

SUMMARY: This document contains final regulations that provide guidance on determining the value of a loss corporation following an ownership change to which section 382(l)(6) of the Internal Revenue Code of 1986 applies. Under sections 382 and 383, the value of the loss corporation, together with certain other factors, determines the rate at which certain pre-change tax attributes may be used to offset post-change income and tax liability. These rules are needed to provide guidance to taxpayers concerning compliance with sections 382 and 383.

DATES: These regulations are effective as of March 17, 1994.

For date of applicability of § 1.382-9, see § 1.382-9(p).

FOR FURTHER INFORMATION CONTACT: Robert Liquerman of the Office of the Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention CC:DOM:CORP:T:R) or telephone (202) 622-7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1324. The estimated annual burden per respondent with respect to the § 1.382-9(i) election varies from 5 to 30 minutes, depending on individual circumstances, with an estimated average of 15 minutes. The estimated annual burden per respondent with respect to the § 1.382-9(p)(2) election varies from 5 to 30 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

These estimates are approximations of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents or recordkeepers may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of

Information and Regulatory Affairs, Washington, DC 20503.

The collections of information in this regulation are in §§ 1.382-9(i) and 1.382-9(p)(2). This information serves as evidence of an election to apply section 382(l)(6) of the Internal Revenue Code (Code) in lieu of section 382(l)(5) and an election to apply retroactively the provisions of the final regulations. The information is required by the Internal Revenue Service to assure that a loss corporation uses the proper amount of carryover attributes following specified types of ownership changes.

Background

This document contains final regulations to be added to 26 CFR part 1 under section 382 of the Code. The Service published proposed amendments to the regulations under section 382 in the Federal Register on August 6, 1992 (57 FR 34736). See also 1992-2 C.B. 616. The rules are effective with respect to any ownership change occurring on or after March 17, 1994. However, a loss corporation may elect to apply the rules in the final regulations in their entirety to any ownership change occurring before March 17, 1994, including ownership changes to which section 382(l)(5) applied. Written comments were received, but no public hearing was held as none was requested.

Explanation of Provisions

Section 382(l)(6) of the Code provides a special valuation rule for certain ownership changes that result from a title 11 or similar case to which section 382(l)(5) does not apply. Under this special valuation rule, the value of the loss corporation reflects any increase in value resulting from any surrender or cancellation of creditors' claims in the bankruptcy transaction. The proposed regulations provide rules regarding the application of this special valuation rule and the coordination of that rule with other statutory rules related to the value of a loss corporation.

The proposed regulations, with a few changes to respond to comments, are adopted as final regulations. The changes, as well as certain comments and suggestions that were not adopted in the final regulations, are discussed below.

The proposed regulations provide that the value of a loss corporation under the special valuation rule of section 382(l)(6) of the Code is the lesser of the value of its stock immediately after the ownership change, or the value of its assets (determined without regard to liabilities) immediately before the ownership change. The proposed regulations further provide that the

value of the loss corporation's pre-change assets is reduced by the amount of any capital contribution to which section 382(l)(1) applies. The proposed regulations could be read to require such a reduction even in cases in which the value of the pre-change assets would not reflect the value of the contributed assets, as would be the case, for example, when the contribution is concurrent with the ownership change. To avoid this possibility, the final regulations provide that the value of the pre-change assets of the loss corporation is determined without regard to any capital contribution to which section 382(l)(1) applies.

Section 382(l)(5)(H) of the Code allows a loss corporation to elect not to have the provisions of section 382(l)(5) apply. The proposed regulations provide that this election must be made by the due date (including extensions) of the loss corporation's return for the taxable year in which the ownership change occurs. The proposed regulations also provide that this election is irrevocable. One commenter suggested that the final regulations allow a taxpayer to file an election after the prescribed due date upon a showing of reasonable cause. The commenter also suggested that taxpayers be allowed to revoke an election.

The Treasury and the Service believe that the general standards and procedures under § 301.9100-1 of the Procedure and Administrative Regulations provide adequate relief for taxpayers seeking to make a retroactive election under section 382(l)(5)(H) of the Code for an ownership change occurring on or after March 17, 1994. A specific regulatory provision allowing an election after the prescribed due date or allowing revocation of an election would inappropriately allow the loss corporation the benefit of hindsight to determine the relative advantages of sections 382(l)(5) and 382(l)(6). Therefore, the final regulations retain the rules of the proposed regulations that the election is irrevocable and must be made on the return of the loss corporation for the taxable year including or ending with the change date. Because of uncertainties that existed with respect to the application of sections 382(l)(5) and 382(l)(6) before issuance of final regulations, transitional rules are provided in §§ 1.382-9(d)(6)(ii) and (p)(2) that allow taxpayers to retroactively file or revoke a prior section 382(l)(5)(H) election for an ownership change occurring before March 17, 1994.

