

§ 1.547-1

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Amount paid in 1966 to retire qualified indebtedness				\$300,000
Less the sum of:				
(a) Depreciation deductions allowed for 1964 through 1966 (3×\$50,000)	\$150,000			
Reduction of deductions in preceding taxable years (1964)	25,000	\$125,000		
(b) Deduction allowed under section 545(b)(5) (relating to long-term capital gains) for 1964 through 1966	100,000			
Reduction of deductions in preceding taxable years (1964)	25,000	75,000	200,000	
Deduction after reduction			100,000	
(iv) If, in the year 1966, Q Corporation's depreciation deduction had been limited for purposes of computing undistributed personal holding company income to \$25,000 by reason of section 545(b)(8), then Q Corporation's deduction for payment of qualified indebtedness would be \$125,000, computed as follows:				
Amounts paid in 1966 to retire qualified indebtedness				\$300,000
Less the sum of:				
(a) Depreciation deductions allowed for 1964 through 1966	\$125,000			
Reduction of deductions in preceding taxable year (1964)	25,000			
(b) Deduction allowed under section 545(b)(5) (relating to long-term capital gains) for 1964 through 1966	100,000			
Reduction of deductions in preceding taxable years (1964)	25,000	75,000	175,000	
Deduction after reduction			125,000	

(g) *Burden of proof.* The burden of proof rests upon the taxpayer to sustain the deduction claimed under this section. In addition to any information required by this section, the taxpayer must furnish the information required by the return, and such other information as the district director may require in substantiation of the deduction claimed.

(h) *Application of section 381(c)(15).* Under section 381(c)(15), if an acquiring corporation assumes liability for qualified indebtedness in a transaction to which section 381(a) applies, then the acquiring corporation is considered to be the distributor or transferor corporation for purposes of section 545(c). Paragraph (c)(2) of this section reflects the application of section 381(c)(15) by including an acquiring corporation within the definition of corporation to which this section applies. Thus, the acquiring corporation is not required to meet the requirements of paragraph (c)(1) or paragraph (d)(1) of this section with respect to such acquired qualified indebtedness to which section 381(c)(15) is applicable. All the other provisions of this section apply in full to the acquiring corporation with respect to such acquired indebtedness.

[T.D. 6949, 33 FR 5526, Apr. 9, 1968; 33 FR 6091, Apr. 20, 1968]

§ 1.547-1 General rule.

Section 547 provides a method under which, by virtue of dividend distribu-

tions, a corporation may be relieved from the payment of a deficiency in the personal holding company tax imposed by section 541 (or by a corresponding provision of a prior income tax law), or may be entitled to a credit or refund of a part or all of any such deficiency which has been paid. The method provided by section 547 is to allow an additional deduction for a dividend distribution (which meets the requirements of this section) in computing undistributed personal holding company income for the taxable year for which a deficiency in personal holding company tax is determined. The additional deduction for deficiency dividends will not, however, be allowed for the purpose of determining interest, additional amounts, or assessable penalties, computed with respect to the personal holding company tax prior to the allowance of the additional deduction for deficiency dividends. Such amounts remain payable as if section 547 had not been enacted.

§ 1.547-2 Requirements for deficiency dividends.

(a) *In general.* There are certain requirements which must be fulfilled before a deduction is allowed for a deficiency dividend under section 547 and this section. These are:

(1) The taxpayer's liability for personal holding company tax shall be determined only in the manner provided

in section 547(c) and paragraph (b)(1) of this section.

(2) The deficiency dividend shall be paid by the corporation on, or within 90 days after, the date of such determination and prior to the filing of a claim under section 547(e) and paragraph (b)(2) of this section for deduction for deficiency dividends. This claim must be filed within 120 days after such determination.

(3) The deficiency dividend must be of such a nature as would have permitted its inclusion in the computation of a deduction for dividends paid under section 561 for the taxable year with respect to which the liability for personal holding company tax exists, if it had been distributed during such year. See section 562 and §§ 1.562-1 through 1.562-3. In this connection, it should be noted that under section 316(b)(2), the term *dividend* means (in addition to the usual meaning under section 316(a)) any distribution of property (whether or not a dividend as defined in section 316(a)) made by a corporation to its shareholders, to the extent of its undistributed personal holding company income (determined under section 545 and §§ 1.545-1 and 1.545-2 without regard to section 316(b)(2)) for the taxable year in respect of which the distribution is made.

(b) *Special rules*—(1) *Nature and details of determination.* (i) A determination of a taxpayer's liability for personal holding company tax shall, for the purposes of section 547, be established in the manner specified in section 547(c) and this subparagraph.

(ii) The date of determination by a decision of the Tax Court of the United States is the date upon which such decision becomes final, as prescribed in section 7481.

(iii) The date upon which a judgment of a court becomes final, which is the date of the determination in such cases, must be determined upon the basis of the facts in the particular case. Ordinarily, a judgment of a United States district court becomes final upon the expiration of the time allowed for taking an appeal, if no such appeal is duly taken within such time; and a judgment of the United States Court of Claims becomes final upon the expiration of the time allowed for filing a pe-

tion for certiorari if no such petition is duly filed within such time.

