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must the change in ownership be?[50] Does the *Libson Shops* rule apply to carrybacks?[51] Will the *Libson Shops* rule apply to unincorporated businesses and sole proprietorships?

IV

CARRYING LOSSES TO A DIFFERENT TAXPAYER

B. J. Adelson

The provisions of section 172 governing the nature of a net operating loss and the detailed rules in that section concerning the carryback and carryover of net operating losses are covered in sections I and II of this symposium. The utilization of these net operating loss carryovers in the same corporate entity is discussed in section III. With this background, the availability of a net operating loss carryover to a different corporate entity shall now be considered.

TRANSACTIONS COVERED BY SECTION 381

All discussions in the corporate area must start with section 381. This section was enacted in 1954 in an attempt to provide definitive rules concerning when a net operating loss carryover or carryback would be available where two or more corporations are amalgamated into a single entity.

Although the Senate Committee Report indicates that the section is not intended to affect a net operating loss carryover in corporate transactions not described in the section,[1] the Tax Court has recently concluded that the section is exclusive and a net operating loss carryover will not be available in transactions not covered by section 381.[2] The conclusion of the Tax Court will cast considerable doubt upon the wisdom

which the change represented a shift in stock ownership among members of a family with the same individual continuing as majority shareholder. However, in Northway Securities Co., 23 B.T.A. 532 (1931), *acq. withdrawn, nonacq. substituted,* 1960-2 CUM. BULL. 8, in which the Commissioner issued his non-acquiescence after the Supreme Court cited it in its *Libson Shops* decision, there was a change in business but *no* change in stock ownership.

50. See, in this respect, the requirement of at least a fifty percentage point change in stock ownership under § 382(a), *supra,* at 254-55.

51. While a business is not normally acquired with the expectation that it will operate at a loss which can be carried back and offset against earlier profits of the acquiring corporation, so that the opportunities for tax avoidance are substantially less in the case of the carryback, nonetheless the rationale of the *Libson Shops* case would appear to be equally applicable in the case of carrybacks. See F. C. Donovan, Inc. v. United States, 261 F.2d 470 (1st Cir. 1958).

of planning a reorganization involving a corporation with a net operating loss carryover unless such reorganization qualifies under section 381.[3]

Liquidation of Subsidiary into Parent

Carryover of Parent's Loss

The first type of transaction covered by section 381 is the liquidation of a subsidiary into its parent.[4] When a subsidiary is liquidated into a parent, the parent's corporate entity continues unchanged, and, naturally, if the parent had a net operating loss carryover, it will continue to have a net operating loss carryover. The practical application of this rule is that a corporation with a net operating loss carryover and a profitable subsidiary should consider liquidating the subsidiary into the parent so that if the operations formerly conducted by the subsidiary continue to be profitable in the future, the net operating loss carryover of the parent may be used to offset the future combined net income of the subsidiary and parent.

Net Operating Loss of Subsidiary Carried to Parent

The effect upon the subsidiary's net operating loss carryover shall now be considered. Section 381(a)(1) provides that if a parent acquires the assets of one of its subsidiaries in a distribution to which section 332 applies, then the parent is entitled to use the net operating loss carryover of the subsidiary. Section 332 governs the tax-free liquidation of a subsidiary and applies when the parent owns at least eighty per cent of the stock of the subsidiary.[5] Thus, a profitable corporation with an eighty per cent owned subsidiary which has a net operating loss carryover should

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1. S. REP. NO. 1622, 83d Cong., 2d Sess. 277 (1954).

2. Denver & Rio Grande W. R.R., 38 T.C. No. 58 (Aug. 3, 1962). The opinion cites the general language of the House and Senate reports (H. REP. NO. 1337, 83d Cong. 2d Sess. 41; S. REP. NO. 1622, 83d Cong., 2d Sess. 52) and the Summary of the New Provisions of the Internal Revenue Code of 1954 prepared by the Joint Committee on Internal Revenue Taxation.