A commenter suggested that the final regulations clarify that a loss corporation need not use liquidation

value in determining the value of its gross assets, and that the corporation may take into account the value of any intangible assets, such as goodwill and going concern value. The Treasury and the Service have determined that the proposed clarification is unnecessary. The valuation rule refers to "the value of the loss corporation's pre-change assets," without limitation to either liquidation value or tangible assets. Therefore, if a loss corporation is able to establish the existence and value of any intangible assets, that value may be taken into account.

The proposed regulations provide that the amount received by a loss corporation for the issuance of debt is treated as a capital contribution that must be excluded from the value of its pre-change assets if the issuance of the debt is part of a plan a principal purpose of which is to increase the value of the loss corporation under the rules of the proposed regulations. A commenter questioned the appropriateness of treating an issuance of debt as a capital contribution. The commenter also suggested that, if the proposed rule is retained, it should be subject to an exception for cases in which the loss corporation uses the proceeds of the debt to fund operating expenses.

The final regulations retain the rule of the proposed regulations regarding the treatment of certain debt issuances as capital contributions. The Treasury and the Service believe that this rule effectuates the principles of section 382(l)(1) of the Code. The Treasury and the Service will consider possible exceptions to this rule in the context of providing general guidance under section 382(l)(1).

Section 382(l)(5)(D) of the Code provides that, if a second ownership change occurs within two years after an ownership change to which section 382(l)(5) applies, the section 382 limitation with respect to the second ownership change is zero. A commenter suggested that the final regulations provide that the zero limitation applies only to losses incurred prior to the first ownership change. The final regulations do not provide such a rule because it would be inconsistent with the language of section 382(l)(5)(D).

The proposed regulations provide that the value of the stock of a loss corporation does not include stock issued with a principal purpose of increasing the section 382 limitation without subjecting the investment to the entrepreneurial risks of corporate business operations. A commenter requested that the final regulations provide further guidance regarding the

stock subject to this rule. The Treasury and the Service believe that additional guidance is not necessary because the test sufficiently limits the scope of this anti-abuse provision.

The proposed regulations provide that the value of any stock issued in connection with the ownership change cannot exceed the value of the property received by the loss corporation in consideration for the stock. A commenter questioned the appropriateness of this limitation. The final regulations, however, retain the limitation to preclude any claims that the stock is worth more than what was paid for it. The limitation avoids the valuation disputes that would result from these claims. Further, the limitation on losses provided by section 382(a) of the Code is intended to measure the earnings power of the corporation. When a loss corporation issues stock, it increases its earnings power by the value of the property it receives, regardless of whether that value represents a fair price for the stock.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Robert Liquerman, Office of the Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes,

Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 are amended to read as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for § 1.382-9 to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.382-9 also issued under 26 U.S.C. 382(l)(1)(B), (l)(3), and (m).

Par. 2. Section 1.382-1 is amended as follows:

1. The entries for § 1.382-9, paragraphs (f), (g), and (h) continue to be reserved.
2. The entries for § 1.382-9, paragraphs (i), (j), (k), (l), (m)(2), (n), and (p) are added to read as follows:

§ 1.382-1 Table of contents.

§ 1.382-9 *Special rules under section 382 for corporations under the jurisdiction of a court in a title 11 or similar case.*

- (f) through (h) [Reserved].
- (i) Election not to apply section 382(l)(5).
- (j) Value of the loss corporation in an ownership change to which section 382(l)(6) applies.
- (k) Rules for determining the value of the stock of the loss corporation.
 - (1) Certain ownership interests treated as stock.
 - (2) Coordination with section 382(e)(2).
 - (3) Coordination with section 382(e)(3).
 - (4) Coordination with section 382(l)(1).
 - (5) Coordination with section 382(l)(4).
 - (6) Special rule for stock not subject to the risk of corporate business operations.
 - (i) In general.
 - (ii) Coordination of special rule and other rules affecting value.
 - (7) Limitation on value of stock.
 - (i) Rules for determining the value of the loss corporation's pre-change assets.
 - (1) In general.
 - (2) Coordination with section 382(e)(2).
 - (3) Coordination with section 382(e)(3).
 - (4) Coordination with section 382(l)(1).
 - (5) Coordination with section 382(l)(4).
 - (m) * * *
 - (2) Under section 382(l)(6).
 - (n) Ownership change in a title 11 or similar case succeeded by another ownership change within two years.
 - (1) Section 382(l)(5) applies to the first ownership change.
 - (2) Section 382(l)(6) applies to the first ownership change.
 - (p) Effective date for rules relating to section 382(l)(6).