(iv) The date of determination by a closing agreement, made under section 7121, is the date such agreement is approved by the Commissioner.

(v) A determination under section 547(c)(3) may be made by an agreement signed by the district director or such other official to whom authority to sign the agreement is delegated, and by or on behalf of the taxpayer. The agreement shall set forth the total amount of the liability for personal holding company tax for the taxable year or years. An agreement under this subdivision which is signed by the district director (or such other official to whom authority to sign the agreement is delegated) on or after July 15, 1963, shall be sent to the taxpayer at his last known address by either registered or certified mail. For further guidance regarding the definition of last known address, see § 301.6212-2 of this chapter. If registered mail is used for such purpose, the date of registration shall be treated as the date of determination; if certified mail is used for such purpose, the date of the postmark on the sender's receipt for such mail shall be treated as the date of determination. However, if a dividend is paid by the corporation before such registration or postmark date but on or after the date such agreement is signed by the district director or such other official to whom authority to sign the agreement is delegated, the date of determination shall be such date of signing. The date of determination with respect to an agreement which is signed by the district director (or such other official to whom authority to sign the agreement is delegated) before July 15, 1963, shall be the date of the postmark on the cover envelope in which such agreement is sent by ordinary mail, except that if a dividend is paid by the corporation before such postmark date but on or after the date such agreement is signed by the district director or such other official to whom authority to sign the agreement is delegated, the date of determination shall be such date of signing.

(2) *Claim for deduction*—(i) *Contents of claim.* A claim for deduction for a deficiency dividend shall be made with the

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requisite declaration, on Form 976 and shall contain the following information:

(a) The name and address of the corporation;

(b) The place and date of incorporation;

(c) The amount of the deficiency determined with respect to the tax imposed by section 541 (or a corresponding provision of a prior income tax law) and the taxable year or years involved; the amount of the unpaid deficiency or, if the deficiency has been paid in whole or in part, the date of payment and the amount thereof; a statement as to how the deficiency was established, if unpaid; or if paid in whole or in part, how it was established that any portion of the amount paid was a deficiency at the time when paid and, in either case whether it was by an agreement under section 547(c)(3), by a closing agreement under section 7121, or by a decision of the Tax Court or court judgment and the date thereof; if established by a final judgment in a suit against the United States for refund, the date of payment of the deficiency, the date the claim for refund was filed, and the date the suit was brought; if established by a Tax Court decision or court judgment, a copy thereof shall be attached, together with an explanation of how the decision became final; if established by an agreement under section 547(c)(3), a copy of such agreement shall be attached;

(d) The amount and date of payment of the dividend with respect to which the claim for the deduction for deficiency dividends is filed;

(e) A statement setting forth the various classes of stock outstanding, the name and address of each shareholder, the class and number of shares held by each on the date of payment of the dividend with respect to which the claim is filed, and the amount of such dividend paid to each shareholder;

(f) The amount claimed as a deduction for deficiency dividends; and

(g) Such other information as may be required by the claim form.

(ii) *Filing of claim and corporate resolution.* The claim together with a certified copy of the resolution of the board of directors or other authority,

authorizing the payment of the dividend with respect to which the claim is filed, shall be filed with the district director for the internal revenue district in which the return is filed.

(iii) *Carryover of deficiency dividends paid by acquiring corporation.* In the case of the acquisition of assets of a corporation by another corporation in a distribution or transfer described in section 381(a), the distributor or transferor corporation shall be entitled to a deduction for any deficiency dividends (as defined in section 547(d)) paid by the acquiring corporation with respect to such distributor or transferor corporation. See section 381(c)(17).

(68A Stat. 192, 917; 26 U.S.C. 547(c), 7805)

[T.D. 6500, 25 FR 11737, Nov. 26, 1960, as amended by T.D. 6657, 28 FR 5720, June 12, 1963; T.D. 7604, 44 FR 18661, Mar. 29, 1979; T.D. 8939, 66 FR 2819, Jan. 12, 2001]

§ 1.547-3 Claim for credit or refund.

(a) If a deficiency in personal holding company tax is asserted for any taxable year, and the corporation has paid any portion of such asserted deficiency, it is entitled to a credit or refund of such payment to the extent that such payment constitutes an overpayment as the result of a deduction for a deficiency dividend as provided in section 547 and §§ 1.547-1 through 1.547-7. It should be noted that a *determination* under section 547(c) and paragraph (b)(1) of § 1.547-2, of taxpayer's liability for personal holding company tax may take place subsequent to the time the deficiency was paid. To secure credit or refund of such overpayment, the taxpayer must file a claim on Form 843 in addition to the claim for the deduction for deficiency dividends required under section 547(e) and paragraph (b)(2) of § 1.547-2.

(b) No interest shall be allowed on such credit or refund.

(c) Such credit or refund will be allowed as if, on the date of the determination under section 547(c) and paragraph (b)(1) of § 1.547-2, two years remained before the expiration of the period of limitation on the filing of claim for refund for the taxable year to which the overpayment relates.