3. Transactions specifically excepted from § 381 or covered elsewhere in the Internal Revenue Code are obviously in a different category. Treas. Regs. § 1.381(a)-1(b)(3) (1960) [hereinafter cited as Reg. §] state, "Section 381 does not apply to partial liquidations, divisive reorganizations, or other transactions not described in subparagraph (1) of this paragraph. . . . In a case where section 381 does not apply to a transaction, item, or tax attribute by reason of either of the preceding sentences, no inference is to be drawn from the provisions of section 381 as to whether any item or tax attribute shall be taken into account by the successor corporation." See Rev. Rul. 56-573, 1956-2 CUM. BULL. 217, on divisive reorganizations, section V *infra* with respect to insolvency reorganizations, and §§ 1001-1083 of the Internal Revenue Code in connection with exchanges or distributions in obedience to Securities and Exchange Commission orders.

4. INT. REV. CODE OF 1954 § 381(a)(1) [hereinafter cited as CODE §].

5. For a detailed analysis of the provisions of § 332 see Dye, *Tax Problems in Corporate Liquidations — Tax-Free Liquidation of a Subsidiary,* 13 W. RES. L. REV. 273 (1962).

consider the desirability of a tax-free liquidation of that subsidiary so that the net operating loss carryover of the subsidiary may be used to offset the future income of the parent. Since the net operating loss carryover can be used to offset the income from the combined operations of the parent and subsidiary, there is a greater likelihood that the net operating loss carryover can be fully utilized than through the filing of consolidated returns, where the carryover loss cannot be used to offset the parent's income.[6]

Recently Acquired Subsidiary Exception

There is one major exception to the rule that the subsidiary's net operating loss carryover will be available to the parent. This exception applies to a recently acquired subsidiary. In 1954 Congress added section 334(b)(2) which provides that if one corporation acquires more than eighty per cent of the stock of another corporation during a period of not more than twelve months, and the parent liquidates the newly acquired subsidiary within two years after the acquisition of stock, the parent will obtain a basis for the assets of the subsidiary equivalent to the amount which has been paid for the stock.[7] This is contrary to the general rule respecting liquidations under section 332 wherein the parent obtains a basis for the assets of the subsidiary equivalent to the basis such assets had in the hands of the subsidiary.[8] If a parent purchases the stock in another corporation and then liquidates that corporation pursuant to section 334(b)(2), that newly acquired subsidiary's net operating loss will not be available to the parent.[9] Thus, a corporation cannot buy the stock of another corporation, liquidate the newly acquired corporation, and receive the advantage of the net operating loss carryover of that purchased corporation. Such a purchase and liquidation would be disastrous. The parent could not obtain the benefit of the carryover because of section 381, and the subsidiary could not use the carryover because it ceased to exist. In effect, the carryover would disappear altogether and would not be available to anyone. However, just as there is more than one way to skin a cat, there is more than one way for one corporation to acquire the assets or stock of another corporation.

6. See section VII *infra* for a discussion of the effect of the filing of consolidated returns upon a net operating loss carryover. In comparing the advantages of filing a consolidated return with those afforded by the liquidation of a subsidiary, note that § 381 applies to the liquidation of a foreign subsidiary, Reg. § 1.381(a)-1(c) (1960), but the foreign subsidiary cannot join in the consolidated return. CODE § 1504(d); Reg. § 1.1502-2(b)(iii) (1955).

7. This is a companion to § 337 which codified the rule promulgated by the Tax Court in Kimbell-Diamond Milling Co., 14 T.C. 74 (1950), *aff'd. per curiam,* 187 F.2d 718 (5th Cir.), *cert. denied,* 342 U.S. 827 (1951).

8. CODE § 334(b)(1).

9. CODE § 381(a).

Reorganizations

Section 381(a)(2) covers the effect of a reorganization upon the net operating loss. That section provides that the net operating loss will be available if the reorganization is a type "A," "C," "D," or "F" reorganization within the meaning of section 368(a)(1). The type "F" reorganization is a mere change in identity, form, or place of organization,[10] and thus is inapplicable to this discussion of the carryover of losses from one corporation to another. The type "A" reorganization is a statutory merger or consolidation.[11] No difficulty should be encountered in complying with the statutory requirements for a merger or consolidation, but the additional requirements set forth by section 382(b), concerning stock ownership of the corporation remaining in existence after the statutory merger or consolidation, may present problems. These problems are discussed later.[12] The type "C" reorganization is the acquisition of substantially all of the assets of one corporation by another corporation in exchange solely for its voting stock.[13] The acquiring corporation may not give anything except stock; otherwise the transaction may not qualify as a "C" reorganization under section 381(a)(2).[14] Finally, section 381(a)(2) permits the carryover in certain type "D" reorganizations, limiting the application to situations where one corporation exchanges all of its assets for stock in another corporation, distributes the stock received on such exchange to its shareholders, and these shareholders end up in control of the surviving corporation.[15]

MECHANICS OF COMPUTING A CARRYOVER

Carryback of Future Losses — Advantage of Merger Over Consolidation

Section 381 provides several different methods of amalgamating two or more corporations pursuant to which the surviving corporation will obtain the benefit of a net operating loss carryover. Some practical lessons to be learned from the provisions concerning the mechanics of computing the carryover shall now be considered.