(1) In general.
 (2) Ownership change to which section 382(l)(6) applies occurring before March 17, 1994.

Par. 3. Section 1.382-9 is amended as follows:

1. Paragraphs (f) through (h) continue to be reserved.

2. Paragraphs (i) through (l), (m)(2), (n), and (p) are added to read as follows:

§ 1.382-9 Special rules under section 382 for corporations under the jurisdiction of a court in a title 11 or similar case.

(f) through (h) [Reserved]

(i) *Election not to apply section 382(l)(5)*. Under section 382(l)(5)(H), a loss corporation may elect not to have the provisions of section 382(l)(5) apply to an ownership change in a title 11 or similar case. This election is irrevocable and must be made by the due date (including any extensions of time) of the loss corporation's tax return for the taxable year which includes the change date. The election is to be made by attaching the following statement to the tax return of the loss corporation for that taxable year: "This is an Election Under § 1.382-9(i) not to Apply the Provisions of Section 382(l)(5) to the Ownership Change Occurring Pursuant to a Plan of Reorganization Confirmed by the Court on [Insert Confirmation Date]."

(j) *Value of the loss corporation in an ownership change to which section 382(l)(6) applies*. Section 382(l)(6) applies to any ownership change occurring pursuant to a plan of reorganization in a title 11 or similar case to which section 382(l)(5) does not apply. In such case, the value of the loss corporation under section 382(e) is equal to the lesser of—

(1) The value of the stock of the loss corporation immediately after the ownership change (determined under the rules of paragraph (k) of this section); or

(2) The value of the loss corporation's pre-change assets (determined under the rules of paragraph (l) of this section).

(k) *Rules for determining the value of the stock of the loss corporation—(1) Certain ownership interests treated as stock*. For purposes of paragraph (j)(1) of this section—

(i) Stock includes stock described in section 1504(a)(4) and any stock that is not treated as stock under § 1.382-2T(f)(18)(ii) for purposes of determining whether a loss corporation has an ownership change; and

(ii) Stock does not include an ownership interest that is treated as stock under § 1.382-2T(f)(18)(iii) for purposes of determining whether a loss corporation has an ownership change.

(2) *Coordination with section 382(e)(2)*. In the case of a redemption or other corporate contraction occurring after and in connection with the ownership change, the value of the stock of the loss corporation under paragraph (j)(1) of this section is reduced under section 382(e)(2).

(3) *Coordination with section 382(e)(3)*. If the loss corporation is a foreign corporation, in determining the value of the stock under paragraph (j)(1) of this section, only items treated as connected with the conduct of a trade or business in the United States are taken into account.

(4) *Coordination with section 382(l)(1)*. Section 382(l)(1) does not apply in determining the value of the stock of the loss corporation under paragraph (j)(1) of this section.

(5) *Coordination with section 382(l)(4)*. If, immediately after the ownership change, the loss corporation has substantial nonbusiness assets (as determined under section 382(l)(4)(B) taking into account only those assets the loss corporation held immediately before the ownership change), the value of the stock of the loss corporation under paragraph (j)(1) of this section is reduced by the excess of the value of such nonbusiness assets over those assets' share of the loss corporation's indebtedness (determined under section 382(l)(4)(D) taking into account the loss corporation's assets and liabilities immediately after the ownership change).

(6) *Special rule for stock not subject to the risk of corporate business operations—(i) In general*. The value of the stock of the loss corporation under paragraph (j)(1) of this section is reduced by the value of stock that is issued as part of a plan one of the principal purposes of which is to increase the section 382 limitation without subjecting the investment to the entrepreneurial risks of corporate business operations.

(ii) *Coordination of special rule and other rules affecting value*. If the value of the loss corporation is modified under another rule affecting value, appropriate adjustments are to be made so that such modification is not duplicated under this paragraph (k)(6).

(7) *Limitation on value of stock*. For purposes of paragraph (j)(1) of this section, the value of stock of the loss corporation issued in connection with the ownership change cannot exceed the cash and the value of any property (including indebtedness of the loss corporation) received by the loss corporation in consideration for the issuance of that stock.

(l) *Rules for determining the value of the loss corporation's pre-change assets—(1) In general*. Except as otherwise provided in this paragraph (l), the value of the loss corporation's pre-change assets is the value of its assets (determined without regard to liabilities) immediately before the ownership change.

(2) *Coordination with section 382(e)(2)*. Section 382(e)(2) does not apply in determining the value of the pre-change assets of the loss corporation under paragraph (j)(2) of this section.

