock or securities of the target corporation transferred in the transaction, determined immediately before the transfer and aggregated as follows—

(i) Importation property transferred in a loss importation transaction, as defined in §1.362–3(c)(2) and (3), respectively;

(ii) Loss duplication property as defined in §1.362–4(g)(1);

(iii) Property with respect to which any gain or loss was recognized on the transfer (without regard to whether such property is also identified in paragraph (a)(3)(i) or (ii) of this section);

(iv) Property not described in paragraph (a)(3)(i), (ii), or (iii) of this section; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with this reorganization.

(b) *Significant holders.* Every significant holder, other than a corporation a party to the reorganization, must include a statement entitled, ''STATEMENT PURSUANT TO §1.368–3(b) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER,'' on or with such holder's return for the taxable year of the exchange. If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The names and employer identification numbers (if any) of all of the parties to the reorganization;

(2) The date of the reorganization; and

(3) The value and basis of all the stock or securities of the target corporation held by the significant holder that is transferred in the transaction and such holder's basis in that stock or securities, determined immediately before the transfer and aggregated as follows—

(i) Stock and securities with respect to which an election is made under section 362(e)(2)(C); and

(ii) Stock and securities not described in paragraph (b)(3)(i) of this section.

(c) *Definitions.* For purposes of this section:

(1) *Significant holder* means—

(i) A holder of stock of the target corporation that receives stock or securities in an exchange described in section 354 (or so much of section 356 as relates to section 354) if, immediately before the exchange, such holder—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the target corporation if the stock owned by such holder is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the target corporation if the stock owned by such holder is not publicly traded; or

(ii) A holder of securities of the target corporation that receives stock or securities in an exchange described in section 354 (or so much of section 356 as relates to section 354) if, immediately before the exchange, such holder owned securities in such target corporation with a basis of $1,000,000 or more.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(d) *Substantiation information.* Under §1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the reorganization described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all transferred property, and relevant facts regarding any liabilities assumed or extinguished as part of such reorganization.

(e) *Effective/applicability date.* This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.368–3 as contained in 26 CFR part 1 in effect on April 1, 2006. Paragraphs (a)(3) and (b)(3) of this section apply with respect to reorganizations occurring on or after March 28, 2016, and also with respect to reorganizations occurring before such date as a result of an entity classification election under §301.7701–3 of this chapter filed on or after March 28, 2016, unless such reorganization is pursuant to a binding agreement that was in effect prior to March 28, 2016 and at all times thereafter.

[T.D. 9329, 72 FR 32800, June 14, 2007, as amended by T.D. 9759, 81 FR 17083, Mar. 28, 2016]

INSOLVENCY REORGANIZATIONS

CARRYOVERS

§1.381(a)–1 General rule relating to carryovers in certain corporate acquisitions.

(a) *Allowance of carryovers.* Section 381 provides that a corporation which acquires the assets of another corporation in certain liquidations and reorganizations shall succeed to, and take into account, as of the close of the date of distribution or transfer, the items described in section 381(c) of the distributor or transferor corporation. These items shall be taken into account by the acquiring corporation subject to the conditions and limitations specified in sections 381, 382(b), and 383 and the regulations thereunder.

(b) *Determination of transactions and items to which section 381 applies*—(1) *Qualified transactions.* Except to the extent provided in section 381(c)(20), relating to the carryover of unused pension trust deductions in certain liquidations, the items described in section 381(c) are required by section 381 to be carried over to the acquiring corporation (as defined in subparagraph (2) of this paragraph) only in the following liquidations and reorganizations:

(i) The complete liquidation of a subsidiary corporation upon which no gain or loss is recognized in accordance with the provisions of section 332;

(ii) A statutory merger or consolidation qualifying under section 368(a)(1)(A) to which section 361 applies;

(iii) A reorganization qualifying under section 368(a)(1)(C);

(iv) A reorganization qualifying under section 368(a)(1)(D) if the requirements of section 354(b)(1)(A) and (B) are satisfied; and

(v) A mere change in identity, form, or place of organization qualifying under section 368(a)(1)(F).

(2) *Acquiring corporation defined.* (i) Only a single corporation may be an acquiring corporation for purposes of section 381 and the regulations thereunder. The corporation which acquires the assets of its subsidiary corporation in a complete liquidation to which section 381(a)(1) applies is the acquiring corporation for purposes of section 381. In a transaction to which section 381(a)(2) applies, the acquiring corporation is the corporation that, pursuant to the plan of reorganization, directly acquires the assets transferred by the transferor corporation, even if that corporation ultimately retains none of the assets so transferred.

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

Example 1. Y Corporation, a wholly-owned subsidiary of X Corporation, directly acquired all the assets of Z Corporation solely in exchange for voting stock of X Corporation in a transaction qualifying under section 368(a)(1)(C). Y Corporation is the acquiring corporation for purposes of section 381.