The technical difference between a merger and consolidation is that in a merger, one of the two corporations is the surviving corporation. In a consolidation, neither of the corporations survives, but a third and com-

10. CODE § 368(a)(1)(F).
11. CODE § 368(a)(1)(A).
12. See *infra* at 267-70.
13. CODE § 368(a)(1)(C).
14. See exception in CODE § 368(a)(2)(B).
15. See Colburn, Fleming, Katcher, & Merritt, *Buying and Selling a Corporate Business: A Survey of Tax and Non-Tax Implications,* 10 W. RES. L. REV. 123, 144-51, for a discussion of the various types of reorganizations under § 368.

pletely new corporation is brought into existence.[16] Ordinarily, it will make absolutely no difference whether two corporations are merged or consolidated. However, the Regulations under section 381 make it clear that there is an advantage to a merger in this area. If two corporations are consolidated so that a third corporation is the surviving corporation, and if the surviving corporation suffers a loss in a future year, this loss may *not* be carried back to offset the income of either of the predecessor corporations which were consolidated to make the new corporation.[17] However, if the two corporations are merged so that one of the two corporations is the surviving corporation, and if this surviving corporation suffers a loss in a future year, this loss may be carried back to offset the income which that corporation had prior to the merger.[18] For example, if Corporations A and B are merged and Corporation A is the surviving corporation, then if A suffers a loss in the year following the merger, that loss may be carried back to offset prior income of A, but it may not be used to offset prior income of B. The moral of this is obvious: If an individual has one profitable and one loss corporation which he wants either to merge or consolidate, he should not consolidate them but should merge them and have the previously profitable corporation the surviving corporation.

Termination of Tax Year of Transferor Corporation

The taxable year of the transferor corporation will end on the date of transfer[19] except in the case of an "F" type reorganization.[20] Thus, in a merger of two calendar year corporations on July 1st, the taxable year of the disappearing corporation ends on July 1st. This short fiscal year counts as a year in computing the three-year carryback and five-year carryforward time periods under section 172.[21] In addition, only a proportionate part of the income for the year during which the corporations were combined can be offset by carryover losses of the transferor corporation.[22] Thus, if two calendar year corporations are merged at mid-year, only one-half of the surviving corporation's earnings for the full year can be offset by losses of the transferor or disappearing corporation.

For example, assume that Corporation A has a net operating loss of $50,000 for the calendar year 1961, the first year of operations, and that it has been proposed that Corporation A merge with Corporation B,

16. CAVITCH, OHIO CORPORATION LAW § 12.71 (1961).
17. Reg. § 1.381(c)(1)-1(b) (1960).
18. *Ibid.*
19. Reg. § 1.381(b)-1(b) (1960).
20. Rev. Rul. 58-422, 1958-2 CUM. BULL. 145; Rev. Rul. 57-276, 1957-1 CUM. BULL. 126.
21. Reg. § 1.381(c)(1)-1(c) (1960).
22. Reg. § 1.381(c)(1)-1(d) (1960).

also a calendar year corporation. If the corporations are merged on November 1, 1962, with Corporation B, the profitable corporation, being the survivor, the 1961 net operating loss of Corporation A will be carried forward as follows:

(1) The short fiscal year January 1 to October 31, 1962, will count as the first carryforward year for Corporation A.

(2) The calendar year 1962 of Corporation B will count as the second carryforward year of the 1961 loss of Corporation A.

(3) Only 61/365ths of the 1962 income of Corporation B can be offset by the carryforward loss of Corporation A.