(3) *Coordination with section 382(e)(3)*. If the loss corporation is a foreign corporation, in determining the value of the pre-change assets under paragraph (j)(2) of this section, only assets treated as connected with the conduct of a trade or business in the United States are taken into account.

(4) *Coordination with section 382(l)(1)*. For purposes of paragraph (j)(2) of this section, the value of the pre-change assets of the loss corporation is determined without regard to the amount of any capital contribution to which section 382(l)(1) applies. For purposes of applying this paragraph (l)(4), the receipt of cash or property by the loss corporation in exchange for the issuance of indebtedness is considered a capital contribution if it is part of a plan one of the principal purposes of which is to increase the value of the loss corporation under paragraph (j) of this section.

(5) *Coordination with section 382(l)(4)*. If, immediately after the ownership change, the loss corporation has substantial nonbusiness assets (as determined under section 382(l)(4)(B) taking into account only those assets the loss corporation held immediately before the ownership change), the value of the loss corporation's pre-change assets is reduced by the value of the nonbusiness assets.

(m) * * *

(2) *Under section 382(l)(6)*. If section 382(l)(6) applies to an ownership change of a loss corporation, section 382(c) and the regulations thereunder apply to the ownership change.

(n) *Ownership change in a title 11 or similar case succeeded by another ownership change within two years—(1) Section 382(l)(5) applies to the first ownership change*. If section 382(l)(5) applies to an ownership change and, within the two-year period immediately following such ownership change, a second ownership change occurs, section 382(l)(5) cannot apply to the second ownership change and the section 382(a) limitation with respect to the second ownership change is zero.

(2) Section 382(l)(6) applies to the first ownership change. If the value of a loss corporation in an ownership change was determined under section 382(l)(6) and a second ownership change occurs within the two-year period immediately following the first ownership change, the value of the loss corporation under section 382(e) with respect to the second ownership change is not reduced under section 382(l)(1) for any increase in value of the loss corporation previously taken into account under section 382(l)(6) with respect to the first ownership change.

(p) *Effective date for rules relating to section 382(l)(6)—(1) In general.* Paragraphs (i), (j), (k), (l), (m)(2), and (n)(2) of this section apply to any ownership change occurring on or after March 17, 1994.

(2) *Ownership change to which section 382(l)(6) applies occurring before March 17, 1994.* In the case of an ownership change occurring before March 17, 1994, the loss corporation may elect to apply the rules of paragraphs (j), (k), (l), (m)(2), and (n)(2) of § 1.382-9 in their entirety. The election must be made by the later of the due date (including any extensions of time) of the loss corporation's tax return for the taxable year which includes the change date or the date that the loss corporation files its first tax return after May 16, 1994. The election is made by attaching the following statement to the return: "This is an Election to Apply §§ 1.382-9 (j), (k), (l), (m)(2), and (n)(2) of the Income Tax Regulations to the Ownership Change Occurring Pursuant to a Plan of Reorganization Confirmed by the Court on [Insert Confirmation Date]." In connection with making this election, on the same return the loss corporation may also elect not to apply section 382(l)(5) to the ownership change under paragraph (i) of this section (if the loss corporation has not already done so pursuant to § 301.9100-7T(a) of this chapter). If, under the applicable statute of limitations, the loss corporation may file amended returns for the year of the ownership change and all subsequent years (an open year), an electing loss corporation must file an amended return for each prior affected year to reflect the elections. If, under the applicable statute of limitations, the loss corporation may not file an amended return for the year of the ownership change or any subsequent year (a closed year), an electing loss corporation must file an amended return for each affected open year to reflect the elections and the section 382 limitation resulting from the ownership change must be

appropriately adjusted for the earliest open year (or years) to reflect the difference between the amount of pre-change losses actually used in closed years and the amount of pre-change losses that would have been used in such years applying the rules of paragraphs (j), (k), (l), (m)(2), (n)(2) of this section to the ownership change.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation paragraphs for § 301.9100-7T are removed from the authority citation for part 301, and the following entry is added:

Authority: 26 U.S.C. 7805 * * * Section 301.9100-7T also issued under 26 U.S.C. 42, 48, 56, 83, 141, 142, 143, 145, 147, 165, 168, 216, 263, 263A, 448, 453C, 468B, 469, 474, 585, 616, 617, 1059, 2632, 2652, 3121, 4982, 7701; and under the Tax Reform Act of 1986, 100 Stat. 2746, sections 203, 204, 243, 311, 645, 801, 806, 905, 1704, 1801, 1802, and 1804. * * *

Par. 5. Section 301.9100-7T is amended as follows:

§ 301.9100-7T [Amended]

1. The table in paragraph (e)(1) is amended by removing each line, from each column, where the entry for "section 621(a)" appears.

2. Paragraph (a)(4)(ii) is amended by removing each line, from each column, where the entry "621(a)" appears.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. The table of control numbers in § 602.101(c) is amended by revising the entry for § 1.382-9 to read as follows:

"1.382-91..... 1545-1260, 1545-1324".

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: February 24, 1994.

Leslie Samuels,
Assistant Secretary of the Treasury.
[FR Doc. 94-6086 Filed 3-17-94; 8:45 am]
BILLING CODE 4830-01-U

estate tax purposes. His executors were not precluded from showing his true residence.

Est. of J. Bloch-Sulzberger, 6 TCM 1201, Dec. 16, 1946.

[§ 10.340]

RULES AND REGULATIONS

SEC. 7805 [1986 Code]. (a) AUTHORIZATION.—Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) RETROACTIVITY OF REGULATIONS OR RULINGS.—The Secretary may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) PREPARATION AND DISTRIBUTION OF REGULATIONS, FORMS, STAMPS, AND OTHER MATTERS.—The Secretary shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

(d) MANNER OF MAKING ELECTIONS PRESCRIBED BY SECRETARY.—Except to the extent otherwise provided by this title, any election under this title shall be made at such time and in such manner as the Secretary shall by regulations or forms prescribe.

(e) TEMPORARY REGULATIONS.—

(1) ISSUANCE.—Any temporary regulation issued by the Secretary shall also be issued as a proposed regulation.

(2) 3-YEAR DURATION.—Any temporary regulation shall expire within 3 years after the date of issuance of such regulation.

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made by subsections (e) and (f) of section 805 of the Tax Reform Act of 1976 shall apply to the reorganization described in clause (ii).

(ii) A taxpayer is described in this clause if the taxpayer filed a title 11 or similar case on December 8, 1981, filed a plan of reorganization on February 5, 1986, filed an amended plan on March 14, 1986, and received court approval for the amended plan and disclosure statement on April 16, 1986.

(c) ANNUAL REPORT OR OLD RULES TO EXAMINER.—In the case of debt of a corporation incorporated in Colorado on November 8, 1924, and reincorporated in Delaware in 1987, with headquarters in Denver, Colorado—

(1) the amendments made by subsections (a), (b), and (c) shall not apply to any debt restructuring of such debt which was approved by the debtor's Board of Directors and the lenders on 1/8/86; and

(2) the amendments made by subsection (e) and (f) of section 805 of the Tax Reform Act of 1976 shall not apply to such debt restructuring, except that the amendments treated as part of such subsections under section 580(b) of the Tax Reform Act of 1984 (relating to qualified workers) shall apply to such debt restructuring.

(3) SPECIAL RULE FOR OIL AND GAS WELL DRILLING BUSINESS.—In the case of a Texas corporation incorporated on July 23, 1935, in applying section 382 of the Internal Revenue Code of 1986 (as in effect before and after the amendments made by subsections (a), (b), and (c)) to a loan restructuring agreement during 1985, section 382(a)(5)(C) of the Internal Revenue Code of 1954 (as added by the amendments made by subsections (e) and (f) of section 805 of the Tax Reform Act of 1976) shall be applied as if it were in effect with respect to such restructuring. For purposes of the preceding sentence, in applying section 382 (as so in effect), if a person has a warrant to acquire stock, such stock shall be considered as owned by such person.

(3) TESTING PERIOD.—For purposes of determining whether there is an ownership change, the testing period shall not begin before the later of—

(A) May 6, 1986; or

(B) in the case of an ownership change which occurs after May 5, 1986, and to which the amendments made by subsections (a), (b), and (c) do not apply, the first day following the date on which such ownership change occurs.

(4) SPECIAL TRANSFEROR RULES.—The amendments made by subsections (a), (b), and (c) shall not apply to—

(A) a stock-for-debt exchange and stock sales made pursuant to a plan of reorganization with respect to a petition for reorganization filed by a corporation under chapter 11 of title 11, United States Code, on August 26, 1982, and which filed with a United States district court a first amended and related plan of reorganization before March 1, 1986; or

(B) ownership change of a Delaware corporation incorporated in August 1981, which may result from the exercise of put or call option under an agreement entered into on September 14, 1983, but only with respect to taxable years beginning after 1991 regardless of when such ownership change takes place.

Any regulations prescribed under section 382 of the Internal Revenue Code of 1986 (as added by subsection (a)) which have the effect of treating a group of shareholders as a separate 5 percent shareholder by reason of a public offering shall not apply to any public offering before January 1, 1989, for the benefit of institutions described in section 591 of such Code. Unless the corporation otherwise elects, an underwriter of any offering of stock in a corporation before September 19, 1986 (January 1, 1989, in the case of an offering for the benefit of an institution described in the preceding sentence), shall not be treated as acquiring any stock of such corporation by reason of a firm commitment underwriting to the extent the stock is disposed of pursuant to the offering (but in no event later than 60 days after the initial offering).