Reduction of Net Operating Loss Carryover Under Section 382(b)

General Rules

Although several types of reorganizations qualify under section 381, section 382(b) may inhibit the use of any of these types of reorganizations.[23] Section 382(b) will apply to any type of reorganization when the stockholders of a loss corporation acquire less than twenty per cent ownership of the corporation which is acquiring the loss carryover. The only question under section 382(b) is whether the stockholders of the loss corporation receive more than twenty per cent of the stock of the combined corporation, irrespective of whether the loss corporation is the transferor or acquiring corporation. If the stockholders of a loss corporation do acquire twenty per cent or more of the stock of the combined corporation, then that corporation will be entitled to the net operating loss carryover under the provisions of section 381.[24] However, if the stockholders of a loss corporation do not acquire at least twenty per cent of the stock of the combined corporation, the net operating loss carryover shall be reduced by one hundred per cent less the percentage ownership acquired by the stockholders of the loss corporation, multiplied by five.[25]

23. Section 382(b) does not apply to the liquidation of a subsidiary.

24. Although the statute merely requires that the shareholders of a loss corporation own (immediately after the reorganization) at least twenty per cent of the fair market value of the outstanding stock of the acquiring corporation, it would seem doubtful that transactions will satisfy the requirement when the loss corporation stockholders receive twenty per cent of the stock even though the assets of the loss corporation are worth substantially less than twenty per cent of the assets of the combined corporation. For example, if X owns all the stock of a prosperous corporation with net assets of $1,000,000 and that corporation acquires all the assets of a loss corporation with net assets of $1,000, and the sole stockholder of the loss corporation, X's son, receives twenty per cent of the stock of the profitable corporation in the exchange, it seems likely that the prosperious corporation will be affected by § 382.

25. CODE § 382(b)(2). The Section of Taxation of the American Bar Association has recommended that the percentage ownership requirement be changed from twenty per cent to thirty-three and one-third per cent with correlative changes in the formula. A.B.A. Section of Taxation Committee Rep. 23 (1962).

For example, if the stockholders of a loss corporation acquire fifteen per cent of the stock of the combined corporation, then the loss carryover will be reduced by one hundred per cent less seventy-five per cent (fifteen per cent times five), or a net reduction of twenty-five per cent. Another way of stating the rule is that for each percentage point less than twenty per cent the stockholders of a loss corporation acquire, the combined corporation will lose five per cent of the net operating loss carryover. If the net operating loss carryover has been reduced pursuant to this formula, the amount of the reduction will not be available as a net operating loss carryover in any subsequent year.[26] That portion of the net operating loss carryover will be lost forever.

Determination of Whether Shareholders Acquire Twenty Per Cent of Stock

In view of the disastrous consequences flowing from a failure to meet the specified percentage, it is essential to analyze the rules which have been established for the determination of whether the stockholders in the loss corporation acquire twenty per cent of the stock of the combined corporation. The fact that stockholders of the loss corporation also own stock in the acquiring corporation is normally immaterial. The twenty per cent ownership must be met solely as a result of ownership of stock in the loss corporation.[27]

Transferor and Acquiring Corporation Owned by Same Persons and in Same Proportions

The twenty per cent limitation does not apply if the two corporations are owned substantially by the same persons in the same proportion.[28] Thus, if an individual owns one hundred per cent of the stock of a profitable corporation and also owns one hundred per cent of the stock of a loss corporation, and if the two corporations are merged, the surviving corporation will acquire the net operating loss carryover of the loss corporation. Unless the stock ownership of the two corporations is identical, however, a determination must be made of whether the two corporations are owned substantially by the same persons and in the same proportions. The Regulations have not drawn the line precisely but have taken such a narrow view that the exception will not be applicable unless the ownership of the two corporations is almost identical.[29]

26. CODE § 382(b)(4).

27. Reg. § 1.382(b)-1(a)(2) (1962).

28. CODE § 382(b)(3).

29. Reg. § 1.382(b)-1(d) (1962). Example 4 indicates that the Commissioner will not view identical ownership of eighty per cent of the stock as qualifying for the exception in § 382(b)(3).