Sec. 382(m)

(5) BANKRUPTCY PROCEEDINGS.—Unless the taxing effects not to have the provisions of this paragraph apply, the case of a reorganization described in subparagraph (ii) of section 382(a)(1) of the Internal Revenue Code of 1986 (as amended by subsection (a)) of such Code, the amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from such a reorganization occurring if a petition in such case was filed with the court before August 14, 1986. The determination as to whether a reorganization has occurred during the period beginning January 1, 1987, and ending on the final settlement of the reorganization or proceeding described in the preceding sentence shall be determined as of the time of such final settlement.

(6) CERTAIN PLANS.—The amendments made by subsections (a), (b), and (c) shall not apply to any ownership change with respect to—

(A) the acquisition of a corporation the stock of which was acquired pursuant to a plan of divestiture which identified such corporation and its assets, and was agreed to by the board of directors of such corporation's parent corporation on October 4, 1985;

(B) a merger which occurs pursuant to a merger agreement entered into before September 24, 1985 and an application for approval by the Federal Home Loan Bank Board was filed on October 4, 1985;

(C) a reorganization involving a party to a reorganization of a group of corporations engaged in related oil refining operations in California, merged in furtherance of a plan of reorganization acquired by a board of directors on September 24, 1985, and a Delaware corporation whose principal oil and gas producing fields are located in California; or

(D) the conversion of a mutual savings and loan association holding a Federal charter dated March 22, 1985, in a stock savings and loan association pursuant to the rules and regulations of the Federal Home Loan Bank Board.

(7) OWNERSHIP CHANGE OR REGULATED AIR CARRIER.—The amendments made by subsections (a), (b), and (c) shall not apply to an ownership change of a regulated air carrier if—

(A) on July 16, 1986, at least 40 percent of the outstanding common stock (including all preferred stock, whether or not convertible) of such carrier had been acquired by a parent corporation incorporated in March 1980 under the laws of Delaware; and

(B) the acquisition (by or for such parent corporation) of the remaining common stock of such carrier is completed before the later of March 31, 1987, or 90 days after the requisite governmental approvals are finally granted.

but only if the ownership change occurs on or before the last day of March 31, 1987, or such 90th day. The aggregate value in tax for any taxable year by reason of this paragraph shall not exceed \$10,000,000. The testing period for determining whether a subsequent ownership change has occurred shall not begin before the 31st day following an ownership change to which this paragraph applies.

(8) The amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from the conversion of a Minnesota mutual savings bank holding a Federal charter dated December 31, 1985, to a stock savings bank pursuant to the rules and regulations of the Federal Home Loan Bank Board, and from the issuance of stock pursuant to that conversion to a holding company owned and controlled in Delaware on February 21, 1984. For purposes of determining whether any ownership change occurs with respect to the holding company or any subsidiary thereof (including the company that the transaction described in the preceding sentence or otherwise), any issuance of stock made by such holding company in connection with the transaction

described in the preceding sentence shall not be taken into account.

(9) TRANSFERRED.—Except as otherwise provided, terms defined in this subsection shall have the same meaning as when used in section 382 of the Internal Revenue Code of 1986 (as amended by this section).

Repealed by P.L. 99-514 (Section 382 prior to amendments by P.L. 99-455. The text of P.L. 99-455 follows.)

SEC. 382 SPECIAL LIMITATIONS ON NET OPERATING LOSS CARRYOVER.

(a) PURCHASE OF A CORPORATION AND CHANGE IN ITS TRADE OR BUSINESS.—

(1) IN GENERAL.—If, at the end of a taxable year of a corporation—

(A) any one or more of those persons described in paragraph (2) own a percentage of the total fair market value of the outstanding stock of such corporation which is at least 50 percent of the total fair market value of the outstanding stock of such corporation, or

(B) the beginning of such taxable year, or

(C) the increase in percentage points at the end of such taxable year is attributable to—

(i) a purchase by such person or persons of such stock, the part of another corporation owning stock in such corporation, or an interest in a partnership or trust owning stock in such corporation; or

(ii) a decrease in the amount of such stock outstanding or the amount of stock outstanding of another corporation owning stock in such corporation, except a decrease resulting from a redemption to pay death taxes to which section 303 applies; and

(3) such corporation has not continued to carry on a trade or business substantially the same as that conducted before any change in the percentage ownership of the fair market value of such stock,

then the net operating loss carryovers, if any, from prior taxable years of such corporation, to such taxable year and subsequent taxable years shall not be included in the net operating loss deduction for such taxable year and subsequent taxable years.

(2) DESCRIPTION OF PERSON OR PERSONS.—The person or persons referred to in paragraph (1) shall be the 50 persons or such lesser number as they are persons owning the outstanding stock at the end of such taxable year) who own the greatest percentage of the fair market value of such stock at the end of such taxable year, except that, if any other person owns the same percentage of such stock at such time as is owned by one of the 50 persons, such person shall also be included. If any of the 50 persons are so related that such stock owned by one is attributable to the other under the rules specified in paragraph (3), such person shall be considered as any one person solely for the purpose of selecting the 50 persons (more or less) who own the greatest percentage of the fair market value of such outstanding stock.

(3) ATTRIBUTION OF OWNERSHIP.—Section 318 (relating to constructive ownership of stock) shall apply in determining the ownership of stock, except that section 318(a)(2)(A) and (B)(i)(A)(i)(A) shall be applied without regard to the 50 percent limitation contained therein.

(4) DEFINITION OF PURCHASE.—For purposes of this subsection, the term "purchase" means the acquisition of stock, the basis of which is determined solely by reference to its cost to the holder thereof, in a transaction from a person or persons

other than the person or persons the ownership of whose stock would be attributed to the holder by application of paragraph (3).

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(b) CHANGE OF OWNERSHIP AS THE RESULT OF A REORGANIZATION.—

(1) IN GENERAL.—If, in the case of a reorganization specified in paragraph (2) of section 381(a), the transferee corporation or the acquiring corporation—

(A) has a net operating loss which is a net operating loss carryover to the first taxable year of the acquiring corporation ending after the date of transfer, and

(B) the stockholders (immediately before the reorganization) of such corporation (hereinafter in this subsection referred to as the "loss corporation"), as the result of making stock of the loss corporation, own (immediately after the reorganization) less than 20 percent of the fair market value of the outstanding stock of the acquiring corporation,

the total net operating loss carryover from prior taxable years of the loss corporation to the first taxable year of the acquiring corporation ending after the date of transfer shall be reduced by the percentage determined under paragraph (2).

(2) REDUCTION OF NET OPERATING LOSS CARRYOVER.—The reduction applicable under paragraph (1) shall be the percentage determined by dividing 100 percent—

(A) the percent of the fair market value of the outstanding stock of the acquiring corporation owned (immediately after the reorganization) by the stockholders (immediately before the reorganization) of the loss corporation, by the fair market value of the loss corporation, multiplied by

(B) five.

(3) EXCEPTION TO LIMITATION IN THIS SUBSECTION.—The limitation in this subsection shall not apply if the transferee corporation and the acquiring corporation are owned substantially by the same persons in the same proportion.

(4) NET OPERATING LOSS CARRYOVERS TO SUBSEQUENT YEARS.—In computing the net operating loss carryovers to taxable years subsequent to a taxable year in which there was a limitation applicable to a net operating loss carryover by operation of this subsection, the income in such taxable year, as computed under section 1221(b)(2), shall be increased by the amount of the reduction of the total net operating loss carryover determined under paragraph (2).

(5) ATTRIBUTION OF OWNERSHIP.—If the transferee corporation or the acquiring corporation own (immediately before the reorganization) any of the outstanding stock of the loss corporation, such transferee corporation or acquiring corporation shall, for purposes of this subsection, be treated as owning (immediately after the reorganization) a percentage of the fair market value of the acquiring corporation's outstanding stock which bears the same ratio to the percentage of the fair market value of the outstanding stock of the loss corporation (immediately before the reorganization) owned by such transferee corporation or acquiring corporation as the fair market value of the total outstanding stock of the loss corporation (immediately before the reorganization) bears to the fair market value of the total outstanding stock of the acquiring corporation (immediately after the reorganization).

(6) STOCK OF CORPORATION CONTROLLING ACQUIRING CORP.—If the stockholders of the loss corporation (immediately before the reorganization) own, as a result of the reorganization, stock in a corporation controlling the acquiring corporation, such stock of the controlling corporation shall, for purposes of this subsection, be treated as stock of the acquiring corporation in an amount valued at an equivalent fair market value.

(7) SPECIAL RULE FOR REORGANIZATIONS IN TITLE 11 OR SIMILAR CASES.—For purposes of this subsection—

(A) a transferee who receives stock in a reorganization in a title 11 or similar case (within the meaning of section

607) shall be treated as having acquired such stock in a reorganization in a title 11 or similar case (within the meaning of section

Sec. 382(m)

The above amendment is effective on the date of enactment of this Act.