Effect of Attribution of Ownership Rules

If one of the two corporations being combined owns stock in the other corporation, then in determining whether the twenty per cent rule has been met a complicated formula is provided to determine what percentage of the fair market value of the surviving corporation's stock will be treated as having been owned by stockholders of the loss corporation.[30] Aside from this relatively insignificant attribution rule, there are no other attribution rules under section 382(b). In this area it would be beneficial to be able to use the attribution of ownership rules which are contained in section 318. These rules provide that an individual is treated as owning stock owned by members of his family, partnerships of which he is a partner, corporations which he controls, and the like. These broad attribution of ownership rules are not applicable under section 382, where they might help qualify the transaction as one involving two corporations owned substantially by the same persons in the same proportion. Accordingly, it would seem that if a husband owns all of the stock of a profitable corporation and his wife owns all of the stock of a loss corporation, and if the two corporations are merged, a portion of the net operating loss will be lost unless the wife acquires at least twenty per cent ownership of the surviving corporation.[31]

Liquidation of Subsidary into Parent

The narrow view of the Internal Revenue Service with regard to what constitutes ownership "substantially by the same persons and in the same proportions" and the lack of attribution rules appear to bring different results when a subsidiary is liquidated into its parent from when the same two corporations are combined through a reorganization. The twenty per cent ownership requirement in section 382 does not apply to the liquidation of a subsidiary under section 332, so the entire net operating loss carryover of an eighty per cent owned subsidiary will be available to its parent if the subsidiary is liquidated.[32] However, if the subsidiary has net assets worth only one per cent of the net assets of the parent and the two corporations are merged, it would seem that the parent will obtain only five per cent of the subsidiary's net operating loss carryover.[33] Even if the parent's stockholders are considered as owning the stock

30. CODE § 382(b)(5).

31. See note 24 *supra* for a discussion of transactions where a loss corporation's assets are worth substantially less than twenty per cent of the assets of the combined corporation but the loss corporation shareholders receive twenty per cent of the stock of the combined corporation.

32. See *supra* 263-64 The parent obtains the benefit of one hundred per cent of the carryover even though it owned only eighty per cent of the subsidiary's stock. Reg. § 1.381(c)(1)-1(c)(2) (1960).

33. CODE § 382(b)(2).

in the subsidiary, the two corporations would not be considered by the Internal Revenue Service as being owned substantially by the same persons in the same proportions.[34] The attribution rule merely enables the parent to claim that the total stock of the parent-acquiring corporation owned by the subsidiary-transferor-loss corporation stockholders immediately after the reorganization was one per cent of the total outstanding stock of the parent-acquiring corporation.[35] The conclusion is that if a loss carryover is to be saved, it is safer to liquidate a subsidiary than to merge it with the parent or otherwise reorganize the two corporations.

Issuance of Parent's Stock to Enable Subsidiary to Acquire Assets

The carryover of a loss corporation will not be denied under section 382 solely because the assets of the loss corporation are acquired by a controlled corporation where the stock of the parent controlling the acquiring corporation is issued to the stockholders of the loss corporation.[36] For example, if Mammoth Corporation with assets of $100,-000,000 wants to acquire the assets of Loss Corporation which has assets of $250,000, obviously Mammoth Corporation cannot obtain the benefit of the loss carryover under the twenty per cent rule of section 382(b) if it issues its stock in return for the assets of Loss Corporation. However, if Mammoth has a wholly owned subsidiary with assets of $750,000 and the subsidiary acquired the assets of Loss Corporation in exchange for $250,000 of the subsidiary's stock, and this stock was distributed to Loss Corporation's stockholders, then Loss Corporation stockholders would own twenty-five per cent of the stock of the subsidiary immediately after the reorganization. Section 382(b)(6) provides that Mammoth Corporation may issue $250,000 of its stock in return for the transfer of assets of Loss Corporation to the subsidiary without losing any portion of the loss carryover under section 382 since the subsidiary is acquiring the assets, and the assets of Loss Corporation will be more than twenty per cent of the combined assets of the subsidiary after the reorganization. Through the interplay of various statutory sections, it would appear possible for Mammoth Corporation to acquire the net operating loss carryover of Loss Corporation if the transaction is handled in several steps. Assume that in this example the subsidiary does acquire the assets of Loss Corporation in exchange for stock of Mammoth Corporation. Assume further that one month later the subsidiary is liquidated in a tax-free liquidation[37] and Mammoth acquires all the assets of the subsidiary. Under

34. Reg. § 1.382(b)-1(d) (1962).
35. Reg. § 1.382(b)-1(f) (1962).
36. CODE § 382(b)(6).
37. CODE § 332.

section 381 the parent acquires the loss carryover of the subsidiary in a tax-free liquidation. Accordingly, it would appear that Mammoth would acquire the loss carryover which had been in Loss Corporation by the simple expedient of liquidating the subsidiary. The newly adopted Regulations attempt to plug this apparent loophole.[38]