P.L. 100-647, § 4012(b)(1)(B):

Act Sec. 4012(b)(1)(B) amended Code Sec. 382(d)(3)(F)(ii)(X) by inserting "(as modified by section 382(a)(3)(D)(ii))" after "section 368(a)(3)(D)(ii)".

The above amendment applies to any ownership change occurring after the date of the enactment of this Act and before January 1, 1990.

P.L. 100-647, § 5077(a):

Act Sec. 5077(a) amended Code Sec. 382(i)(3)(C)(ii) by striking "and" at the end of subclause (I), by striking the word "and" at the end of subclause (ii) and inserting in lieu thereof

"; and", and by adding at the end thereof a new subclause (III) and a new flush left sentence to read as above

For the effective date of the above amendment, see Act Sec. 5077(b), below.

Act Sec. 5077(b) provides:

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to acquisition after December 31, 1988.

(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to acquisitions after December 31, 1988, pursuant to a binding written contract entered into on or before October 21, 1988.

[Sec. 382(m)]

(m) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section and section 383, including (but not limited to) regulations—

(1) providing for the application of this section and section 383 where an ownership change with respect to the old loss corporation is followed by an ownership change with respect to the new loss corporation, and

(2) providing for the application of this section and section 383 in the case of a short taxable year,

(3) providing for such adjustments to the application of this section and section 383 as is necessary to prevent the avoidance of the purposes of this section and section 383, including the avoidance of such purposes through the use of related persons, pass-thru entities, or other intermediaries,

(4) providing for the application of subsection (g)(4) where there is only 1 corporation involved, and

(5) providing, in the case of any group of corporations described in section 1563(a) (determined by substituting "50 percent" for "80 percent" each place it appears and determined without regard to paragraph (4) thereof), appropriate adjustments to value, built-in gain or loss, and other items so that items are not omitted or taken into account more than once.

Amendments

P.L. 100-647, § 1006(d)(1)(C):

Act Sec. 1006(d)(1)(C) amended Code Sec. 382(m) by inserting "and" at the end of paragraph (3), by striking out paragraph (4), and by redesignating paragraph (5) as paragraph (4). Prior to amendment, Code Sec. 382(m)(4) read as follows:

(4) providing for the treatment of corporate contractions as redemptions for purposes of subsections (e)(2) and (h)(3)(A), and

The above amendment shall apply with respect to ownership changes after June 10, 1987.

P.L. 100-647, § 1006(d)(24):

Act Sec. 1006(d)(24) amended Code Sec. 382(m) (as amended by paragraph (1)) by striking out "and" at the end of subparagraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and", and by adding at the end thereof new paragraph (5) to read as above.

The above amendment is effective as if included in the provision of the Tax Reform Act of 1986 (P.L. 99-514) to which it relates.

P.L. 99-514, § 621(a):

Act Sec. 621(a) amended Code Sec. 382 to read as above. For the effective date of the above amendment see Act Sec. 621(f), below.

Act Sec. 621(f), as amended by P.L. 100-647, §§ 1006(d)(1)-(16) and 6277(a)-(b), provides:

(f) EFFECTIVE DATES.—

(1) AMENDMENTS MADE BY SUBSECTIONS (a), (b), and (c) —

(A) IN GENERAL —

(i) CHANGES AFTER 1986.—The amendments made by subsections (a), (b), and (c) shall apply to any ownership change after December 31, 1986.

(ii) PLANS OF REORGANIZATION ADOPTED BEFORE 1987.—For purposes of clause (i), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

(B) TERMINATION OF OLD SECTION 382.—Except in a case described in any of the following paragraphs—

(i) section 382(a) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subsection (a)) and the amendments made by section 806 of the Tax Reform Act of 1976) shall not apply to any increase in percentage points occurring after December 1, 1988, and

(ii) section 382(b) of such Code (as so in effect) shall not apply to any reorganization occurring pursuant to a plan of reorganization adopted after December 31, 1986.

In no event shall sections 382(a) and (b) of such Code (as so in effect) apply to any ownership change described in subparagraph (A).

(C) COORDINATION WITH SECTION 382(i).—For purposes of section 382(i) of the Internal Revenue Code of 1986 (as added by this section), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

(2) FOR AMENDMENTS TO TAX REFORM ACT OF 1976 —

(A) IN GENERAL.—The repeals made by subsection (e)(1) and the amendment made by subsection (e)(2) shall take effect on January 1, 1986.

(B) ELECTION TO HAVE AMENDMENTS APPLY —

(i) If a taxpayer described in clause (i) elects to have the provisions of this subparagraph apply, the amendments