The Regulations have interpreted the statute to prohibit other types of step transactions from qualifying under section 382(b). For example, the Regulations indicate that any acquisition of stock for the purpose of meeting the twenty per cent requirement will be disregarded.[39] Similarly, the Regulations would combine successive reorganizations of small companies made with a view towards building a corporation large enough to meet the twenty per cent requirement.[40]

CARRYBACK OF NET OPERATING LOSS FROM ESTATE OR TRUST TO BENEFICIARY'S PERSONAL RETURN

A trust or estate can operate a business, and if the business is operated at a loss, the trust or estate can take advantage of the net operating loss carryback and carryover provisions.[41] A special problem arises, however, if the trust or estate has distributed its income to its beneficiaries in years to which the net operating loss may be carried back. The trust or estate will have no income remaining after the distribution, so the carryback of a net operating loss will not benefit that entity. However, the beneficiaries will be taxed on the income distributed, and they might benefit from the carryback.

In two cases arising under the 1939 Code the courts held that the beneficiaries could not avail themselves of the net operating loss carryback of an estate because the Code had no provision for offsetting the losses of one taxpayer against the income of a different taxpayer.[42]

The Internal Revenue Service has ruled that under the 1954 Code, although the loss of a trust or estate cannot be carried back to offset the income of the beneficiary in the prior year, the loss is carried back in the estate or trust to reduce the distributable net income of the trust or estate in the prior year.[43] The practical result is that the reduction of the distributable net income reduces the portion of the distribution which is taxable to the beneficiary and thus indirectly gives the beneficiary the benefit of the net operating loss carryback of the estate.

38. Reg. § 1.382(b)-1(g) (1962).
39. Reg. § 1.382(b)-1(c) (1962).
40. *Ibid.*
41. CODE § 172.
42. Mellott v. United States, 257 F.2d 798 (3d Cir.), *cert. denied,* 358 U.S. 864 (1958); Sargent v. United States, 55-1 U.S. Tax Cas. ¶ 9424 (S.D. Cal. 1955).
43. Rev. Rul. 61-20, 1961-1 CUM. BULL. 248.

Unused Loss Carryover in Year of Termination of Estate or Trust

A different problem arises when the trust or estate is terminated at a time when it has a net operating loss carryover. The unused portion of the net operating loss is allowed as a deduction to the beneficiaries succeeding to the property of the trust or estate.[44] The last taxable year of the trust or estate and the taxable year of the beneficiary in which the estate or trust is terminated are both counted as carryover years in determining the five-year carryover period,[45] but if the five-year period ends with the last taxable year of the trust or estate, the beneficiary may deduct the unused portion of the loss carryover as an "excess deduction" on his individual return in the year of termination of the trust or estate.[46] This rule, in effect, permits an estate or trust to receive a six-year carryover period through termination on the last day of the fifth carryover year.

The Regulations indicate that the residuary legatees are entitled to the benefit of carryover losses in the proportion in which they would share losses of the estate.[47] However, it is not clear whether an estate can distribute assets to one residuary legatee in full satisfaction of his legacy in year 1 so that the other residuary legatees can receive full benefit of the net operating loss carryover upon termination of the estate in year 2.[48] Such a procedure could be extremely useful if the residuary legatees are in substantially different tax brackets.

No Carryover from Decedent to his Estate

Although the net operating loss of an estate can be carried over to its beneficiaries upon termination, if an individual dies with an unused net operating loss, that loss will *not* carry over to his estate.[49] A net operating loss dies with the individual.

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44. CODE § 642(h).
45. Reg. § 1.642(h)-1(b) (1956).
46. Reg. § 1.642(h)-2(b) (1956).
47. Reg. §§ 1.642(h)-3, -4 (1956).
48. *Cf.* Rev. Rul. 60-18, 1960-1 CUM. BULL. 145, which ruled that a residuary legatee always has an interest in an estate for purposes of the attribution rules under section 318.
49. I.T. 1562, II-1 CUM. BULL. 33 (1923); Estate of R. R. Russell, 34 B.T.A. 715 (1936); *cf.* Rev. Rul. 54-207, 1954-1 CUM. BULL. 147 (capital loss carryover).